

**HERITAGE BILL 2016**

*Second Reading*

Resumed from 14 September.

**MS M.M. QUIRK (Girrawheen)** [11.03 am]: It would be churlish, not to mention trite, to note how long it has taken for this bill to be introduced into Parliament. With the volume of laws awaiting consideration by the Legislative Council, there is a very real possibility that this legislation will not pass before Parliament rises in a matter of weeks.

Several members interjected.

**The ACTING SPEAKER (Mr P. Abetz)**: Members! The member for Girraween has the floor. Members, I am on my feet. Let us not let this degenerate. The member for Girraween has the call. Let us give our full attention, on both sides of the house, to the member for Girraween. Thank you.

**Ms M.M. QUIRK**: I have to say that if the minister is sensitive about that rather neutral remark, I have more in store for him. Despite an unequivocal commitment by the government in its 2013 election policy, not to mention the Premier noting in successive years that heritage laws would be introduced into Parliament, we are only just receiving them now. In the Premier's address in 2014, he stated in this place —

Heritage: The conservation of our built and cultural heritage will also be a focus with the introduction this year of a new Heritage Bill. Remaining substantially unchanged for more than two decades, our current heritage legislation no longer reflects modern standards of heritage practice.

That was over two years ago. As I said, this promise had to be made in successive years because it was broken. The failure to prosecute and progress these laws with due expedition speaks volumes about the lack of meaningful commitment to preserving our built heritage and, by definition, the very essence of what makes us unique: our cultural identity. Just as telling was the halving of the so-called heritage revolving fund from the \$8 million election commitment. It was halved in the 2014–2015 budget.

Before I refer to two specific cases, I want to make some broader observations about how this government has handled heritage issues. It is said that fish rots from the head down, so when the leader of the government has persistently had difficulty understanding the notion of conflict of interest, it is little wonder that the interaction between commercial interests and good governance can be blurred and lack transparency. The Premier stubbornly maintains that for there to be a conflict of interest, an actual financial benefit must be gained. We all know this is not the case. In the context of heritage, the potential for conflict of interest is high. As recently as a fortnight ago, there was an example in *The Sunday Times* in which transparency within the Perth city council may well be a casualty of the pursuit of commercial interests above and beyond good heritage practice and the preservation of rare and significant examples of our built past.

That lack of transparency and contempt of this place has also been evident in this minister. I will not dwell on the infamous saga of the Guildford Hotel other than to say that when pressed, the minister hid behind claims of commercial-in-confidence and legal professional privilege, even if he is unable to point to the existence of either oral or written legal advice when asked by the Auditor General.

That is a convenient segue to two examples —

Several members interjected.

**The ACTING SPEAKER**: Members, I do not think the member for Girraween is asking for interjections so let us just give her our attention.

**Ms M.M. QUIRK**: That is a convenient segue to two examples of less than transparent and frank dealings with the public of Western Australia on heritage matters. The first relates to Florence Hummerston kiosk, which relocated from the Esplanade to 200 metres away, close to the river on Elizabeth Quay. Most members are familiar with the background to this matter. I will just refer to the minister's press release. This was a building built in 1928. It was ultimately moved at some cost—which we will talk about—some 200 metres closer to the river on an artificial island in Elizabeth Quay.

The matter is now before the Supreme Court, as offers made to the plaintiff, Wang Nominees, have been refused. The then Minister for Planning, Hon John Day, would not disclose the quantum of the last offer made to the plaintiffs, which has been rejected. However, I have had access to the statement of claim filed in April 2014. The plaintiff asserts the following. The lease for the Grand Palace restaurant was entered into in December 2003 with the City of Perth. The initial term was for 10 years, with provision for three more terms of renewal, each of 10 years. The cost of the lease was significantly offset by the need to undertake capital works and repairs to the building, which took almost two years to complete. The business commenced trading in December 2004. Further alterations to the premises took place in 2007 and 2008, including the additions of a bar and alfresco and

function areas. In August 2009 the Western Australian Planning Commission assumed lead agency role and a master plan was released for the Perth Waterfront project. In May 2010 the restaurant was given approval to construct decking and paving, and in October 2010 further extensions were approved by the planning commission. In early 2011, amendments were made to the metropolitan region scheme to consolidate existing reserves into a single purpose special use reserve. These amendments were subject both to submissions and public hearings.

In February 2011, Mr Glenn Finn, director of the Perth Waterfront project and employee of the Western Australian Planning Commission, met with the plaintiffs, the Wangs, and advised them that work was intended to commence in 2012. I stress—2012. Ultimately, the land would be required for the project—wait for it—but the WAPC would endeavour to leave them in place as long as possible and probably some time into 2014. In October 2011, the plaintiffs' solicitors were advised by email that the WAPC now intended to issue a taking order due to a very tight time frame. Later that same day, another email was sent, stating the earlier email should be disregarded and the WAPC would wait and see how negotiations proceeded before even contemplating the course of compulsory acquisition set out in the email sent earlier the same day. By letter, dated 31 October 2011, a month later, lawyers acting for the WAPC advised that the business would have to terminate by 1 March 2012. That date was later altered to May 2012. We have gone from the WAPC originally saying it would let the business stay there until 2014 to now giving about seven months' notice that the Wangs would have to vacate by May 2012. The statement of claim goes on to note that trading results for the business suffered due to the inability to commit to bookings for more than a short period into the future and proceed to long-term expansion plans. In November 2011, the alfresco area was completed, providing more casual dining, but the construction of the bar area was postponed due to the uncertainty attached to the rapidly crystallising plans to bring forward the waterfront project.

In May 2012, a letter from Mr Finn to the plaintiffs indicated that a notice to quit would be issued simultaneously with a taking order for vacation of the land on 31 May. Correspondence between the parties then took place concerning the manner in which the Planning Commission would take possession of the property to maximise the tax outcomes for the Wangs—namely, the purchase of shares in the business, as opposed to resumption of the land. The taking order was signed by the Minister for Planning in April 2012 and by the government in Executive Council later that month, and then registered on 25 May with Landgate. The land and all the plaintiffs' interest in the land were taken for the purposes of the metropolitan region scheme—namely, special use Perth Waterfront project. The business ceased trading on 26 May 2012 and the WAPC took possession on 31 May 2012.

The statement of claim sets out in more detail the particulars of the claim and what should be taken into account in valuing the property. They include —

- (a) a unique and irreplaceable location with expansive views over the ... Swan River ...
- (b) an attractively renovated heritage building;
- (c) a beneficial, significantly below market, rental for the Land
- (d) a long term lease of the Land
- (e) above average management and trading results ...
- (f) strong ethnic links to the Chinese/Asian community;
- (g) an optimum location for exploiting the Perth CBD business community customer pool ...
- (h) a consistently escalating turnover, growth and net profits on a year by year basis even through the economic downturn following the Global Financial Crisis;
- (i) the potential to further increase turnover growth and net profit in both the existing fully renovated buildings, the newly renovated but not yet fully exploited alfresco area and the proposed lounge and bar area, the latter frustrated by the public work and
- (j) the ability, following the completion of the last stage of buildings works namely the bar, for the Wangs to turn their full attention to maximising the potential of the expanded business

All those matters, according to the statement of claim, were not adequately considered in the evaluation.

