ABORIGINAL CULTURAL HERITAGE BILL 2021

Consideration in Detail

Resumed from 18 November.

Debate was adjourned after clause 99 had been agreed to.

Clause 100: Terms used —

Mr V.A. CATANIA: Clause 100 refers to an impact statement. Will any landholder who owns a house or land greater than 1 100 square metres be required to complete an impact statement for tier 2 and 3 activities, and to whom do they submit the impact statement? What are the anticipated costs associated with this? How many impact statements does the government expect to be provided with by landholders per year?

Dr A.D. BUTI: If it is only a tier 3 activity, the landholder will have to do an impact statement, and that is part of the management plan. In regard to how many, who knows?

Mr V.A. CATANIA: I suppose that is the problem, minister. We are finding this out and we have had a few extra days to have a look at this bill and we want to be able to get some clarity, especially over the 1 100-square-metre rule that the government is putting in place. Land greater than 1 100 square metres will be required to provide impact statement. Can the minister explain, as an example, what is a tier 3 activity and how will it impact on property greater than 1 100 square metres? Can the minister give some examples?

Dr A.D. BUTI: Does the member know that at the moment under the current act there is no requirement? It can be for 40 square metres. The imposition of an impact statement after 1 100 square metres is more rigorous because at the moment there is no size limit for any land. Did the member know that?

Mr V.A. Catania: Did you know there's other —

Dr A.D. BUTI: No; I asked you a question!

Mr V.A. Catania: — rules and regulations that we do not know about that will be added to this?

Dr A.D. BUTI: What?

Mr V.A. Catania: We don't know the detail. Further question.

The ACTING SPEAKER: Member for North West Central.

Mr V.A. CATANIA: The minister keeps saying, "It is 1 100 square metres." Why is that the definition? Perhaps the minister can tell us why there is a definition of 1 100 square metres.

Dr A.D. BUTI: Does the member want to know why it is 1 100 square metres? It is because that is the pragmatic approach. At the moment the legislation recognises that owners of lots of less than 1 100 square metres will not have flexibility with regard to their lots. That is in line with what is required under fire management, which is 1 100 square metres. That is why it is 1 100 square metres. There are actually criteria and a reason why.

Mr V.A. CATANIA: With regard to impact statements, let us take the example of a farmer or pastoralist—someone who has some land. For activities such as the construction of a dam or a track, what will they have to provide in the impact statement prior to carrying out those activities on their property?

Dr A.D. BUTI: That is covered under due diligence, which we will get to at clause 102. It is not actually part of the impact statement. The member needs to follow the sequence of the bill. I cannot answer all his questions about impact statements if he just mentions impact statements under clause 100. He needs to follow the process. If there is no harm after they have done their due diligence, they will not need to do an impact statement. Follow it.

Mr V.A. CATANIA: The minister just said: if they have done their due diligence.

Dr A.D. Buti: What section of the act are you looking at?

Mr V.A. CATANIA: I am looking at the definition of "ACH impact statement", which states —

> … in respect of a proposed activity that is intended to be carried out in an area, means a statement, prepared in accordance with the regulations, about the impact of the proposed activity on Aboriginal cultural heritage in the area;

If a farmer, for example, does their due diligence and there may be some Aboriginal cultural heritage on the property, does that mean that they will have to do an impact statement? Is that correct?

Dr A.D. BUTI: The process for consideration in detail is that we follow the legislation clause by clause. The member has referred to the definition of "ACH impact statement" under clause 100. That is a definition; it does not provide for the operational part of it. The member needs to look at other clauses to deal with that. When we get to the appropriate clause, I will give the member an answer.

Mr V.A. CATANIA: These are the questions that have been asked publicly of the Minister for Aboriginal Affairs, and he has failed to answer those questions. The minister is saying that he will be able to provide that information when we get to clause 102. That information is actually quite critical to the farming and pastoral regions of Western Australia—a large proportion of Western Australia. We need to be able to know that detail because of the lack of consultation with farmers, pastoralists and local governments. We have since found out about the lack of consultation. We need a full understanding and appreciation of the impact this bill will have on landowners right across Western Australia. Whether someone's property is 1 100 square metres or they have hundreds or thousands of hectares of land, they will be subject to the same legislation as Rio Tinto and BHP. That is the issue. The government has failed to consult, and that is why it wants to rush through this legislation.

Dr A.D. BUTI: They are all currently subject to the same law.

Dr D.J. HONEY: By way of explanation, I have heard that comment being used before as a defence, and I have heard it said publicly around the —

Dr A.D. Buti: What are you referring to?

Dr D.J. HONEY: I am referring to clause 100. This is my preamble, minister, and I can say what I like in it. The minister does not get to question me. I have never had a more offensive consideration in detail with a minister in my time in Parliament—never.

Dr A.D. Buti: Are the questions getting to you?

Dr D.J. HONEY: No, it is not getting to me. The minister has been rude and insulting to us the whole time, and it is unacceptable. I can tell members that Minister Johnston, who is a robust minister, and Minister Saffioti —

Point of Order

Mr D.T. PUNCH: This is not a question referring to any specific clause in the bill, Acting Speaker.

Dr D.J. Honey: I can do whatever I like in the preamble.

The ACTING SPEAKER (Ms R.S. Stephens): Member, you must speak to the clause.

Debate Resumed

Dr D.J. HONEY: I am. Thank you very much, Acting Speaker. Those other ministers have never behaved like you and they are probably the most tribal ministers in this place.

The ACTING SPEAKER: Member, can I refer you to the clause.

Dr D.J. HONEY: You can. For exempt activity (b), can the minister please describe what those exempt activities are? Under "exempt activity" it reads —

> (b) development of a prescribed type carried out in accordance with the *Planning and Development Act 2005*;

Can the minister give us some examples or explain further what those activities are, please?

Dr A.D. BUTI: At this stage, it is a prescribed type so they will be prescribed in the regulations.

Dr D.J. HONEY: Thank you very much. What are some examples of those types of activities, minister? I am not trying to be cute. I am trying to ascertain what those activities are so we can understand what is in the bill.

The ACTING SPEAKER: Minister.

Dr A.D. Buti: I gave the answer.

Dr D.J. HONEY: Exempt activity (e) reads —

> recreational activities carried out on or in public waters or in a public place;

Does that also include fishing activities carried out in those spaces?

Dr A.D. BUTI: To the extent that they are recreational.

Dr D.J. HONEY: Thank you very much. So any fishing activities you see as recreational activities as well, minister?

The ACTING SPEAKER: The question is that clause 100 stand as printed.

Dr D.J. Honey interjected.

Mr V.A. CATANIA: On the ACH management code, can the minister explain the definitions —

Dr D.J. Honey interjected.

Dr A.D. BUTI: Chair, I am trying to listen to the member for North West Central but I cannot because of the member for Cottesloe.

The ACTING SPEAKER: I agree, minister. Member for North West Central.

Mr V.A. CATANIA: Can the minister explain the definition of "ACH Management Code" under "Terms used"? I would like to know whether landholders will be consulted in the same way as Aboriginal parties and resource companies about the development of the management code. Under this definition, will there be the ability to have some representation on the Aboriginal Cultural Heritage management council?

Dr A.D. BUTI: Consultation is not the same issue about representation on the council. The meaning is given to the member at clause 294(a), as it states in the bill. As I said numerous times last week, there will be consultation with stakeholders in the co-design. I do not know how many times I need to say that.

Mr V.A. CATANIA: I appreciate that, but can the minister understand, from our end, that there is no understanding on how that co-design process is going to be undertaken? There is no understanding of who the invited stakeholders will be. Will there be public or open forums in which anyone can participate? Or will they be forums in which the government selects who will participate in the co-design?

The argument and opposition to this bill is because of the lack of consultation. The minister might argue that there is not a lack of consultation but he should look at the media on every Aboriginal group, bar the big end of town. The big end of town has supported this legislation, as I said many times last week, because those companies are big enough and ugly enough, and have the financial capacity, to be able to go through any process that the government puts forward. Because of the government's absolute majority, people are very scared to stick their head above the parapet wall to argue that this is poor legislation that will impact on industry and anyone who has a property over 1 100 square metres—the farming and pastoral sectors. Only now, in the time we have had since last week, have we been able to go through this bill and pick up those concerns. They are the concerns of many Western Australians who have approached me and the opposition. They have grave concerns about the impact that this legislation will have on local government.

I was in "Cue Parliament" on Friday and was told there had been no consultation with the Western Australian Local Government Association representative on this legislation that will impact local governments, particularly those in the Murchison area, which is a large pastoral area, and with the mining industry generally made up of junior miners. A lot of people go exploring there. There are people who like to go gold detecting. This legislation impacts them. There is huge concern now that people are starting to look into and understand this legislation. It is important to know whether there will be consultation with all parties about the ACH management code, not just one party. The minister said that it is covered in another clause down the track. I look forward to him explaining what consultation will occur. We cannot just accept that there will be consultation and co-design of guidelines, policies and procedures when we do not know how the government will organise that process. Can the minister provide a list of who will be invited? Will it include resource companies and resident associations?

Dr D.J. Honey: WALGA? WAFF?

Mr V.A. CATANIA: Yes; will there be WALGA, the Western Australian Farmers Federation or the Pastoralists and Graziers Association? Will they be able to come to the table? Local governments with large landholdings are vital in this. Like I said, this legislation will defer, delay, cost jobs and create angst. Can the minister provide us with the process of co-designing the guidelines? The legislation in this house is only one very small aspect to this. It is all hidden in the so-called co-design down the track, with guidelines, policies and procedures.

Dr A.D. BUTI: I am not sure what the question about the bill is. I repeat: there has already been consultation over a number of years. WALGA has been consulted. The PGA has already been consulted. They have been consulted. I repeat —

Mr V.A. Catania interjected.

Dr A.D. BUTI: I did not interrupt the member. I repeat: if someone does not agree, it does not mean they have not been consulted. There has been wide consultation. There will be extensive consultation going forward. A task force will be set up that will include all relevant stakeholders, and there will be extensive consultation. Could we deal with the detail of the bill? I cannot give the member an answer today on the process of consultation. There will be extensive consultation. That is not included in the bill. Tell me any legislation that includes that.

Mr V.A. CATANIA: I refer to the ACH management plan. Who is responsible for completing the ACH management plan? Can the minister provide some detail on that?

Dr A.D. BUTI: Who will be responsible? Is that what the member is asking?

Mr V.A. Catania: Yes.

Dr A.D. BUTI: It will be the proponent, but a template will be provided to assist.

Mr V.A. CATANIA: The minister says there will be a template. Will there be an opportunity for the landholder to prepare their own management plan, or will this be part of the LACH service?

Dr A.D. BUTI: Of course they will be able to prepare their own, but the template will be there to assist them.

Mr V.A. CATANIA: Will they have to follow the template provided by the ACH council? Is that correct?

Dr A.D. BUTI: It will provide minimum standards.

Mr V.A. CATANIA: They will have to follow a minimum standard, but they will be able to have their own management plan as long as it follows some of the criteria. Is that correct?

Dr A.D. BUTI: I refer the member to clause 137, which deals with management plans.

Mr V.A. CATANIA: Will there be an education program on the ACH management plans for all landholders with land greater than 1 100 square metres, farmers, pastoralists and local governments? Will the government provide an education program to ensure that the, I think, 54 000 households with land over 1 100 square metres will get something in the mail to say that they will be subject to an ACH management plan and that this is the process if they want to disturb the ground of their property to put in a pool, a dam or road networks, or, you know, they just want to do their garden? Is the government going to embark on an education program to explain to people their new obligations under this soon-to-be act of Parliament under which they will have to provide an ACH management plan to be able to disturb the land that they own?

Dr A.D. BUTI: As I mentioned last week, there will be an extensive consultation process. The council will be responsible for the education process. The Leader of the Liberal Party was obsessed last week with the 1 100-square-metre landowners, but the member for North West Central seems to be falling into that trap at the moment. I remember that during debate on native title in Western Australia, mining and resources companies had a map that they tried to scare people with by saying, "They're coming after your backyard!" I know the member for North West Central's history and that is not him, so I ask him to please not fall into the trap that the Leader of the Liberal Party seemed to fall into last week.

This is also a pragmatic approach. Properties over 1 100 square metres in size will generally be on the outskirts of the city anyway. If someone has been using their land normally up to now, it is highly unlikely that they will need to worry about this. Obviously, if they dig up some bones, they will ring the police, whether they are Aboriginal bones or not. That would be no different with or without this legislation. That is normal. Let us please be careful not to start a fear campaign on this legislation, as was the modus operandi of the conservatives back when we had the Mabo decision and they said that we were coming after people's backyards.

Mr V.A. CATANIA: I understand what the minister is trying to say, but where I disagree with him, when he said not to go down a particular rabbit hole, is that the opposition is getting pressure on this from the community. People are coming to us because they are concerned. The minister may be correct, but we are dealing with legislation that needs to have some pretty line-in-the-sand clauses so that there are no grey areas and there is no ambiguity. That is why we need time to scrutinise the bill and that is why we need time to consult—to make sure that there are no grey areas in the legislation or to try to minimise them. The opposition needs to be provided with time to be able to get relevant information or advice on legislation, which we have somewhat been able to do on this bill in a very small way in a very short space of time. We are talking about the issue of landholders who own land greater than 1 100 square metres because this clause starts to talk about that. It is important that we flush this out because someone will go back and look at the second reading speech, the clauses of the bill and the questions we have asked, and they will see the responses given by the minister and that will give them some guidelines down the track.

The difference between the previous legislation and the current legislation is the proposed fines. The proposed fines will be increased significantly. There is also a potential jail term. Therefore, it is important that we flush out exactly what it means to have a property over 1 100 square metres. People need to know that a person who owns a property of over 1 100 square metres will be subject to the same obligations as the mining giants Rio Tinto and BHP. I go back to why not one acre, or two hectares? Why do Aboriginal values exist on land that is 1 100 square metres and not on land that is under 1 100 square metres?

Dr A.D. Buti interjected.

Mr V.A. CATANIA: Yes. I am asking the question. How did the government arrive at those metrics? Why is it over 1 100 square metres and not under 1 100 square metres? Why will a 1 000-square-metre block be subject to the same conditions as will be imposed on Rio and BHP, two massive companies that have the resources and financial capacity to ensure that they comply with the legislation and will not be fined, whereas a landholder on 1 100 square metres will be unaware of their obligations and the fines, and possible jail term, that they may receive if they do not comply?

Dr A.D. BUTI: The act currently provides for a term of imprisonment. It also relates to any land, no matter what the size. It is hard to know what the member wants. One minute, he is saying that we are not providing enough protection for Indigenous culture; the next minute, he is saying it is too much. I will repeat it. Currently, there are imprisonment provisions. Currently, there is no size restriction. With regard to why we have chosen 1 100 square metres, I answered that a while back by saying it is pragmatic. It is in line with the bushfire regulations. We can change the footprint of a building on an area that is larger than 1 100 square metres, but, if it is smaller than that, we

cannot. There are exempt activities. There are also tier 1, tier 2 and tier 3 activities, member for North West Central. These provisions will provide a pragmatic approach going forward. I do not really understand where the member is coming from. One minute, it is too hard; the next minute, it is not hard enough.

Mr V.A. CATANIA: A good example of the 1 100-square-metre rule is the Dampier Peninsula, which the member for Kimberley would know. There are lot sizes there that are smaller. We know that there is potentially a huge amount of Aboriginal cultural heritage in the area. That may be under that 1 100-square-metre rule. There are certain areas of the state that will be very rich in Aboriginal cultural heritage. I am asking why it is 1 100 square metres, particularly in areas that have a very high number of significant Aboriginal cultural heritage sites or Aboriginal cultural heritage in general.

Dr A.D. BUTI: The bill sets out certain legal frameworks. The point is that we are setting up an education program that is also setting up a code to ensure people do their best to ensure they do not damage Aboriginal cultural heritage. That is part of the whole education program. I have told the member the reason that 1 100 square metres was selected. Is the member saying we should keep the current situation and not have 1 100 square metres—it should apply to everything?

Mr V.A. Catania: No. I am saying that in areas such as the Dampier Peninsula, the Kimberley or the Pilbara —

Dr A.D. BUTI: What size lots are they?

Mr V.A. Catania: If they are under 600 or 1 000 square metres, their rate of Aboriginal cultural heritage would be higher.

Dr A.D. BUTI: Are there really lots that size in the Dampier Peninsula?

Mr V.A. CATANIA: My example is areas that had a higher historical population of Aboriginal people who would have used the land. If land has been subdivided in a development of less than 1 100 square metres, who is to say that land in Dampier, Broome, Roebourne, Carnarvon or the Kimberley has no value when it comes to Aboriginal cultural heritage compared with a block that is over 1 100 square metres? That is the point I am trying to make.

Dr A.D. BUTI: Obviously at some stage that was a larger piece of land. Due diligence would have been undertaken on a larger piece of land; then it may be subdivided after. But the due diligence would be undertaken on a larger piece of land when it is being developed.

Mr V.A. CATANIA: Is the minister saying that if land was subdivided, say, 30 to 40 years ago, Aboriginal cultural heritage management plans would have been around?

Dr A.D. Buti: No. Show me examples.

Mr V.A. CATANIA: It is very hard to show examples because we have not had the opportunity to go out and get the examples for the minister.

Dr A.D. Buti: I have given you the answers. I do not really have any more to say on that one.

Mr V.A. CATANIA: I will keep going, minister.

Given there are roughly 54 000 properties over 1 100 square metres and given there are large farming and pastoral communities in Western Australia, when exempt activity is listed at less than 1 100 square metres, there is a huge amount of activity that potentially will occur with the 54 000 houses—farming, pastoral and local government, to name a few. The resources that Aboriginal groups will need to properly go through, such as ACH management plans, the ACH management code, ACH impact statements, local Aboriginal cultural heritage services, you name it, could be huge in terms of the financial need for organisations that had the capacity to allow developments to occur; for the right assessment to occur to protect a site of Aboriginal cultural heritage significance. Where are the funds? I have asked the minister about this before. The sum of $10 million is not a drop in the ocean to be able to carry out these functions. Western Australia has a large landmass. This could potentially impact right across the board—54 000 houses, farming, pastoral and local government. How will the government prevent bottlenecks occurring because of an organisation's inability to get the expertise or the funds needed? That will cause angst. How will the government navigate and assist these groups to carry out these functions under clause 100 of this bill?

The ACTING SPEAKER: Member for North West Central.

Mr V.A. CATANIA: Clearly, the minister does not want to answer. We are getting to the nitty-gritty of the bill and suddenly the opposition is being stonewalled by the government.

Dr A.D. Buti: Ask me a question about the clause.

Mr V.A. CATANIA: I asked the minister a question —

Dr A.D. Buti: Ask me about the clause.

Mr V.A. CATANIA: Minister, how is the government going to fund what is listed under clause 100—the "Aboriginal party", "ACH impact statement", "ACH Management Code", "ACH management plan" and "ACH permit", "consult" and "exempt activity"? I want to know what resources the government will put in to

ensure that these functions are carried out in a proper and timely manner, without creating any delays or deferrals, costing people their jobs, and, ultimately, creating angst between landholders and Aboriginal people.

Dr A.D. BUTI: I repeat, Acting Speaker, that we are dealing with the definitions under clause 100. In regard to the member for North West Central's constant questioning, the angst will come from people like him going out spreading a fear campaign. The fact is prescribed bodies corporate already do this. Aboriginal groups already do this. They will not have to do everything. As we go through the clauses, we will see how this bill progresses and how it will work. But if the member is going to keep going on about definition clauses and issues that really have no relevance to the clause before us, we are not going to make any progress.

Mr V.A. CATANIA: The minister said that prescribed bodies corporate already do that. That is what the prescribed bodies corporate are complaining to me about; it is that they do not have the capacity in a lot of respects to do that work or that it is very costly to do. I mentioned last week that it cost a PBC—the Banjima Native Title Aboriginal Corporation—$700 000 to bring its people together. Minister, the issue is that the state is not covered by PBCs. Those structures are not there. Of course they could be there, but the government needs to provide financial support for them to be able to carry out the obligations set out in this bill, which is soon to be an act of Parliament. That is the issue. Last week I said that one of the biggest criticisms of the bill so far—as people start to delve into it, they find more big issues—is that it is not funded to a level that will allow these Aboriginal organisations, LACHS, to carry out the functions set out in this bill by the government. It is not funded. Ten million dollars will have no impact whatsoever and will not ensure that we have properly funded organisations, such as LACHS, to carry out the functions for, like I said, 54 000 properties that are under 1 100 square metres. I think the farming and pastoral industries make up three-quarters of the state, if not more—would that be correct, Leader the Liberal Party?

Dr D.J. Honey: Probably less, but, yes, it is significant.

Mr V.A. CATANIA: It is significant. It is maybe 70 or 75 per cent of the state. It will be a huge impact. Say, we all agreed; we cannot agree that this legislation is a funded bill. A future act is not funded, which is going to cause angst and cause projects to be delayed. People who have property that is over 1 100 square metres potentially will suffer delays or they will just not develop —

The ACTING SPEAKER: Member, we are talking about the terms of the bill, so can I just get you to stay on track.

Mr V.A. CATANIA: The terms of the bill are not funded. The terms of the bill do not have the ability to carry out their function.

Dr A.D. Buti: That's a classic—the terms of the bill are not funded! Sit down now.

Mr V.A. CATANIA: Everyone is complaining about the fact that the funding is inadequate for the functions set out in clause 100 to be carried out. How is the government going to fund this?

Dr A.D. BUTI: The member for North West Central said that he has now had the weekend to study the bill. I do not know how much of the clauses he has really studied. It was a classic to say that the terms of the bill are not funded. As I mentioned to him last week, there will be $10 million in up-front funding that will be given before we even get operational. There is a cost-recovery part to this bill. Also, as I stated last week, there will be further funding. Let us now get on to the clauses and the terms in the bill so that we can make some progress.

Dr D.J. HONEY: In relation to the definition of "proponent", will it apply only to the owner of the land or will it also apply to a contractor or another person who carries out the activity on that land? Obviously, that goes to who will be required to procure the permit for the activity.

Dr A.D. BUTI: It is quite clear what it will do. A proponent means a person who intends to carry out an activity that may harm Aboriginal cultural heritage or carries out an activity authorised under division 4.

Dr D.J. HONEY: I read that, but I want to get clarity from the minister on this. We could say that a landowner intends to carry out an activity on their land, but there is also the individual who is going to carry out the activity. Am I to take it from the minister's answer that in fact the legislation will apply equally to both—that is, the owner of the land who plans the activity or wants the activity carried out and the contractor who carries out the activity on the land?

Dr A.D. BUTI: It runs with the activity.

