

## **HERITAGE BILL 2017**

### *Consideration in Detail*

**Clauses 1 and 2 put and passed.**

**Clause 3: Objectives —**

**Mr A. KRSTICEVIC:** It is great to have finally got to this point with the Heritage Bill, because I know a lot of people are very keen for this to receive assent. I think I discussed clause 3 and said I was going to ask some general questions before I got into the specifics of the finer details of the bill. One thing I want ask about here is the State Library of Western Australia and the fact that it has some 10 000—to be exact 9 816—heritage films, and we know a lot of them are deteriorating quite quickly. I believe only 10 per cent of them have been restored, and currently the State Library has about \$1 000 allocated to the restoration of those films. I think about \$4.3 million is required to undertake that job. From inquiries I made previously, I believe that a number of those films with heritage value are starting to deteriorate beyond any ability to have them restored. I am keen to find out what the minister's views are on the heritage value of those films and why the State Library of Western Australia has not been given funding as required to bring them up to an acceptable standard by being digitised.

**Mr D.A. TEMPLEMAN:** I thank the member for his question. Obviously, the objectives of this bill, and indeed the objectives of heritage in general, are to make sure we do everything possible to protect artefacts, buildings and areas of cultural significance to the best of our ability. As the member has highlighted, there are over 9 000, nearly 10 000, heritage films in the State Library, and there has been a program over time to digitise those significant heritage assets. That program will continue as budget provisions allow.

**Mr A. KRSTICEVIC:** How much has been budgeted, both in this budget and in future years, to allow that to occur?

**Mr D.A. TEMPLEMAN:** This is the Heritage Bill, and we are looking at a new bill with regard to the overarching legislative framework for heritage. I think the member's line of questioning would be more appropriate during the budget estimates committee hearings, because the answer to specific questions about budgetary allocations for digitisation of heritage film archives is within that ambit, not within the objectives of the bill. If the member is going to asking about every budget item, that is for consideration during the estimates process. I specify to the member that within budget constraints, everything will be done to ensure that items such as archival records, including heritage films, are digitised as soon as possible. Indeed, those are considerations for the budget process.

**Mr J.E. McGRATH:** The member for Carine was using this clause to ask a general question. The minister might recall that in my contribution to the second reading debate I spoke about the value of heritage sites for tourism—not so much buildings, but heritage sites and the cultural heritage we have available in our city and our state. In particular, I was talking about the Swan River, the South Perth foreshore and places like that. I know I am going to ask a question about the budget, and if the minister would prefer me to ask it during budget estimates hearings, I will. The Treasurer talked about being committed to supporting jobs and boosting the economy through heritage tourism by investing \$4 million of sales proceeds over two years into the heritage revolving fund. I am not sure what that revolving fund is. Would now be the time to ask that question or would the minister prefer me to wait until estimates?

**Mr D.A. TEMPLEMAN:** The member will get a much more comprehensive answer in estimates, because I think that very important fund has been highlighted in the Treasurer's speech this afternoon. In general, the revolving fund allows heritage assets to be recognised, if you like, through a sale process, and that money is then revolved into other heritage-related activity. A more recent example is the warders' cottages in Fremantle, which, as the member may be aware, remained derelict for quite a considerable period. Indeed, the member for Fremantle campaigned very strongly over time about the protection of those very significant heritage assets. Once the state acquired those, there was then a process of allowing them to be adaptively reused. In this case, a number of those cottages have now been sold and residents now live in them. I went through one of those late last year. Moneys realised through that can then go into a fund that is, if you like, revolved to do more of that sort of activity. It is a good example of adaptive reuse of buildings that otherwise may have in fact continued to decline in their integrity and their construction. That is an example. Another example of an opportunity when the revolving fund may be used is probably more specific to the budget process, and we will have all of that information for the member in the budget estimates hearings in less than two weeks' time.

**Mr J.E. McGRATH:** I seek clarification. Will those heritage buildings that were sold—I am told by the member for Nedlands that that was his initiative—still retain their heritage listing even though they have been sold? How does that work?

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**Mr D.A. TEMPLEMAN:** Absolutely. When the buildings are proposed for adaptive reuse, they must comply with heritage principles. Those buildings have been brought back to life not only because they now basically provide a home for residents, but there are also some proposals for other uses of a more commercial nature for some of the cottages that exist in that area with the requirement that they adhere to certain heritage principles under the heritage agreements. We have heritage agreements that are negotiated and ultimately signed off by those owners.

**Mr A. KRSTICEVIC:** Further to the matter of the 9 000-odd heritage films that are deteriorating in the state library, can the minister please explain how the Heritage Bill will protect that heritage asset at the State Library of Western Australia when we know that a number of those films are deteriorating at an alarming rate and may not be able to be digitised if they are not dealt with as a matter of priority?

**Mr D.A. TEMPLEMAN:** I appreciate the question because film archival history is an important matter. This bill will not protect the principles associated with protecting certain elements of that collection. That comes under the State Records Act 2000 and state records procedures and processes. I am not trying to avoid the member's questions. They are very good questions, but they are more appropriate for the culture and the arts section of the budget estimates process. It is not specific to the Heritage Bill that is before the house.

**Mr A. KRSTICEVIC:** Another area I was interested in, which has obviously been in the news recently, is the Round House and Arthur Head Reserve, which is listed as a registered heritage place and obviously afforded protection under the Heritage Act. I believe that the City of Fremantle is responsible for the maintenance of that precinct under a management order from the state. Can the minister explain the status of that reserve and whether that area is being protected according to the requirements of the Heritage Bill?

**Mr D.A. TEMPLEMAN:** I thank the member for his question. The Round House and Arthur Head Reserve are very iconic and important parts of our Western Australian heritage, dating back to convict times. I want to congratulate the volunteers and those who are involved in ensuring that the Round House experience for tourists and residents who visit is a positive one. A number of issues have been raised, as the member has highlighted. The Heritage Council is working with the City of Fremantle not only on the responsibilities of the management order, but is also addressing some of those concerns that have been raised about maintaining the standard of the Round House, particularly the reserve area. It is a very interesting place to visit; indeed, it is an important part of the City of Fremantle's overall heritage assets. As we know, Fremantle has significant heritage assets that are very, very important to the telling of the Western Australian story.