On 12 June, the defendant paid the plaintiffs, the Wangs, the sum of \$5 million by way of an interim advance payment. On 11 November 2012, the minister announced that Florence Hummerston kiosk would feature prominently at Elizabeth Quay, which was five months after the interim payment of \$5 million was made and five months after the taking order. The minister announced that the kiosk would be dismantled and reconstructed and that it would be put in storage until late 2014.

By December 2013, an offer totalling \$7 116 739 was made inclusive of the already paid advance of \$5 million. This was rejected as full compensation, but the additional sum—that is, the sum between the amount offered and the \$5 million advance payment—of \$2 245 135.17 was transferred by way of advance payment. The matter was very slow in proceeding through the courts, and it was not until October 2013 that Chevron agreed to purchase the block where the kiosk was located.

It is by no means clear that initially the kiosk was intended to be retained but moved. This occurred later, after considerable public pressure. These facts show that we can conclude that between February and October 2011, inexplicably, the time frame change meant that representations made to the restaurateurs that they could stay operating until 2014 were truncated by two years. That begs the question why it was suddenly urgent. The loss to the plaintiffs appears to be compounded, especially the viability of having undertaken various building works with the concurrence of the WAPC, and that will reflect itself in the ultimate damages claim. As I said, the matter is still on foot in the Supreme Court. We know from court documents obtained that many billable hours have been expended. Former responsible minister Day refused to disclose the quantum of legal costs incurred to date; as he rather cutely replied, as the State Solicitor is acting for the WAPC, no legal costs have been incurred. Neither would the minister disclose the details of any settlement offer, as he claimed the information was commercial-in-confidence.

As the legal costs rise and the ultimate settlement is paid, the economics of moving the kiosk are less sustainable. In February 2014, I asked the minister the supplementary question: what was the amount offered in settlement? The minister replied —

The member for Girrawheen, as a former lawyer, would not really expect me to provide that information. I have probably provided more than was ideal, but it would not be appropriate to divulge that. I do not have that particular figure here.

...

... Because negotiations are still underway; the matter is not concluded at this stage. What I do recall is that what was being claimed by the lessee, at least is the early part of negotiations going back a year or two, was far, far higher than what has been paid at this stage. Obviously we have a responsibility to protect the interests of taxpayers, the public interest in this state, and we will do that. There is a process that is well established to determine an outcome if it cannot be agreed; and that is what will happen.

[Member's time extended.]

**Ms M.M. QUIRK:** Some might say that proceedings are being delayed because the government does not want the embarrassment of having to disclose the final payout. We can conclude that the government has been less than forthcoming on the issue. The haste in taking over the site from the City of Perth without due diligence on the lease, and then inexplicably moving the time frame, both adding to the expense incurred by the government and I suspect the quantum of its liability, is yet another example of the government's fiscal delinquency. The whole matter has been incompetently and deceitfully handled. The heritage value of the Esplanade Reserve has been significantly devalued by the removal of the iconic Morton Bay figs and the spiriting away under the cloak of darkness piers of a jetty to the Mosman Park Men's Shed before scrutiny under the Maritime Archaeology Act could be undertaken. Happily, I am advised that the Mosman Park Men's Shed, recognising the significance of the wooden piers, has not turned the wood into coffee tables, but has preserved them hoping for a future opportunity to return them to their rightful home in some form or another.

Finally on this project, and in the spirit of the great TV program *Utopia*, I note the "Perth Waterfront Project: heritage interpretation strategy" prepared in August 2012. This strategy ironically canvasses how the heritage significance of the things removed under the very project is to be remembered. Under the heading "interpretive signage", it states —

The most didactic delivery of messages and storylines will be through detailed interpretive signage.

I think that means that when the heritage item has been removed, a sign will be put in place outlining what used to be there. It continues —

This supports and provides context for the more provocative elements such as artworks and in-ground quotes. The signage may convey the messages and storylines through detailed text and photographs, maps, plans or other graphic content.

The signage may be located both along busy thoroughfares and in quieter areas. The scale and type of signage will vary to engage the audience at different levels, and will be dependent on the landscape context in which it is placed as well as the interpretive content it will contain. The material palette and geometric form will be considered against that of the landscape in order to merge the interpretation—

Punctuation seems to be very sparse —

into the overarching design approach and form an integrated interpretive system in the eyes of the audience. This approach is common throughout the interpretive overlays.

Make of that what you will. As I said, in other words, it means that now that we have got rid of everything, let us put up a sign to tell people what used to be here.

The second case I want to refer to as evidence of a lack of candour by the government in its heritage practice relates to the award of a 2014 heritage grant of \$100 000 to a premises in Busselton. Of itself, this did not appear exceptional. The premises had been the subject of a conservation management strategy dated April 2014 for which the owners received a \$10 000 grant. What brought the grant to my attention was that for some reason, the minister chose to omit reference to the grant in his media statement and also in a response to a government parliamentary question. Interestingly, he mentioned the other three projects that received the maximum grant amounts, but as I see from the draft press releases that I obtained under freedom of information, the reference to this particular project was deleted. I then undertook a freedom of information request wanting from the State Heritage Office copies of all the documents related to that grant of \$100 000. I got back no primary documents whatsoever. All I initially got back was a table that had been prepared in the State Heritage Office summarising all applications for heritage grants. I had to fight for a number of months to get the original application and the State Heritage Office quite unreasonably claimed exemptions on the material as being personal information when it was quotations for work needed to be performed as part of the heritage application. This is a problem that also excited my suspicions. For some reason the office did not want to disclose the grant application. Why was there this obfuscation? When I finally got the application, I saw that there were no independent quotes for the work required to be done on these premises. For example, a handwritten application had only an estimate of the amount that would be taken for the work performed. Despite it being apparent that the State Heritage Office had requested additional information, apparently none was provided and the heritage office was prepared to recommend the \$100 000 grant without independent information on the costs of the repairs. I am not inferring that the current owners have done anything improper. I think their intention was to restore the premises to its former glory. However, as I said, the FOI application has been like drawing teeth and a very wide interpretation of personal information included the provision of material that would have elucidated the cost of the repairs. When I finally got that information, it was only handwritten notes and there were no independent quotes from contractors whatsoever.

Why do we think that the minister has been less than forthcoming on this application? This property was passed in twice at auction. This could lead one to infer that there an undertaking at the time of sale that a grant for a conservation management strategy and also a heritage grant could be secured, which would relieve the purchaser of some of the repair costs for the house. Was that undertaking to be made because the then local member's wife was the owner of the property, and did that local member have the ear of the minister in lobbying for that grant? As members would appreciate, only four such grants of \$100 000 are given each year and there is substantial competition for these grants. As I said, the application was largely handwritten, there were no independent costings and it appears to have been hastily submitted. I note in the scant paperwork that I have secured under FOI a note about the applicant by a state heritage officer stating, "I think they may be a little overwhelmed by the whole process so we may need to tread gently." That is a slightly odd comment if there is no background given to the people making the recommendation. It beggars belief that such a substandard application garners \$100 000 of taxpayers' money against quite substantial competition. In my view, there is an alternative explanation, which the minister is not prepared to disclose.