Dr D.J. HONEY: It is not a gotcha question, minister; I just want to get clarity on this. Will it apply to both the owner of the land who plans the activity and the contractor who carries out the activity? The minister will be able to see the importance of it. The farmer will say to the contractor, "Dig a ditch from here to there" and the contractor will go in and do it, but may subsequently find out that he has inadvertently harmed Aboriginal heritage. The contractor would say, "I carried out this activity under the direction of the farmer and therefore it was the farmer's responsibility to carry out the required assessment and get the approvals." Let us say that they assumed it was a tier 1 activity. I just want to get clarity. I heard what the minister said before about who will and will not be impacted by the bill and everyone being impacted by Aboriginal cultural heritage. The difference with this legislation is that this is much more codified and it is building an enormous structure around enforcement. I know it applied to other people, but

I am not aware of what enforcements occurred for small organisations. In the past, the focus has always been on bigger organisations, not individuals, unless someone had deliberately done something stupid in a national park. I am talking about people on their own property. It is really getting clarity on that so that we understand very clearly who this will apply to. Will it be just the landowner, will it be the contractor who does the physical work, or will it be a shared responsibility?

Dr A.D. BUTI: The proponent can be either. I refer the member to agent liabilities under clause 267.

Mr V.A. CATANIA: Under exempt activity (c), I am sure the minister is aware that some tracks in WA lead to highly sacred sites and their mere presence is enough to cause offence, and, in some cases danger, in Aboriginal culture. Are those roads or tracks exempt from visitors travelling through a path, a track or a road where there is a sacred site?

Dr A.D. BUTI: They are exempt, but we have to provide a balance.

Mr V.A. CATANIA: I am sure the minister is aware that in Aboriginal tradition, it is highly offensive for men to enter women-only sites and for women to enter men-only sites. Is not exempting people from going on a known track or road where there is an Aboriginal site contrary to respecting Aboriginal culture?

Dr A.D. BUTI: What does the member suggest we do?

Mr V.A. CATANIA: I ask the questions here; you answer them. Has the government considered those Aboriginal cultural sensitivities?

Dr A.D. BUTI: Yes. The member may be asking the questions but if he is going to ask questions that are so far off his consistent line of one minute protecting Aboriginal sites and the next minute creating a fear campaign, I will ask questions back. But regarding the member's question, it can be declared a protected area if it has great Aboriginal cultural significance. But we are also trying to create a balance, which, for part of the day, the member has been arguing we should do.

Mr V.A. CATANIA: In response to what the minister just said, our role is to ensure that we have a look at every potential gap by scrutinising the legislation put in front of us to make sure there are no unintended consequences. We will debate and question every clause to ensure this bill will stand up to scrutiny. That is our role. Standing there saying, "Look how good we are; don't question", is what we are getting.

Dr A.D. BUTI: What relevance does this have to the clause? What clause is this dealing with?

Mr V.A. CATANIA: The same relevance to which the minister just responded.

The ACTING SPEAKER: Member, can we please get back to the bill.

Mr V.A. CATANIA: Do not stand there and try to give us a lecture because the minister is trying to —

The ACTING SPEAKER: Member for North West Central, please sit down.

Point of Order

Mr D.T. PUNCH: This goes to the heart of "Relevancy of debate" under standing order 179. I ask that the member keep to the question.

Mr V.A. Catania: More relevant than you, member for Bunbury.

The ACTING SPEAKER (Ms R.S. Stephens): Excuse me, member for North West Central.

Debate Resumed

Dr D.J. HONEY: Getting down to the definitions of tier 1 and 2 activities, I take it we can skip tier 1 by exception. I want to get a sense of "tier 2 activity", please, by example, so we know where this is likely to apply. It states —

> … means an activity involving a low level of ground disturbance that is prescribed for the purpose of this definition;

I take it from the definition of "prescribed" that it means some reference will be made to activity in regulations and we will get regulations. We know also that regulations are likely to be about 18 months away, so we will not know for 18 months what is intended for that specifically. I appreciate that there will always need to be some level of interpretation. The regulations cannot be exactly prescriptive, so they will do it by example. So that we can discuss this with the community, what is the minister's understanding about an activity such as ploughing a paddock? The ploughs may go into the soil anywhere up to 30 centimetres so the soil will certainly be significantly disturbed. Will ploughing be an activity that will fall under a tier 2 activity?

Dr A.D. BUTI: The member for Cottesloe and the member for North West Central have talked about the need for consultation. Tier 2 activities will be prescribed and listed in the regulations, which will be determined following consultation with all stakeholders.

Dr D.J. HONEY: The minister must understand our dilemma, though. It is one of my concerns with this whole bill—that is, really significant matters are governed by this bill, but when we look at them, it is either by prescription or otherwise; it refers to something that will be in regulations. We are trying to pass a bill in Parliament, or discuss a bill in Parliament, and it has to go through the upper house and be interrogated there, but between the houses, we have not had a significant opportunity over the weekend to consult with the community—only in a limited way. Over the next week, we will have a better opportunity to do that. If we are going to enter into meaningful consultation with the community and to raise other issues—maybe we will answer issues in the process—in the other place, we need some sense of what they could be. If all normal farming activities are not governed by tier 2 or 3, we should not be wasting the time of that community consulting them about it. But if, for example, a plumber who digs trenches in people's backyards that are over 1 100 square metres is a tier 2 or maybe a tier 3, we will need to consult with those people. This is not trying to catch the minister out on anything; it is trying to get a sense of what is intended. The minister at the table or the Minister for Aboriginal Affairs, and the people who had input into this bill, must have had some sense of what they felt will fall within tier 2 or 3. Otherwise, we will come from this place thinking that it could be anything. I do not think that helps the government and I do not think it helps us in consultation with the community. If we say that, the minister will say what he has said here—that is, that somehow or other we are trying to fearmonger or cause concern in the community. Surely, the minister can give us some sense of whether an activity like ploughing will be considered to be a tier 2 activity.

Dr A.D. BUTI: The beauty of what we are trying to pass today in this Parliament is that we are seeking to co-design the regulation. It is not unusual to have extensive regulations attached to a bill. That is not new. The regulations will come back to Parliament. We will seek to engage in wide consultation to come up with what should be the appropriate tier 1, 2 and 3 activities.

Dr D.J. HONEY: I appreciate that. My concern here is really simple. The minister commented before that we are obsessed with landholders and he alluded to some improper motive or partisan motive in all that. The reason for that focus is that in practice this will apply to a whole lot more people than the Aboriginal Heritage Act does, theoretically.

Dr A.D. Buti: No, it does not.

Dr D.J. HONEY: Theoretically, the previous act applied, but there was not a whole apparatus built around it. There was not a whole mechanism. We will get to that later under the role of inspectors, which will be enormously powerful positions—more powerful than the police it would seem in terms of their capacity. They will be appointed all over the state. There will be local Aboriginal cultural heritage services all over the state; there will have to be. I am not concerned about the big mining companies. This will not alter their world much at all. I am not concerned about consultation with the Aboriginal community. Although there are people in the Aboriginal community who are concerned and have expressed concerns, I know from what I have seen, the government has undertaken widespread consultation with that community on the Aboriginal heritage side so those bases are well covered. I will not challenge or question the minister on that because I think there has been a very strong focus on it. My concern is that a whole new community of people will come under a lot more scrutiny for their activities and that there will be enormously onerous penalties. That is why the focus is on the tiers. That goes to the core of it, does it not, minister? If I am merrily confident that an activity is a tier 1 activity, life is sweet. For us to talk to the community about the bill, we will need some sense of that.

It seems that the minister does not intend to give me any guidance on something like ploughing. That leaves it open for us to tell people that it could mean anything. That is not a threat; it is a practical reality because the minister has said to us that this will be based purely on consultation. I will tell the minister quite openly that I know mining companies have been consulted with and a significant number of Aboriginal groups have been consulted with, but, honestly, the vast majority of representative organisations that I have spoken to have no idea about the content of the bills. Whatever the consultation was, they do not know what is in the bills, yet when they have looked at them, they have come back and said that they are quite shocked and perturbed by what they have seen. That is not me telling them; it is them telling me once I have told them to look at the bills, because they had not done that. That is what we want to know. We just want a sense of it so that we can go ahead. If the minister is determined not to answer that, that will be the basis for our consultation.

Clause put and passed.

Clause 101: Consultation about proposed activities —

Dr D.J. HONEY: Once someone has gone through consultation for a tier 2 activity and there is no Aboriginal heritage and nothing whatsoever has changed, will they be required to do further consultation on that activity or will they be able to carry on with that activity into the future, comfortable that they will not confound this law?

Dr A.D. BUTI: This is a definitional clause about what consultation actually means or what will have to take place. That is what this clause is about. The consultation will come up in specific clauses as we go through them.

Mr V.A. CATANIA: That may be the case for my question. Clause 101(e) states —

> the proponent taking reasonable steps to follow up with a person to be consulted if there is no response to the initial contact or a reasonable request for further information.

Is there a definition of what the reasonable steps to be taken are? Will the minister become involved if there is no person to be consulted with or if there is no interest when a proponent has found an Aboriginal cultural heritage site of significance? How will that process work?

Dr A.D. BUTI: There will be guidelines. I refer the member to clause 139, which will impose the obligation on a proponent to consult. The Aboriginal cultural heritage management plan requires that such consultation must be carried out in accordance with the requirements of that clause and within the consultation guidelines.

Mr V.A. CATANIA: If there is no-one to consult with or no-one has come forward or no-one is interested but, clearly, there are Aboriginal artefacts on a property, will there be a process for that?

Mr P. Papalia interjected.

Mr V.A. CATANIA: Can the minister be quiet? He is yabbering in the background.

The ACTING SPEAKER: Member for North West Central, direct your questions through the chair to the minister. Thank you.

Point of Order

Dr D.J. HONEY: I can understand where the member for North West Central is coming from. It is really hard to concentrate and hear when there is constant noise coming from the Minister for Police, which does not seem to be related to these bills.

The ACTING SPEAKER (Ms K.E. Giddens): I have heard your point of order, thank you. I understand the point.

Mr P. PAPALIA: The members are engaging in irrelevant and tedious repetition of their own arguments about a clause that is a definition clause. If they wait until the appropriate clause later in the bill, they will get the answer they are seeking.

The ACTING SPEAKER: There is no point of order. They have five minutes. We are considering clause 101.

Debate Resumed

Mr V.A. CATANIA: Now I am lost.

Dr A.D. BUTI: If I remember the member's question, it was about having no-one to consult with. There will always be someone. There will either be LACHS, a native title representative body or a native title person.

Clause put and passed.

Clause 102: Due diligence assessment —

Mr V.A. CATANIA: I think I asked this earlier. The current register is open to acknowledging the inaccurate, riddled, outdated and, if you like, unverified information.

Dr A.D. Buti: Sorry, what are you referring to?

Mr V.A. CATANIA: I am on clause 102 on page 85. There is currently a backlog of thousands of sites. I am going through the assessment. I understand that there is a huge backlog of sites—thousands of sites, one would say—that have not been reviewed or entered into. Who is going to go through those sites to ensure that proper due diligence and assessment has been undertaken and the new directory will really be up to date—as up to date as it can be—in order to cater for all these potential new assessments to be undertaken? As I said, 54 000 properties will be captured by this legislation as well as a large proportion of Western Australia through the farming, pastoral and local government sector. What assistance will be provided to those landowners who will potentially be required to be put in the directory? What assistance will the government provide in terms of the due diligence that is needed for the properties that I mentioned—the 54 000 farmers, pastoralists, local governments, and the community in general that will be captured by this act? What financial assistance will the government provide to ensure that that due diligence assessment is undertaken in a timely and appropriate way?

Dr A.D. BUTI: The member keeps talking about 54 000 properties. Not all the owners of those properties will need to undertake due diligence. The member for North West Central knows that, but we will leave that aside. I am not 100 per cent sure what he is getting to. The due diligence assessment will be set out, step by step, under the Aboriginal cultural heritage management code. It will quite clearly set out how to follow it.

Clause put and passed.

Clause 103: Due diligence assessment not required for exempt activity —

Mr V.A. CATANIA: The clause states —

> A due diligence assessment is not required in relation to an exempt activity.

…

> However, a proponent is required to make an assessment about whether the area where it is intended that the exempt activity be carried out includes any area that is part of a protected area, see section 109.

We have not got to clause 109. I asked a question about the 1 100 square metres in areas of Western Australia where there are potentially a higher number of Aboriginal cultural heritage sites. Will a proponent still be required to undertake an initial assessment to ensure that there is no Aboriginal cultural heritage in an area that may be under 1 100 square metres?

Dr A.D. BUTI: I am confused by that question. I am not sure whether the member wants to clarify it.

Mr V.A. CATANIA: There is an exemption under clause 103, then it states —

> Note for this section:
>
> > However, a proponent is required to make an assessment about whether the area where it is intended that the exempt activity be carried out includes any area that is part of a protected area, see section 109.

If an area comes under that 1 100-square-metre rule, in the Kimberley, for example, which may have more significance as an Aboriginal cultural heritage site, under that 1 100-square-metre rule, will the proponent be required to make an initial assessment?

Dr A.D. BUTI: If it were a protected area, it would be on the directory and would be gazetted, so the proponent would know whether it was a protected area or not.

Clause put and passed.

Clause 104: Proponent may seek confirmation about proposed activity —

Dr D.J. HONEY: I have looked at this section and all the activities that the CEO will have to carry out, and I heard the minister optimistically comment that perhaps there would not need to be too much of this with the number of approvals when he said that 54 000 properties will not need approvals —

Dr A.D. Buti: There's a difference. I didn't say "too much". Don't try to verbal me.

Dr D.J. HONEY: I am not trying to verbal the minister; I am just giving a preamble. My concern is: has any analysis been done on the sheer workload that this will imply for the department? My concern is the level of resourcing that the department will need. I think that this will be a significant workload and the department will need to prepare for that, but I wonder whether any activity is going on within government to estimate the workload. I know the minister cannot predict it exactly. The reason I am asking now is that this is the part of the bill that brings in the role of the CEO and the work that the CEO's department will have to carry out.

Dr A.D. BUTI: This is actually a more limited requirement than the member may think. The CEO needs to provide a letter of advice only to confirm whether the activity is exempt or comes under one of the three tiers. If we look at clause 104(4), we will see that the letter of advice has to be provided only if there is uncertainty about whether the activity comes under one of those categories.

Dr D.J. HONEY: I thank the minister; I think I understand. My concern is that once this process has gone around the loop a few times, it might be smooth, but I suspect at the start there will be considerable nervousness, and that will be fuelled by the magnitude of the penalties, which are potentially huge. In any case, I will take that as the minister's answer.

I refer to clause 104(5). Will there be any liability on the CEO for providing incorrect advice? The CEO will provide a letter of advice, but if that letter contains a mistake or is incorrect and that results in a proponent potentially falling under the ambit of the act and incurring a fine or penalty, will there be any liability on the CEO? I am really asking about the CEO's liability for providing incorrect advice.

Dr A.D. BUTI: This will be a letter of advice provided by the CEO. Any action would be against the proponent.

Dr D.J. HONEY: Thank you very much, minister. It was more that if the proponent ends up in strife because of something that the CEO has put in that letter, will they then have any recourse back to the CEO?

Dr A.D. BUTI: Is the member asking about if the wrong advice were provided by the CEO?

Dr D.J. Honey: Yes, minister.

Dr A.D. BUTI: That would depend. Obviously, it often depends on whether it was done in good faith or bad faith. I refer the member to clause 305, which may give him an answer with respect to any wrongdoing.

Mr V.A. CATANIA: Under clause 104, one of the newly proposed functions of the local Aboriginal cultural heritage services will be to provide advice to landowners; am I correct?

Dr A.D. Buti: My understanding is that it will be to the council. But what sort of advice are you talking about?

Mr V.A. CATANIA: When a proponent goes to a LACH service to get advice and to start to go through the process, what will stop a landowner from potentially shopping around for the best advice from a LACH service and from the CEO?

Dr A.D. Buti: There's only one LACH service per area, so you can't shop around.

Mr V.A. CATANIA: So there will be only one LACH service per area. Will that LACH service give advice to that CEO? Is that correct?

Dr A.D. Buti: I think we're on different purposes here. If you're talking about this clause, this is not about the LACH.

Mr V.A. CATANIA: No. The LACHS are under this. It is a function of the CEO —

Dr A.D. Buti: There's nothing about the LACH in this clause.

Mr V.A. CATANIA: No. The CEO will provide advice to confirm whether the proposed activity is exempt, or is tier 1, 2 or 3. Is there a potential for a LACH service, the Aboriginal Cultural Heritage Council and the CEO to get differing advice?

Dr A.D. BUTI: This advice here is in regard to whether it is an exempt activity or a tier 1, 2 or 3. That all has to be determined by the co-design and the regulations, so the CEO will not have to go to a LACH service because that information will already be in the regulations.

Clause put and passed.

Clauses 105 and 106 put and passed.

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

Dr D.J. HONEY: Clause 107 is in relation to persons to be notified. Later on in the bill, I know there is a clause on information that the Aboriginal Cultural Heritage Council has to maintain and keep accessible. But how will a proponent know who those people are? Will they know that because that information will be specifically available on a website, I am assuming? If they rely on that information and they miss someone out, will they have complied with the act? My question is really around how the proponent will know who to contact, because the bill goes through a hierarchy of the list.

Dr A.D. BUTI: It will be on the directory and in the management code. I refer the member to clause 108 as well.

Mr V.A. CATANIA: What will happen if there is no local ACH service, but there are about 100 people who have declared themselves "knowledge holders"? How will one be chosen?

Dr A.D. BUTI: If the member is referring to "each knowledge holder", I refer him to clause 107(2).

Mr V.A. CATANIA: What happens if someone makes a false claim to be a knowledge holder? Who has authority to decide whether the claim is legitimate?

Dr A.D. BUTI: The proponent cannot be held responsible for wrong information given to them, but they have to take all reasonable steps. I refer the member, again, to clause 108.

Dr D.J. HONEY: That in itself causes a problem, I think. We assume that this is some sort of GIS-related website, or whatever it is. Whatever form it is in, if someone wants to carry out an activity that they think could disturb the land, they will want to go through the approval process and get an assessment done. They will then make sure that they have a plan. If they go onto the website and it lists people that they should contact, but they miss out on contacting someone that they should have, the minister's earlier answer was, "Oh well, you've always got clause 108." I would have thought, in that case, that everyone would go to the CEO, which could be onerous. What I am getting to is: if there is reasonable information and they have people to go to, based on the information that is on that database, and the person does that, would that be seen to be reasonably compliant with the legislation? Again, this is not a tricky question; it is just clarity for people who are doing this. If they go onto the website, there are one or two or however many people listed, they contact them and it subsequently turns out that they missed out someone who was not on the list, will that fall under the reasonableness provisions—that the person has done the reasonable thing to try to satisfy the contact requirement?

Dr A.D. BUTI: We would hope that there is no-one missed out, but as the clause quite clearly states, they need to take all reasonable steps.

Dr D.J. HONEY: I know this is labouring the point, but I am trying to get to looking at the website. Obviously, if they saw no-one there, I can understand that they would go to clause 108. But if they have done that and there are people there, those would be reasonable steps. That is what I am trying to get clear—that those would be reasonable steps.

Dr A.D. BUTI: That is right.

Dr D.J. HONEY: I thank the minister.

Mr V.A. CATANIA: Presumably the notification will be through an exchange of letters, I imagine, or emails, to be able to know who to deal with. If that is the case, is the consultation requirement to be through an exchange of letters or emails, or is it intended that consultation will necessitate meetings, or is it both, with each person?

Dr A.D. BUTI: It could be both, but the guidelines, which are co-designed, will determine that. It probably could be both; it will just depend.

Mr V.A. CATANIA: If it is both, obviously there will be costs involved. Will the proponent be charged to pay the costs of those meetings with each individual? Given the vastness of our state and the fact that people live in remote places, as I have said, the cost of getting a group together for a meeting can be up to $700 000. Will the costs be passed on to the proponent or will they be taken up by the prescribed body corporate? That is the concern I keep raising: that the funds are not there, unless we are prepared to charge the proponent, and it can cost hundreds of thousands, if not millions, of dollars just to arrange a meeting.

Dr A.D. BUTI: When we are co-designing with the stakeholders and when the most practical and reasonable way of communicating has been determined, obviously those factors will be taken into consideration. The LACHS can recover costs that are reasonable fees. I would have thought that we should be applauding that we are saying the guidelines are going to be co-designed and that we are going to consult with all the stakeholders to work out the most practical, reasonable and best way of determining these matters.

Clause put and passed.

Clause 108: Assistance to identify persons to be notified or persons to be consulted —

Mr V.A. CATANIA: Will this clause require the CEO to maintain a list of persons who should be consulted?

Dr A.D. BUTI: It should be on the directory, but the CEO will determine the best way of doing that. They could; they may.

Mr V.A. CATANIA: Who will be responsible for maintaining that list? Will the CEO be responsible for maintaining that list?

Dr A.D. BUTI: The department will be responsible for maintaining the directory.

Mr V.A. Catania: Not the CEO?

Dr A.D. BUTI: The CEO obviously delegates often, but it will be the department, under the CEO's leadership. I do not think the CEO is going to put everything in the directory.

Mr V.A. CATANIA: I understand; it is just to clarify in *Hansard*. Will the CEO or the department provide contact details for persons, such as home addresses, personal mobile numbers or email addresses?

Dr A.D. BUTI: No, unless the people wanted that. They will be providing contact details that are consented to.

Dr D.J. HONEY: Will there be any time frame for the CEO to respond to the proponent with that information? I did not notice whether it was time bound. Obviously, one of the concerns with this process is that it could further delay approval for work or a project.

Dr A.D. BUTI: This will be a statutory requirement. There will be no time frame, but the CEO will be expected to act within a reasonable time frame.

Clause put and passed.

Clause 109 put and passed.

Clause 110: Authority to carry out tier 1 activity that may harm Aboriginal cultural heritage —

Mr V.A. CATANIA: Can the minister please explain what the "Note for this section" means? It reads —

> The duty to mitigate set out in paragraph (d) applies in relation to Aboriginal cultural heritage in an area even if an assessment was made, in undertaking a due diligence assessment, that Aboriginal cultural heritage was not located in the area.

Can the minister explain that?

Dr A.D. BUTI: It is a code to say that it is a tier 1 activity, but all reasonable steps should be taken to minimise any harm.

Mr V.A. CATANIA: What value is there in determining the steps to mitigate the cultural heritage that does not exist?

Dr A.D. BUTI: It is a duty to mitigate. Even if it is a tier 1 activity, which is considered to be very low risk, appropriate steps should still be taken to minimise any risk. That goes with the objectives and purpose of this legislation, which is to respect Aboriginal cultural heritage.

Mr V.A. CATANIA: Who will be responsible for identifying those steps?

Dr A.D. BUTI: The proponent who has done the due diligence assessment in accordance with the code.

Mr V.A. CATANIA: What will happen if the landowner and the LACH service do not agree on those steps?

Dr A.D. BUTI: This is the due diligence, and it is a tier 1 activity, so there will be no negotiation with the LACH service.

Mr V.A. CATANIA: What will happen if the landowner does not take reasonable steps?

Dr A.D. BUTI: They will always have to take reasonable steps. If they do not, they can be prosecuted against. That is obviously if they have harmed the cultural heritage.

Clause put and passed.

Clause 111: Authority to carry out tier 2 activity that may harm Aboriginal cultural heritage —

Dr D.J. HONEY: Clause 111 refers to tier 2 and tier 3 activity. Would it be the minister's understanding that any assessment of a tier 2 or 3 activity inevitably would have to involve consultation with a LACH service?