**Mr J.E. McGrath** interjected.

**Mr D.A. TEMPLEMAN:** We have not heritage listed the member yet, but I am sure that that is possible at some stage. I have not had any nominations for the member for South Perth yet, although I note that his community recognised his high status by naming a toilet block—no, it is not a toilet block; it was a hall.

**Mr J.E. McGrath:** No, it is a pavilion—the South Perth pavilion.

**Mr D.A. TEMPLEMAN:** Yes, the pavilion—the John McGrath Pavilion.

**Mr I.C. Blayney:** I get the feeling you'd like a pavilion named after you.

**Mr D.A. TEMPLEMAN:** I would love a pavilion named after me but I do not think I will get one.

As always, the member for South Perth has distracted me. I wanted to highlight the significant acknowledgement of Fremantle prison, for example, in the recent Australian Tourism Awards. It was recognised nationally in the national tourism awards for its contribution to cultural tourism. That is a wonderful affirmation for not only the staff and the people who work at the prison, but it also underpins the importance of our convict history, our convict buildings and the structures throughout the state that require ongoing protection. Of course this bill will underpin the protection of such assets.

**Mr A. KRSTICEVIC:** Is the minister saying that the City of Fremantle has done everything that it needs to do to protect the Arthur Head Reserve precinct, and that the minister and the Heritage Council are comfortable with the way they have dealt with that and there is a plan for the issues around that to be resolved?

**Mr D.A. TEMPLEMAN:** I assure the member that the Heritage Council is very aware of the issues. It is working on a long-term strategy with the City of Fremantle. In my view, the City of Fremantle has a very good understanding of the importance of the heritage assets of the city. It has worked very hard to ensure that the west end ultimately received heritage listing, which was the largest single area heritage listed late last year. I can assure the member that the Fremantle City Council is working very hard to address some of those concerns and issues and that will be addressed ultimately through a long-term strategy in the case of the Round House and the reserve around it.

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**Mr A. KRSTICEVIC:** A further area I am interested in is the Pilbara. I believe that back in February 2018, the *Pilbara News* indicated that a number of heritage buildings in the Pilbara are one cyclone away from total destruction. More interestingly, when the Water Corporation was asked about Cooya Pooya station, it was reported in that article as saying that it is not required to maintain the structures at Cooya Pooya station; its priority is to provide safe drinking water. Are there issues with the Water Corporation not taking its heritage obligations seriously? Is the minister aware of the issues up there and has he directed the Water Corporation or anybody else in the Pilbara to deal with what could potentially be demolition by neglect?

**Mr D.A. TEMPLEMAN:** Again, I thank the member for Carine for his question. As he is probably aware, these heritage buildings and structures are within a water catchment area, which of course creates some constraints and/or challenges. It is interesting to note that there is a bit of history to attempt to protect these particular assets over time. I am aware that efforts have been made by the Water Corporation and the local government and even some of the voluntary heritage organisations in the region, which are wonderful advocates for the protection of heritage in all our communities. It is a vexed problem and a challenge because of where the buildings or construction sits in the water catchment area. From time to time, one of the challenges for heritage in general is that despite all good efforts, some assets remain challenged for a range of factors, but that does not mean that they are not more important than others. Local communities are faced with challenges. The Heritage Bill 2017 sets out a modern and renewed legislative framework that has within it a range of measures or levers that will enhance the capacity to protect assets into the future. Will we protect every single asset? I hope so, but there will be challenges and this is an example of one such challenge.

**Mr A. KRSTICEVIC:** Does the minister see the complications in this for the Water Corporation and other parts of the Pilbara, for example, when the bill refers to demolition by neglect? In terms of these buildings, will someone review all the heritage structures to make sure that they are not demolished as a result of neglect by the Water Corporation and others? Will they be maintained to the current standard and not allowed to disappear from the register?

**Mr D.A. TEMPLEMAN:** As the member is probably aware, most of these buildings are now in a state of ruin, which is a process within the heritage continuum. Although the protection of ruins and such structures may be an objective, there is no intention to restore them to their former glory. My understanding of heritage worldwide is that we do not rebuild castle ruins, for example. The heritage value of them is their current state. If a structure can be adaptively reused, that is, of course, a preferred or key objective. In this case they are assets. I have not been to the Pilbara to see those heritage assets. I have seen photographic evidence but I have not been there. It is my understanding that the particular sites and structures that the member mentioned are in a state of ruin and there is no intention to restore them to their original status to be reused. That is not practicable.

**Mr A. KRSTICEVIC:** Is the minister saying that even though that particular ruin and other ruins in the Pilbara are heritage-listed assets, at some point in the future they will no longer exist because the weather, the elements and other things will obviously wash them away? There are no active measures in place to save those heritage assets and, by default, they are only temporary heritage assets and will not be given protections under the Heritage Bill. We know that they are heritage-listed heritage assets. From what I understand, the minister is saying that the Heritage Bill gives them no protection at all. Nature will take its course. Those assets are not that important to the state that they need to be maintained in the state in which they are in at the moment.

**Mr D.A. TEMPLEMAN:** The member is straying into individual sites. I am happy to talk about individual sites. I am not sure how many he wants to talk about —

**Mr A. Krsticevic:** It is more about understanding the context around those sorts of sites at a broader level. I am sure they exist everywhere.

**Mr D.A. TEMPLEMAN:** Quite often when I drive through the country, I see private farm lots with little cottages that would have housed original settlers or the farmers who settled there. A lot of them are in a state of ruin. Sometimes people try to restore them and bring them back to life. I have seen some of those around Williams —

**Mr J.E. McGrath:** They turn them into roadside cafes.

**Mr D.A. TEMPLEMAN:** That is right. Even if a site is part of the inventory and has had special consideration, the stories about it will have been collected and there would be a permanent record of it—what it was used for and any other information that is appropriate to its heritage, and that in itself becomes a heritage record of that particular area. Sometimes there are various ways that a heritage asset is recognised or indeed a story recorded. I think we will get to a stage in the future—I am not sure when—when people will be able point their modern iPhone or whatever it will be called at an asset on the side of the road and up will come the story of that asset. In fact, that already happens now. The technology has already been developed, but I think it will become more enhanced and user-friendly. That will be very important because people want to know stories. I used to drive past

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a little farmhouse in Williams that had fallen down. I used that road a lot of times because my nanna used to live in Narrogin. I always wondered about the story behind that house—who lived there, what is the farm's history, what is the Indigenous history and if a significant Indigenous history related to it. I hope we will get to the stage at which we will be able to point our phones at an asset and up will come the story of that asset.