It is my fervent hope that when this new bill is enacted, it will herald a new standard of openness and the willingness to judge our heritage on its worth and in the context of its true historic and aesthetic value, and not just on the capacity to convert it into commercial premises or a wine bar or to just help out mates. We are reminded every day as we look down the Terrace through the lonely Barracks Arch that once our rare heritage is lost, it is lost forever. I am not convinced that, were the Barracks Arch to be earmarked for demolition today, it would be saved, unless it could be converted into a bar or restaurant. Sometimes our history is important for its own sake or, as John Steinbeck more succinctly put it in *The Grapes of Wrath*: "How will we know it's us without our past?"

**MRS M.H. ROBERTS (Midland)** [11.30 am]: I rise to speak on the Heritage Bill 2016. I know that the Minister for Heritage has congratulated himself on bringing this legislation before Parliament—eventually. Certainly, one of my teachers at school always used to make the comment that self-praise is no praise indeed. We hear, virtually on a daily basis in this house, the minister praise himself. The fact of the matter is that the Liberal government has been in power for some eight years. It is true that a review of the Heritage of Western Australia Act was put in place in about 2005 or 2006. I certainly had some involvement in the year that I was Minister for Heritage. The Liberal Party promised in the lead-up to the 2008 election that it would introduce heritage legislation as a matter of priority. I realise that the current minister was not the Minister for Heritage in the first term of the Barnett government. That duty fell to the member for Bunbury, if

**Extract from *Hansard***

[ASSEMBLY — Thursday, 22 September 2016]

p6614b-6628a

Ms Margaret Quirk; Mrs Michelle Roberts; Ms Janine Freeman; Ms Simone McGurk

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I recall correctly, who re-engaged with the process and had consultation. Indeed, he led the community to expect that he would introduce a heritage bill in the first term of government. Unfortunately, that did not eventuate and now, another four years later, we have this bill before us for debate. This bill certainly shows progress, but does it provide the necessary heritage protections that are required in this state? Could it go further? Absolutely, it could. Although this bill shows some progress, it is a long way from perfect and still has some big gaps.

I know that many people in my electorate have been disappointed by this government's lack of action on heritage matters. People in the region have been very concerned about the lack of heritage protection for Guildford in particular. Although I have spoken about the historic town of Guildford many times in this place, I do not intend to go over all that history, including the history of Indigenous settlement. Guildford was a very important location prior to white settlement in this state, but there has been little acknowledgement of that. A lot more could be done to acknowledge the importance of a town such as Guildford to the Aboriginal people of our state. Guildford is probably better known by most people as one of the earliest places of settlement in this colony. As I remarked only last night, the heritage-listed Guildford Primary School is the oldest continuously operating government school in this state, so it was a very important school in those early years. The fact that it has operated continuously sets it apart from some schools that were established earlier and did not operate for a period but the buildings still exist.

The fact of the matter is that when the Swan River Colony was established, some of the earliest places that were established were necessarily along the Swan River. River transport was the easiest means of transport. If people can imagine those early settlement days, there were no roads, let alone highways, and no railways, so travel by boat was the primary source of travel. People often question why there is an anchor on the City of Swan's crest. It has an anchor because Guildford and Midland were among the first ports established in this state. They were river ports. People do not think too much of river ports anymore, but that is why places such as Guildford and Midland were among the early places of settlement.

People may be aware that the agricultural soils of Guildford and Midland in the Swan Valley were acknowledged in those early years as being significantly more productive than the soils of the Swan coastal plain. Those soils did not offer the same growing and agricultural opportunities that the much more fertile soils of Guildford and the Swan Valley provided. Hence, that is why it is such a great grape-growing and viticultural region, why those early settlers in Perth headed out to Guildford and Midland to the rich clay soils and why places such as Woodbridge House were established as prime locations. Indeed, at that time, they were seen as far more prime locations than areas on the river around Dalkeith or Mosman Park, because those areas did not provide the same great agricultural land that the section of the river through Guildford and Midland and into the valley provided. That is why some of the oldest buildings in this state are there.

With such a relatively short history since the establishment of the Swan River Colony, people in Western Australia often take their heritage for granted or, alternatively, do not really acknowledge it as heritage. They see heritage as something that applies to 500, 600 or 700-year-old churches and buildings in Europe, 300 or 400-year-old buildings in America or even the older buildings in New South Wales, because that colony was established at a much earlier stage than the colony in Western Australia. Although Captain Cook arrived in New South Wales in 1770, it was not until 1829 that Governor Stirling arrived in Western Australia and the Swan River Colony was established—some 60 years after New South Wales. I would like to see much more done to acknowledge those early years of this state, and I am not talking just about the built heritage.

There are some very active heritage groups in my electorate, and none more active than the Guildford Association. Anyone who has ever taken an interest in Guildford's heritage would know that the backbone of the Guildford Association is Mrs Barbara Dundas, who is really quite renowned. I know of no-one who has a more expert knowledge of Guildford, and more particularly the heritage of Guildford. I want to refer to some correspondence from Mrs Dundas that I know has been forwarded to the State Heritage Office; she has also forwarded that same correspondence to me and to the member for Mandurah in his capacity as shadow Minister for Heritage. She has provided some comments that are very well informed. I want to place her concerns and comments about the Heritage Bill 2016 on the record. We can have some further discussion about some of these issues when we get to the consideration in detail stage of the bill. Her first comments relate to the relationship with the State Heritage Office and Heritage Council to the minister. She states the following —

To provide for complete transparency of process, the power of the Minister of Heritage to override or determine decisions over and above State Heritage Office ... and the Council should be removed to provide independence and transparency. This was seen as a necessary point to be incorporated in the new Heritage Act

These were seen as necessary points to be incorporated in the new Heritage Bill. She comments further —

*It is disappointing to see the independence of the Minister from SHO and the Council decisions has not been incorporated. This was the most agreed upon comment in the Workshops on reviewing the Heritage Act.*

I would be interested to hear the minister's comments on that. Most of us would like to think that there would be minimal interference, for want of a better word, from the Minister for Heritage and that by and large the decisions of the State Heritage Office should be upheld. That is certainly the concern of the people who attended the workshops. I understand that concern, because if I can play devil's advocate for a moment, people will ask: what is the point of having the State Heritage Office or the Heritage Council if any or all of its decisions can be overridden by the Minister for Heritage—if political imperative has the intention to override the independent and objective assessment of the State Heritage Office or the Heritage Council? The correspondence from Mrs Dundas goes on to comment on the inclusion of the definition of "heritage place", and she referred to the green bill, which has effectively become the bill. She states —

... the definition of a 'Place' may include multiple places with different ownership, inline with international practice. This allows for the inclusion of a Heritage Town as opposed to dividing it into many different precincts

Her comment on this is that it is supported by the Guildford Association. That is obviously because we have long sought the inclusion of Guildford as a heritage town—we actually want the whole town protected. One of the problems we face is that we do not have that protection for Guildford. There are competing demands, particularly demands from state planning, because state planning's brief is different from that of the heritage minister. I well understand the thrust of many of the things that the state planning agencies want to do. They acknowledge that urban sprawl, for example, cannot be allowed to continue. They acknowledge that it is not a good use of public money or community resources to continue to sprawl and sprawl and for government to have to provide more and more kilometres of roads and services such as electricity and gas and so forth when urban infill could provide a much better alternative. It is certainly a cheaper alternative for government because existing structures in existing suburbs can be used rather than new facilities and new structure having to be built in sprawling suburbs to the north, the south and the east. That is well understood. There are also some environmental advantages in having so-called urban infill, greater intensity of planning development and greater intensity of housing in established centres. Further, it makes even more sense to have that kind of urban infill and greater population numbers close to transport nodes. That has been acknowledged for quite some years now. We want people not to be so reliant on cars, and we want the concomitant environmental benefits of that. That also enables people to keep costs down by using public transport, which eases congestion and avoids all its associated costs. More people living in more intense developments close to public transport nodes is generally a good thing.