Dr A.D. BUTI: Clause 111 does not refer to tier 3 activity, only tier 2.

Dr D.J. Honey: I know, I said that and the next one. I was just asking, because I wanted to avoid repetition.

Dr A.D. BUTI: It would depend. If there was existing land usage, it would obviously reduce the need for further consultation, but it would depend. If it was a tier 2 activity that may cause harm, the person would have to notify the Aboriginal people of that proposed activity, which is done via the various groups, the LACHS, the native title party, the knowledge holder or the native title representative body. It is similar with tier 3 activity. With tier 3 activity, there would have to be consultation. With tier 2 activity, there would be notification and with tier 3, there would be consultation, which is dealt with in the next clause.

Dr D.J. HONEY: I do not want people to be inadvertently caught up and I am sure that the minister does not either. If the LACH service was informed and thought it required an assessment, that is something it would feed back to the proponent, which closes the loop so that no-one is caught by surprise.

Dr A.D. BUTI: I know we are talking about clause 111 now, but I am going to give the process. It will not prevent the member from talking about other clauses, I am just giving him the way it goes. Under clause 111, if there is a tier 2 activity that may cause harm, the proponent will need an Aboriginal cultural heritage permit or an Aboriginal cultural heritage management plan. We then go to clause 113, under which the proponent would have to notify the Aboriginal people, which, as I said, would be the LACH service or each native title party or the knowledge holder, and if there were none of the above, the native title representative body. The Aboriginal people will be notified of the proposed activity and there will be the ability to make submissions. Then the proponent will submit an application to the council for a council permit that must identify the council and include how the risk of harm will be minimised or avoided. That is under clause 115. Then, under clause 118, which can be delegated to the department, the council will give notice and seek submissions from Aboriginal people. There are other clauses, but that is the process up to that stage. I will leave it at up to that stage and talk about other stages when we get to the clauses that deal with them.

Clause put and passed.

Clause 112 put and passed.

Clause 113: Notice of intention to carry out tier 2 activity —

Mr V.A. CATANIA: Clause 113 states —

> A proponent who intends to carry out a tier 2 activity in an area that may harm Aboriginal cultural heritage must give to each of the persons to be notified about the activity —
>
> (a) written notice providing details of —
>
> (i) the proposed activity; and
>
> (ii) the area where the proponent intends to carry out the activity;

Who will decide whether a tier 2 activity may harm cultural heritage?

Dr A.D. BUTI: Due diligence will be done under clauses 102 and 103, which will determine whether it is a tier 1, 2 or 3 activity. If it is a tier 2 activity, the proponent will have to go through the various processes under clause 113. Also, the due diligence will determine whether there is any risk of harm. Being a tier 2 or tier 3 activity does not mean that there necessarily will be harm, but there will be a greater likelihood of harm if it is a tier 2 or tier 3 activity. The assessment will determine the tier and also whether there is a risk of harm to Aboriginal cultural heritage.

Mr V.A. CATANIA: What will happen if a landowner decides, under the process in clause 102, that no harm will occur, but the Aboriginal people of that area where the proponent wants to do whatever to disturb the land do not agree? What will happen then?

Dr A.D. BUTI: As part of the due diligence assessment, the proponent will of course consult with an Aboriginal group or Aboriginal person, who will provide information or advice on whether it will do harm. If the proponent then does not obey that and ends up doing harm, they could be liable for prosecution.

Dr D.J. HONEY: The minister kindly went through the notice under clause 113. It states, in part —

> … to each of the persons to be notified about the activity —

Will that occur just through that hierarchy? The LACH service will be at the top, so if I notify the LACH service, will that be the person?

Dr A.D. BUTI: Under clause 107, if there is no LACH service, the proponent will go to the native title holders and knowledge-holders, and if there are none of those, they will go to the native title representative body.

Mr V.A. CATANIA: I just have a quick one, minister. Can an approved plan be used for other activities, at a future date, in the same area?

Dr A.D. BUTI: Tier 2 deals with permits; tier 3 deals with plans.

Mr V.A. CATANIA: Tier 3 deals with plans. Can that plan be used at a future date in the same area?

Dr A.D. BUTI: I am not sure what clause the member is dealing with. We are on clause 113, which deals with tier 2. In any case, it will depend on what the plan is.

Clause put and passed.

Clause 114 put and passed.

Clause 115: Application for ACH permit —

Dr D.J. HONEY: Subclause (2)(d) refers to identifying whether there is a risk of harm to Aboriginal cultural heritage. We will go into this later, but there is a set of cascading clauses in relation to risk and imminent risk and so on. How will risk be determined? There is always a risk. There is a risk that this building will collapse on us in the next 10 minutes. I am not trying to be cute; the risk is very low. What reasonable steps will a person need to take to determine whether there is a risk, because otherwise it will almost become a case of anything we do has a risk?

Dr A.D. BUTI: The risk will be assessed in undertaking the due diligence, in compliance with the management code.

Clause put and passed.

Clause 116 put and passed.

Clause 117: ACH Council may refuse to consider some applications —

Dr D.J. HONEY: We are getting through this with breathtaking acceleration. The minister must be thrilled. This clause provides that the ACH council may refuse to consider some applications. Will that process be in any way time bound? My concern is the time that this process will take.

Dr A.D. BUTI: As a point of logic, if the council will have to approve something in a certain period, it obviously will also have to refuse to consider something in a certain period.

Clause put and passed.

Clause 118 put and passed.

Clause 119: Decision of ACH Council on application for ACH permit —

Mr V.A. CATANIA: Subclause (4) states —

> If the ACH Council does not make a decision on an application within the prescribed period, the applicant may make a written request to the Minister to direct the Council to do anything that the Minister considers necessary to expedite the matter.

What is meant by "expedite" the matter?

Dr A.D. BUTI: The normal meaning of "expedite" is ensure that it is done in a speedy manner; to bring it to a conclusion or a decision.

Mr V.A. CATANIA: The minister will have the ability to respond to a request from a proponent and to expedite the matter, given the fact that it will be in the interests of the state. Is that correct?

Dr A.D. BUTI: No. What the minister will be doing is directing the council to consider the matter and come to a decision.

Mr V.A. CATANIA: The role of the minister is basically to direct the council to expedite the matter because it is an important area for the state—it may be iron ore, and the royalties are needed by the government, and it wants to expedite a decision by the council to benefit the state. I think one of the clauses in the bill is that the benefit of the state needs to be looked upon by the council in a positive way in order to be able to proceed. Is that correct?

Dr A.D. BUTI: No. This is about process, not the actual decision itself. The problem is the decision has not been made; the council has not made the decision. The minister is directing the council to make a determination. If it has

not made a decision within the prescribed period, which will be set out in the regulations under a co-design, the council will be told to make a decision, whatever that decision may be.

Mr V.A. CATANIA: Clause 119(5) states —

> A direction given by the Minister in response to a request under subsection (4) must —
>
> (a) be in writing; and
>
> (b) specify the period within which the direction must be complied with.

The direction to the Aboriginal Cultural Heritage Council will be given by the minister to expedite the matter; is that correct? Can the minister request this off his or her own bat?

Dr A.D. BUTI: The minister can only do that if it has not been determined within the prescribed period.

Mr V.A. CATANIA: Can the minister do that without a letter being written to say, "We are not getting a result here"?

Dr A.D. Buti: No; sorry—at the request.

Mr V.A. CATANIA: At the request of a proponent or an applicant —

Dr A.D. Buti: Applicant.

Mr V.A. CATANIA: — or Aboriginal Cultural Heritage Council?

Dr A.D. BUTI: No. The Aboriginal Cultural Heritage Council has not made the decision. It is from the applicant writing to the minister.

Mr V.A. CATANIA: The applicant–proponent can write to the minister under clause 119(4) saying, "We're not getting anywhere, can you please request in writing and specify the period within which the direction must be complied with?" The minister can direct the ACH council, in writing, to consider the matter within a period, or the minister can make a decision after that period of time; is that correct?

Dr A.D. BUTI: Only if the council does not comply with that direction.

Mr V.A. CATANIA: The minister can see how the potential destruction of an Aboriginal cultural heritage sacred site could occur with this simple direction here by an influential proponent such as a multinational company—a large iron ore company, a large gold company or a large resource company—that is heavily involved, say, in the Labor Party and attends fundraisers of the Minister for Aboriginal Affairs and the Minister for Mines and Petroleum and so forth. It may say, "I really need to get this project. It's worth a lot of money. It's going to provide thousands of jobs to the state. It's going to give the state lots of royalties; therefore, if I write to you, minister, will you write to the ACH council and give it whatever the co-design guidelines come up with, whether it is 10 days, 14 days, 20 days or 60 days?", or whatever the case may be. If the response during that prescribed time is not satisfactory to the minister, the minister has the ability to make a decision to go down one path or another. That could lead to the destruction of a site of Aboriginal cultural heritage significance; is that correct?

Dr A.D. BUTI: A lot of the stuff the member said was absolute rubbish. This is an issue about following a process-of-time period. So much time was put into this. Council members will be majority Aboriginal. This is when the council will not make a decision and then there is a request. It has nothing to do with pressure being mounted by the big end of town or anything. The council's purpose is to make a decision. If it does not make a decision, someone else has to make a decision. That is when the minister tells the council to make a decision. If it does not make a decision within the specified time, that is when the minister may stand in the place of the council, regardless of whether it is from the top end of town or the small end of town.

Mr V.A. CATANIA: I agree. That is the point that the opposition is making: this legislation will not protect Aboriginal cultural heritage sites of significance because the minister has the ability to step in. The minister can be pushed to step in by a proponent writing a letter asking for the intervention to occur and for a direction to be given by the minister. That is the point opposition members made in their contributions to the second reading debate, and the minister has just clarified that it could occur. To say that this bill will protect Aboriginal cultural heritage sites of significance is a farce.

Dr A.D. BUTI: I am trying with my answers to questions in consideration in detail to stick to the legislation before us, but what the member for North West Central is saying is just absurd. This is his normal way of trying to start scandal and controversy. The Aboriginal Cultural Heritage Council will make decisions. If the council will not make a decision, someone will have to make a decision. The decision cannot be left there forever; someone will have to make a decision. Hopefully, it will be on very rare occasions that the council will not make a decision. To try to equate that process with not protecting Aboriginal cultural heritage is a farce. The member knows it is a farce; it is just his normal way of trying to create controversy. A process will be put in place under the legislation. There will be negotiation with Aboriginal groups. There will be prescribed guidelines that will be co-designed with stakeholders. The council will make decisions and it will have a majority of Aboriginal members. But if the council will not make a decision, the minister will need to make a decision.

Mr V.A. CATANIA: That goes to the heart of the problem and it is why nearly an absolute majority of Aboriginal organisations have rejected this bill. It is because it does not have —

Dr A.D. Buti: Who should make the decision?

Mr V.A. CATANIA: The argument is that because of the lack of —

Dr A.D. Buti: No. I'm asking you.

Mr V.A. CATANIA: Hang on a second; let me finish and then I will respond.

That is at the heart of the issue. There was a lack of consultation. The will of Aboriginal people and organisations was to have veto rights to stop potential influence whether it is from the big end of town —

Point of Order

Mr D.T. PUNCH: Under the provisions of standing order 179, consideration in detail has to be relevant and not a debate. It is a specific question on the clause.

The ACTING SPEAKER (Ms K.E. Giddens): There is no point of order.

Debate Resumed

Mr V.A. CATANIA: This clause goes to the heart of why Aboriginal organisations and people feel that they have not been consulted appropriately. It is because the legislation does not have a right of veto. Under clause 119, the minister, potentially after being lobbied at a Labor Party function, could say, "Write to me and I will be able to apply pressure to the ACH council." The legislation will open up that possibility. The minister is a good bloke and a good member of Parliament. I think he will be a great minister—especially if he becomes the Minister for Health in due course! I know that the minister would not do that, but legislation should protect people from unintended extreme consequences, and that is the issue here. If there were someone who could be corrupted or influenced, this clause would allow that influence to occur and could potentially lead to the destruction of an Aboriginal cultural heritage site of significance.

Dr A.D. BUTI: I am not sure whether the member really understands this clause. This is a process clause. If the council does not make a decision in a prescribed period, and is then directed to make a decision in a prescribed period, only then can the minister decide to step in in the place of the council. One would hope that the council will make an overwhelmingly majority of the decisions. This is a process only for the granting of the permit.

Clause put and passed.

Clause 120 put and passed.

Clause 121: Duration of ACH permit —

Dr D.J. HONEY: This is perhaps one of the more troubling clauses in the bill and it deals with the duration of the ACH permit. Activities will only be carried out under that permit. If the permit is cancelled, activities will not be carried out. The permit may be extended and I understand the subsequent provisions about the extension. However, my concern with the short duration for the permit is the potential impact that will have in a few areas. I pointed out before the impact of this clause on farming activities such as ploughing a paddock and so on, which some farmers have been doing for over a hundred years. We have not seen the regulations yet, but, potentially, ploughing or periodic deep ripping of paddocks—activities that have been carried out for some time—could come within the ambit of the bill. I am especially concerned about resources projects. The minister will know that in the preparatory stage of resources projects, such as those up north that are 30 years old or more, a company is required to invest enormous amounts.

Sitting suspended from 6.00 to 7.00 pm

Mr V.A. CATANIA: Under clause 121, "Duration of ACH permit", paragraph (b) states —

> is of effect until the expiry of the period of 4 years after the day on which the permit comes into effect unless the permit is —
>
> (i) earlier cancelled under section 130(1)(b); or
>
> (ii) extended under section 126(1)(c)(i).

How will the four-year period for the expiration of the permit apply to farming activity? Someone may be doing the same thing every year, such as ploughing. It may be the same process on the same piece of land. Will that require a new permit every year? It could be mining activity that has not changed in the area. Will the permit have to be renewed every four years?

Dr A.D. BUTI: It will go for a period of four years and then they may seek to extend it under clause 126.

Before the break, the member for Cottesloe asked about mining. He was concerned that the permit will be for only four years. It is in line with what is in the Mining Act. Under the Mining Act, the duration of an approval for a program of work is four years. It is what happens in the mining industry, which is what the member for Cottesloe was referring to. As I have stated, it is for four years. Obviously, it can be cancelled earlier, but it can be extended under clause 126.

Mr V.A. CATANIA: Thank you for that, minister. Under this clause, on what occasion would a farmer in the wheatbelt, for example, be able to access a permit or how would it affect any pastoral activity? Under this clause, will they need to get a permit?

Dr A.D. BUTI: If they have done the due diligence and it is a tier 2 activity that may cause harm, they will have to go through the permit process.

Mr V.A. CATANIA: How does this compare with the provisions in the current bill? Do farmers and pastoralists have to get a permit to carry out works on their land or is this a new provision in this bill?

Dr A.D. BUTI: Currently they have to comply with the section 18 process. The difference here is we are giving Aboriginal people a voice in the process that they do not have currently under section 18 of the Aboriginal Heritage Act.

Mr V.A. CATANIA: The minister referred to section 18. How many section 18 permits for pastoral or farming activity has the farming sector applied for over the years gone by, or over the last 12 or 24 months? Does the minister have that figure?

Dr A.D. BUTI: I do not have that data.

Mr V.A. CATANIA: If a person has to apply for and is granted a section 18 permit, how long will it last under the current legislation?

Dr A.D. BUTI: A section 18 permit is indefinite.

Mr V.A. CATANIA: The current section 18 permit is indefinite, whereas under this new provision in the Aboriginal Cultural Heritage Bill, people will have to apply for a permit that will last four years. It can be cancelled. Can the minister give me an example of why this permit could be cancelled?

Dr A.D. BUTI: In addition to getting a permit for a tier 2 activity, a person could do a management plan, which would be indefinite, so it would not be limited to four years. We make no apologies for wanting to protect Aboriginal culture, as the member for North West Central has stated we should be doing. He has expressed concerns from Aboriginal people that this bill will not protect Aboriginal culture. I therefore think the provision of four years for a permit will strengthen the protection of Aboriginal cultural heritage, but, as I said, a person could try the management plan.

Mr V.A. CATANIA: I suppose the difference is that this is something new. The new provisions in this legislation will allow, firstly, for self-assessment on whether land could have Aboriginal cultural heritage significance or whether an artefact may be there. I am talking about land on which a farmer or pastoralist has not had to do this in the past. We know that often Aboriginal cultural heritage sites can be found on farming land and pastoral land in particular. If a farmer conducts an activity that they have conducted for the past 50 years, will they suddenly have to apply for a permit that lasts four years and can be cancelled or extended? Does that mean that farmers and pastoralists in the wheatbelt and the great southern will be subject to this provision even though they have been conducting the same process for many years on that land, such as ripping 30 or 50 centimetres off the top of the ground, building new waterholes or activities like fencing? Will this now apply to them?

Dr A.D. BUTI: They will have to do their due diligence. If they have done their due diligence and come to the conclusion that it is a tier 2 activity that could cause harm, they will need to seek a permit with a four-year extension or a management plan for the term of the project, which is what currently exists in section 18 of the Aboriginal Heritage Act. But if they are using the land currently, it is probably unlikely that they will need a permit because they are using the land and there has been no harm to cultural heritage. They would not need a permit or a management plan. Remember, if a farmer does their due diligence and their land has been labelled tier 2 and it does not cause harm to Aboriginal cultural heritage, the farmer does not need the permit and/or the management plan. If they are worried about the four-year extension—I am not sure why they would be, because, as I said, that is what exists under the Mining Act—they could try to go for a management plan, which would be for the term of the project. But not every use of land requires a permit, not every use of land is tier 2 or tier 3, and not every tier 2 or 3 activity causes harm.

Mr V.A. CATANIA: It is important to clarify this clause. If a farmer does a self-assessment, could someone come and say, "Mr Buti, you own a farm in Chittering. I believe that you require a permit because I know there is a site of Aboriginal cultural significance on your property. Have you got a management plan? Have you got a permit for your property"? Who will be able to do that? Will anyone be able to do that? What are the ramifications for a farmer if he does not have a permit based on his self-assessment that there is no need for one but there is a need based on

another individual's assessment? What penalty will exist? Will that individual person be able to make a claim that they require a permit?

Dr A.D. BUTI: If a farmer does not do their due diligence, someone could approach the council, but I am not sure who this person is that the member is referring to.

Mr V.A. CATANIA: I suppose in life, someone could upset someone else, or they could know something or they could have heard that there is something of Aboriginal cultural heritage on the land that has been ploughed forever and a day. Under the minister's logic, one could make a self-assessment and end up saying, "It's all good. I don't require a management plan or a permit", but that would open them up to someone making a claim. What validity would that individual person need to have and who would come out and assess that? Who bears the cost of that?

Dr A.D. BUTI: Remember, we are dealing with clause 121, which deals with the duration of ACH permits. I am not 100 per cent sure what the relevance is, but it is no different from any other act; there may be a prosecution and it will be up to the prosecuting authority to investigate.

Mr V.A. CATANIA: But is there a process whereby that individual can make a claim? Who will come out to assess whether the farm, pastoral station or property is an Aboriginal cultural heritage place of importance or has artefacts that the landowner might have found there when they were a kid? Who will be responsible for verifying that and who will pay the cost if a farmer, pastoralist or landowner self-assessed but may have got it wrong? They may have self-assessed after moving onto the property only a year or two ago and continued what the previous owner had done and, unbeknownst to them, there may be some Aboriginal cultural heritage of significance on that property. If that is the case, will they have to pay for an Aboriginal heritage survey of the area? If they do, will there be penalties attached for not having a permit in place?

Dr A.D. BUTI: I really have nothing more to add on this clause.

Mr V.A. CATANIA: Just for the record, the minister does not want to answer some of the questions that we have asked. We have drawn his attention to the many concerns that the effect this clause, "Duration of ACH permit", could have on farmers, pastoralists and large landholders. For example, will local government need to get a permit if it wants to expand its light industrial area? Will local governments come under this?

Dr A.D. BUTI: We are talking about the duration of the permit. That is what we are talking about.

Mr V.A. CATANIA: I just want to know what effect a permit will have and who will be required to get a permit. Will a local government be required to get a permit; and, if so, will it last for four years and can it be cancelled or extended?

Dr A.D. BUTI: If the local government is the proponent, of course.

Clause put and passed.

Clause 122: Application for extension of ACH permit —

Mr V.A. CATANIA: Clause 122(2) states —

> An application cannot be made under subsection (1) later than 90 days before the ACH permit is due to expire.

Under this clause, will a new application for a permit be required 90 days before the permit is due to expire?

Dr A.D. BUTI: It is an application for an extension of the permit.

Mr V.A. CATANIA: It is an extension, but will it be the same process or a different process? Has the process been worked out? Will the forms be the same? How will someone acquire an extension to the permit?

Dr A.D. BUTI: The process is clearly set out in subclauses (3) and (4) of clause 122.

Clause put and passed.

Clause 123 put and passed.

Clause 124: ACH Council may refuse to consider some applications —

Mr V.A. CATANIA: The clause states —

> The ACH Council may refuse to consider, or consider further, an application for the extension of an ACH permit if —
>
> (a) it is not made in accordance with this Act; or
>
> (b) the applicant has not complied with a request under section 123(1).

What is the timing of knowing whether an ACH permit will be accepted under the act if the applicant has not complied? Is there a time frame or turnaround for the proponent who is applying for the permit?

Dr A.D. BUTI: We dealt with the application for a permit earlier. This clause is about an extension of the permit.

Clause put and passed.

Clause 125 put and passed.

Clause 126: Decision on application for extension of ACH permit —

Mr V.A. CATANIA: The clause states —

> (1) The ACH Council must —
>
> (a) assess each application for an extension of an ACH permit in accordance with section 120(1) as if the application for the extension of the permit were an application for the grant of the permit; and

Is there a time frame for an application? Is it one month, two months, six months or 12 months? Does the department or the ACH council need to adhere to a time period when granting an application?

Dr A.D. BUTI: As part of the co-design process, it will be prescribed in the regulations.

Mr V.A. CATANIA: The reason I asked that question about timing is that it may affect development costs. When someone goes to the bank to get a loan, they have to pay it back. The quicker they can develop, the quicker they get a return. Will the department have a preferred time frame—whether it be one month, two months, five months, six months or 12 months—attached to this, noting that it could really hamper a project moving forward or it could stop a season, whether someone is growing wheat, canola or something else?

Dr A.D. BUTI: I think the member would realise—he has criticised us in parts—that the whole bill is about being reasonable. There will be a consultation process with interested stakeholders. The time period will be prescribed in regulations. After the consultation period, there will be a co-design process, and the time period will be reasonable. That is the whole premise of this bill.

Mr V.A. CATANIA: That may be the premise of this bill but the problem with this bill is that a lot of detail still needs to be worked out and agreed to in the co-design situation. That is the issue. That is what is not visible in this bill. The minister is relying on, down the track, having that co-design—we will not call it consultation—of the guidelines and other bits and pieces. We do not know. As I said, the minister could be fantastic and adhere to the intent of this bill, but what if a future minister does not adhere to the intent of the bill? We design legislation to try to ensure that the intent is written into it. This bill contains a lot of question marks. We do not know what the guidelines will be or how long it will take to co-design a permit. We have a lot of questions around that. It is not visible in this place. That is probably more of a statement than anything.