**Mr J.E. McGrath:** Provided you don't do it when you're at the wheel driving.

**Mr D.A. TEMPLEMAN:** That is right. That technology relies on information being collected and stories being told. I suppose in any heritage consideration, there are a lot of stories out there. They are usually, depending on the circumstances, in private hands in the hands of the people who lived there because it is their family lineage. I went to York on Sunday to a Martin Stone event. Martin Stone was a convict who came out on the first ship, the *Scindian*. I did not know that I was related to him—indeed, I have direct lineage—until late last year. There was a gathering of about 600 000 people; sorry, a gathering of 600 people! It would have had to have been a big racetrack for 600 000 people, member for South Perth, because it was at the York racetrack! There was capacity at that event for people to tell lots of stories. We have to try to get these stories recorded so that we have a record of them, which becomes a record in itself. The building may not be there anymore or the Indigenous cultural site may have changed dramatically, but the fact that there is a story and that it has been collected and recorded is in itself a heritage asset for the state.

**Mr J.E. McGRATH:** What would the minister's advisers say about an area that is not a building—the minister did talk about areas of heritage significance—such as South Perth, where the Chinese market gardens were situated? Does the minister have any ideas about how that could be recognised? It was a significant part of our history in the nineteenth century and into the twentieth century.

**Mr D.A. TEMPLEMAN:** The member for South Perth raised a good question, and I did listen to his contribution to the second reading debate. This is very important, and in the case of South Perth and many other communities, uses have changed. The foreshores of South Perth, where there might have been market gardens that were worked by a lot of Chinese folk who sold produce that fed the growing city of Perth, are significant and have important stories to record. Of course, we have examples of where things have changed throughout the state in Geraldton, in parts of the metropolitan area and in the wider regions. In the first instance, local government has a key role here because at the time, it is ultimately best placed to make sure that what is known about those areas is recorded and those stories are collected. In his speech, the member mentioned the importance of the Old Mill.

**Mr J.E. McGrath:** That is already heritage listed.

**Mr D.A. TEMPLEMAN:** That is right, but there is a great story behind that that is worthy of being retold over and over to people and the visitors to our state about the feeding of our state when colonisation commenced and the important interchanges and relationships between Indigenous and non-Indigenous folk at that very important time. Primarily, local government has a key role. Information about the Chinese market garden in particular should be available at the State Library of Western Australia. But, ultimately, if the City of South Perth wanted to capture the significance and importance of that area that has changed measurably, then it could seek advice on that from the Heritage Council. It is certainly within its realm to champion that cause.

**Mr J.E. McGrath:** Could it be listed as a site without having a building?

**Mr D.A. TEMPLEMAN:** Yes, it could—absolutely. Currently, it would appear on municipal inventories, but under this proposal we talk about surveys as being the focus.

#### **Clause put and passed.**

#### **Clause 4: Terms used —**

**Mr A. KRSTICEVIC:** In the list of terms, I want to focus quickly on the following definition —

*prescribed* means prescribed by the regulations;

We know that this bill went through an extensive consultation process with the green bill et cetera, and that a number of submissions were received. How far have the regulations progressed and has there been any consultation? The bill indicates that things will be outlined in the regulations quite extensively. It is very hard to get a picture of exactly how these things will come to fruition without being able to look at the regulations. In terms of this bill's implementation, how much consultation on the regulations has taken place and when will they be updated or made available?

**Mr D.A. TEMPLEMAN:** I thank the member for his question. I am sure that he is aware that once the bill is enacted, the development of the regulations and related elements that will sit within the bill's context will be carried out with broad consultation; I can assure the member of that. In terms of the construction of the bill, some

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of the terms used and their definitions are standard. In the legislative process they are required as part of the parliamentary drafting process.

**Mr A. KRSTICEVIC:** Has the minister put together a plan or process around how that consultation will take place or will the minister do that once the bill has been assented to? I assume he must already have this sorted out. He must have a plan around how the consultation will be done, who will be invited along to those consultation sessions and the exact process to be gone through as far as that is concerned. I am sure the minister is not waiting for the bill to be assented to before all that work is done.

**Mr D.A. TEMPLEMAN:** As the member is well aware, the germination of this process has been over a number of years—2011 being a key year—and a consultation process has ultimately allowed us to arrive at where we are today in having a comprehensive, modern heritage act for Western Australia. The same principles of consultation will be followed and adhered to in the development of the regulations and the discussions. Consultation will occur with many of the same stakeholders that were part of the consultation period dating back a number of years. They will include the National Trust, architectural professionals, heritage professionals, key stakeholders and local government. They will all be key, consultative stakeholders in that consultation process. Credit must go to the previous government and previous heritage ministers, including—the member was not heritage minister was he?

**Mr A. Krsticevic:** No, it was Albert Jacob and John Castrilli.

**Mr D.A. TEMPLEMAN:** I thought the member mentioned—no; it was an idea he had about reviving the metro —

**Mr W.R. Marmion:** The houses —

**Mr D.A. TEMPLEMAN:** Sorry, it was through the houses—that is right. It was a good process. It was very comprehensive and, as the member knows, there are literally a number of exposure drafts and all those sorts of things that the member was briefed on and saw and I was briefed on when I was opposition spokesperson. The consultation will be very thorough because we want to make sure that this bill delivers the objectives that we have set for it.