The conflict that then develops in a town like Guildford is that Guildford is a historic built form with a railway through its centre. It is remarkable how intact Guildford still is today. Most people who come to Guildford, if they do not frequently go there, think when they stand in Stirling Square that they have arrived for *Midsomer Murders*. It has that quaint little English country village feel, and indeed it is named after a town in England.

[Member's time extended.]

**Mrs M.H. ROBERTS:** It has that quaint feel. It has that same built form that we would expect in one of those country villages. It has the train line through the centre of town. It has the level crossing right there in the centre of town and the town hall and the post office. It is generally built form of no more than two storeys.

**Mr R.F. Johnson:** They don't get as many murders as in *Midsomer Murders*, though!

**Mrs M.H. ROBERTS:** No, exactly!

Guildford is unique—and if we do not act soon, we will lose that. Some people might say that that is what happens, but this is a town that reflects those earliest times of colonial settlement in Western Australia. There is a very strong argument for it to be preserved. That does not mean that it has to be quarantined and there can be no development, but I do not think multiple-storey developments, which we are getting more and more pressure for—four, five, six and seven-storey developments—fit with the built form of Guildford. That is not to say that I oppose these transport-oriented developments with all the urban infill along the rail line; I absolutely support that. But give us that in Midland—give us that around the current Midland train station site. We are hopeful that the current Midland train station will be moved closer to the hospital and will link in with Cale Street. There is a huge opportunity there for a multistorey development where the new train station goes in. There is further potential for development where the old train station currently is. All of that parking area at the current station could be used or transferred to a different end-of-line station, potentially at Bellevue or the like. An awful lot of railway land, and other land, is in the vicinity of Midland. People are more than prepared to contemplate a multistorey development in the Midland town centre. I do not think that people would have terribly much

**Extract from Hansard**

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objection to a six, seven or eight-storey development close to a new railway station in Midland where it would not affect anyone much. It makes sense to have that intensity of development around there. Maybe we could take more than our fair share of urban infill and transport-oriented development in the Midland town centre. There is a huge opportunity for growth and infill there. I think in a recent planning study I saw speculation that another 20 000 people could be located within an area not much bigger than the Midland CBD over the next 10 to 20 years. I have no issue with that. But I have an issue with the continued pressure on a town such as Guildford.

A line has to be drawn somewhere, otherwise what we have now could be lost. It is not fair to have a system whereby we just pick off sites one by one. One by one, sites get picked off in Guildford. There has to be a holistic plan. Property owners and future developers need to know what the guidelines are and what is expected for the development in Guildford town centre. That is the concern there. Widening the definition of “heritage place” to cover multiple sites is supported by the association and me. This is an opportunity to afford Guildford a protection from some of the pressures coming from state planning.

With respect to the council, Mrs Dundas sent in the following comments —

Under the Green Bill the current emphasis on having members represent certain interest groups (eg Architecture) be altered to have membership based on various skills. It is important for the Council to be able to recover costs relating to certain necessary activities.

*Comment The Association supports the change of membership to a broader base as was discussed in early workshops ... We are cautious in this support, as this may not be easy to implement as Councillors may achieve considerable financial benefit and status being on this Committee and the loss of position may be subject to challenge.*

*The Association would like to see a member of an Indigenous community included on the Council eg an Elder with considerable experience in planning matters*

That is a very good point and I would be interested in the minister’s response to that. The letter continues —

The Code of Practice needs to include Councillors not taking on particular work or having involvement in particular work areas because of potential conflict of interest.

*Comment The Association supports the need for development of strict code of practice to ensure transparency and reduce potential areas of conflict of Council members eg using a position of Chair of a professional organisation to support certain proposals without publicly declaring ones commercial interests that might benefit from such a statement.*

I think that is self-evident. Mrs Dundas’s comments on the state register are as follows —

Removal of interim registration to allow for one single process

*Comment The Association has some concerns about the removal of this section of the Act, as a place under immediate threat may not be able to get the Minister to make an urgent decision. There is risk that a place may be bulldozed, vandalised, or burnt whilst waiting for assessment for placement on the State Heritage Register that may take upwards of 10 years.*

Use of HERCON Criteria as used by most other Australian States

*Comment this is supported by the Association as it will give better grounds for State comparisons and also assist with placement on National/Federal Heritage Registration and World Heritage Listing.*

Minister for Heritage required to receive advice for Heritage Council and his decision to be made public.

*... The Association would like to see the Minister removed from the decision making process and all decisions made public.*

Regulations to have prescribed time limits for the Minister and Heritage Council to make decisions

*Comment with the planned removal of interim listing and the potential time limits of assessment removed, many properties may be left unprotected for 10 or more years until they are considered for assessment.*

I think that is a legitimate concern. The letter continues —

Formalising how nominations are made/assessed and who is to be involved will increase transparency

*Comments the Association supports this move but would like a further period of public comment on this when developing such protocols.*

Removing or amending a place from/on the State Heritage Register is to be formalised through a process.

***Comment** The Association is concerned that this process may lack transparency if there is the potential for Ministerial involvement or political interference*

Statements of significance will be created and amended in a separate process, although this can be undertaken in parallel with the processes for entering or amending a place in the Register.

***Comment** It is unclear how this process would work as the statement of significance is critical to assessment of registration demonstrating rarity, social associations, technological innovation etc etc. It would be difficult to assess a place without due consideration. This may lead to criticism of the assessment process and the undesirable result of having to reassess and remove from the State Register.*

The next comments from the Guildford Association are on protection and repair orders —

Protection Orders to more accurately reflect their purpose and for consistency with Australia ICOMOS Burra Charter terminology.

***Comment** The Association is concerned that the decision to implement a Repair order is in the hands of the Minister and could be subject to political interference. The Minister must act on the recommendations of Heritage Council, although his ultimate decision must be made available. There is a need to take this decision out of the political process*

The State Administrative Tribunal will have the power to review this decision.

***Comment** This is of concern as the Tribunal(SAT) does not have the expertise to comment on Heritage matters and must seek advice from Heritage Council.*

The Council, the Minister and the State are immune from liability for damages or injuries ...

***Comment** This is beyond the scope of the Association to comment*

Stop work Orders expire 60 days from issue, rather than the current 42 days, allowing more time for public consultation and other tasks required to issue an ongoing Protection Order.