Dr A.D. BUTI: Obviously, the regulations will come before Parliament. It is not unusual to have regulations to an act. These regulations will be co-designed after a period of consultation with the stakeholders.

Mr V.A. CATANIA: The Aboriginal Cultural Heritage Council does not have a time frame because the co-design process has not been conducted. Will the minister potentially have the opportunity to make that decision? If it is going to take longer than expected—it could take six months—can the minister potentially intervene in a permit decision?

Dr A.D. BUTI: Not so long ago, the member was complaining that the minister was intervening. The minister will not be intervening if it is within the prescribed period.

Mr V.A. CATANIA: I thank the minister. That is the reason we ask these questions—so that we can get some clarity on what is going on. It is our job to find out exactly what roles and responsibilities the government will have in legislation that is put forward.

Clause put and passed.

Clauses 127 to 129 put and passed.

Clause 130: Suspension or cancellation of ACH permit —

Mr V.A. CATANIA: Clause 130 states —

> (1) The ACH Council may, by written notice given to the holder of an ACH permit, take either of the following actions —
>
> (a) suspend the permit for a specified period;
>
> (b) cancel the permit.

What are the reasons the ACH council could suspend or cancel the permit?

Dr A.D. BUTI: If the member reads the next subclause, that will tell him.

Mr V.A. CATANIA: The ACH council may suspend or cancel the permit, and that process is highlighted under subclauses (2), (3) and, I think, (4). Will there be an opportunity for the proponent to ask for a review? Will they be able to question the reasoning and ask for the permit to be re-looked at or go to another body? If the ACH council were to cancel or suspend a permit, would the proponent have a right of appeal?

Dr A.D. BUTI: Clause 130(2) gives the reasons a permit may be cancelled. Subclause (3) refers to the process of notifying the permit holder. Subclause (4) will answer the member's question about whether the proponent or the permit holder will be able to question the impending decision by the council. If the member goes to the next clause, clause 131, he will see that it refers to objections to the decision of the council.

Mr V.A. CATANIA: Clause 130(4) states —

> Before taking action under subsection (1), the ACH Council must give the permit holder —
>
> (a) written notice of —
>
> (i) the action that the Council proposes to take; and
>
> (ii) the grounds on which it proposes to take that action;
>
> and
>
> (b) a reasonable opportunity to be heard on the matter.

If the Aboriginal Cultural Heritage Council suspends or cancels the permit, is there somewhere else to take this matter?

Dr A.D. BUTI: As I have referred to, chair, clause 131.

Clause put and passed.

Clause 131: Objection to decision of ACH Council —

Mr V.A. CATANIA: The minister keeps referring to clause 131, "Objection to decision of ACH Council". In this clause, the objection can go to the minister. My understanding is, and correct me if I am wrong, the minister can accept the decision by the ACH council or refuse to grant the permit. Let me get that right. Regarding the ACH permit, the minister can either adhere to the council's resolution or go against the council's resolution. In going against the council's resolution, what process will the ACH council embark on after that, noting that the council is against the decision of that permit? Does the ACH council have any other opportunity to appeal against the minister's decision to overturn its decision?

Dr A.D. BUTI: I think the clause is quite clear—no.

Mr V.A. CATANIA: Therefore, the ACH council will approve or cancel permits and the minister will issue permits, because, basically, he or she is issuing the permit. Will the permits be published so that the public is aware of them and the reasons they were issued or cancelled?

Dr A.D. BUTI: The details of the permit will go in the Aboriginal Cultural Heritage Directory.

Clause put and passed.

Clause 132: Notice of decision must be given —

Mr V.A. CATANIA: Clause 132, "Notice of decision must be given", states —

> (1) The ACH Council must give to a person who has a right under section 131(1) or (2) to object to the Minister about a decision written notice in accordance with this section.
>
> (2) The notice must be given within 14 days after the decision is made.
>
> (3) The notice must contain the following —
>
> (a) a description of the decision;
>
> (b) short particulars of the reasons for the decision;
>
> (c) a statement that the person has a right to object, within the prescribed period under section 131(1), to the Minister about the decision within the period specified in the notice.

What is the time frame for the minister to receive the objection? The proponent has 14 days to object, so what is the time frame for the minister to come back to that proponent on whether the permit has been approved?

Dr A.D. BUTI: Clause 132(3)(c) refers, in part, to —

> … the prescribed period under section 131(1) …

Mr V.A. CATANIA: What is the prescribed period? Does it relate to looking at the guidelines down the track and having a co-design, or is there a time frame already set out?

Dr A.D. BUTI: It is a co-design after consultation.

Mr V.A. CATANIA: It is not set out, so the minister should not mislead the chamber that it is set out. It is not set out, because it is still part of the co-design moving forward. The minister has no time frame at the moment to be able to approve or not approve an appeal by the proponent.

Dr A.D. BUTI: With all due respect, the member for North West Central is wrong. I said there will be a prescribed period; the prescribed period will be determined. I did not say there is a prescribed period at this stage; I said there will be a prescribed period. If the member read the actual clause, he would see that that is what it says.

Mr V.A. CATANIA: Just so we get it on the record, this is not an answer to the question I asked the minister. It is something that will be conducted in the future through a co-design, so the minister does not yet have a time frame because it has not yet been designed. Unless the minister can give me a time frame of 10 days, 20 days, 50 days or 60 days, he should enlighten me. If he cannot, then it is part of a co-design process down the track.

Dr A.D. BUTI: I am not sure about the member's interpretation or reading of clauses. There will be a prescribed time; it is set out in the legislation, but the actual period is yet to be determined. The whole framework of this bill is to try to reach agreement between Aboriginal parties and proponents, and therefore stakeholders. Surely the member should be lauding us for seeking to ensure that all stakeholders have a say in the co-design of the operational aspects of the bill—something that is completely missing under the current legislation.

Clause put and passed.

Clause 133 put and passed.

Clause 134: When ACH management plan required —

Mr V.A. CATANIA: Clause 134(1) states —

> An approved or authorised ACH management plan is required before the commencement of a tier 3 activity that may harm Aboriginal cultural heritage.

Who will decide whether a tier 3 activity may harm cultural heritage?

Dr A.D. BUTI: If we go back to clauses 102 and 103, it is a due diligence assessment.

Mr V.A. CATANIA: What will happen if it is decided, as a result of the due diligence undertaken by the landowner, that no harm will occur, but the Aboriginal people do not agree?

Dr A.D. BUTI: I am not going to repeat myself, because this is exactly the same question we have already gone through. It is actually nearly word-for-word the same question we went through with regard to the permits. There is no difference.

Mr V.A. CATANIA: I tend to disagree, minister. This is a new clause and it is unclear what will happen if the landowner decides that no harm will occur but someone else believes that there will be harm, and there is a disagreement. Who will mediate that disagreement?

Dr A.D. BUTI: I do not know who this other person is that the member for North West Central keeps talking about, but anyway, I will not repeat it. The member for North West Central can stand up and say it again, but we went through this before the dinner recess in some detail and I am not going to repeat it. He can get up and make flowery statements about whatever but I will not repeat it.

Mr V.A. CATANIA: Can a landowner be compelled to commission an Aboriginal cultural heritage management plan?

Dr A.D. BUTI: If they do not undertake their due diligence, they are the ones who are going to bear any consequences.

Mr V.A. Catania: Sorry, could you just repeat the end; I did not quite hear it?

Dr A.D. BUTI: If they did not undertake a proper due diligence assessment and were found to harm Aboriginal cultural heritage, they will take the due consequences of that.

Mr V.A. CATANIA: That is not the question I asked. I said, "Can a landowner be compelled to commission an ACH management plan?"

Dr A.D. BUTI: The landowner is obliged to comply with the legislation.

Mr V.A. CATANIA: When I asked whether a landowner can be compelled to come up with a management plan, the minister said they have to comply with the bill. Is there anywhere in the bill—I cannot see anywhere—that compels a landowner to provide a management plan?

Dr A.D. BUTI: The member cannot take each clause in isolation. Earlier, we went through the process that has to be followed. If a landowner wants to get the permit under tier 2 or they want the tier 3 approvals, they have to follow that process under the bill. There is nothing more I can really say on that.

Clause put and passed.

Clauses 135 and 136 put and passed.

Clause 137: ACH management plan —

The ACTING SPEAKER (Mrs L.A. Munday): The question is that clause 137 stand as printed.

Mr V.A. CATANIA: Thank you, Madam Chair. I am glad you understand what is going on. Clause 137 reads —

> (1) An Aboriginal cultural heritage management plan (an ***ACH management plan***) is a plan for the management of an activity that may harm Aboriginal cultural heritage.
>
> (2) An ACH management plan must —
>
> (a) identify —
>
> (i) the proponent for the activity to which the plan relates; and
>
> (ii) each Aboriginal party, if any …

I am interested in the "if any". I think I have asked the question before about what if an Aboriginal party or person cannot be found, how will a person move forward with the management plan? The clause continues —

> (iii) the area to which the plan relates (which must not include any area that is part of a protected area); and
>
> (iv) the activity to which the plan relates;

My question, which the minister may have answered already, is about existing farmland property that is used for farming or pastoral activity. Will they all be subject to this ACH management plan?

Dr A.D. BUTI: It will be determined whether it is a tier 1, 2 or 3 activity. If it is a tier 3 activity and there is harm or a risk of harm to Aboriginal cultural heritage, the various processes are then gone through.

The ACTING SPEAKER: Member for Cottesloe.

Dr D.J. HONEY: Thank you very much, Acting Speaker, I am sure you missed me!

I apologise if the minister has already covered this, but clause 137(2)(b)(ii) refers to the characteristics of Aboriginal cultural heritage as opposed to just Aboriginal cultural heritage. I am not going to do this exhaustively; it is mentioned a number of times in the legislation. The minister explained to me the difference between Aboriginal cultural heritage and the characteristics of Aboriginal cultural heritage. I would have thought it was one thing and I do not understand the distinction between those two things in the bill.

Dr A.D. BUTI: There is the cultural heritage, and the characteristics go to the details of that heritage. We can also use the plain English interpretation, but that is basically what it is.

Dr D.J. HONEY: I would have thought that Aboriginal cultural heritage is that detail: there is this site, there are these features to it and there are these different aspects to it, whether it is tangible or intangible. I thought that is what would be described as Aboriginal cultural heritage located in the area. Is the minister saying this is just for the sake of completeness? Is it just a way to differentiate and say there is heritage in a location, which is clause 137(2)(b)(i), and then subclause (2)(b)(ii) goes into the explicit detail of all that? Is that the purpose of it?

Dr A.D. BUTI: The cultural heritage is like a waterhole and the characteristics go to the detail. It is like saying the cultural heritage is David Honey and the characteristics are that he is six-foot four, blue-eyed et cetera.

Clause put and passed.

Clause 138 put and passed.

Clause 139: Obligation to consult on ACH management plan —

Dr D.J. HONEY: This is a bit of a familiar question, minister; nevertheless, it is important. Clause 139(2) refers to a reasonable time. Again, the concern is about the potential for these processes to take longer than they otherwise would need to. It could just be a literal thing. Is there some mechanism that makes sure that this is not unreasonable?

Dr A.D. BUTI: The clause uses the term "reasonable" and "reasonable" will be a term in accordance with the consultation guidelines. I also refer the member to clause 101.

Clause put and passed.

Clauses 140 to 145 put and passed.

Clause 146: Informed consent —

Dr D.J. HONEY: I am looking at clause 146(2), which is the description of the activity, the feasible alternatives and the like. I was concerned about the complexity of that. How will that be determined? To a degree, it is: how long is a piece of string? Any range of alternatives could be listed, from plausible to implausible. Is there some mechanism in the bill? Will it be through discussion or negotiation with the LACH service or some other body that will determine how much effort is put into that part?

Dr A.D. BUTI: It will be only if it is applicable. They will have to be feasible alternative methods that are known at the time.

Clause put and passed.

Clauses 147 to 149 put and passed.

Dr D.J. Honey: You should have been here the whole time, Acting Speaker; it is going much faster!

Clause 150: Decision of ACH Council —

Mr V.A. CATANIA: Acting Speaker, you are a very good chair; I think you are the best one we have had tonight.

The ACTING SPEAKER (Mrs L.A. Munday): Thank you.

Mr V.A. CATANIA: Minister, subclause (6) really goes to the heart of why a lot of Aboriginal people feel that they will not have the right to say no. It states —

> If the ACH Council does not comply with a direction made by the Minister, the Minister may stand in the place of the Council and make a decision on the application in accordance with this Subdivision.

That tells members of this house that the minister will be able to stand down the Aboriginal Cultural Heritage Council and become that decision-maker. We may not have a minister who is willing to do that, but, as I have explained, there will be pressures on ministers and governments about what is for the benefit of the state. The state might by looking at an economic benefit. Aboriginal and heritage people will know the value of the Aboriginal cultural heritage site of significance, yet the minister might issue a direction to the Aboriginal Cultural Heritage Council that says, "I want you to approve that destruction."

Dr A.D. Buti: No, you have it completely wrong.

Mr V.A. CATANIA: I invite the minister to respond. Hang on; let me finish, minister!

Dr A.D. Buti: You said you would like me to respond.

Mr V.A. CATANIA: When I finish, minister. If a direction is given by the minister and the ACH council does not apply it, the minister will be able to stand it down and make a decision to allow for the destruction of Juukan Gorge, for example. He will sign off on it and then reinstate the Aboriginal Cultural Heritage Council, and it will move on to the next proponent who puts forward an application. That is what subclause (6) says. Am I correct, minister? Can the minister enlighten the house on why it does not say that?

Dr A.D. BUTI: The member for North West Central is completely wrong. Subclause (6) refers to the council not making a decision within the prescribed time. The minister will not say to the council that it must approve an application; the minister will ask the council to make a decision. If the council will not make a decision in the prescribed time, the minister may make a decision. The minister will not direct the council to say yea or nay. Further, what would the position of the Nationals WA be if there were no prescribed time? Would the Nationals be happy for the council to sit on a decision forever? Of course it would not. Many of the people whom the National Party represents would not like that; they would want a decision one way or the other. This sets out a process. If the council does its job properly, the minister will not use this power. This is a power to direct the council to make a decision if it has not made it within the prescribed period. If it does not make a decision within the prescribed period after the direction has been given, that is when the minister would make a decision. The minister does not direct the council to permit the management plan.

Mr V.A. CATANIA: I think the minister has answered my question. The minister will have the ultimate decision-making ability. If a determination cannot be made by the ACH council, which is what the minister is saying —

Dr A.D. Buti: Yes.

Mr V.A. CATANIA: — the minister may issue a direction to the council to deal with the matter one way or the other. If the council still does not accept that direction of the minister, the minister will step in to make a decision. We could have a situation in which there was conflict with the ACH council. It could be conflict at the LACH service level, or conflict at the local level, where they cannot get agreement, or two sides are putting two very good positions forward, and that is why the ACH council is unable to make a decision within the appropriate time and a direction needs to be issued by the minister to the ACH council if it does not comply. If the parties are still at loggerheads and

cannot get an agreement in place, the minister will step in to make a decision one way or the other. So the minister can step in and issue a notice of destruction under this provision.

Dr A.D. BUTI: The member's premise is wrong. A plan comes about only because the parties have agreed. They have put the plan to the council, but the council will not make a decision on that plan. If the council will not make a decision within the prescribed period, the minister can make a decision. It is not about disagreement with other parties. A plan will not be in place if they have disagreed. It is about the council not making a decision. If the council was doing its job properly, the minister would not be involved. The question I ask the member is: What do we do? Do we just leave it like that, so that the proponents cannot do X, Y or Z—they cannot use the land, because a decision can never be made?

Mr V.A. CATANIA: I am looking at it from a viewpoint of how this legislation can be manipulated to achieve certain outcomes. That is what this clause will allow the minister to do. We are not the ones in government. We have not had the time to do any consultation on this clause. We simply do not have the ability; it is the government's legislation. The minister asked what would we do. The first thing we would do is consult with the parties that need to be consulted with. That is what is lacking in this legislation. Also, minister, will the ACH council have the financial ability to ensure that the people are able to get together and provide the support to the ACH council to enable it to make the right decision?

Dr A.D. BUTI: Clause 150 comes into play when the parties have agreed on a plan, the plan is before the council for determination, but the council will not make a decision. We think it would be rare that the council would want to do that. If the council will not do it, someone will eventually have to make a decision. That is what this clause is about. It is not about manipulation. The parties have agreed to it. It is just that for some reason, the council will not make a decision.

Clause put and passed.

Clause 151 put and passed.

Clause 152: Duration of ACH management plan approval —

Dr D.J. HONEY: Clause 152(b)(ii) states —

> the plan expires in accordance with its terms;

Unfortunately, I was not here when the minister answered one of my earlier questions. Is the duration of ACH management plan approval limited to four years? With the minister's indulgence, it related to the other part involving ongoing activity —

Dr A.D. BUTI: I will answer it for the member. While the member was out, I said that that related to a permit. It was four years, which is in line with the Mining Act. This is in respect of plans. The plans are not for four years; it is for the term of the plan, which is often for the term of the project.

Dr D.J. HONEY: I am seeking the minister's indulgence on this. In relation to the plan, the plan would have to be renewed every four years as well; so the plan can continue as well?

Dr A.D. BUTI: The permit is for four years, which was way back. For the plan, it is in accordance with the terms of the plan. The agreement will probably be between the parties for the term of the project. It could be three, four, five, six years, or whatever—even 30 years.

Clause put and passed.

Clauses 153 to 159 put and passed.

Clause 160: Assistance to reach agreement on ACH management plan —

Mr V.A. CATANIA: I notice that clause 160(1)(b) refers to mediation. Clause 160(1)(a) states —

> assist the applicant and each interested Aboriginal party (the ***proposed parties***) to reach agreement about the terms of an ACH management plan in respect of the activity; and

Proposed paragraph (b) states —

> for that purpose, act as a mediator.

Where will the mediation be held and who will fund the involvement of the applicant and the Aboriginal people?

Dr A.D. BUTI: If the council is the mediator, the council will generally absorb those costs.

Dr D.J. HONEY: Could a mediated settlement also include a cash payment as part of resolving access, or is this purely limited to how that area is treated and how the cultural material is treated?

Dr A.D. BUTI: The management plan cannot include a financial consideration.

Dr D.J. HONEY: Clause 160(5) refers to the ACH council acting as a mediator. I understand that some information cannot be disclosed; for example, secret cultural information. I wonder why information that the council has had access to cannot be more generally disclosed. I guess it is around transparency. My understanding with most processes

is that there is a fair degree of transparency so that other parties know what is going on. What is the reason for confidentiality? Is that a normal clause in a mediated process or is that an unusual clause for this bill?

Dr A.D. BUTI: It would be normal. Most mediations are confidential.

Mr V.A. CATANIA: Indulge me a little more on clause 160. If a mediator is appointed by the Aboriginal Cultural Heritage Council, what would happen if the applicant or Aboriginal party objects to that person? Is there a process to follow or will they just keep trying to find a mediator who is acceptable to both parties?

Dr A.D. BUTI: Obviously, it will be up to the council to resolve the issue. Of course, a person cannot be a mediator if the parties do not agree on them.

Mr V.A. CATANIA: The minister said that the mediator will be funded by the ACH council; is that correct?

Dr A.D. BUTI: That is if the council is acting as mediator.

Mr V.A. CATANIA: Is it possible that the applicant could provide a mediator to try to mediate outside the process, or, vice versa, the Aboriginal organisation or people could present a mediator to assist them to try to get a resolution or a way forward to present to the ACH council?

Dr A.D. BUTI: The council has to appoint the mediator.

Mr V.A. CATANIA: So that does not exclude the two parties from mediating and trying to get an agreement? It is probably part of the negotiations, I suppose, at the start.

Dr A.D. BUTI: This clause is about assisting the parties to reach an agreement. If they have already reached an agreement, they do not need any assistance.

Clause put and passed.

Clauses 161 to 164 put and passed.

Clause 165: Decision of Minister —

Mr V.A. CATANIA: Clause 165(1) states —

> If the ACH Council makes a recommendation to the Minister under section162(1)(b) in respect of an application for the authorisation of an ACH management plan, the Minister must —

The subclause lists the things the minister must do. It seems to me that there is no avenue to appeal the minister's decision in this clause. Is that correct?

Dr A.D. BUTI: That is right.

Mr V.A. CATANIA: Thanks for that lengthy answer—I am trying to work my hamstrings a bit here!

So there is no avenue to appeal the minister's decision whatsoever. Hence, again, the government talks about protecting Aboriginal cultural heritage sites, but this legislation is still at the whim of the minister. Does the minister agree that the minister will still make the ultimate decision on whether the destruction of Aboriginal cultural heritage sites can occur?

Dr A.D. BUTI: The minister's decision must be made on the grounds of the interests of the state, which includes the interests of Aboriginal people. Under the current law, the only persons who can appeal are the proponents, who are not the Aboriginal people. Under this legislation, it will be equal, and either the proponent or the Aboriginal group can appeal. Currently, it is only non-Aboriginal people who can appeal a decision on Aboriginal culture.

Mr V.A. CATANIA: If a multimillion-dollar project has to go through the investigation process but there is no right of appeal, does the minister see that that would be a disincentive for potential investment in this state? On the other foot, the proponent, the investor, the resource sector would have no right of appeal either. Am I correct?

Dr A.D. BUTI: I would say no, because it is actually providing certainty. Once the decision has been made by the minister, the proponent cannot appeal, so they would have certainty. I think that would probably encourage investment.

Mr V.A. CATANIA: I do not know how the minister got to that logic.

Dr A.D. Buti: It provides certainty.

Mr V.A. CATANIA: It provides certainty that there is no certainty, because, at the end of the day, the minister can make that decision. After millions of dollars have been spent by the proponent to perhaps clear land for a resource opportunity, which would provide royalties, jobs and investment for the state, the minister could say, "No, you can't do it" and there would be no right of appeal whatsoever. Can the proponent start the process again, or is the minister's decision final on all fronts?

Dr A.D. BUTI: The question that was asked at the beginning was: is there a right of appeal? I said no.

Mr V.A. CATANIA: No; this is a different question. The question I have just asked is: is there an opportunity for a proponent or an Aboriginal organisation to submit a new application and go through the process again if the minister

has given their verdict to support either the protection of the Aboriginal cultural heritage site of significance or the destruction of the site? Can either of those parties start the application again for the same piece of land?

Dr A.D. BUTI: The member for Cottesloe's wife would understand judicial review. There is always judicial review. She is a legal academic. Of course they can start the application again, but why would they if nothing has changed. I really have nothing more to add.

Clause put and passed.

Clauses 166 to 172 put and passed.

Clause 173: Contravention of conditions on approved or authorised ACH management plan —

Dr D.J. HONEY: It is a straight penalty of $100 000 for the contravention of a condition. Was there a view around the penalty for an individual versus a corporation, because clearly a corporation would have much more significant means, if you like? It seems that it is a very large fine for an individual, but it could be seen to be a minor fine for a corporation.