**Mr A. KRSTICEVIC:** It is good to hear that consultation will be thorough. How will that consultation translate into making sure that the regulations are able to achieve the outcomes of that consultation? We realise that consultation takes many forms. People provide their ideas, concerns and issues, and then we go away and draft the regulations. Is there a group, a body or a committee that will oversee this to make sure that those regulations that have gone through that consultation process can be translated into outcomes at a grassroots level?

**Mr D.A. TEMPLEMAN:** I assure the member that the Heritage Council will be the lead in terms of this consultative process. I have great confidence that the Heritage Council will be able to deliver quality regulations that are effective and reflect the intent of the new heritage act.

**Mr P.J. RUNDLE:** I would like the minister to expand on the concept of the demolition by neglect in relation to —

**The ACTING SPEAKER:** Member for Roe, we are on clause 4.

**Mr P.J. RUNDLE:** I will come back to that.

**Mr D.A. TEMPLEMAN:** I think that there will be a bit of debate about the issue of demolition by neglect. As the member is well aware, a very important component of this bill regards protective measures relating to demolition by neglect. It is best debated and expanded upon when we get to that clause.

**Clause put and passed.**

**Clause 5: Term used: cultural heritage significance —**

**Ms J.M. FREEMAN:** The definition states —

*cultural heritage significance* means aesthetic, historic, scientific, social or spiritual value for individuals or groups within Western Australia.

... may be embodied in a place itself and in any of its fabric, setting, use, associations, meanings, records, related places and related objects;

Does that term encompass murals regardless of whether the wall that the mural is on has any heritage significance? Assuming that the wall has no heritage significance, but the mural that is on the wall has significance, does that fall within the term “cultural heritage significance”?

**Mr D.A. TEMPLEMAN:** I listened intently to the member’s very appropriate and sensible plea regarding the Mirrabooka mural. I have not seen it and I must have a look. Maybe the member could invite me to look at it.

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I understand that since the Heritage Council considered the wall some time ago, there have been some more enhanced works and some more embellishment of the stories associated with it, which I think is good. The Heritage Council would not be against that being re-looked at. It is important to note that quite often heritage stories continue to be developed upon, new information comes forward and the community becomes engaged and interested in the importance/significance from a social or cultural perspective. Therefore, there is no reason why that should not be resubmitted for consideration.

**Ms J.M. Freeman:** I am very pleased and I will resubmit, but the question is more of a generalised question about whether a mural comes within that definition. For example, if the dingo in Fremantle were not on that structure and it were on a wall that did not matter, could we heritage list the dingo? As I understand it, the picture of the dingo is heritage listed, because the actual structure that it is on is heritage listed. Does the image come under “cultural heritage significance” or is that interpretation?

**Mr D.A. TEMPLEMAN:** Yes, it does, because it is part of the story of that place and the fabric.

**Mr W.R. MARMION:** Further to exploring this issue, I understand that a mural could be of heritage significance to the state but what happens if the structure it is painted on or attached is suddenly in a state of disrepair? What is the onus on the owner to maintain the structure that that mural is on? Is it the owner’s responsibility? Can the minister give me some commentary on that, please.

**Mr D.A. TEMPLEMAN:** I thank the member for Nedlands for his query. In short, the bill does not impose a minimum maintenance standard on owners. It does not provide that by X date, they must do X to a minimum standard, but it provides a framework to recognise, record and celebrate a particular heritage place. That importance of recording and recognition is there. The bill does enable adaptive re-use when possible and will also provide a long-term sustainable use, when possible. Does the member have a particular example in mind in which that circumstance applies?

**Mr W.R. MARMION:** An example could be a mural in Northbridge. It might have been considered graffiti art and not nice historically, but now it might have been there for 10 or 15 years and become a bit of an icon of Northbridge. I see one there regularly and I know who did it. It has been around for a while. In fact, someone might have been the owner of the building and encouraged a particular graffiti artist to do it to stop other graffiti art going on there that they did not like. It may have been there for decades and after 20 years someone might want it listed, but the owner finds out that there is water leaking from the roof. There are two issues here. The mural could be deteriorating. What happens then? Does the owner have to get the artist to repaint it? Also, the wall could be falling apart.

**Mr D.A. TEMPLEMAN:** As I said previously in the discussion around “ruined”, deterioration is essentially a natural part of the heritage process. It would be likely that a mural will fade and paint may chip off or run. The important aspect is the recording of that particular asset and the maintenance of that record. That is the important thing. Essentially, local government has a key role to play.

**Mr W.R. Marmion:** I am very happy with that response.

**Clause put and passed.**

**Clause 6 put and passed.**

**Clause 7: Term used: place —**

**Mr A. KRSTICEVIC:** I note that the bill revolves heavily around the use of the term “place” as noted —

**provide for the identification and documentation of places of cultural heritage significance and for the conservation, use, development and adaptation of such places;**

I have some concerns regarding the need for further clarification around moveable heritage. The definition states —

- (c) equipment, furniture, fittings or other objects (whether fixed or not) that are historically or physically associated or connected with the place;

There does not appear to be a mechanism for the registration of such items. A couple of things were brought to my attention as part of that by the City of Wanneroo. It talked about the World War II Bofors anti-aircraft gun, which was located at the council offices and now sits on Rottnest Island. The other item it brought to me was the limestone sculptures that were made by Marc Le Buse and featured at Atlantis Marine Park. How does the bill protect those sorts of structures?

**Mr D.A. TEMPLEMAN:** It is a good question. Essentially, once a heritage item or structure is moved, there is a natural decline in its heritage value because it is no longer in its place of origin. As the member is well aware,

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we have seen examples of houses and structures being deconstructed and moved, such as Edith Cowan's cottage being moved to one of the university campuses.

**Ms J.M. Freeman:** You can see it if you go to the Joondalup Pines movie theatre; you buy your tickets there.

**Mr D.A. TEMPLEMAN:** There we are; the member for Mirrabooka is a cultural tourist!

That is a structure. The member for Carine is talking about movable objects—more specifically, furniture et cetera.