The Guildford Association supports that extension. As for matters affecting places of heritage interest, generally the association supports the principles as outlined in the review document. The letter continues —

Revaluation for land tax assessment will be extended to any land entered in the State Register.

***Comments** the Association supports this in principle, but believe there could be issues with a total town registration and would argue that there may need to be some exemptions.*

In other parts of the world where whole towns have been listed, the values of properties in those towns have generally increased. It seems to be a bit of a Western Australian phenomenon that everyone thinks that heritage listing somehow devalues a property. A heritage listing not only can, and does, often increase the value of a property, but when whole towns are listed, one finds that, generally, property values go up, not down. These become sought-after places to live and work in.

There are some more comments on heritage agreements. The document continues —

***Comments** the Association supports this section of the new amendment if it is backed by the decision of Heritage Council and the Minister*

With respect to local heritage, the document continues —

Inventories are now called Local Heritage Surveys and include ‘places’ instead of just ‘buildings’.

***Comments** the Association supports the extension of the terms of what can be placed on an inventory to include places as sites of significance*

...

***Comments** Include the word ‘Heritage’ Council and define what is meant in terms of ‘due regard’.*

...

***Comments** The Association supports this and would like Councils to ensure the regular maintenance of such surveys*

*The Association would like to see Local Governments include an assets register which includes heritage components to prevent the social significance being destroyed in the name of Commercialisation principle ...*

**MS J.M. FREEMAN (Mirrabooka)** [12 noon]: I, too, rise to speak on this very important bill before the house, the Heritage Bill 2016. I note that the Heritage Bill looks at postcolonial heritage and does not include Aboriginal heritage as such. It came about amongst much contention; not this bill, but having heritage legislation

in the first instance in the form of the Heritage of Western Australia Act 1990. In fact, I think four incarnations before that legislation, which this bill replaces, were actually put to Parliament.

Before I begin my contribution to the debate on the Heritage Bill, I would very much like to remember someone who was very involved in the Heritage of Western Australia Act 1990, which set up the Heritage Council. I refer to a gentleman named Angus Hopkins. Angus died recently—far too young, in his 60s—on 24 July 2016. He was instrumental in bringing heritage legislation to the Parliament in the 1990s. When I started working for Hon Jim McGinty in 1991 in his capacity as Minister for Housing, he was also Minister for Heritage. He had the job of implementing the heritage legislation that had gone through Parliament and Angus Hopkins came to work in his office and then went to head up the department as the chief executive officer. He worked tirelessly to ensure that the legislation reflected the needs of the community at the time; the community had seen things like the Barracks being knocked down, the demolition of the Esplanade Hotel and many other properties knocked down. I read some of the parliamentary debate of the time and Hon Tom Stephens talked about Matso's in Broome; as there was no legislation to protect it at the time, it could have been knocked down as well. Anyone who has been to Broome will know Matso's store. It was actually a bank in Chinatown and was moved to another part of the town because developers wanted to knock it down. Captain Gregory's house is one that I am unfamiliar with, but as I understand it, it was the home of one of the great pearling masters of Broome, Captain Gregory. Both buildings were moved because there was community outrage at the prospect of them being knocked over. At the time, Lord McAlpine facilitated those buildings being shifted. We can see that that period of the 1990s was a time of a lot of growth; people had seen a lot of growth and felt aggrieved and concerned about different buildings that were being knocked down. Physical heritage was being lost and there was a feeling that the history that those buildings encompassed was being lost to the community.

Angus Hopkins was at the forefront of the community; he was always a strong community member. Wherever Angus went, he took the community with him. He was often the spokesperson for groups of people who wanted to see change for the better in their communities and in Western Australia. After working in the heritage area, he moved to the Department of Conservation and Land Management, as it was in those days, and was instrumental in some pretty amazing mapping technology that is being used now.

I went to a memorial service for Angus; he passed away in Townsville because he had moved to Queensland and was also working in Canberra, as I understand it. His death came as a great shock to me; he had been sick for a little while, but his death is a great loss to our community and to Australia as a whole. He was one of those public servants we all come across in the work we do who are just quiet achievers; they go around and look at the technical requirements needed to deliver the policy frameworks we give them. He did that, and he always did it with great joy and bonhomie.

His memorial was held in Fremantle and lots of people came down to it, despite the fact that he had not lived in Western Australia for a good 10 years. Hon Kay Hallahan was there, as was Hon Jim McGinty and many academics, and many people from what is now a different department —

**Mr A.P. Jacob:** Department of Parks and Wildlife.

**Ms J.M. FREEMAN:** Yes, the Department of Parks and Wildlife, formerly the Department of Conservation and Land Management.

His family, friends and community members were also there.

I want to put this on record, because it is a lovely thing to put on record: someone stood up and did the Angus laugh, which Angus did wherever he went. He was a lovely, charming man who had a passion for life and if he embraced a commonality of passion with someone, he would come in, see that person and laugh right from the core of his soul. He is a great loss and I want to put this on record because we are talking about the Heritage Bill, and this man was very important to the heritage legislation we have before us now and the previous heritage legislation in Western Australia.

Strangely enough, when I was looking through the old bound volumes of *Hansard*, people asked, “What are you looking at those for?” Nowadays, we thank the advisers and the people who assisted us in drafting legislation; in those days it did not seem to be common practice for that to occur. The only mention I can find of Angus in *Hansard* is when he was appointed to the Rottne Island Authority in 2001; he was appointed because of his experience with the heritage legislation and his work in the Department of Parks and Wildlife, or CALM as it was then. As such, he was an able appointment to the board.

I want to move on to talk about the community that I represent, which is Mirrabooka. We would not think Mirrabooka has much heritage, would we—we just would not. There is the idea that heritage has to be beautiful and old. My view is that heritage is about cultural history and it is about retaining an essence of the history of the community and about linear time so that as the community develops, we can look back to the past and see how it was formed. That can be lost because we have forgotten what the physical structure of our city looked like, and because we do not know the verbal history because it is not passed on to us. I will digress a bit here and talk about

verbal history versus physical history. I always love telling this story to students from my area when I stand in front of the picture of the first government of Western Australia. It was actually not an elected government. It was the first administration of Western Australia. I point to the person in the middle of the picture, and I ask, “Does anyone know John Septimus Roe?” Of course, they know John Septimus Roe because we have John Septimus Roe Anglican Community School in Mirrabooka. I say he was the surveyor general, and he drew all the roads. I then ask, “Does anyone know why there is a kink in the road at the end of St Georges Terrace before it goes into Adelaide Terrace?” Does the minister know why there is a kink in the road?