Dr A.D. BUTI: In determining the penalties, other states were examined. It should be noted that the penalty amount stipulated is the maximum for an individual but may be up to five times more for a body corporate.

Dr D.J. HONEY: So where does the five times come from for a body corporate?

Dr A.D. BUTI: It is standard interpretation for all legislation.

Clause put and passed.

Clause 174: State significance guidelines must be considered —

Mr V.A. CATANIA: Why is the consideration of heritage of state significance reserved only for the approval process to harm heritage? Why is that the case?

Dr A.D. BUTI: Under the act, the whole idea is to frontload the process to enable negotiation between Aboriginal and non-Aboriginal people, and the Aboriginal Cultural Material Committee has a greater say when it considers matters of state significance. This bill will allow greater equality between the Aboriginal people and the proponents, so that is why in this area we need to consider state significance.

Mr V.A. CATANIA: What will happen if a site of potential state significance is identified during a tier 1 or tier 2 due diligence assessment?

Dr A.D. BUTI: Tier 1 and tier 2 are of the lower harm threshold so that is why we are looking only at tier 3.

Mr V.A. CATANIA: If the ACH council requires further information to make its decision, who will fund that investigation?

Dr A.D. BUTI: If it requires that information from the proponent, the proponent will fund it.

Dr D.J. HONEY: I refer to the state significance guidelines, and the minister may not need to answer this. I am referring more to the guidelines, so once again what is of state significance clearly is a very important matter in the way we view the legislation. I appreciate that the minister mentioned that a process will be gone through, but it is a big unknown when we are considering the legislation. I guess it reinforces the importance that all stakeholders be consulted, not just the big mining companies and the Aboriginal organisations. I imagine that that consultation will include also anthropological experts and the like.

Dr A.D. BUTI: The member is correct. The guidelines will be prepared by the ACH council with an opportunity for public consultation submissions for approval and possible amendment by the minister under part 13, division 3, subdivision 2 of the proposed act.

Mr V.A. CATANIA: Before the member for Cottesloe stood up, I asked whether the ACH council would require information to make a decision on who would fund the investigation. Who will be able to determine a scope of investigation? Will it be the co-design process the minister keeps referring to?

Dr A.D. BUTI: I am not 100 per cent sure why the member has brought it up under this clause but everything will be done on a case-by-case basis. The state significance guideline will be determined under the process I outlined to the Leader of the Liberal Party.

Mr V.A. CATANIA: The minister kept referring to the co-design process, another flaw in this bill. Perhaps the co-design process should have commenced prior to the drafting of the bill. We could have had a co-designed bill.

Dr A.D. Buti: It did. The bill was co-designed.

Mr V.A. CATANIA: Was it co-designed?

Dr A.D. Buti: Three or four years of consultation.

Mr V.A. CATANIA: Come on! Under this clause, who will determine the boundary of work of what is considered state significance and what criteria will be used?

Dr A.D. BUTI: It will be in the guidelines that are prepared by the council and there will be an opportunity for public consultation and submissions.

Mr V.A. CATANIA: Is it contemplated that an area of state significance will be a single area or could it be a series or cluster of areas?

Ms M.M. Quirk: You'd know about clusters!

Mr V.A. CATANIA: Exactly, this legislation; I am reading it!

Dr A.D. BUTI: It could be either.

Mr V.A. CATANIA: Does an area of state significance require care and management? Who will fund the ongoing cost of an area of state significance?

Dr A.D. BUTI: No, it will not require care and management.

Mr V.A. CATANIA: We spoke earlier about tracks, roads and what have you, and allowing for public access so that people can take photos and so forth. No care and management will be required, but will funding be available to assist in ensuring that an area of significance is looked after? Areas of cultural significance exist; the Burrup Peninsula is one. I do not know whether the Burrup is looked after by Woodside, but I am pretty sure that some areas of the Burrup, such as Hearson's Cove and so forth, which has the rock art, is under care and management, which the government facilitates. Who will fund the care and management of any state significant area?

Dr A.D. BUTI: An area of great cultural significance is a protected area and there would be a management plan for a protected area, because it is a protected area where activities are not allowed.

Clause put and passed.

Clause 175: Notice must be given if ACH Council forms view that Aboriginal cultural heritage may be of State significance —

Dr D.J. HONEY: Clause 175(3)(c) states —

> provision of an opportunity for a person to submit to the ACH Council …

Will there be any qualifications for who can do that? For example, could Greenpeace, the Conservation Council of Western Australia or a member of the public make a submission in relation to that area of state significance? Will only a prescribed group of people be able to make a submission or will it be open to anyone to make a submission to the council on that matter?

Dr A.D. BUTI: Any person can do that.

Dr D.J. HONEY: I refer to clause 175(5) at the bottom of the page, which states —

> ***each knowledge holder***, in relation to a notice area or a part of a notice area, means each person who is identified as a knowledge holder …

Will a LACH service identify the knowledge holder? How, otherwise, will a knowledge holder be identified?

Dr A.D. BUTI: As clause 175(5) states —

> … means each person who is identified as a knowledge holder for the notice area or a part of the notice area, after reasonable steps have been taken to do so in accordance with the knowledge holder guidelines.

Dr D.J. HONEY: To be clear, this is another area in which guidelines will need to be developed on the process of how to identify a knowledge holder.

Dr A.D. BUTI: That is correct. May I add, if the member goes back, that there is a definition of "knowledge holder" in the definitions.

Clause put and passed.

Clauses 176 and 177 put and passed.

Clause 178: Terms used —

Dr D.J. HONEY: The question of characteristics of Aboriginal cultural heritage was answered previously, so I thank the minister.

The definition of "remediate" in relation to Aboriginal cultural heritage talks about controlling and carrying out work and so on. That seems to be very clearly related to tangible heritage. Does that relate in any sense to intangible heritage when someone has gone into an area that they should not have gone into and caused damage? Will there

be any form of remediation for that or is this very much about the physical remediation of physical damage to a physical object?

Dr A.D. BUTI: That is really difficult to answer because it is very case specific. Obviously, as we talked about last week, there is a great interconnection between the tangible and intangible. It would depend, but in some cases when the tangible is remediated, it will remediate the intangible because of the interconnectedness between the two.

Mr V.A. CATANIA: I want to echo what the minister said about the importance of the two and that the two are intertwined. That is the reality. I am a Perth boy born and bred, but my roots now lie to the north of the state. I have spent time in the bush and have had fantastic opportunities not only to experience the culture of Aboriginal people, but also gain an understanding of the area and the land. It can absolutely blow your mind. We have some fantastic stories that cannot be seen. People have to listen to the songs and so forth that weigh heavily on Aboriginal people's hearts and thought processes. I want to make sure that the minister knows that the opposition is not all bad. I agree entirely with the minister's definition of "tangible" and "intangible".

Clause put and passed.

Clause 179 put and passed.

Clause 180: Stop activity order may be given by Minister in certain circumstances —

Dr D.J. HONEY: Clause 180(4) states —

> A stop activity order must be given to a person who, in the opinion of the Minister, has control over the activity.

This seems to be a very broad definition. If a stop activity order goes through a bureaucratic process, it could allow imminent harm to occur. How will it be determined who a stop activity order will go to? Will it be a CEO, a site manager or a shot firer? How will that be determined? Someone might say they issued a stop order and that it went to the CEO but the CEO was away or whatever. Will there be a process to determine who it will go to?

Dr A.D. BUTI: Obviously, it will depend on who is determined to be the person who has control. In other words, who the person is who can ensure that the activity can be stopped the quickest.

Dr D.J. HONEY: Is that process prescribed or will it be up to the wherewithal of the CEO or the minister and the minister's department to determine that on a case-by-case basis?

Dr A.D. BUTI: That is why it is not prescribed; it will allow flexibility to ensure that the quickest process is followed.

Dr D.J. HONEY: I refer to subclause (7), which states —

> … that public notice is given of the giving of a stop activity order as soon as practicable after the order is given.

What form does the public notice take?

Dr A.D. BUTI: I refer the member to clause 282.

Clause put and passed.

Clause 181: Contents of stop activity order —

Dr D.J. HONEY: Is there any right of appeal to that stop order or, as the minister indicated before—I am okay with a very quick answer—it will stop with the minister and there is no right of appeal?

Dr A.D. BUTI: There is a right of appeal for a stop activity order, as set out in clause 277.

Clause put and passed.

Clause 182: Extension of duration of stop activity order —

Mr V.A. CATANIA: The clause states —

> (1) Before a stop activity order expires, the Minister may extend the duration of the order by written notice given to the person who was given the order.

Under what circumstances would a minister extend stop activity orders? I do not understand how a minister could extend a stop order given that they can issue a stop order to stop any potential destruction occurring. Why would the minister extend the stop activity order?

Dr A.D. BUTI: Subclause (2) tells us why; it is because the council may require further time to consider the order.

Mr V.A. CATANIA: Subclause (2) states —

> The decision of the Minister to extend the duration of a stop activity order must be made on the grounds that the Minister is satisfied that the ACH Council requires further time to consider under section 186(1) whether Aboriginal cultural heritage the subject of the order requires continued protection under a prohibition order.

Why would a stop activity order that has been issued expire if the activity has stopped? Can the minister explain that to me?

Dr A.D. BUTI: The stop activity order is basically in an emergency to ensure no harm is done to Aboriginal cultural heritage. It could lead to a prohibition. The stop order is always temporary but it may need to be extended to gain more knowledge before a prohibition order is imposed.

Clause put and passed.

Clause 183: Compliance with stop activity order —

Dr D.J. HONEY: A person who is given a stop activity order must comply with the directions specified. Obviously, some activities could be stopped straightaway; somebody could be told to take an excavator away, or whatever it is. It may be that something is not safe if it is left in that state. Is there a provision under which someone can make something safe or do a minimum amount of work in an activity to ensure that people are not put at risk or the like? I appreciate it is an unusual circumstance, but I can imagine some circumstances whereby stopping something immediately could lead to an unsafe condition.

Dr A.D. BUTI: Clause 181 refers to the contents of a stop activity order and how it is to comply. It refers to imminent risk of harm and how to carry out a specific activity in a specific way for a specific period.

Dr D.J. HONEY: Thank you very much. I understood that clause related to the minister extending the stop order, so that the activity cannot be carried out. This clause relates to compliance with the stop order. So, the minister has said, for whatever reason, "Stop this activity." I appreciate this is an unusual circumstance, but will some latitude be given if the activity were to be stopped at a point that would be fundamentally unsafe for people or the like, or is there some other process that has to be negotiated to make sure that something is made safe before the work is stopped?

Dr A.D. BUTI: Common sense is always part of the operation of an act, and I think common sense will prevail to ensure that safety is paramount.

Clause put and passed.

Clause 184 put and passed.

Clause 185: ACH Council may make recommendation about prohibition orders in certain circumstances —

Dr D.J. HONEY: Clause 185(2) refers to an activity that is harming cultural heritage or imminent risk of harm, but then we have a third area of risk. Why do we need that delineation? It is almost like it has been designed by a committee. Why do we need that additional section?

Dr A.D. BUTI: The purpose of this bill is to protect Aboriginal cultural heritage and we are covering all bases.

Clause put and passed.

Clause 186: ACH Council must make recommendation about prohibition order while stop activity order of effect —

Dr D.J. HONEY: Clause 186(2)(c) refers to the duration of the order. Is that still bound by the limit of 60 days plus the 60-day potential extension?

Dr A.D. BUTI: Obviously, it is different from a stop activity order, which is for a certain period. This is a prohibition, so it could be for any length of time.

Clause put and passed.

Clauses 187 and 188 put and passed.

Clause 189: Contents of prohibition order —

Dr D.J. HONEY: It may be the same answer that the minister gave before. Is there any right of appeal for either party to the contents of the prohibition order?

Dr A.D. BUTI: Yes; that is in clause 277.

Clause put and passed.

Clause 190: Compliance with prohibition order —

Mr V.A. CATANIA: For the purpose of putting it on record, clause 190, "Compliance with prohibition order", subclause (1)(a) states, "a fine of $250 000". In the current legislation, is there a fine; and, if so, how much is it? If there is no fine, this is a new compliance of a fine of $250 000? Is that correct?

Dr A.D. BUTI: Under current legislation, there are no prohibition orders. In determining the penalty, we looked at other legislation that is comparative with offences under the Aboriginal Heritage Act of Victoria.

Clause put and passed.

Clauses 191 to 193 put and passed.

Clause 194: Remediation order may be given by Minister —

Dr D.J. HONEY: Clause 194(1) states —

> The Minister may give a remediation order to a person …

Can a remediation order include the requirement for financial compensation?

Dr A.D. BUTI: No. That is a different issue not in regard to a remediation order.

Clause put and passed.

Clause 195 put and passed.

Clause 196: Compliance with remediation order —

Dr D.J. HONEY: In relation to clause 196(1), what happens in the event that someone has no capacity to pay a fine? Will a small contractor who lives off the smell of an oily rag and has no capacity to pay be subject to the normal debtor provisions under criminal law?

Dr A.D. BUTI: Obviously, the best thing for them to do will be to comply with the remediation order. But, in that case, they will have to comply with the normal requirements of when one does not pay their fines. I refer the member to clause 197, "Other persons may carry out remediation if order contravened".

Clause put and passed.

Clause 197 put and passed.

Clause 198: Entry to carry out remediation —

Mr V.A. CATANIA: Clause 198, "Entry to carry out remediation", states —

> (1) A person required or authorised to carry out remediation under a remediation order may enter land if it is necessary to do so for the purpose of carrying out the remediation.
>
> (2) However, nothing in this Division authorises a person to enter any part of premises used for residential purposes except with the consent of the occupier of the premises.

Therefore, this clause authorises a person to carry out remediation under a remediation order. Can the minister describe what remediation that is, under the remediation order, that will allow a person authorised to enter land for the purpose of carrying out the remediation?

Dr A.D. BUTI: Remediation has its natural meaning; it is to remediate the damage.

Mr V.A. CATANIA: Where will the authorisation for the "person authorised" come from? Will it come from the Aboriginal Cultural Heritage Council, the CEO or the proponent?

Dr A.D. BUTI: I think the member is referring to the fact that under clause 197, other persons may carry out a remediation order. Clause 197(1) states, in part —

> … the Minister may authorise any other person to carry out some or all of the directions specified in the order.

Clause put and passed.

Clauses 199 to 205 put and passed.

Clause 206: ACH protection agreement —

Dr D.J. HONEY: We are trying to facilitate the minister here; we are skipping over a heap of detail.

Dr A.D. Buti: Yes, great stuff.

Dr D.J. HONEY: Clause 206(3) states —

> Without limiting the matters that may be dealt with by an ACH protection agreement, an agreement may deal with any of the following —
>
> …
>
> (e) rights of access to, or to use, Aboriginal places or Aboriginal objects by Aboriginal people;

This is in relation to access to, or use, of Aboriginal objects by Aboriginal people. The question is: could that include fees for access or some other charge for access, or is this purely around who will have the right to access that area?

Dr A.D. BUTI: This is about protecting heritage. I assume it will not preclude that, but this is about a protection agreement that is voluntarily entered into by Aboriginal groups and proponents to protect, preserve and manage Aboriginal cultural heritage.

Mr V.A. CATANIA: I will say what I think that means, and the minister can correct me if I am wrong. This will allow traditional owners in, for example, the Pilbara, to use or access at any time the objects that are there. It might be a cave, or it might be a tangible or intangible situation. Will it cover that? Let us say an agreement is reached on a mine, and somewhere in the middle of the mine or to the left of the mine, there is a sacred site. Everyone has

agreed to protect it, but there are safety issues around access and all the things that go with being able to access this Aboriginal cultural heritage site of significance. Can the company that is mining there prevent Aboriginal people from going to see the places and, potentially, objects? Can the company prevent them from going there, or is that part of an agreement that is reached through the management plan?

Dr A.D. BUTI: This is a voluntary agreement, obviously, but there cannot be an agreement that deals with any activity for which a permit or management plan is required.

Clause put and passed.

Clauses 207 to 210 put and passed.

Clause 211: ACH Directory —

Dr D.J. HONEY: This is an area that I have some concern about, although not about the directory itself, which I think sounds like a critical enabler for the workability of this legislation. It is more around the things that need to go into this. I assume that this is going to be a geographical information–type system that will be spatially oriented. I am really concerned about the time and cost to develop this. Has the government made provision for those factors? A new geographic information system of this complexity—we will go further into it in the bill—has requirements that some material is generally accessible and some material is accessible only to certain individuals. I am interested in how that will be achieved. A system could be developed, but typically these systems would cost tens of millions of dollars, so the $10 million that has been allocated to this would be more than gobbled up. Has a system already been developed that can be used and extended for this purpose, or will it be a new system? If it is a new system, has any work commenced? I have just tried to condense all that into one question.

Dr A.D. BUTI: There is a system in place at the moment. That system will be improved and expanded. The member would be surprised how much work has already been done in this space by government.

Dr D.J. HONEY: Part of the question was whether any allocation or allowance has been made for it. I appreciate that the minister said there is a system, but I have looked at the government computer systems. For a simple system like that for the Water Corporation, the Department of Water and Environmental Regulation was developing an approval system and spent $300 million and got nothing out of it. Has the government made adequate provision for it? This is no simple system. It is a complex system, especially for the different levels of access that people are allowed.

Dr A.D. BUTI: We already have a very good system in place, but it will be improved. Of course, the funding that is needed will be allocated.

Clause put and passed.

Clauses 212 to 215 put and passed.

Clause 216: Access to ACH Directory —

Dr D.J. HONEY: I refer to clause 216(2). A range of documents is referred to, including those that contain culturally sensitive information, which can be accessed only by individuals. How is that going to be achieved and policed? We have seen inappropriate access to police databases and they now have very sophisticated systems to track who accesses them. I can understand that people who are tech-savvy are used to doing this sort of thing all the time, but I know from the remote regions I have been to that many traditional knowledge holders, for example, have very limited computer skills and the like. How is that information going to be controlled in a way that prevents inadvertent access by people who should not access it? Equally, how will it allow access for those people who need it?

Dr A.D. BUTI: We are very mindful of many complexities and challenges. We will work to ensure that all appropriate challenges are met.

Mr V.A. CATANIA: Under the co-design process, will any work be done to provide further detail on access and input into the directory to provide as much information as possible on the land that we have in this state? Will there be a co-design element to this directory? How will information be shared?

Dr A.D. BUTI: The government is incredibly committed to ensuring that when this bill becomes law, it is operated in the manner that it should be, so that all processes will be complied with and all information will be gathered and made available. The government is very committed to ensuring that this bill, once it becomes law, is properly operational and that all the systems that need to be available and the support that needs to be given will be there.

Clause put and passed.

Clauses 217 and 218 put and passed.

Clause 219: Access for proponents of activities —

Dr D.J. HONEY: I should have asked this question before, but I still think it is relevant. I refer to access for proponents of activities and the way I envisage this system working. Say, I am a miner and I am going to dig a hole. I am just a little miner—a minor miner!—and I want to see whether there could be Aboriginal cultural heritage in that area. I look on a map relevant to my site and it comes up with a red dot or some such thing, and I click on it and it says there are scatter sites there or it is a sacred area or whatever. The person has not commenced an activity; they are only considering it. Will a fair bit of information be generally available or will people have to identify themselves as a proponent before they have access to the system? The minister can see where I am heading. I know that things can range from very complex to very simple, but will it be open architecture for an ordinary person doing an ordinary activity who just wants to double-check? If a warning flag or something comes up, will they have to identify themselves so they get more information?

Dr A.D. BUTI: It could be all of those things. It still needs to be worked out.

Mr V.A. CATANIA: Is there a time frame to work that out? That would be pretty integral for wanting to explore or do whatever. If we are moving away from and changing section 18 of the Aboriginal Heritage Act, I would imagine the department is working towards this, so timing is everything. When does the minister envisage all this will be completed?

Dr A.D. BUTI: The department is already working on it, and it will all be completed and ready to go by the end of the transitional period, and probably before.

Mr V.A. CATANIA: What is the transitional period? Can the minister provide, for Hansard's sake, a date?

Dr A.D. Buti: It will not be the law yet, how can I give a date?

Mr V.A. CATANIA: It will become law, because the government has the numbers to do whatever it wants. Say, it becomes law in two weeks' time, when will the transition be complete? Is it six months, 12 months, 18 months or 24 months?

Dr A.D. BUTI: The member has been here long enough to know about this. It will be on the date that is proclaimed. It will be at least 12 months.

Mr V.A. CATANIA: The minister envisages that this will take 12 months—it could take longer—provided we can get the co-design process working nicely, with people all wanting to be part of a process. It seems like a lot of co-designing needs to take place to make this legislation workable. It will be interesting to see how that process goes, given that the government could not co-design this bill prior to it hitting Parliament! The minister can understand the concern of exploration companies, junior miners, those who want to develop land and those who want to prospect. The minister can see how it could cause problems for the lower half of the miners and resource companies—not the big end, but the middle to little end of town. It may cause problems over the next 12 months, if not longer, if we do not have the detail or processes in place. We need to ensure that the state does not stand still and have to wait on how to proceed because the government is still waiting for all the co-design guidelines that will enable this piece of legislation to be workable.

Dr A.D. BUTI: I am not really sure what the member's problem is. He was a great supporter of the voluntary assisted dying legislation that went through and did not become operational until 12 months later. The current act, besides some changes, will remain in force until the transitional period is exhausted and the new system for the protection of Aboriginal cultural heritage in Western Australia becomes operational.

Clause put and passed.

Clause 220 put and passed.

Clause 221: Terms used —

Mr V.A. CATANIA: The definition of "entry warrant" is —

> … an entry warrant issued under Division 4;

Can the minister explain when an entry warrant will be used? I cannot recall, that is all.

Dr A.D. BUTI: That is dealt with in division 4. We are in division 1 at the moment.

Clause put and passed.

Clause 222: Reasonably suspects —

Dr D.J. HONEY: This is one of the clauses in this bill that troubles me the most. I can see the potential for conflict, but hopefully the minister can reassure me that that is not going to be the case. This clause states, in part —

> … a person ***reasonably suspects*** something at a given time if —
>
> …

(b) those grounds (even if they are subsequently found to be false or non-existent) when judged objectively, are reasonable.

There are going to be real consequences from inspections. Inspectors will be able to seize material, objects, vehicles, equipment—anything. In fact, they could seize a truck or a backhoe—all those things. Destruction powers, sale powers and so on will arise out of all this. When the grounds for suspicion are proven to be false or non-existent, will that trigger any sort of compensation in relation to these powers? If a person is wrongfully arrested, compensation can be due for that person. Will these powers, particularly for inspectors, trigger any compensation when the grounds are wrongful, or does that definition mean that there can be no compensation regardless of whether they are false or non-existent?

Dr A.D. BUTI: These clauses are not remarkable. This has gone through an extensive process with the Director of Public Prosecutions, the State Solicitor's Office and the Attorney General's department. Also, these provisions for inspectors are in line with state standards under the Criminal Investigation Act, the Biodiversity Conservation Act and the Environmental Protection Act. They are no different.