**Mr A. Krsticevic:** Some are very difficult to move, obviously.

**Mr D.A. TEMPLEMAN:** The reality is that this bill does not essentially address the protection of those objects. The nature of the fact that they have been moved diminishes their heritage value because they are no longer in situ where they were part of a structure. It does not mean they are less important but there is certainly a diminishment of their heritage value because those are the elements that make up a heritage artefact or item's story—movable or otherwise. If it is taken out of its original context, there is an issue. But, of course, for some heritage objects that have been moved, if it was part of a registered place, they are protected. If an item that is not registered is moved from one place to another, its heritage value is diminished.

**Mr A. Krsticevic:** How are those items protected? As much as they are valued and important, how are they protected?

**Mr D.A. TEMPLEMAN:** I mentioned that if they are part of a registered site or element, they are protected under this act. Essentially, if an item is not a registered place, this bill does not cover it. I do not know whether the member has any examples.

**Mr A. Krsticevic:** Yes; the World War II Bofors anti-aircraft gun, for example, which was moved from the City of Wanneroo to Rottnest Island.

**Mr D.A. TEMPLEMAN:** The member is talking about an object. It is not part of a formal, structured installation. It is an object that was moved from one place to another. One would hope that now it is in situ on Rottnest that the Rottnest Island Authority, being the authority responsible for Rottnest, would acknowledge the ongoing importance of protecting it, even if it is not a registered site.

**Mr A. Krsticevic:** Can an object not be protected if it is moved?

**Mr D.A. TEMPLEMAN:** If it is part of a registered site, yes, it can be.

**Mr A. Krsticevic:** If it is on a registered site and it is moved to a non-registered site, then it cannot —

**Mr D.A. TEMPLEMAN:** No; I will clarify this, because I do not want to give the member misleading information. He might send me to the Procedure and Privileges Committee!

If it is a registered place, it is protected. If it is an object that is moved, it is not protected under this act.

**Mr A. KRSTICEVIC:** I have a further question. I am interested in how objects would be protected in that case, especially, for example, if objects are found at an archaeological dig. If those objects are removed from that site to somewhere else, the minister is saying they are no longer protected. Even though someone might dig something up that is 50 000 years old —

**Ms J.M. Freeman:** Then it would be covered under the Aboriginal Heritage Act.

**Mr A. KRSTICEVIC:** That is different. There might be other objects; I do not know.

**Ms J.M. Freeman:** Yes, like plates or a jug.

**Mr A. KRSTICEVIC:** Yes, or whatever, that is right. If something is found and moved, then it is not protected under the Heritage Bill. Where are they protected or how are they looked after, or do they lose that status once they are moved from that site and their protection?

**Mr D.A. TEMPLEMAN:** It is a good question. Perhaps I can answer this best by saying archaeological items might be uncovered as part of a development proposal or the developer is aware that it is an archaeological site and therefore there are obligations and requirements; they are negotiated with the Heritage Council and any other authority that has jurisdiction. An outcome is negotiated so an agreement might be made, for example, that items are recovered and curated at a museum, museums, or a regional museum. Those matters are seriously considered as part of that development proposal. A lot of items will have some significance because of where they have been found, but the reality is that they will be moved and their curation will ultimately be up for negotiation and discussion. The Heritage Council of Western Australia would have a role in that process, and so, of course, would the Museum of Western Australia, in certain circumstances. Other legislation covers shipwrecks, for example, and the requirements for the protection of assets that lie under the sea.

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**Ms J.M. FREEMAN:** What happens, for example, if there is an iconic painting at a heritage site? Let us say it is the *Shearing the Rams*, because I cannot think of another iconic painting. We are not talking about Aboriginal paintings because they fall under provisions in a different act. If a painting is removed from a site and therefore the site loses the story around its heritage, how is that painting's heritage protected? How is that object protected, because that object creates the heritage? For example, at a pub in Sydney, there is a painting of a naked lady over the bar. If the painting were removed from the pub, it would effectively lose its heritage. How is that heritage protected? If, for example, the painting were moved to somewhere else, how is its heritage protected to make sure it is not sold offshore or destroyed? Someone might decide that they have a religious problem with the painting of a nude lady in the pub and they want to remove it and burn it. How is that object protected?

**Mr D.A. TEMPLEMAN:** It is a good question. It is budget day, and these pearls of questions are coming in! I can assure the member that if a painting is identified as having significance to a particular area —

**Ms J.M. Freeman:** But what happens if it has significant heritage in its own right, not in the area?

**Mr D.A. TEMPLEMAN:** I will deal with the significance of the area first. There is an obligation for the Heritage Council to be consulted for discussion and ultimately a determination about its significance. Regarding the context of a site, ultimately through this bill, there are penalties or processes to restore an object back to its site. Those processes are included in the bill.

To answer the member's question about the significance of the painting itself as a heritage item—to separate it from where it is located—this bill does not really deal with that. This bill deals with places. It does not deal with any objects that may or may not have a significance to a place. I do not want to disappoint the member. The other issue with paintings is ownership. Paintings are sold every day and leave this country and end up in other parts of the world, even if they have very significant cultural heritage value. In the Art Gallery of Western Australia we have some paintings that are not Western Australian paintings but are iconic paintings by international painters.

**Ms J.M. Freeman:** But that does not make them heritage.

**Mr D.A. TEMPLEMAN:** No, but they might be very old and someone might see them as having heritage value because of their age.

**Ms J.M. Freeman:** You are talking about cultural heritage significance. The painting *Shearing the Rams* has cultural heritage significance of itself. Does the painting of the naked woman in the Young and Jackson's pub fit within that? We do not have anything in Western Australia quite like that.

**Mr D.A. TEMPLEMAN:** What makes the painting *Chloe* so important is where it is located. It is also a painting of significance in its own right. If people go to the Young and Jackson's hotel on the corner of Swanston and Flinders Streets in Melbourne and up the stairs to the first floor, they will see Chloe painted in all her glory. The significance is its location, because the location is part of the cultural history story of *Chloe*— who painted it and who acquired it. That is all entangled in the fact that it is located at the Young and Jackson's hotel. That painting would not have the same contextual story if it was located in the Art Gallery of Western Australia. That is the reality. It would be a beautiful painting at the Art Gallery of Western Australia, but essentially it has no connectivity to the Art Gallery of Western Australia. Its story is entwined in the story that is the Young and Jackson's hotel.