**Mr A.P. Jacob:** I am waiting to find out!

**Ms J.M. FREEMAN:** The reason there is a kink in the road is because John Septimus Roe put his house at the end of St Georges Terrace. Where the Dome coffee shop is now, there is a statue of John Septimus Roe. The house was not the problem. His lovely wife, Eliza—after whom many things in Western Australia are named, as we know—decided that she wanted a rose garden, so she built a beautiful rose garden out the front of her house. That is what I understand. Hopefully, historians will not come and say to me that actually I am a bit wrong. John Septimus Roe must have come home one night—this is my creation of the story—and said to his lovely Eliza, “I’ve got to put the rest of St Georges Terrace through”, and she would have said, “Not through my rose garden you won’t”, so he kinked the road around the rose garden, and hence we have a kink in the road. I love that story and I am sticking to it! Hopefully the historians will allow me that story. Often the issue with heritage is that we do not have these great little stories that can make up part of our physical heritage. That is mostly because in many cases we have lost the physical buildings. If John Septimus Roe’s house was still at the end of the street, we might be able to say the reason there is a kink in the road is because that is where the rose garden was. But all we have now is a statue.

While I am standing here, minister, can I say that Edith Cowan’s house is an important part of our structural history. I know that this was not the house that she lived in for the full period of time. She lived there for a short period with her husband. However, this woman is iconic. She was the first woman elected to a Parliament anywhere in the commonwealth, as far as I understand, but at least in Australia. When she came into this house, she was berated. People were yelling from the public gallery, telling her to go home and look after her children. This is a woman who by this stage had grandchildren.

**Mr A.P. Jacob:** I was going to say that was your side at the time, but I will not. It is a good story.

**Ms J.M. FREEMAN:** I do not think it was our side. If the minister wants to talk about sides, she was then dis-endorsed by the minister’s side at the time; so, let us not go into that. The fact of the matter is that May Holman came into this place after Edith Cowan. Edith Cowan had only one term, because she was effectively dis-endorsed for the seat of Subiaco by the conservatives because she spoke out about her area.

**Ms S.F. McGurk** interjected.

**Ms J.M. FREEMAN:** I am not supposed to talk about May Holman! Okay. When May Holman walked into this house, there was cheering. People could not get into the public gallery. She was a much younger woman. Edith Cowan had forged ahead—it is that amazing thing about people who can jump the barrier of discriminatory thought that she was somehow sully this place by being a woman in this house. There were comics that showed her cleaning the chamber and things like that. I digress, but it is very important to mention that. A lovely young woman, a year 5 student whom I know, has written a letter to the minister saying please save Edith Cowan’s house.

**Mr A.P. Jacob:** I have received the letter. It’s a lovely letter.

**Ms J.M. FREEMAN:** The minister has received the letter. Has the minister responded?

**Mr A.P. Jacob:** I am fairly sure I have responded.

**Ms J.M. FREEMAN:** The minister responded last week.

**Mr A.P. Jacob:** I will have to check. You sent me a letter from a year 5?

**Ms J.M. FREEMAN:** Yes.

**Mr A.P. Jacob:** I think I sent a holding response.

**Ms J.M. FREEMAN:** The minister has, actually. I tell a lie! I am misleading the Parliament here, minister. The minister has responded. It is a bit of a holding response. I have responded as well. Her dad is someone who I know from our work past. I responded and said to her there is this other great woman, May Holman, and sent her a copy of the book.

I digress. What I want to get on to is Mirrabooka. I was very, I suppose, challenged when I was elected in 2008 because under the Mirrabooka redevelopment, they wanted to take out Mirrabooka lake. I do not know whether the minister has been to Mirrabooka, but there was a lake. They got rid of the lake and there is now a road where the lake used to be. The lake was quite beautiful. It had lovely trees that had been there since the 1980s. There is still

quite a lot of bushland around that area and the lake brought in that aspect of Mirrabooka. It was a physical presence that gave a history of the area and what they were trying to create when the suburb of Mirrabooka was established in the 1980s. However, the thing about a physical presence is that along with it, there can be antisocial behaviour, and stigma is then attached to that physical place and the idea was to get rid of it and put a road through it and that would solve the problem. But of course it never solves the antisocial problem, because it takes itself somewhere else—in this case, it took itself in full view of people, and so it has become more of an issue.

[Member's time extended.]

**Ms J.M. FREEMAN:** I am telling this as a story to build up to heritage. So, for me, we lost a bit of our physical heritage in the Mirrabooka area.

The other thing that happened is that in the 1990s, I think it was, Mirrabooka Square was opened. That was seen as amazing. It was the first of the big shopping centres. Karrinyup was still being built. I remember when Karrinyup was being built because I grew up around that area. There was huge excitement that we were going to get a big shopping centre. I am thinking of heritage. Nowadays, there is a whole series of discussions around the fact that the mall culture that we had in the 1980s and 1990s and in early 2000 has gone. That is now not what they are doing in parts of the United States—they are putting streetscapes and things like that around shopping centres. I am thinking of the idea of planning that was around at that time. The opening of Mirrabooka Square was so big that 96FM radio turned up for the opening. There was a whole day of broadcasts. People were taking photos of the shopping centre. What is amazing was that people could gather and hold events out the front of the shopping centre. The land out the front of the shopping centre was owned by the council. On the other side of the shopping centre was a building that was owned by a very famous Danish pastry person who has a shop in town. She had a coffee shop there. It was her first coffee shop outside of Perth. There was much glee, much fun and much excitement about what Mirrabooka was going to be like. Mirrabooka had a new housing development that was very much to do with the Department of Housing trying to create space—which we all try to do now—in other areas. Mirrabooka had all these things around it. In the gathering and events area, which had seating, a Southern Cross symbol was put in the paving because “Mirrabooka” is a Koori word for Southern Cross. People had seating on the paving near that Southern Cross and it was a great place for people to gather. People always went there to see each other and catch up. However, the coffee shop never took off, so it was knocked down. It became a vacant lot and, of course, some antisocial behaviour came with that. There were also problems at the bus station.

The resolution was to swap the land for the redevelopment of Mirrabooka. The City of Stirling got where the cafe was and Mirrabooka Square got the place where everyone could meet with this Southern Cross in its paving on the ground. It is now a car park.

**Mr A.P. Jacob:** I've got really fond memories of the waterfall that used to be there.

**Ms J.M. FREEMAN:** Yes; that is gone.

**Mr A.P. Jacob:** For some reason, there was often a trolley at the bottom of that waterfall.

**Ms J.M. FREEMAN:** That is the lake!

**Mr A.P. Jacob:** The lake.

**Ms J.M. FREEMAN:** That is the waterfall and the lake. Yes, it was trolley city! We used to have great gatherings to get the trolleys out of the lake and do up the lake. I loved the lake, but the lake is gone. There is a road and the meeting place is now a car park. There is sort of an area in front of the bus station, which may take off in future years, or maybe in future years another member for Mirrabooka will stand up here and say, “No! That's our heritage; don't get rid of it!” I am getting there, minister. I am getting to what I want to say.