Clause put and passed.

Clause 223 put and passed.

Clause 224: Inspectors —

Dr D.J. HONEY: Despite what the minister just said, I am really concerned about these inspectors. The minister made mention of the previous Aboriginal Heritage Act. We seem in this bill to be potentially building an army of inspectors across the whole state. Subclause (1) provides —

The CEO may … designate any of the following persons as an inspector for the purposes of this Act —

(a) a public service officer;

(b) a person employed or engaged under the Public Sector Management Act …

Subclause (3) refers to the revocation of a designation. These inspectors will have the power to enter places and the like. Will there be any specific qualifications or training for these people? I would be comfortable if a police officer were to be an inspector for the purposes of this bill. That is because a police officer has training in conflict resolution and in avoiding conflict situations and the like. It seems that a group of people will be plucked out for these roles. I cannot see anywhere in this bill any requirement for any specific ability or specific training. Given that these inspectors will have the right of entry at any time and such things, I can see enormous potential for misunderstanding when these inspectors come in. Why has the government chosen to use such a broad brush? We have the same concern about the Aboriginal inspectors, who will also be people chosen by the CEO. Is there any reason why these powers are not limited to the police; or why there would not be designated specific officers who are chosen for the role and trained, not just in the ability to recognise Aboriginal heritage, but in all the skills of interacting to avoid conflict? I am concerned that these proposed powers could lead to unnecessary conflict.

Dr A.D. BUTI: I did refer the member to the previous act and said that there had not seemed to be any issues. I am not sure why there would suddenly be an issue now. Any inspectors hired by the department will receive training under the Public Sector Management Act, which is quite normal. There is a compliance unit in the department. Many of the compliance officers in the department are ex-police officers. It would not be appropriate for the police to be the inspectors. As the member would realise, police already have a lot of duties and demands on their time. I do not think that to now demand that they also do this would be reasonable or practical.

Ms M.M. Quirk interjected.

Dr A.D. BUTI: Exactly right. It really is not controversial.

Dr D.J. HONEY: I am not sure about that, minister. The minister mentioned fisheries inspectors. I would say that is extremely controversial. In the number of circumstances when inspectors have come onto a person's property and seized equipment, it has led to physical conflict. In my experience—I think the member for North West Central would concur—in the majority of circumstances when inspectors go onto a person's property, they will do it in conjunction with a police officer, for the very reason that they want to avoid conflict. The minister said that these officers will be given training. I will not repeat the question about Aboriginal inspectors. Whether they will be Aboriginal inspectors or departmental inspectors, the point is the same. We will go through and flesh out the powers that they will have, but it seems to me that these inspectors will have greater powers than the police in a number of cases, because they will be able to enter property without any approval. I do not know whether they will be able to enter a dwelling. It seems that they will have greater powers than police officers.

Some years ago, I was a forensic scientist who worked for police. I note that in some circumstances, police officers would accompany the fisheries inspector because the fisheries inspector had more rights of entry than the police

officers. They would use that to observe a crime or whatever so that they could make an arrest. These are really extreme powers; they go beyond the powers of a police officer.

Dr A.D. BUTI: No. I referred the member to three other acts. We are talking about the protection of Aboriginal cultural heritage, something that is incredibly important. It is very important to this government. As I said, it has gone through the Office of the Director of Public Prosecutions, the State Solicitor's Office and the office of the Attorney General. With all due respect, they have not expressed any of the concerns that the member for Cottesloe has expressed. I would prefer to take their collective wisdom and knowledge on this area because they have examined it many, many times. They have expertise in this area and it is within the standard powers of inspectors and with those three statutes that I referred to. The member can go on if he wants, but I really have no more to add.

Dr D.J. HONEY: With all due respect, the minister talked to people on the prosecution side, but did he talk to the Criminal Lawyers' Association of WA or to the Law Society of Western Australia about that? I suspect that anyone involved from that side would be extremely concerned —

Dr A.D. Buti: You asked me a question about the Law Society; it has expressed no concern.

Dr D.J. HONEY: — especially when we go forward.

Dr A.D. BUTI: Of course you always find one lawyer who has!

Clause put and passed.

Clause 225: Aboriginal inspectors —

Mr V.A. CATANIA: Clause 225(1) states —

> The CEO may, in writing, appoint an Aboriginal person to be an Aboriginal inspector for an area of the State.

The minister mentioned that it goes through the process. Clause 225(4) states —

> A person may be appointed as an Aboriginal inspector for a fixed or indefinite period.

I understand that an Aboriginal inspector or an inspector will be based in a certain area because they will have certain knowledge of the area. How does the minister anticipate a person will be appointed for a fixed or indefinite period? The application may be a month's worth of work or it could be six months, 12 months or two years. Once someone is employed as an inspector, how does the minister see that working for an individual, especially if an individual is employed for only a month? Will there be a minimum employment period or would the minister recommend a minimum employment period to the co-design team or group, or whatever he wants to call it?

Dr A.D. BUTI: No, there is no prescribed time; it would be on a case-by-case basis. Of course, that period can be revoked at any time.

Mr V.A. CATANIA: Would that be on a contract basis that defines an amount of money, or would it be in line with the Public Sector Management Act and whatever those wages are? Particularly if it is only for a short time, how is one to attract someone to do the work of an inspector when it may be only for a month?

Dr A.D. BUTI: It would be on a case-by-case basis and they will be employed pursuant to the Public Sector Management Act.

Clause put and passed.

Clauses 226 to 230 put and passed.

Clause 231: Power to enter places —

Dr D.J. HONEY: This is getting to the nub of areas where I see huge potential for conflict. Clause 231 states, in part —

> (1) For inspection purposes an inspector may do any of the following —
>
> (a) subject to section 232, at any time enter a place that is not a dwelling;

Section 232 relates to entering only Aboriginal places. I read that to be if someone has a 1 100-square-metre block, they have got a yard; at any time an inspector can enter that block if they believe they have to. I understand inspectors can only go into a person's dwelling, or house, with their informed consent. Otherwise, if the inspector does not have their informed consent, they can get an entry warrant. The bill goes on to describe how they can get an entry warrant, which is the detail, at any time to enter someone's property, for example, a hobby farm. A person can walk onto that land at any time. Later in the bill it states that an inspector has to have a card, although they do not have to have that card on them, they simply have to produce it sometime later.

As the member for North West Central pointed out earlier, we need to view this bill in the worst possible circumstances, not the best possible circumstances. Just as sometimes police officers behave very improperly, there is a possibility that inspectors will behave very improperly for whatever reason. They may decide that they are going to make a point to someone and come onto the property at midnight or the like. It seems to me that that could well lead to conflict.

Someone who does not actually have to have any identification could go onto someone's property and simply say that they are an inspector. It is not unreasonable to think that there might be any number of circumstances that could lead to conflict. I can imagine a farmer who sees someone—or "someones", as we discover later in the bill—walking on their property. The person has no formal identification and the farmer tells the person to get off their property, "Leave; don't come onto my land or I will eject you from the property." We have had those situations. We had a situation down south in Manjimup not so long ago when a farmer ejected an inspector, who, I might say, was throwing their weight around. This occurred in water. That led to a conflict and that person ended up going to court. Fortunately, the charge was thrown out.

I just think that this an extreme power for inspectors. The minister said that they are going to be trained, but the qualification listed in the bill is that they will be appointed. As I said, we see later in the bill that the inspector could basically get a group of deputies to come along with them. These people will have no training or qualifications and will be appointed by the inspector. We could have enormous conflict when an inspector is not acting properly and is misusing that power to intimidate someone or improve their position in a bargain or some such thing. I want to understand why the government has done this; it seems unnecessary. I might ask: Can a police officer enter someone's property at any time for no reason, or do they have to say that they have a reason to enter? Are police allowed to do that?

Dr A.D. BUTI: This government takes protecting Aboriginal culture very seriously. These standards are, as I said, in line with the Criminal Investigation Act, the Biodiversity Conservation Act and the Environmental Protection Act. Why are the environment and biodiversity in any more need of protection than Aboriginal culture? We do not apologise. We believe we have got this right. We believe the powers are correct.

Dr D.J. HONEY: I guess the point is that a trained police officer who is subject to direction from the Commissioner of Police ultimately entering for a criminal investigation is a different circumstance from this. It seems to me that if these powers were held by a police officer, it would be fine. A number of people are very concerned about the misuse of these types of powers under those other acts. For example, a number of people have approached me about the misuse of powers under the Biodiversity Conservation Act. There are already concerns that they are misused, so I see no justification for why someone cannot go through the process of getting a warrant so that there is some review. In this case, it is an individual. They are not a police officer; they are simply a public servant or an Aboriginal person who has been chosen.

Ms M.M. Quirk interjected.

Dr D.J. HONEY: Exactly. As we will see later in the bill, the inspector could basically deputise anyone and say, "They're coming with me." It is not just the inspector who may turn up; it may be a whole crowd of people who turn up.

In relation to Aboriginal heritage, this can be a very emotional matter, and the minister has demonstrated that. The inspector could well be part of the group being affected by the Aboriginal cultural heritage matter. It is not a police officer who is just employed to do a job; it could be someone with a direct interest in, and a strong personal and emotional opinion about, the matter. It is not like pulling out a public servant. As I have said, I am sure that the majority of people will behave in a reasonable way, but this bill has to be interpreted for a person who acts in an unreasonable way and who could potentially misuse that authority. I have great concern about this and we will go through it when we go on. When I see that the inspector can deputise two other people, it causes me a great deal of concern.

Dr A.D. BUTI: I will say only one further thing here: whatever the member might want to come back with, part of his commentary was about Aboriginal inspectors and that maybe they cannot be trusted because they might be too emotional. I find that deplorable.

Dr D.J. HONEY: No —

The DEPUTY SPEAKER: Leader of the Liberal Party, you asked very similar questions the three other times you have questioned the minister.

Dr D.J. HONEY: I was very, very clear on this matter. My only comment was that someone could have a direct personal interest in the matter. That was it. So do not try to conflate this with someone's Aboriginality or non-Aboriginality.

Dr A.D. Buti: You said that.

Dr D.J. HONEY: No. I said that that person could have a direct emotional interest in the matter. That is the only point I made. To try to conflate this with something else is disingenuous by the minister.

Mr V.A. CATANIA: I want to make it quite clear that this is not about whether a person is Aboriginal. Allowing someone from the public sector is one thing, but having someone who is not tied to the government in one way or another, whether they are Aboriginal or non-Aboriginal —

Dr A.D. Buti: But they are.

Mr V.A. CATANIA: No, that is not what it says here. It says an Aboriginal person. It is a person. I understand why an Aboriginal person would be an inspector, but a person who is not a —

Ms M.M. Quirk: They are being appointed under the Public Sector Management Act, aren't they?

Mr V.A. CATANIA: No, they are not being appointed under the Public Sector Management Act.

The DEPUTY SPEAKER: Member for North West Central, ask the question and the minister can respond.

Mr V.A. CATANIA: I have four minutes to ask the question, thank you, chair.

The DEPUTY SPEAKER: No; there is only one who can respond.

Mr V.A. CATANIA: It is about ensuring that we have the right people. The minister mentioned the Department of Water and Environmental Regulation and its inspectors and so forth. Their role —

Dr D.J. Honey: Public servants.

Mr V.A. CATANIA: They are public servants. They are part of that department. They have been trained and it is a long-term job, whereas this is potentially a very short term job. Grabbing someone and training them up for a couple of weeks and sending them off to become an inspector will cause issues because they will not know the boundaries. Let me tell members that if I saw someone who I did not know in my backyard, I would be concerned. I am concerned that we are allowing someone who is not fully versed or trained in this area to become an inspector. They may not understand that a knock on the door is the way to go rather than walking around the back or jumping the fence, as this act will allow people to do. I am concerned about the safety of an individual or people who come along, because, as we read further in the bill, people can be deputised and more than one person can be brought onto a property.

Ms M.M. Quirk: Who has to act within the constraints of the delegation, presumably.

Mr V.A. CATANIA: I understand that. The inspector who is put there —

Ms M.M. Quirk: Right, so you are implying, as is the member for Cottesloe, that they could just go on some frolic of their own, which is not consistent with how the powers are delegated.

Mr V.A. CATANIA: They have to have a reason to go onto the property without the consent of the property owner.

Dr D.J. Honey: It could be a completely misguided belief.

Mr V.A. CATANIA: It will be up to them to make that decision. That is the question. Allowing a person without the absolutely necessary experience or training to make those decisions could put that person in serious harm's way, especially when they are dealing with the angst of negotiations between a landlord and an Aboriginal organisation. There can be angst. There is angst all the time between mining companies and Aboriginal organisations. We saw that with Rio Tinto and Banjima. That is the point I am trying to make. I do not think that this part of the bill is safe. It should require that people have greater expertise and knowledge before entering a property.

Dr A.D. BUTI: Aboriginal inspectors will have powers given to them by the CEO and they will be under the oversight of the department, plus the CEO must notify the local ACH service of the proposed appointment and allow a reasonable opportunity for submissions to be made to the CEO in respect of that appointment. They will be trained. The member keeps saying that there will be no training; they will be trained.

Mr V.A. CATANIA: The minister did not provide me with the minimum employment period that these inspectors will have. What will be the minimum employment period for an inspector? Clause 225(4) states —

> A person may be appointed as an Aboriginal inspector for a fixed or indefinite period.

Tell me what that fixed period will be? Will it be a month, two months or six months? That is the issue. The issue is that it could be a very short term appointment, and an inspector in a particular town or area of the Pilbara could be needed for only a short time because agreements are in place and everyone will move on hand in hand.

The issue is that it is very unsafe for an inspector to be able to enter a property without getting the consent of the property owner. It would be better if the inspector went to a property with a warrant that had to be handed to the landlord and was perhaps accompanied by a police officer for the security of the individual and to not create angst. As I said, the first thing I would do is call the police if I saw someone walking around on a person's property when I knew that no-one should be on the property. Often in regional WA the police are not nearby and perhaps people will take the law into their own hands. That is the point.

Clause put and passed.

Clauses 232 and 233 put and passed.

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

Dr D.J. HONEY: This provision concerns me greatly for a number of reasons, especially in relation to people's vehicles. I see that there is an exclusion in this clause. If I am reading this clearly—I think it is a reasonably clearly

written bill—a mobile home is excluded from this provision without a warrant. However, at any time, an inspector can stop and enter a vehicle. A family could be halfway along the Gibb River Road and an inspector could form the view that they wanted to inspect the vehicle. The inspector could stop the vehicle and make the family get out. The inspector could go through all the family's personal belongings such as suitcases and clothing. In fact, the inspector could decide to look at the vehicle some more. The inspector could stop the vehicle, detain the vehicle and move it to another place. Meanwhile, the whole family would be stranded. That would all be done under the protection that the inspector believes there is an issue because of the earlier clause that says, "You can be mistaken."

Ms M.M. Quirk: Surely Aboriginal heritage should be on the same footing as marron.

Dr D.J. HONEY: The member is not unique in her concern about Aboriginal heritage or people, so she does not need to continually interject.

I am also concerned about the way people could be treated. People with their families in remote locations could have an inspector go through all their possessions. The member might find it amusing or think it is trivial, but I suspect that if the member was out in the middle of nowhere with her family and that occurred, she would be extremely distressed.

Ms M.M. Quirk: I wouldn't be moving Aboriginal heritage, member.

Dr D.J. HONEY: The truth is that under this bill a person does not have to have any Aboriginal heritage or to have done anything. The only test is that the inspector has formed an opinion. We are not talking about a trained police officer, but an inspector. I suspect that this is more likely to happen in a remote location than in the middle of metropolitan Perth. Why has the minister provided this power? It seems to be an extreme power. In that situation—I know I am talking about a particular situation, but it could occur and I am happy to be disabused of that—I can imagine that people's emotions could run very high and it could well lead to unnecessary conflict, which would not be good for either party in that event.

Dr A.D. BUTI: In 2016, the Liberal government enacted the Biodiversity Conservation Act 2016. I refer the member to section 201, which is exactly the same as the clause we are considering now. His government thought it was okay to do that. Why is this any different? Is it because it relates to Aboriginal cultural heritage or is there some other reason?

Dr D.J. HONEY: The reason is very straightforward. That act causes enormous difficulties, and I think this bill has the same potential. I was not in Parliament in 2016, as the minister well knows, but I am in Parliament now. I am extremely concerned about this. I have limited time to talk to people about this, but I have discussed this clause with people whom I think are reasonable, not some fringe. Those people have also been—I have not prompted them—extremely concerned with this provision. It seems that if a person were to exercise those powers, it should be a police person. It seems to me that this is an extreme power to have at any time and in any place, particularly if a vehicle is taken away, detained and moved to another place suitable for carrying out an inspection. I believe that power should reside with the police, not with an inspector, as set out under this bill.

Mr V.A. CATANIA: I tend to agree with the member for Cottesloe.

Ms M.M. Quirk interjected.

Mr V.A. CATANIA: Sorry, what was that, member for Landsdale?

Ms M.M. Quirk: I just said you're north of me and you're the only one that does!

Mr V.A. CATANIA: We do not want to talk about issues in relation to transport, do we, member for Landsdale, and issues that occurred under portfolios in times gone by?

Dr A.D. Buti: Even for you, Vince —

Ms M.M. Quirk: That's below the belt.

Mr V.A. CATANIA: No. You have been having a crack at me all afternoon.

Dr A.D. Buti: That's way below.

Mr V.A. CATANIA: It is not.

The concern that we have with this clause is that inspectors basically will have the same powers as police officers, who are not trained in that way.

Dr D.J. Honey: More powers.

Mr V.A. CATANIA: They will have more powers. I feel that this provision is a complete overreach. If someone is able to take any artefacts or anything of significance, they should be dealt with by the appropriate authorities. Under this legislation, there is a fine system and, in some cases, offences are jailable. There are adequate penalties, but let us ensure that the appropriate authorities have the appropriate training and authority in the public's eye so

that when they are told that a car has or certain people may have something of significance, they should report it to the police, like any other theft. That would not diminish its importance; I think the need to get the police involved would increase the importance of ensuring that Aboriginal heritage is protected. I do not think anyone in this house disputes the fact that Aboriginal heritage should be protected and anyone who seizes or steals Aboriginal heritage should absolutely be punished, especially if they do so to potentially make money or harm a sacred site.

I do not think anyone disputes that. I think the issue is that there is no time frame and someone may be an inspector for only a couple of months. How will that person have the ability to know exactly how to fulfil their role? I do not think anyone does. I caution the government that I think this power to stop and enter vehicles and the ancillary powers are a massive overreach. I want to know the reason the government has put this in this legislation when we have police who should be used to deal with any crimes pertaining to stolen or misused Aboriginal heritage. I do not think that anyone disagrees with that. I strongly urge the government to reconsider this clause because it will give amazing power to inspectors, and I am concerned that they will not have the necessary training and protection in place to be able to carry out this function.

Dr A.D. BUTI: The comment that the member for North West Central made to the member for Landsdale really probably does not deserve any response; it was disgraceful. But in regard to the substance of this, the fact is that we do not have these inspectoral powers in the current act, and that is why we have major concerns about the protection of Aboriginal cultural heritage now. The member wants to pick this up and say that an inspector may be employed for only an indefinite, small period. That may be, but probably most of them will not be; they will be employed on a repetitive basis, they will be trained and they will become experts in Aboriginal cultural heritage. We should not be putting this on the police. The police have enough to do. As I say, this clause is consistent with provisions in the other acts that I referred to. At least one of them was passed by a conservative government, of which maybe the member for Cottesloe was not a member, but the member for North West Central was.

The DEPUTY SPEAKER: Member for North West Central, before you go on, you asking the same questions as the Leader of the Liberal Party still constitutes repetition. The same question has been asked multiple times now.

Mr V.A. CATANIA: This is an important question.

The DEPUTY SPEAKER: I appreciate that, but it is the same question.

Mr V.A. CATANIA: It is an important clause in the bill. I want to make this final point on this power that will exist. Let me ask this question: under previous legislation —

Dr A.D. Buti: Current legislation.

Mr V.A. CATANIA: Under the current legislation, these powers do not exist. Am I correct?

Dr A.D. Buti: Yes.

Mr V.A. CATANIA: Does the minister have an understanding of how many crimes have been committed or what has been stolen by the public? Is this an area in which theft is prolific?

Ms M.M. Quirk: Yes.

Mr V.A. CATANIA: What is the evidence to suggest that the stealing of artefacts and so forth is prolific?

Dr A.D. BUTI: Of course, we do not know how many artefacts or what Aboriginal heritage has been stolen or lost; if we knew, maybe it would not have been stolen or lost. But I can tell the member for North West Central that there have been eight or nine successful prosecutions in 50 years. Do not tell me that Aboriginal culture has been stolen only eight or nine times in 50 years. That is definitely not the case. There is a major problem at the moment and this clause will address it. The member has laboured the point many times during the last three days that we need to protect Aboriginal cultural heritage, but when we do things like this, he then takes the other side. Wake up to what you really believe in! I think the member does believe in protecting Aboriginal cultural heritage; he just cannot help himself. This clause is here to protect Aboriginal cultural heritage and the member should be applauding it.

Mr V.A. CATANIA: The minister is right; we are in favour of protecting Aboriginal cultural heritage—absolutely. There is no dispute about that. The opposition's role, and the role that we have in this house and outside, is to ensure that legislation is as watertight as it can be. We have to think of all the unintended consequences that may arise from a piece of legislation. That is our role. We will ask questions and flip from side to side to ensure that we are able to work out any possible angle from which this piece of legislation could be abused. That is the reason.

Mr P. Papalia interjected.

Mr V.A. CATANIA: Member for—I do not even know what you are the member for; Minister for Police, go home! Your services are not needed!

Mr P. Papalia: I've heard this before. It's endless repetition!

Mr V.A. CATANIA: Yes, that is right. I think I tell you to go home every week. We do not need you!

The DEPUTY SPEAKER: Member for North West Central, to the minister, please.

Mr V.A. CATANIA: Anyway, that is the point and we keep saying that. We have a deadline to get this bill through because the government does not want the bill to have the scrutiny that it deserves.

Clause put and passed.

Clause 235 put and passed.

Clause 236: Other powers related to inspection —

Dr D.J. HONEY: As a preamble to this clause, we understand that this bill is about Aboriginal heritage, but that is not the only thing that this bill affects. This bill will potentially affect every person in the state of Western Australia, not just Aboriginal people. The application of these subclauses could have a very dramatic, intimidating and terrifying effect on the people who are subject to searches. The member should know that.

Dr A.D. Buti: Minister, actually. I am not the member; I am the minister.

Dr D.J. HONEY: It is not just a question of only considering Aboriginal heritage. Yes, I know you are the minister. I was looking at someone else at the time, minister, but I will look fixedly at you.

This is the whole point. This is one of the major questions in relation to this bill. It is not just about protecting Aboriginal heritage; this bill has a real and material impact on a whole range of people who will be subject to new activities and requirements. People could potentially be put in very dramatic situations. People could have their property destroyed under false circumstances. They could have their property taken away. These inspectors will have enormous powers. No police officer can take someone's property and destroy it.