**Ms J.M. FREEMAN:** I will come back to the mural, because that is my interest. A mural, of itself, is just a painting. The wall behind the mural has no significance. The mural is attached to a place that is at the end of a road and it has been located at that place since 1993. What gives that mural significance is the story behind it. The mural needs a structure. That structure is the wall behind it. However, the wall itself has no significance. The minister talked about the painting *Chloe*. That painting has a wall behind it. In the same way as the hotel has significance in the context of that painting, maybe that wall should also have significance. That may be drawing a long bow. I will try to make my question clear, because I want to put this on the record. Clause 7(1)(c) refers to —

equipment, furniture, fittings and other objects (whether fixed or not) that are historically or physically associated or connected with the land;

Does a mural that is painted on a wall that is not a built form of any significance fit within the words "other objects"? Does the picture that is on that wall provide the significance of that place? Is that where it fits? Is it an object that is historically connected with that place, even though the built form—the wall—has no significance?

**Mr D.A. TEMPLEMAN:** Clause 7 refers to the elements that the member has highlighted. The reality is that the story, the structure and the painting that sit around that are all considerations. All those elements are important parts of a heritage nomination. I have not seen that mural. I am not an expert in assessment. We have people on

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the Heritage Council of Western Australia and people in the Department of Culture and the Arts who assist us in that. I would encourage the member to renominate the mural, and to ensure that the nomination includes all those elements.

**Ms J.M. Freeman:** Yes, and it will.

**Mr D.A. TEMPLEMAN:** Until it is assessed, I cannot say that, yes, it will be included

**Ms J.M. Freeman:** It is not just the Mirrabooka mural. Murals have heritage value. They also have tourism value. There are places in the world to which people go to look at murals. Melbourne is a good example of that—people go to Melbourne to look at graffiti! The question is: would a mural fit within the words “other objects” in the definition of “place”? The last thing we would want is for some well-meaning council employee to put brown paint all over a mural that has historical significance for our area just because the wall has no significance and the council wants to clean it up.

**Mr D.A. TEMPLEMAN:** I assure the member that the answer is yes. The member should put in a submission for nomination and make sure it well and truly covers all the bases, and I am confident it will be considered with appropriate analysis.

**Ms J.M. Freeman:** Thank you, minister.

**Mr P.J. RUNDLE:** Could the minister give me some more information about the Burra Charter and how that relates to the sense of place? I do not believe the explanation in the bill is sufficient to explain that. Paragraph (e) of clause 7(1) refers to “a tree or group of trees.” How is that defined?

**Mr D.A. TEMPLEMAN:** I thank the member for Roe for the question. The member would be aware that the Burra Charter is a nationally recognised statement of heritage principles, and of course this state adheres to those standards and principles. What makes a place special is very much influenced by the people locally, who collectively recognise, embrace and value that particular place or identified area. That is an important component in determining the heritage value of a place. In terms of trees, clause 38(1)(e) at page 24 of the bill states —

any strong or special meaning it may have for any group or community because of social, cultural or spiritual associations;

I think that answers the member’s first question. It gives great credence to that aspect of special meaning to a group, a township, an organisation or whatever, so that comes into consideration. Regarding trees, it is interesting, because quite often in various places trees are planted for specific purposes. Sometimes there are avenues with trees that commemorate something or they are identified as having heritage significance because of the story behind their planting. Those can be considered. We have different examples around Australia and, I think, Western Australia, where there is an acknowledgement of groves, avenues, plantings or even gardens. A garden might be reflective of early nineteenth-century significance because of the plantings and even heritage plants that may exist in that garden. Those are all considerations that can be identified for their significance.

**Mr P.J. RUNDLE:** What I am trying to get to in a way is, for argument’s sake, a farming operation. The bill refers to a group of trees, whether planted or naturally occurring. My concern is how this might relate to a farm with a group of naturally occurring trees. How does this relate to the bill?

**Mr D.A. TEMPLEMAN:** That is a good question. Essentially they have to have a cultural story that is of significance to the state as a whole, which is a key difference from individuals on a farm. It must have a story of cultural significance to the state. In some instances pine trees have been planted by returned servicemen. They came back from World War I and brought seeds back and planted them. They might have been poplar pines—I think that is a species. I think there were two in Mandurah. One fell over because it died—they reach the age. The significance of that tree was that a World War I veteran brought it back and planted it on site. Whether that ultimately has significance for the state is what would have to be assessed, but that may be an example specific to a tree or avenue. I know in Mandurah one of those trees is left and the City of Mandurah in interpreting the story is actively propagating the seeds from the original tree, because it is known that the living tree will fall over, because it will reach the end of its natural life in probably five to 10 years’ time. That will be the last tree and the city will not be able to save it, because it will die. The city might reuse the wood and interpret the story that way, but it is also propagating the seeds, which I think is a very admirable thing to do. Again, it comes back to the story and, to reassure the member, it must have state significance for it to be of particular concern.

**Clause put and passed.**

**Clauses 8 to 13 put and passed.**

**Clause 14: Membership and proceedings —**

**Mr A. KRSTICEVIC:** Clause 14 of obviously refers to the membership of the Heritage Council of Western Australia and indicates that there are nine members. Clause 14(3)(b) indicates the knowledge and skills

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of the areas that those members have to have. I am sure the minister has also received representation, as I have, from the local government sector indicating concerns that there are no requirements for someone from the local government sector to be appointed to the council, only that they have demonstrated knowledge, experience and skills. We know local government plays a key role in maintaining heritage assets and inventories, as they will be known in this new list. I want to know what consideration, if any, was given to that point in this clause.

**Mr D.A. TEMPLEMAN:** The Public Sector Commissioner advised that the need to come from a specific area such as local government to hold a place was not modern practice. As the member can see in that clause, the list of demonstrated knowledge is broad. It includes local government, so that is not to say that local government is to be excluded, but it is not specified someone from local government must be in the make-up of the Heritage Council. I am sure when this bill is proclaimed and a new Heritage Council is established, that brought expertise will be part of the consideration for membership. As Minister for Heritage, I want to make sure that the Heritage Council, after the enactment of this legislation and the creation of the new entity—that is what this bill does; it creates a new entity—will take into consideration broad representation. But the need for the council to have someone from local government and X, Y and Z, with a specific place excised, was not recommended by the Public Sector Commissioner as modern practice.