**Mr A.P. Jacob:** I'm enjoying it.

**Ms J.M. FREEMAN:** Around the same time, in 1993, there was a wall as people drove from the Mirrabooka shops and from the lake that is no longer there up Sudbury Road to Yirrigan Drive. It was a big wall that belonged to the Department of Housing. It was the Year of the Family and the City Mission and the Department for Communities thought, “Let's do a mural with unemployed youth.” It was cutting-edge stuff in 1993! Taking kids off the street to do graffiti art is something that happens all the time now, but this was in 1993! This is our heritage. Members can go and have a look at that mural or I can show them photos so they can see the completely different, diverse faces. There was an Aboriginal face to recognise Noongar culture. There were faces of people from different ethnic groups. There were faces of hospitality workers and hospital workers. There was an elderly face and there were young faces. One of the faces was a woman with her child; she was white and her child was brown. When the mural had been finished by these kids, the part with the woman and her child was covered by racist graffiti. The graffiti was removed and the mural has been there since 1993 without being graffitied since. The mother and son portrayed were Sue Jeyaraj and Joshua Jeyaraj. Shortly after it was painted, racist graffiti that commented on her being white and her son being brown had to be removed;

I do not know what it said, I just know that. Josh is now in his 20s and is studying medicine and Sue still works in the community. They are immortalised in this mural.

I thought that since the lake and the Southern Cross in the pavement had been taken away, the mural would stay. It is a Department of Housing wall so I went to the department in December 2013 and said, “Give me an undertaking that you’re not going to paint over this mural.” The department staff said, “No, no; we won’t paint over it”, which was great. I said I would start to try to get the mural fixed, but these things take time! People were talking about it in the City of Stirling and lots of other things happened in that time. In November 2015, the City of Stirling started to come on board with doing something around the mural and it sent its inspection team out. I then got a phone call from the Department of Housing to say that the wall was structurally unsound and the department needed to knock it over. I said, “Oh my God! Don’t knock over the mural! Don’t knock the mural down! No!” The department said, “We’re really sorry, Janine, but we’re going to knock it down.” I said, “No; you’re not.” For the first time ever, I put in a claim for heritage listing. I have made a claim for heritage listing but probably no other members have, and I found out that murals cannot be heritage listed; only the wall could be heritage listed. The wall is not particularly special, I have to say, but the mural is very much about our cultural heritage. I started a change.org petition, I went to see the Minister for Housing and I made a bit of noise. Thankfully, the Department of Housing said it would not knock down the wall. It got somebody in to fix it up. Thankfully, the woman who lives in the Department of Housing house did not say it would inconvenience her; she said, “Yes, that’s fine; come in.” The department put a wall behind the wall. However, in that process, part of the wall fell down so we did lose part of it. Unfortunately, I think the part we lost was Sue and her son Josh, but I cannot entirely remember.

We are back on the bandwagon to fix the mural. The Department of Housing came on board to say that it would contribute towards it. I have said that I will contribute towards it. I also found one of the original graffiti artists. Do members know when they come into Wellington Street and there are the “Tomorrow’s Children Today” faces —

**Mr A.P. Jacob:** Yes, under the bridge.

**Ms J.M. FREEMAN:** Yes! That is by the same graffiti artist who did the Mirrabooka mural and he has come on board. We might be able to find some of the original photos, which has started us thinking that we could have a little exhibition. The idea is to add to that space by putting in some of the newer faces of people who have come into the community since 1993 to show diversity. It is exciting. Community not-for-profit services are on board. We are putting in for funding applications. A local Balga market group has also offered to donate towards it. There is still uncertainty about funding but, hopefully, we can do it.

In the process of trying to get the mural heritage listed, I discovered that murals cannot be heritage listed. Graffiti and street art can be heritage listed in Victoria and New South Wales, but they cannot be listed here. The purpose of this presentation to members was to ask whether the Heritage Bill 2016 will enable us to have murals heritage listed. Frankly, there is lots of great street art around now. Members who have driven up Fitzgerald Street recently will have seen that there is a new building. I think there was a Banksy there and I think it was gotten rid of. I was at an art auction where he had drawn on a leaf and it sold for 10 grand, but this thing on the wall was just painted over. It was not a Banksy because he is the one from the United Kingdom.

**Mr A.P. Jacob:** Was it ROA?

**Ms J.M. FREEMAN:** No, it is the other guy. Anyway, I have forgotten. I should know who it is, but I do not. I know *Blue Poles* and I know Van Gogh! I am not particularly great with street artist names.

It seems to me that we have this idea that heritage is old; it is not old. It does not have to be old; it just has to represent something that has happened in a community that has formed an identity for that community. The community that I represent—and represent proudly—has rich diversity with multiple waves of migrants who have made Mirrabooka and the surrounding suburbs their home. These people have contributed to the community and they have grown the area. We have celebrations that reflect that. There is not only Harmony Day but also Eid and Diwali and Tet—all those celebrations. I think it is really, really important to be able to say that that is part of our heritage. I understand that a person can go to their local government and apply to have their property on its heritage list. However, the government needs to lead by example, and I will give it the example. I think a mural on the heritage list should be the Mirrabooka mural. That would be fantastic and it would give the community pride in what it knows it has, which is this rich heart of inclusion. In these times when people are saying pretty horrible things about inclusion, it would be a great representation of how Parliament can come together and recognise those things —

**Ms S.F. McGurk** interjected.

**Ms J.M. FREEMAN:** I prefer not to have hate speech and fear in my community. Something like the Mirrabooka mural honours the heritage of the area would also embrace difference and diversity.

**MS S.F. McGURK (Fremantle)** [12.31 pm]: I want to make a contribution to the debate on the Heritage Bill 2016. This is perhaps not a surprise considering the electorate that I represent was one of the first points of white arrival, certainly British white arrival, and settlement in this state. As a consequence, Fremantle has a very rich built heritage of which it is very proud. It has a very rich cultural heritage as well, of which it is equally proud. This legislation is important because it updates and reconsiders the legislation that protects our built heritage. It will be interesting to see whether the state government considers this topic so important that it decides to prioritise this legislation and get it through the Parliament within the four remaining sitting weeks before we finish up for 2016 and move towards the state election in March next year.

I note the separation of this bill from the Aboriginal Heritage Act and the Conservation and Land Management Act. Although I can understand why both Aboriginal heritage and conservation and land have their own particular and very important considerations, one of the criticisms of this bill by the National Trust of Australia is the complete separation of particularly the Aboriginal heritage considerations from those contained within the Heritage Bill before us today. The National Trust rightly says that separating them completely may mean that we do not have a holistic approach to our heritage considerations, particularly Aboriginal heritage. It will be interesting to hear what the minister has to say about that. We know that this government tabled amendments to the Aboriginal Heritage Act, but it does not look like it will proceed with those amendments in this term of government. Caution around proceeding with those amendments to the Aboriginal Heritage Act is welcomed because I think there will be a lot of community opposition to the proposed amendments, primarily led by Aboriginal people themselves. One of the comments made by the National Trust is that the exclusion of solely natural or Aboriginal heritage places in the bill might, in fact, compromise a holistic approach to heritage.