Clause 236 states —

> … an inspector may do any of the following —
>
> (a) take onto or into, and use on or in, a place or vehicle any equipment or facilities —

And so on that they can bring in there —

> (b) make reasonable use of any equipment, facilities or services on or in a place or vehicle in order to carry out an inspection …

Is that the owner's or someone else's equipment? Is it the equipment that lies to hand? Is it only the inspector's equipment? The bill goes on to list that the inspector may inspect intensely personal things. The inspector could go through people's homes, possessions, goods, intimate apparel and the like. Therefore, this bill is not just about Aboriginal heritage. Yes, the main title of the bill is about protecting Aboriginal heritage, but the application of this bill will have an impact on a wide range of people, and some of those impacts could be extraordinarily onerous. In relation to clause 236(b) which states "make reasonable use of any equipment, facilities" and so on, what is the limit of that? Can the inspector seize equipment and use it? Does this refer to only the equipment the inspector has or brings to the location?

Dr A.D. BUTI: The clause refers to inspection purposes. That is the reason. I will ask a question again, because I am not going to add any more. The member can get up and repeat himself, if he wants. Are flora and fauna more important to protect than Aboriginal cultural heritage? I ask that because the powers in this clause are no more extensive than the powers in the other three acts. Why is it suddenly such an issue because we are protecting Aboriginal cultural heritage?

Dr D.J. HONEY: The difference is that this is the bill that I have been asked to consider. The specific questions I asked about clause 236(b) were: When reference is made to "make reasonable use of any equipment, facilities or services on or in a place or vehicle", does that relate to the inspector's equipment? Is that something that is provided by the inspector, or simply something that is to hand that the inspector can commandeer?

Dr A.D. BUTI: I have no more to add, other than to say that this is the same provision that can be found in section 203 of the Biodiversity Conservation Act 2016.

Mr V.A. CATANIA: I want some clarification on clause 236(c), which states —

> remain on or in a place or vehicle for as long as is reasonably necessary to carry out the inspection;

What is "reasonable"? We are not dealing with the other act the minister talked about, we are dealing with this legislation. I draw the minister's attention to relevance. If we go further, clause 236(d) states —

> inspect and open any package, compartment, cupboard or container of any kind, and inspect its contents;

Even when going through customs at Perth Airport—which might be foreign for a lot of people, and has been for a while—customs officers are often reluctant to damage the goods that they look at, and they use their expertise, or they test, before they damage or open up a package, regardless of whether it is a present, all wrapped up, or whatever it may be. That is the concern. We are dealing with this legislation; we are not dealing with the Biodiversity Conservation Act. I am not the shadow minister for that portfolio and I do not know what is in that act. I probably

would not have dealt with it back in 2016. I have two concerns: what is "reasonably necessary" to carry out an inspection, and how long will it take? Let us say someone is travelling with their family along the Gibb River Road or the Great Central Road and they are pulled over. I do not know what they flash; I do not know whether they need to flash a badge or —

Dr D.J. Honey: It tells you later: they don't actually have to have it on them.

Mr V.A. CATANIA: Okay, they do not have to have any identification. That could be quite confronting, being told to get out of the car and then being searched. How do they search? Are they meant to put everything back in place that they search? What happens if goods get damaged? There are all these things; it is not that simple. I believe it is a massive overreach. If an inspector thinks there is concern that someone has taken something, I think it should be reported to the police, just as it should be if someone finds bones in the ground. In that instance, the minister said the first thing people should do is call the police. That is what they would do. This is a massive overreach, which is why we need time to scrutinise this legislation. We are getting towards the end of the bill, and we find this massive overreach.

Dr A.D. BUTI: If inspectors did not have the powers to do that, I do not know how it would be worked out whether there was a danger of cultural heritage being damaged. I am very surprised that the member, who has been in this place and the other place for about 14 or 15 years, does not know what is meant by reasonable. Maybe he should ask two of his siblings who are lawyers what a reasonable test is. It is a standard test. It is what is considered to be reasonable. What is reasonable is an objective test. I find it quite amazing for him to be even asking me that.

Mr V.A. CATANIA: Defining "reasonable" is one thing here but out in a remote area, potentially —

Dr A.D. Buti: We're talking about what an inspector does, not anyone else. They've been trained.

Mr V.A. CATANIA: That is the issue; what is reasonable to one is not reasonable to another. That is the point.

Dr A.D. Buti: They have been trained.

Clause put and passed.

Clause 237 put and passed.

Clause 238: Directions —

Dr D.J. HONEY: In this clause, we see the significant powers that an inspector has. Initially, I will go to paragraph (b). It reads —

> direct an occupier of a place or vehicle to answer questions;

I am no expert on criminal law but I know that a person has no obligation to give any information to a police officer other than their name if they request it. Otherwise, they have a right not to answer any question at all. In reading this clause in the time that I have had to do it, there does not seem to be a legal right to silence at all. My concern is that, if we go to clause 256, which we will get to eventually I hope, there are very significant penalties for not complying with the instruction of an inspector. Could the minister please clarify for me whether that means an inspector can compel a person to give them information? If they do not do it, could they potentially incur a penalty for not complying with that direction?

Dr A.D. BUTI: It is a direction but how it may differ from where the member is looking—he referred to the police and so forth—is that an inspector does not have the power of arrest.

Dr D.J. HONEY: The minister did not answer my specific question.

Dr A.D. Buti: I said it is a direction.

Dr D.J. HONEY: The minister gave me part of an answer. If an inspector directs a person to answer a question and that person refuses to answer the question, saying "You can stick it up your jumper. You've got no authority to do this", could that person incur a penalty because they refused to answer the question?

Dr A.D. BUTI: It is quite obvious if you read the act; it is further on, in clause 252.

Dr D.J. HONEY: To be very clear, the minister's answer is yes. He is nodding his head.

Dr A.D. Buti: I told you, it's clause 252.

Clause put and passed.

Clause 239: Seizure of thing relevant to an offence —

Dr D.J. HONEY: As we get deeper, what can be done gets more and more extreme. This clause is about the seizure of a thing relevant to an offence. Just to be very clear, I think the bill reads reasonably clearly, but a thing is anything. I think it could be a Haulpak truck, an excavator, someone's personal vehicle or anything that could be seized. This inspector can in fact seize any property that they believe relevant to a potential offence under this legislation. Is that correct, minister?

Dr A.D. BUTI: Yes, if they have a reasonable suspicion.

Dr D.J. HONEY: What if they seize that thing, and it was completely unfounded, and a person has suffered loss? It could be a family that has lost their vehicle and missed all their hotel bookings in Broome because the vehicle was seized in Halls Creek and they have incurred substantial expense. It could be a prospector carrying out work and they have now not been able to do work for several days. Is there any compensation for that seizure or is it just tough luck? If the family has had their holiday destroyed or the prospector has lost several days of valuable production, is there any recompense for seizure when it is shown that there has been no offence committed?

Dr A.D. BUTI: I refer the member to the Criminal Investigation Act to start with.

Mr V.A. CATANIA: If something is seized, a vehicle or whatever it may be, where will the inspector take it? Is there a safe and secure compound to put a vehicle or something that may be extremely valuable in? Is there a place for the responsible inspector to put the possession, whether it be a vehicle, Haulpak or whatever?

Dr A.D. Buti: Refer to the next two clauses.

Mr P. Papalia: The next three.

Mr V.A. CATANIA: Okay, I will look forward to that.

Clause put and passed.

Clause 240: Security of seized things —

Mr V.A. CATANIA: The bill states —

> If, under section 239(2) or in the exercise of powers under the CI Act, an inspector seizes a thing, the inspector must take reasonable steps to ensure that the thing is kept in a secure manner.

Is that the minister's answer to the question before? What is a secure manner? If I have a 300 series LandCruiser that has suddenly been seized, I want to make sure that that LandCruiser is parked in a compound and it will not be damaged. The bill states "in a secure manner". That is a secure manner in regional WA. Given the crime that is occurring in Fitzroy Crossing or Carnarvon that the Minister for Police fails to address, there are some places we would not leave our car. What is a secure manner? What happens if the thing is damaged? Who is responsible for that?

Dr A.D. Buti: Read the legislation. It tells you what everything is.

Mr V.A. CATANIA: It does not say that.

Dr A.D. Buti: It does. There is a $10 000 fine.

Mr V.A. CATANIA: Can the minister explain what is meant by "in a secure manner"? It is not like a car that is towed away by a tow truck company. Tow truck companies often have compounds in which they put the cars, in a secure manner to prevent those cars from being damaged or broken into. That is just one example. Can the minister explain to me what is meant by "in a secure manner"? How will someone be able to secure a vehicle, for example, if they are in in regional Western Australia?

Dr A.D. BUTI: It states that they "must take reasonable steps to ensure that the thing is held in a secure manner." I surely do not need to provide the member with a definition of the meaning of "secure". It states that reasonable steps have to be taken. It will depend on where they are. There may be a police station that they can take it to. There will be flexibility. Even the member would understand that in any piece of legislation, we do not define every single possibility in the world. If that is what the member thinks we should do, I pray that he will always remain on that side, because he never be able to get any legislation up. It is reasonable steps to ensure that it is retained in a secure manner.

Clause put and passed.

The ACTING SPEAKER: The question is that clause 241 stand as printed. This may well deal with some of the questions that have previously been raised.

Clause 241: Dealing with seized things —

Dr D.J. HONEY: In relation to dealing with seized things, I see that the CEO will have some involvement. When we talk about impacts on people, under this clause, something that was seized—it could be a person's car, a piece of equipment or personal belongings—could be destroyed or sold. Is that a correct reading of that? It provides that "deal with" includes to preserve, treat, sell, give away, use and destroy. An inspector can seize my property and then have that property destroyed or sold. I wonder again why we need such an extreme power.

Dr A.D. BUTI: Subclause (2) provides that the inspector may deal with the thing in accordance with the directions of the CEO.

Clause put and passed.

Clauses 242 to 244 put and passed.

Clause 245: Making application for entry warrant —

Dr D.J. HONEY: The minister's reason for not answering the other questions is that there is an ordered process of going through a magistrate to get a warrant. That seems to be a far more thorough and considered process. Subclause (7) states —

> An application must be made on oath unless —
>
> (a) the application is made by remote communication; and
>
> (b) it is not practicable for the magistrate to administer an oath to the applicant.

Is that a common feature in other laws? For example, can a police officer gain a warrant in a circumstance in which they are not required to administer an oath to the applicant, or is this power unique to this bill?

Dr A.D. BUTI: The point with regard to other acts is that we are dealing with this bill. If the application is made by remote communication, the application may be made orally, and the magistrate must make a written record of the application and any information given in support of the application.

As I keep telling the member, we have consulted the State Solicitor's Office, the Attorney General and the Director of Public Prosecutions, and they have not raised concerns.

Clause put and passed.

Clauses 246 to 251 put and passed.

Clause 252: Contravention of directions —

Dr D.J. HONEY: We talked a little about a contravention to a direction. I gave an example when we were on clause 238(b). Am I right in saying that when an inspector directs someone to answer a question, that person could be subject to a $10 000 fine if they refuse to do that? Is that not in fact a much more extreme power than a police officer has? A police officer can only direct a person to give their name and date of birth, as I understand it. Clause 252 relates to an inspector directing a person to give answers. An inspector will not be as well trained as a police officer; they will be someone who may have a direct interest in the matter themselves. If a person says, "I will not answer your question", that person could be subject to a $10 000 fine. They would not even have the right to silence that a person has in a serious criminal matter in which someone may have murdered someone. Someone may have murdered a bus full of schoolchildren, which I would argue is a matter more serious than many matters that could be dealt with under this bill. Is my scenario correct; that is, under clause 238(b), if the person does not follow that direction to answer a question, they could be subject to a $10 000 fine?

Dr A.D. BUTI: Obviously the person will have to have a reasonable excuse not to answer, which the member failed to mention. It is a maximum penalty of $10 000 and it is comparable to what we currently have under the WA Heritage Act.

Dr D.J. HONEY: The minister did not completely answer my question. At present, if a person has murdered a bus full of schoolchildren, the only thing they are required to do is provide the police officer with their name and date of birth. An inspector is very unlikely to be as well trained as a police officer. If a person does not answer an inspector's question, they could be subject to a $10 000 fine without reasonable excuse. Their excuse might be, "I do not believe I should have to answer your question." If I say to a police officer, "Officer, no, I choose not to answer your question", I do not have to have any reasonable belief; I just say to the police officer that I will not answer it. In fact, that is the advice my lawyer would give me in the great majority of circumstances.

The ACTING SPEAKER: Member, I think the minister has got the gist of the question.

Dr A.D. BUTI: If a person does not have a reasonable excuse, they could incur a maximum penalty of $10 000. That is comparable to what we have currently under the Heritage Act.

Clause put and passed.

Clause 253 put and passed.

Clause 254: Assistance to exercise powers —

Dr D.J. HONEY: This clause again causes me enormous concern. If I am reading the clause correctly, I believe an inspector may deputise any number of people. We will have somebody who in the great majority of circumstances will definitely not have anywhere near the same training and experience as a police officer who could of their own volition deputise —

> … as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.

They can deputise a mob if they want to. If this was in a remote location—for example, if this was in relation to a remote Aboriginal community—that inspector could deputise other members of that community who may be emotionally involved in this matter to assist them —

The ACTING SPEAKER (Ms M.M. Quirk): Member, can I just caution you to focus on the wording in the clause and not engage in what are hypotheticals, which are, frankly, objectionable.

Dr D.J. HONEY: There is nothing objectionable. I cannot comprehend —

The ACTING SPEAKER: With all due respect, there is.

Dr D.J. HONEY: I cannot comprehend how there is anything objectionable in this. I do not care —

Dr A.D. Buti: Mob.

Dr D.J. HONEY: What? A group of people.

Dr A.D. Buti: You used "mob".

Dr D.J. HONEY: Okay; that was a—that is right, because, you know, you are a fine moral citizen and everyone else is a racist if they do not agree with everything that you say.

Dr A.D. Buti: You used that word; I didn't.

Dr D.J. HONEY: What? A group of people. I use the term "a mob of people" all the time. I did not say —

Dr A.D. Buti: Bull; you did!

The ACTING SPEAKER: Member, I am just cautioning you to focus on the wording in the clause.

Dr D.J. HONEY: So, they can form a group of people from the community they are in when that inspector is from that community—it can be any number of people—to exercise those duties. My concern with many aspects of this inspection is, as I said at the outset, the potential for conflict. There is a potential for conflict when you have a group of people who are not just dispassionate independent people, but people who could be intimately and emotionally involved in the matter. I am not criticising people for being emotionally involved. I can understand that people could be passionate about and involved in matters of Aboriginal cultural heritage. Does the minister think that this proposed section could exacerbate the potential for conflict, especially in a matter that has emotion associated with it? As I have said, this is not like a police person engaging the help of bystanders in a matter that none of those bystanders are involved with. That is my concern, minister. I appreciate that in the great majority of circumstances that will not be an issue, but I can equally appreciate that in a matter of high emotion that there could be conflict. The minister talks about overreach in a matter; I believe this is substantial overreach in this bill.

The ACTING SPEAKER: Member, you have asked the question a number of times. The minister can answer it.

Dr D.J. HONEY: No, I have not finished yet.

The ACTING SPEAKER: What you do or do not believe is immaterial.

Dr D.J. HONEY: I still have one minute and 38 seconds.

Surely, the prudent approach when an inspector needs assistance would be that the inspector would then engage the services of the police in that matter and not simply deputise people who have no training at all. Those other people have no training. They have no training in being an inspector or in conflict resolution or conflict avoidance.

Dr A.D. Buti: But you've told me this already.

Dr D.J. HONEY: No, I have not. This is in relation to the people who are deputised.

The ACTING SPEAKER: There were about eight questions there, member. So, minister, you can choose to answer whichever one you want.

Dr A.D. BUTI: I will just make a couple of comments. The member used the word "mob". When I pointed that out to him, he then connected it to—I did not mention it—racism. I will leave that stand where it is. He used the word "mob" and then he talked about racism.

Dr D.J. Honey: I talked about where you were going.

Dr A.D. BUTI: I refer the member to section 120 of the Heritage Act, which is the same. Does the member think it is appropriate that we have this provision in the Heritage Act but we do not have it to protect Aboriginal cultural heritage? Does he see that as maybe discriminatory?

Dr D.J. Honey: No.

Dr A.D. BUTI: Why not?

Dr D.J. HONEY: Again, minister, I was not in this place when that act was put in place.

Dr A.D. Buti: It doesn't matter. I asked you a question. Do you think it is discriminatory?

Dr D.J. HONEY: No; I do not have to answer the minister's questions.

The ACTING SPEAKER: Yes, I would agree with you there.

Dr D.J. HONEY: He has to answer my questions—or he can ignore them like he has done with a considerable number of others. But he does not get to ask me questions. In relation to this matter, I do not care what was in the previous bill. What we do know is —

Dr A.D. Buti: It is now. The Heritage Act is now.

Dr D.J. HONEY: I do not care what is in the current bill.

Dr A.D. Buti: You don't care about Aboriginal culture.

Dr D.J. HONEY: Chair, can I ask the question?

The ACTING SPEAKER: Yes. Go ahead; we are waiting for it.

Dr A.D. Buti: We are not talking about the Aboriginal Heritage Act; we are talking about the Heritage Act.

The ACTING SPEAKER: Minister, let the member attempt to ask a question.

Dr D.J. HONEY: I have to consider the bill that is before us. As I have said, I think this will lead to the potential for considerable conflict. We are going to see a much wider application of this in all these processes that are being set up. I assume that all the prescribed bodies corporate across the state will effectively become local Aboriginal cultural heritage services. Equally, many of the corporations may become LACHS as well. We are going to have a whole range of inspectors, so the potential for any conflict under this provision will be multiplied many, many times because, in reality—the minister has pointed it out—there has been limited enforcement of that in the past. That is why I am concerned about overreach and that is why I believe there should be some requirement that at least those assistants are trained. I see enormous potential for unnecessary conflict that could be avoided if trained people were available or, more particularly, if police officers were engaged.

The ACTING SPEAKER: Minister, there was really only one question near the end.

Dr A.D. BUTI: That is right. I have mentioned that people will be trained. I think the member might be confused. I am talking about the Heritage Act. Would it not be discriminatory if we allowed these powers for the protection of non-Aboriginal heritage, but not for Aboriginal cultural heritage?

Dr D.J. Honey: I think they should all be reviewed in that case.

Clause put and passed.

Clauses 255 and 256 put and passed.

Clause 257: Self-incrimination not an excuse —

Dr D.J. HONEY: Under criminal law, I do not have to answer a question if it could incriminate me. Am I reading this correctly in that under this clause, an individual could be compelled to give evidence that would then be used to incriminate them and make them liable to a penalty?

The ACTING SPEAKER: The minister might like to refer to subclause (2).

Dr A.D. BUTI: Thank you very much. I refer to subclause (2) and "proceedings for perjury".

Clause put and passed.

Clauses 258 and 259 put and passed.

Clause 260: Who may commence proceedings —

Dr D.J. HONEY: Clause 262(2) states —

> Subsection (1) does not limit the ability of a person to commence or conduct the prosecution of an offence under this Act if the person has authority at law to do so.

What does that mean? It sounds like *Yes Minister* doublespeak. Could the minister explain that, please?

Dr A.D. BUTI: It is a general provision that is in a lot of acts. It refers to someone who has authority, like the Director of Public Prosecutions.

Clause put and passed.

Clause 261: Time limit for prosecution of simple offence —

Dr D.J. HONEY: Clause 261(1) states —

> A prosecution of a simple offence under this Act must be commenced within 6 years after the date …

However, clause 261(2) refers to something that is unknown and that only comes to light after. It states —

> (a) the prosecution may be commenced after 2 years after the date specified …

Is that not really overcoming the limitation period in that there is no limitation period if someone discovers something 30 years later? Also, will there be any retrospectivity in relation to that matter or will it apply to matters only once the bill is promulgated?

Dr A.D. BUTI: It is not unusual to have a discovery rule in limitation acts; this is a discovery rule in which time runs from when the wrong is discovered.

Dr D.J. HONEY: Is there any retrospectivity in this? What will happen if someone becomes aware of a matter that occurred 20 years ago only after this bill is put in place, or does it apply only to incidents that occur after this bill is assented to?

Dr A.D. BUTI: This bill is not retrospective.

Clause put and passed.

Clause 262: Court may order costs and expenses —

Dr D.J. HONEY: I am not sure whether the Leader of the House has spoken to the minister, but the intention was that we would stop at 10.30 pm so that we could have a chance to complete the third reading of the bill.

In relation to this clause, "Court may order costs and expenses", does that include awarding costs and expenses to the defendant as well; that is, to both parties in the dispute?

Dr A.D. BUTI: Section 123 of the Criminal Procedure Act states —

> (1) An accused must not be charged a fee by a court for or in respect of any act or proceeding that relates to the prosecution of the accused in a superior court.
>
> (2) A superior court cannot order a party to a case to pay another party's costs of or relating to proceedings in the court that relate to a charge in an indictment or a charge on which an accused has been committed to the court, except under section 166(2).

Dr D.J. HONEY: Perhaps this is obvious, but does that not include anything beyond costs or expenses in the normal terms? Is there not and additional component or amount that is a punishment?

Dr A.D. BUTI: The costs are not related to punishment, but, obviously, this provision provides the power to make orders relating to costs and expenses for a range of matters incidental to anything that is the subject of these proceedings.

Clause put and passed.

Clause 263 put and passed.

Clause 264: Liability of officers for offence by body corporate —

Dr D.J. HONEY: Clause 264(2) states —

> If a body corporate is guilty of an offence to which this section applies, an officer of the body corporate is also guilty of the offence if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

Who is, or who can be, the officer? Could it be the CEO or the managing director? If Strike Energy, for example, committed an offence, could the officer potentially be the managing director of that company? Under this bill, the state will also be liable. The exclusion of the state from liability is included. Does that mean that the minister or the head of the department could be liable? I am trying to understand who could be held liable for an offence under this clause.

Dr A.D. BUTI: I refer the member to the previous clause, which defines what an officer is.

Clause put and passed.

Clause 265: Further provisions relating to liability of officers of body corporate —

Dr D.J. HONEY: Chair, just so you are aware, we agreed that we would finish these bills by midnight. In the discussions with the Leader of the House, we agreed that we would leave an hour and a half for the third reading.

Mr V.A. CATANIA: Just so we get it on the record, there was more of a push than a shove—I am looking at the Leader of the House—and we were told that the government would like to have these bills put through by midnight tonight. Unfortunately, we have not been able to get through all the clauses, given the time frame we had. However, to ensure that the minister, the Leader of the Liberal Party and I could speak to the third reading, we have all agreed that we would end the consideration in detail stage at 10.30 pm so that we could wrap up these bills.

The ACTING SPEAKER: Is it not nice that we have not had to get the police officers in to resolve the conflict, member!

Clause put and passed.

Clauses 266 to 353 put and passed.

Title put and passed.

Third Reading

DR A.D. BUTI (Armadale — Minister for Finance) [10.34 pm]: I move —

> That the bill be now read a third time.