**Mr A. KRSTICEVIC:** Has the minister had any consultation with the local government sector about this—Western Australian Local Government Association or councils themselves—to find out whether they have any concerns about the fact that there could be nobody on the council who is currently a councillor or has direct experience of managing heritage inventories on behalf of local government and that someone who has the demonstrated knowledge, but not a direct interest in what local councils are doing, would take that place?

**Mr D.A. TEMPLEMAN:** Regulations under this clause will allow recognition of other fields of expertise as qualifying a person for membership. But I do have to highlight that one of the things I would like to see more councils doing is taking on an even greater interest in heritage. The reality is that many councils, because of their small populations and numbers, do not necessarily have a heritage officer, nor would we expect them to, on staff to advise on matters of heritage in relation to the compilation and maintenance of, and advocacy for, heritage matters. The reality is that a number of our larger councils in the Perth metropolitan area do not have heritage officers but I think they should. I think that is something they should take on. I cannot direct them to do so, nor should I; however, I hope they would consider that. Local government has been involved in this consultation process over a long period. I am aware that it would like to continue to be involved. I return to the fact that the Public Sector Commissioner advised that in the modern context, it is not advisable to excise places on this committee for specific interest groups but, instead, we would draw on people who have a broad range of skills and expertise. There are many examples of local government councillors who are architects or who are involved in construction or who have the skills to bring to the council. I would welcome their consideration.

**Mr A. KRSTICEVIC:** I do not consider local governments to be a small player in this space; they are a significant player, if not the most significant player in this space. It seems a little strange that they are not given that level of recognition, considering how much importance they have in this space in identifying these assets and also looking after a lot of these assets and keeping them maintained and making sure they do not go into states of disrepair. By saying that we do not need anyone from local government involved —

**Mr D.A. Templeman:** It's not saying that.

**Mr A. KRSTICEVIC:** No, but the bill is not indicating that they will be either.

**Mr D.A. Templeman:** But it's not certain. You're intimating that they won't be. The reality is that page 11 of the bill clearly highlights local government as one of the areas of expertise that will be looked at for consideration. I would not like you to intimate that we are excluding local government; we are including local government through that connection.

**Mr A. KRSTICEVIC:** When we read those areas that are listed, a lot of them are knowledge areas, such as archaeology, architecture and construction, as opposed to local government, which is an entity. It has a direct level of responsibility and a lot of skin in the game in this area. We are saying to local government that it is not appropriate to save it one of the nine seats because that is not the way things are done in the modern world. Hopefully, through some magical process, it might get a seat at the table but we cannot guarantee that because that is not modern practice and that is not the way we do things anymore. Anybody could have that local government knowledge. It could be a former local government councillor who does not necessarily have skin in the game today from the point of view of having to manage those inventories and take some responsibility —

**Mr D.A. Templeman:** That depends on their capacity and their skills.

**Mr A. KRSTICEVIC:** I will let the minister speak.

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**Mr D.A. TEMPLEMAN:** Is local government included in the consideration of having the capacity to sit on the board? Yes, because local government employees have a range of other skills and expertise that we could say are specific to occupation or indeed skills across occupations. When this bill is proclaimed and we look at establishing a new Heritage Council, there will be a renewed interest from people who would like to serve on it. I do not want to exclude them. I do not want to exclude anyone. I agree with the Public Sector Commissioner's recommendation that, for a modern piece of legislation, we do not prescribe that specific stakeholders should be included and others not included. The last thing we would want is a 20-seat Heritage Council because the opposition wants all these people prescribed as members. I do not think that is the way to go.

The other thing that is important is that if we look at the current Heritage Council and the history of the Heritage Council, it has had very good local government representation over many years, including the current Mayor of Fremantle. As an elected member of the City of Fremantle, he is the mayor of a municipality that has incredible heritage assets, stories and history. He makes a great contribution to the Heritage Council and we would hope that in the future we would have the calibre of representatives who might happen to be mayors, councillors or former councillors. We would welcome that but we will not prescribe specifically for one stakeholder.

**Mr A. KRSTICEVIC:** Has the Heritage Council ever not had a representative from local government on its council?

**Mr D.A. TEMPLEMAN:** No, because it is prescribed at the moment.

**Mr A. KRSTICEVIC:** We have had a Heritage Council, prescribed obviously, which has always had a local government representative on it and now it is optional as to whether they will be on the council, based on whatever the minister of the day decides the composition of that council needs to be. I understand the minister talking about not prescribing everybody who needs to be on that board but, again, I reinforce the fact that local government has a very significant role, if not the most significant role, to play in this space. Local government is the most significant entity outside state government in this space, so local government is the most significant grouping and represents every part of this state. It is the eyes and ears on the ground and is responsible for so much in the heritage space. We would be saying to them that they no longer have a seat at the table and they are no longer important in this space because we do not prescribe things anymore and we need someone with some general experience. They may have 1 243 councillors and 16 000 employees, but none of them are going to be on this council in a prescribed way. They might get on there if they are lucky. They might have the most significant role to play but, again, they are not important enough to be guaranteed a spot in this place. That is a harsh assessment of what local government can bring to the council, which has obviously happened since it has been in place. I think the minister mentioned that the Mayor of Fremantle has offered a lot. I would hate to see a minister being able to make a decision not to put someone from a local government authority on the council. Even though it is not prescribed, which I think it should be, I would like the minister of the day to effectively make a commitment that there will be someone from local government who currently has skin in the game to be part of the council, unless of course there is a good reason that the minister wants to exclude them.