Although there is a separate Aboriginal Heritage Act at the moment, the concern is that with the separation of the Aboriginal Heritage Act in particular, Aboriginal heritage values might be discounted or devalued if inadequate consultation and assessment is undertaken. I understand that the National Trust is calling for an interaction between Aboriginal and state heritage legislation and a formal embodiment of them in an agreed process. That is one of the important considerations. The member for Mirrabooka also spoke about those issues. In fact, my entire contribution could be about the importance of Aboriginal heritage and how we recognise it, particularly, for instance, how in my electorate Aboriginal treatment at Rottnest Island is viewed. The largest single Aboriginal burial place on Rottnest Island was, for a time, a camping site. That has now, rightly, been corrected and I am glad to say that since I have been a member of this house, there has been some improvement to the signage and cordoning off of that burial site. However, the state government has not made a huge investment into the proper recognition of that site. An undertaking has also been made that when the current lease on the Rottnest Lodge expires, the quadrangle section will be separated and its management will come under the auspices of the Rottnest Island Authority, which is welcome. However, it concerns me that without the resources to spend on the quadrangle, the site will be left to languish and proper recognition of exactly what happened at that site will not occur. It is a very sensitive area. Aboriginal people were treated appallingly and sent to the island for decades, often for very small crimes. Many of them suffered and died at that site so it is proper that it is separated from the accommodation facilities at the lodge. As I said, resources need to be spent if due respect is to be given to what happened to Aboriginal people at that site.

I want to briefly comment about some of the elements of the bill before us. I understand that, for the first time, national standards of criteria to assess heritage places will be used and the two-stage process for registration will be changed to a single process. It will explicitly require consultation with the owner and that the Heritage Council of Western Australia will have to publish advice to the minister on whether a place should be registered. If a ministerial direction is given to remove a place from the register, that direction will be subject to the approval of both houses of Parliament. These improvements are welcome.

I mentioned that the National Trust had some concerns with the bill, which include the implications of expanding the powers of the Heritage Council of Western Australia and the potential for conflict between the Heritage Council's core role as a regulatory and advisory body. For instance, the Heritage Bill 2016 proposes that the Heritage Council of Western Australia act as manager as well as developer of heritage places. It also provides consultancy, management, advisory, or other services for profit. It has all those functions and at times they may be in conflict. The bill allows for the Heritage Council to act as regulator as well as manager, developer and consultant. As I said, I am advised that this combination of roles is not replicated in any other state or territory. I understand that in England recently, the so-called English Heritage was split into two organisations to separate the regulatory and property manager/development roles. In England, there was an acknowledgement that the regulator and property manager/development roles are more appropriately done separately.

Another concern of the National Trust of Australia, but also generally, is the considerable delegation of power to regulations rather than providing explicit detail within the legislation. I am a member of the Joint Standing Committee on Delegated Legislation, which looks at regulations to ensure that they are clear and consistent with the legislation. It is also true that regulations are more easily amended than are powers included in the legislation itself. Another concern is the extent that detailed protection is provided for in regulations rather than in the

legislation. I have spoken about the lack of interface between particularly the Aboriginal Heritage Act and this bill. Again, these are all issues raised by the National Trust, so I am not the first, and I do not imagine I will be the last person to raise them in contributions to debate on this bill. Clause 17 of the bill allows the Heritage Council to undertake or provide for the conservation of places owned by the state that are, or may be, of cultural heritage significance, and also to acquire, own, conserve, arrange for the conservation of, lease, manage and dispose of places that have or may have significance to the cultural heritage of Western Australia. As I mentioned before, in no other state or territory does the Heritage Council have these powers or functions. Examples from overseas and locally suggest that the combination of the roles of regulator and manager has been unsuccessful and, as I said, in other jurisdictions there has been a clear separation of these functions.

Another concern about the bill is in relation to clause 63(2), which refers to the likelihood of undue hardship to the recipient of a repair order. There have been situations in Western Australia in which owners of heritage places have argued for substantial modification or demolition of heritage places based on economic concerns. But the concern is that in this bill there does not seem to be any requirement for owners, local government authorities or other agencies to provide documentation or proof to support this argument. That is a very important assurance that needs to be considered, given the protections that we and the community expect to be contained within our heritage legislation. I mentioned, certainly in Western Australian terms, there is almost an embarrassment of riches of built heritage in my electorate of Fremantle. In my inaugural speech to Parliament, I referred to the work of the Fremantle Society, because in the 1960s and 1970s, it did a lot of important work to ensure protection of the west end in particular, and it remains today a very important, celebrated and protected area of, in that case, Edwardian buildings. Just recently we were debating the Universities Legislation Amendment Bill 2016 and I spoke about the activation that the University of Notre Dame has had in that section of my electorate. There was a lot of concern about whether putting a university there and dominating that particular section of Fremantle would be appropriate, but on the whole, people welcome the activation of those places rather than there being many empty buildings, which occur in other areas in Fremantle.

There continues to be a very live debate in Fremantle, and in other built-heritage centres in the state, about how we balance maintaining the heritage values of an area while encouraging the use of those sites and attracting development. That has been a big debate in Fremantle and the Fremantle council has, on the whole, done a good job leading debate on that question. Not everyone would agree with me, but, hopefully, we can get the balance right of attracting development and new building areas away from our heritage-concentrated areas. A good example of where that conflict might occur is in the restoration work being done on the warders' cottages alongside the Fremantle markets, which were built in the 1850s. They are an important, uninterrupted length of terrace housing, quite unusual, certainly in Western Australia and even around the country. They were built, as the name implies, to house the warders for Fremantle Prison. They are quite simple buildings. The Minister for Heritage celebrated the investment that the state government put into their restoration. It put \$2 million into restoring 17 or 18 terraces. My concern is that \$2 million does not actually buy a lot in restoration terms. I am glad to see that work being done. I advocated for that work; I represented my community advocating for that work. I am concerned about what will now happen with the sale of those buildings.

**Mr A.P. Jacob:** That's not true; you called it a poor outcome for heritage.

**Ms S.F. McGURK:** The minister gets plenty of time on his feet in this place. Every time he is on his feet he takes a lot of time. I am not taking his interjections.

Several members interjected.

**The ACTING SPEAKER (Mr N.W. Morton):** Members! Member, direct your comments through the Chair.

**Mr A.P. Jacob** interjected.

**The ACTING SPEAKER:** Minister, you have a chance to conclude the second reading stage. The member for Fremantle has the call. Direct your comments through the Chair, member.

**Ms S.F. McGURK:** My concern about the work being done on those cottages is that by selling them afterwards, not as a single block or even an uninterrupted block—there are two blocks of those cottages—but individually, some of those heritage values will be compromised. I am concerned that we may have lost an opportunity to ensure that the significant value of those cottages is not lost, and that is what might occur if those lots are sold off individually or at least not in whole blocks. I welcome the investment in those cottages; it needed to be done because, previously, public housing residents occupied them. Those tenants were relocated because, as I understand, the cottages were not suitable for the sort of access issues required for current public housing tenants, and work needed to be done. As a result of moving those tenants, the cottages were left untenanted and were incredibly neglected. The work that has been done is welcome, but I do not welcome selling the cottages individually, which I think could compromise the value of those terraces. It will be interesting to hear what the minister has to say about that. The minister also likes to say that the revolving fund is an Australian first. That is not true. There is a revolving heritage fund in New South Wales, and I have spoken to people who worked on that fund.

**Extract from *Hansard***

[ASSEMBLY — Thursday, 22 September 2016]

p6614b-6628a

Ms Margaret Quirk; Mrs Michelle Roberts; Ms Janine Freeman; Ms Simone McGurk

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Debate adjourned, pursuant to standing orders.