**Mr D.A. TEMPLEMAN:** When the member is next having a discussion with his former colleague, the now Mayor of Joondalup, he might want to ask him why he, as one of the constructors of this bill, proposed this very clause for this very reason. This element is unchanged from the bill that was presented in 2016. I do not know whether the member has had a change of mind because he is now sitting on the other side of the house. He may have; that is fine. Many of his members remind us that this was the Labor Party's bill. "This is ours. Just because you won the election, you snatched it off us and we are now delivering it." This clause is the opposition's. I give this baby to it—this lovely little cherub. I agree with it. I absolutely support it. I am sure that the former Minister for Heritage, the former member for Joondalup, the now Mayor of Joondalup, also supports it. He is now in local government. He may be a consideration for the Heritage Council. He has expertise and we would certainly look at it.

I am sorry, member, but we are going to disagree. I agree with the former ministers who helped conceive this bill—the member's former colleagues—that this is an important element of the bill. I also agree with the Public Sector Commissioner who has also advised that this is the best way forward. If local governments want to make sure that they are considered, they are, because they are mentioned clearly in that list. While I am Minister for Heritage—I am the Minister for Local Government as well—local government will be of very high consideration. We want a cross-section of expertise, a broad section of capability to draw from and to encourage to nominate or be considered, so we will have a little disagreement there. I hope the member does not vote against this clause, because he will be voting against his own party's proposal.

**Mr A. KRSTICEVIC:** I thank the member for that history lesson. The bill has obviously been constructed exceptionally well, but that does not mean that there still cannot be some refinement.

**Mr D.A. Templeman:** Are you going to move an amendment?

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**Mr A. KRSTICEVIC:** I am just putting it out there that the local government sector is very keen to be actively engaged in this space, as it has been up to this point in time. As the minister said, he is also the Minister for Local Government, and I know that local governments have spoken to him about maintaining their active involvement in this space. I just want to make sure that that continues, and that they are not squeezed out and unable to be involved when they carry a huge responsibility in this area. I am sure that the minister will agree, as a minister, that if someone who carries a huge responsibility for a particular portfolio is not given a seat at the table, and someone else is making decisions on their behalf, they might have a few issues with that, especially when they are expected to do all the work. It is a bit harsh to be unable to assure the sector that its previous involvement in the council has been invaluable and has contributed to the efficient running of the council, and that its future involvement will be strongly supported by the minister, so that it can continue to work in collaboration with the state to make sure that heritage is given the priorities it deserves at both levels of government. Local government should not be thought of as a bit player in this, and therefore lose its level of enthusiasm to be in this space.

**Mr D.A. TEMPLEMAN:** I can ensure local governments that they will be very much considered, as is highlighted in the bill, for determination.

**Mr P.J. RUNDLE:** I will argue partly along the same lines as the member for Carine. I have not been a member of this place for long. Obviously the previous government drafted the previous bill, but I cannot necessarily take responsibility for the former member for Joondalup or anyone else. I would like to talk about the regional councils. Many of our regional towns have such things as heritage cottages, an old town hall or something to that effect. The Mayor of Fremantle may not necessarily have the best interests of country local governments at heart. I was wondering whether the minister had any thoughts about requiring the membership of the council to include regional councillors. In a lot of cases they are even more affected.

**Mr D.A. TEMPLEMAN:** One of the really important things is having regional representation. It is an important consideration for me to make sure that the council includes people with regional experience. Up until last year we had a gentleman from Albany, David Heaver, who was a heritage architect. Another regional member was Sally Malone. They were not councillors in local government, but they brought to the table a range of skills and expertise that was very valuable, in a regional context. I can assure the member that the processes that the Heritage Council goes through require members to bring their expertise to the table, but consideration also takes place through the lens of a range of important principles. It is perhaps a little unfair to say that a mayor or councillor from a metropolitan local government will not have an understanding of the context of regional heritage. I do not think the member meant that intentionally, but I think it is a little unfair. When I consider the make-up of the new Heritage Council after this bill becomes law, those aspects will be part of my consideration. I understand that they were considerations of previous Ministers for Heritage as well. They understood the importance of including people representing the regions, because as the member knows very well, the regions are the custodians of many of our heritage assets, and it would be detrimental to not ensure that there was regional representation. I do not think that the person from regional WA would have to be a local councillor. We have a range of people in the regions, such as Sally Malone and David Heaver, who bring to the table great expertise and understanding of heritage issues and values, and I think that is wonderful. That is to be encouraged. This clause provides the scope for that to happen, and I can assure the member that while I am Minister for Heritage, it will happen, because regional people need to be represented on the council. We have in the regions many people to choose from who have the expertise that the Heritage Council needs.

**Mr P.J. RUNDLE:** Talking about the mixture of people on the Heritage Council, I take very seriously what the minister just said. In view of such issues as the Esperance Jetty, in my electorate, is the minister comfortable that he has the potential expertise into the future to deal with engineering issues? My concern is that information that might be filtered through to the council does not necessarily always reflect the correct engineering or architectural requirements, and so on. I am interested in the minister's response to that.

**Mr D.A. TEMPLEMAN:** That is an excellent question, member for Roe. The short answer is: yes, I am confident. This bill and the parameters in which the Heritage Council conducts its role ensure that if expert advice or information is required that is not able to be delivered through the members, it can be accessed.

But within the current arrangements, an engineer is part of the Heritage Council's development committee. I assure the member that expertise that may be required will be sourced if and when it is needed to ensure that the Heritage Council makes a well-informed decision and recommendations to the minister. It is also prescribed in the provision where it mentions the skill base.

**Mr P.J. RUNDLE:** The provision refers to archaeology, architecture, construction, engineering and so on. Several members interjected.

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**The ACTING SPEAKER:** Members on my right, could you keep the noise down, please. It is hard for Hansard to hear.

**Mr P.J. RUNDLE:** That is something I would like to explore a little further because I am curious about the division of powers between the executive and the members of the council. When advice is received from the likes of a council such as the Esperance council that says, “There’s a sag in the jetty. We need to pull out a pier for safety purposes”, how does the heritage council take that into consideration? Does it use its council member or does it refer back to its outside engineering consultants and so on? I am curious about the process.

**Mr D.A. TEMPLEMAN:** In that specific case, the engineer’s advice would normally be provided as part of the proposal, and that is then assessed. If there is a requirement to seek advice during that assessment process, then that will happen.

**Clause put and passed.**

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.