MR V.A. CATANIA (North West Central) [10.34 pm]: We went through quite an ordeal on so many fronts after this government imposed the Aboriginal Cultural Heritage Bill 2021. During consideration in detail—correct me if I am wrong, Madam Acting Speaker—we got up to clause 265 out of 353 clauses. It is a very large bill. The opposition had a very short amount of time in which to consider such an important piece of legislation and to consult widely. I will shortly read a statement that was issued by Slim Parker, the vice chair of the Banjima Native Title Aboriginal Corporation.

The ACTING SPEAKER (Ms M.M. Quirk): Is this something that has been raised previously, because you know what rules apply in the third reading?

Mr V.A. CATANIA: Yes. Thank you, Madam Acting Speaker.

As I said during my second reading contribution, this bill, which will become an act, given the fact that the government has the numbers, will defer, delay, cost jobs and create angst. There are more questions in this bill than there are answers. This bill was rushed through. The government did not consider the ramifications down the track of it not being properly resourced so that its mechanics ensured a proper and smooth transition and a smooth process—one that everyone can work towards. This was a great opportunity for Aboriginal people, the government and non-government parties to walk hand in hand and co-design a consultation process and legislation that everyone could cheer and say was a sign of real progress and what closing the gap is all about.

A great opportunity has been missed. It was missed because of the numbers that the government has in this place and because of the changes that the government made to legislation. We heard the detail about co-designing policies and procedures after the legislation was put through without any scrutiny, without people having any say and without lobbying by those people who may be involved in the co-design process. There was no consultation with landowners or the 54 000 property owners who own property over 1 100 square metres. There was no consultation with local government, farmers, pastoralists and, more importantly, Aboriginal people. We heard the words "consultation" and "meeting". Consultation can be defined in many different ways but the definition of "consultation" that was put to me and the opposition through the media was no consultation.

The concern is around the lack of consultation. It is a missed opportunity. As we delve into this 260-page-thick piece of legislation with 353 clauses, we see that this will introduce huge penalties of fines and imprisonment. The power for inspectors to walk onto someone's property with little or no evidence and to seize someone's property with little or no evidence should be of great concern to everyone. That is why this bill is not only about Aboriginal people. The reason behind the bill is to ensure that we can protect our Aboriginal cultural heritage. It is vital that we protect our Aboriginal cultural heritage, and vital that Aboriginal people protect their culture and heritage. This is a great opportunity to walk hand in hand together and create a piece of legislation that we can be proud of in this house; whether we are Labor, Liberal or National does not matter. This was an opportunity missed.

I read out in my contribution to the second reading debate some quotes by a very respected Aboriginal elder and traditional owner, Slim Parker, who is the vice chair of the Banjima Native Title Aboriginal Corporation—BNTAC. I want to read what he issued off the back of what I said in the second reading debate —

> Senior Banjima Elder and Banjima Native Title Aboriginal Corporation … Vice Chair Slim Parker said Traditional Owners have once again been left feeling let down and disrespected by Western Australia's State Government.

Mr Parker and BNTAC are pleading with the State to halt rushing the Aboriginal Cultural Heritage Bill 2021 (the Bill) through parliament, to talk to Traditional Owners and to take this window of opportunity to unite Western Australia.

> While questioning the tactic chosen by the WA Labor Party to push the Bill through, Mr Parker is also unsurprised. He said leaving Traditional Owners and others affected by legislation completely in the dark is trademark of the entrenched systemic racism that still exists in Australia.
>
> "On behalf of Traditional Owners across WA, I ask you Premier Mark McGowan and the Minister for Aboriginal Affairs Stephen Dawson to please publicly announce the reason you have, in 2021, imposed upon us the management of 'Our' cultural heritage. Why are you doing this to us?" Mr Parker said. "It is

> a breach of trust and respect to not allow us time to review and understand a bill that still appears to be an approvals process to enable development," Mr Parker said.
>
> "Premier, you know very well you developed the Bill without giving due regard and respect to the people who will personally be affected. This has happened through a lack of communication and consultation with our cultural decision makers, our Elders.
>
> "Instead, we have a Minister who does not appear to be representing us in the government, instead he is representing the State and industry. It has been this way since colonisation, Aboriginal people have been controlled though legislation and the systems of government which have in-built systemic racism. This Bill is yet another example of this.
>
> "It is the Minister, or people selected by the Minister, who have the final say as to whether our heritage will be destroyed. It is the Minister who decides who will sit on the Aboriginal Cultural Heritage Council. Nothing changes with this legislation—we continue to be controlled by government.
>
> "This Act should be of concern to all Western Australians, industry, investors, employees on projects, and employers. Why? Because people's "license to operate" on country is put at risk by this Act prohibiting Traditional Owners from having free consent."
>
> Mr Parker said Traditional Owners want to work with the Government and industry to address the issues with the Bill to give assurance to all for the future.
>
> "Let's work together to solve those problematic areas in the current Bill, which haunts us now and will do forever if the Government continues on its current path. We have a great opportunity to unite this country and not divide it even more," he said.
>
> In addition, the burden placed on Prescribed Bodies Corporate (PBC) through the establishment of local Aboriginal cultural heritage services (LACHS) will be significant. PBCs need clarity on fees, funding and support to carry out these requirements. In its present form there is no clarity for either PBCs or mining companies on such costs, or timeframes to complete works.
>
> The Bill also ignores the recommendations of the final report from the *Inquiry into the destruction of 46,000-year-old caves at the Juukan Gorge in the Pilbara region of Western Australia*. A few recommendations included: the codesign of legislation; to uphold the United Nations Declaration on the Rights of Indigenous Peoples principles of free, prior and informed consent; and to have the ability to withhold consent.
>
> Many more unknowns remain with regulations to guide how the Bill will operate yet to be written. These regulations will not be legislated, and therefore are open to interpretation and amendments. This has been a major failing of the operation of the *Aboriginal Heritage Act 1972*.
>
> "Despite being dominated and controlled by racist and discriminatory policy and legislation, many of us have had the very good fortune to have adapted academically through schools and universities. Combine this with our cultural knowledge, we are the best placed people to inform this legislation on paper and in practice," Mr Parker said.
>
> "We are not against mining and development, as these provide opportunities for employment and the ability to look after our communities and our culture. But we need the ability to have a say."

That was from Mr Parker.

Dr A.D. Buti: Just as well he didn't listen to your contribution during the consideration in detail. He'd be very disappointed.

Mr V.A. CATANIA: The minister has an opportunity to get up.

Clearly, I think that sums up the feeling amongst Aboriginal people and Aboriginal organisations in Western Australia. Deferrals and delays cost jobs and create angst. As Mr Parker said, this is not about opposing development or the resource sector; this is about ensuring that we can all move forward together to protect Aboriginal culture and provide job opportunities for Aboriginal people. It is not about creating angst and pitting people against each other, which is what this bill does because it is not funded properly. Yet again we see the government come out, make an announcement and there be no detail to the bill and no funding.

The bill changes the landscape of this house. This house on the hill has changed because there is no scrutiny over the legislation that is being put before us, and we have another three years of it. People should be extremely concerned off the back of what happened with the changes to the Legislative Council in the electoral reform bill and now with the Aboriginal Cultural Heritage Bill 2021. Both pieces of legislation were rushed through Parliament. Both have escaped the scrutiny of the opposition and the public of Western Australia. This all adds up, members. This is the start of the end of the government. The reason I say that is the government will put fear into people by not allowing

proper scrutiny of legislation and by putting in all these regulations and then working it out later on. It does not bode well for anyone to have confidence in the Parliament anymore.

There is no confidence because everything is done behind the scenes and done with those who are in favour with the government. That will be the challenge. When we see these committees that will co-design the regulations, it will be interesting to see who is on them and who gets left out because they have criticised the legislation. We will see who gets left out because they are from the other side of politics, or because the government knows that it cannot win over the Pastoralists and Graziers Association, the landowners and the Western Australian Farmers Federation. The government will leave out the Western Australian Local Government Association, which represents local governments here in Western Australia. That will be the test. If the government truly believes in co-designing a way forward, it will include everyone. It has not done so to this point, which leaves us with very little confidence in the government's consultation processes. It will not capture the opportunities presented by the co-design of regulations.

This is a very important piece of legislation. What is the maths on 1972?

Dr D.J. Honey: Fifty years, and then they try to jam it through.

Mr V.A. CATANIA: Fifty years. Is this piece of legislation going to last 50 years? That is what we are talking about. It could be longer; we do not know. We hear "when you were in power" quite often. Guess what, members? You have been in power for five years.

Several members interjected.

Mr V.A. CATANIA: You know what? You now own what is happening. You own the fact that you have changed Parliament. You own the fact that you now provide poor legislation that is not consulted on with the wider public and is rushed through Parliament, with the details being worked out later on. You have changed the way Parliament works, not us. It was not the previous government; the McGowan Labor government has changed it to suit its own purposes. It is changing the electoral system to suit its own purposes. It is unbelievable. The people of Western Australia are waking up to it because of the uncertainty —

The ACTING SPEAKER: Member, you are confining yourself to the bill, are you not?

Mr V.A. CATANIA: The government creates uncertainty with bills like the Aboriginal Cultural Heritage Bill 2021. The very people whose culture the government wants to protect are saying that the government is not doing so. My job is to represent North West Central, which has a large population of Aboriginal people and a large area of Aboriginal cultural heritage. I am the shadow Minister for Aboriginal Affairs, and I am listening to Aboriginal people and their organisations. The government is not.

Dr A.D. Buti interjected.

Mr V.A. CATANIA: Because the minister is not the Minister for Aboriginal Affairs, I give him the benefit of the doubt, because he is a good bloke.

Mr R.R. Whitby: I thought he was a disgrace?

Mr V.A. CATANIA: I did not say disgrace; the minister said disgrace.

The government has missed an opportunity. I know how the Labor Party works. It says one thing and does another.

Several members interjected.

The ACTING SPEAKER: Members, you can only interject from your own seat!

Mr V.A. CATANIA: Waldorf and whoever from *The Muppet Show* up the back there!

The ACTING SPEAKER: I think you will find it is Statler, member!

Mr V.A. CATANIA: Statler, that is the one!

What an opportunity. We know how the party works: it says one thing and does another. The deceit of the Aboriginal people in the lead-up to the 2021 election was based on draft legislation by the former member for Victoria Park—the then Treasurer and Minister for Aboriginal Affairs—which gave Aboriginal people confidence that he was going to make sure that there would at least be the right to appeal the minister's decisions. That is what the former Minister for Aboriginal Affairs put to the people of Western Australia and to Aboriginal people prior to the last election. We all know what happened. I do not begrudge the former member for Victoria Park getting very lucrative jobs, but he should not come out in the media and say that this is very good legislation when he is working for the big companies of Western Australia that can move and adapt to any legislation because they have the ability, the financial capacity and, often, are so powerful that they have the minister's ear. That is my concern.

Government members can say what they want, but I would have expected them to come to this chamber and clapped at what Slim Parker had to say in his statement, because it is pretty powerful stuff that Slim Parker put on paper. But

members opposite did not, because it does not suit them. I know the pressure that the member for Kimberley is under, because one of the most vocal groups against this legislation is the Kimberley Land Council. Like the opposition, the Kimberley Land Council did not see this legislation until 10 past five on Tuesday, last week. It is now a week later and this legislation will go through, with the opposition having very little ability to consult and get advice so that it understands the bill in its entirety. We wanted to ensure that we could get the legal support we needed on a very complex bill that, I will repeat, has huge ramifications for not only property owners with properties of over 1 100 square metres, local governments around WA, and farmers and pastoralists in our state, but also, more importantly, First Nations people—the Aboriginal people of Western Australia. We have missed a great opportunity to co-design a piece of legislation that, when we look back over our careers, we could say we played a role in changing the landscape and rewriting old legislation that did not allow Aboriginal people to have a say and to say no. We missed an opportunity to right the wrongs of the past.

I hope that the government feels some pain over this. I hope it pulls the legislation and that, after allowing time for a proper co-design to occur, it brings it back to the house in 2022. I promise the government that if it says it will properly consult, I am sure the opposition will happily rush the bill through Parliament based on the fact that everyone has been consulted and we know what the government is proposing. We know it needs to change; it is concerning for all citizens of Western Australia.

I think the government has missed the mark, but, more importantly, it has missed the opportunity to bridge the gap with the Aboriginal people of Western Australia. Shame on the Labor Party! Shame on the government for basically guillotining debate on this important bill that will have a huge impact on everyone's life, particularly Aboriginal people!

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [10.59 pm]: I also rise to make a contribution to the third reading debate on the Aboriginal Cultural Heritage Bill 2021. At the outset, I thank the minister's officers, staff and departmental staff. I know some members have devoted an enormous amount of time, over years, to this bill, and I thank them for their time.

As I said in my second reading contribution, this is an extremely important piece of legislation, which makes it all the more unfortunate that it is being dealt with in this way. As the member for North West Central has pointed out, there are significant and important members and organisations in the Aboriginal community who do not believe they were properly consulted on this bill. I have made the point many times in my contributions during consideration in detail that a very large number of people right across the state of Western Australia are completely unaware of what is in this bill. I heard the minister say that there was extensive consultation and people who are affected by the bill had been consulted, but the proof of the pudding is in the eating on this one. If that consultation had been effective, I would not have had the head of the Western Australian Farmers Federation saying he had no idea what was in this bill.

Tonight I was at the excellent function put on for service people by Legacy and the RSL coming together and getting parliamentary support. The Minister for Police was there. The member for Willagee hosted the event. It was a great event. There were a number of senior figures from the mining industry there. I talked about this bill briefly to some of those figures and they were unaware of it. Some of them had seen a draft of the bill a year ago, but none of them were aware of the 100 changes that have been made to it. From discussions with the Chamber of Minerals and Energy, I am not even sure its members have read the bill as well as they might have, although maybe they did. I know that the overwhelming majority of property owners who can be impacted by this bill are utterly and totally unaware of what is in it.

I can understand why the government consulted thoroughly with Aboriginal groups. I accept both points. The member for North West Central pointed out that a number of Aboriginal people and organisations do not believe they have been consulted properly. Equally, I understand and accept the minister's assertions that there was an attempt to consult with a wide range of Aboriginal stakeholders on this bill, and that was obviously important. We are dealing with Aboriginal cultural heritage. It is clearly a group that has been affected. I think everyone in this place accepts that over time there has not been proper consideration of that issue. It has not been dealt with properly. Every member—at least members on this side who spoke, and we might talk about that a little bit—accepts that there was a need to improve. Juukan Gorge obviously brought that into very sharp focus, but it really brought into focus a matter that was under consideration.

It was important that that was done, but, equally, government is for all people. Members may feel a great moral imperative around this, and, clearly, the minister feels very passionately about it, but we are here to represent all people. When we look at legislation, we look at the impact on other people. Even in criminal legislation, we still look at the human rights of criminals. We do not say that the government can do whatever it likes to criminals—that it can put them in whatever facility it likes, treat them any way it likes or remove all their civil liberties. Even when we are dealing serious criminal offenders, in this place we look at the other side. In a previous life, the Attorney General was a passionate defender of people who had been on the wrong side of the law. He stood up and said those people

should be properly defended. That is an extreme case. Here we are talking about ordinary members of our community who own property being impacted by this legislation. They are utterly and totally unaware. They are not aware that if they do something that damages Aboriginal cultural heritage, even by accident, there is no defence. This bill specifically excludes the criminal law defence of accident. I will tell members: I value human life above all else, above physical things; above property. I think our prime responsibility is to defend it. Even if someone kills someone, they have the defence of an accident. An accidental death is a defence. This bill specifically says that even if it is an accident, that is no defence, and it lists serious penalties if a person causes an accident. That will apply, potentially, to every single property owner in the state of Western Australia who has a piece of property over 1 100 square metres. It is not just those 54 000-odd properties; it is every single person who carries out significant work on those properties. Whether it is a contract seeder, a plumber digging a trench to install plumbing or some other person, it will run into the hundreds of thousands of people who will potentially be impacted by this legislation.

I can pretty well guarantee that if members talk to some guy who is doing it tough—who goes out in his 10-tonne truck and excavator to dig trenches on properties right across metropolitan Perth—he would have no idea whatsoever that he could potentially face a million-dollar fine. Under this bill, he could potentially face five years in jail. I heard the minister say, "Oh well, you've already got an Aboriginal Heritage Act and that already applies." Technically that is true, but it is rarely, if ever, applied except for major developments, major mining activities and the like. It, effectively, does not intersect with all property owners. The minister pointed out that under the bill, it could affect even more people, but in reality it will not. It is not something they have to think about because there is no enforcement.

As we heard during consideration in detail, this bill will impact on a very large group of people. We are also likely to see much more interaction. Enormous infrastructure is being set up to support all of this. In effect, every prescribed body corporate in Western Australia—I think there are almost 70 of them; I am sure someone can tell me the exact number—will be a local Aboriginal cultural heritage service. That is the likelihood because this bill covers the whole state, from Kununurra to Esperance and all points in between. It covers all crown land as well as private property. All the area where native title was extinguished in the south west and the midwest, and through the recently completed settlements, will be subject to a series of organisations managing this. We hear that inspectors will be appointed. I assume that it would make sense to appoint an inspector in every one of those jurisdictions. Obviously, departmental inspectors will be appointed. This is not equivalent to what we have now. A whole apparatus and a whole infrastructure is being constructed, which I will go on to talk about. I have enormous concerns that the government has massively underestimated the sheer physical effort required for the administration and governance of that.

It is extremely disappointing that, again, government members have been gagged. The member for Kimberley was the only speaker. I enjoyed the great majority of her contribution, but not the last little bit; I thought that was unnecessary. Nevertheless, it was a heartfelt contribution from someone in this place who has experience and probably more immediate connection with the concerns that this bill is set to deal with than the rest of us. I appreciate that contribution, but none of the rest of you contributed.

Again, the Premier used his authority, his power, to just rush through this bill—gag it through—for no reason. As I said, the great majority of people who will be, or could be, potentially negatively impacted by this legislation are unaware of it. They have not had any consultation and are unaware of the provisions in the bill. There was time to do that; there was no rush. This legislation is four years or more in the making and Juukan Gorge happened 18 months ago, so there is no imperative. The government could have had decent consultation, time to consider some of the matters and concerns raised, and time to ease concerns and fears in the community about whether this legislation will be onerous, whether it will introduce costs or delays and whether people will be inadvertently subject to penalties. The government could have done all that in a calm and considered way. Instead, we have had this unseemly rush. Why? We have not been given a single reason why this bill has to be rushed through now. There is an act in place already and heightened awareness about this issue within organisations. It is very unlikely that we will see a Juukan Gorge incident in the next six or 12 months. I imagine every CEO in every mining company is really making sure that they are dotting i's and crossing t's because they saw what happened to Rio Tinto's international reputation when it did what it did. Having said that, Rio Tinto did something that was actually authorised by a minister and sustained through to this government.

Nevertheless, why does the Premier have to do this? It is an abuse of power. There is no way that I can give a proper contribution on this bill, even in consideration in detail, because I simply have not had the chance to get feedback from other people. I have had a small amount of information emailed to me and I have had discussions with some people. I think that undermines the integrity of this bill, but that is what we expect to see. The government is only seven months into its term and this is what it is doing already. I shudder to think what is going to happen in this place over the next three and a bit years.

I was disappointed in the way that the minister handled this bill. I have participated in a lot of consideration in detail. I have participated in very willing consideration in detail on certain matters, including, as I mentioned, bills

managed by the Minister for Planning and the Minister for Mines and Petroleum. They are two fierce government warriors who conduct their consideration in detail with good grace and understanding and without making offensive assertions, yet with this bill we had exactly that—offensive assertions and constant insults. It was the least professional handling of a bill that I have seen in this place. Again, I think that is really unfortunate. It is an important topic and there is no more virtue on one side of the chamber than the other. Government members said, "We're more virtuous because we consider this issue. We're the virtuous people and you're the unvirtuous." I find that argument deeply offensive. There is no more concern about Aboriginal cultural heritage on the government side of the chamber than there is on the opposition side. Our job in this place is to represent everyone. I think the member for North West Central exemplified that very well.

The comment that was made was: which side do we stand on? It is not a matter of standing on a side; it is a matter of testing the legislation. The member for North West Central tested the legislation. He has a range of constituents, from pastoralists to those in townships and remote Aboriginal communities, and he has to come in here and test the legislation for all those parties. It is not a question of which side we stand on. We have not formed a final opinion on this legislation because we have not had the time to review it. We have had a bit of time to go through at least two-thirds of the bill in consideration in detail, but not the final third. We will consider it. As we on this side have said consistently, we recognise that Aboriginal cultural heritage needs better protection and we recognise that Aboriginal people feel, and have been, sidelined in that. One of the positive aspects of this bill is that it will bring Aboriginal people to the centre of that process, and that is not something that we object to at all.

Dr A.D. Buti: That's nice.

Dr D.J. HONEY: That is important. We also have to examine the detail in the bill. A range of significant issues are raised in this legislation. I have a concern that this legislation could create division within our community. I think that with broader consultation and some changes to the bill, that could have been avoided. I am concerned that given that there is no defence of accident and that people could be subject to enormously onerous penalties of five years' jail and a $1 million fine, that may encourage people not to report Aboriginal heritage. Let us be frank about Aboriginal heritage. We are not talking about the bill having a greater impact on metropolitan Perth. Of course there is Aboriginal cultural heritage in metropolitan Perth, but a lot of it has been damaged or has been difficult to recover simply because houses, roads and whatever have been built on the place. This will apply across the whole state, and many of the areas are intrinsically remote. There are no people there. Farmers in the south west, where there has been perhaps the greatest disruption to Aboriginal culture generally and to Aboriginal people, have a deep respect for Aboriginal cultural heritage. If they are aware of a significant site—for example, a burial site—on their property, it is fenced off and left alone. People respect that. In many cases, the only people who are aware of that particular cultural heritage are the farmers, because there has been such dislocation and disruption in those Aboriginal communities, unlike in the Kimberley and Pilbara where there has been greater continuity.

I am concerned that the provisions of this bill are onerous, especially specifically excluding the defence of accident. People will feel that the best thing to do is to say nothing. I think that is a tragedy. I have thought this for some time. I have been aware of this as an issue for some time. The extreme penalties in this bill mean that people will say, "I'll avoid this situation altogether. I'm the only person who is aware of this, so I'll say nothing" and it will just disappear. That will be a loss for all of us. Obviously, the greatest loss will be for the Aboriginal community that loses that heritage. That will be lost forever, but it will be a loss for all of us. I am proud of the history of our nation. I am not proud of everything that has happened in the history of our nation, but I am proud of the fact that we have this continuing culture that has been there for tens of thousands of years. That is unique in Australia and it is something that we can all share pride in. I think it is terrible. If we lose any of that history and heritage, it will be a bad thing. I am concerned that the way that this bill is written will encourage that. I know the view is that these very serious provisions are needed to discourage people from doing the wrong thing, and I am sure that that is the case sometimes. But because people will have to disclose information that no-one else is aware of, that, I suspect, will encourage people to stay quiet even more and to say nothing. The tragedy of that is that that history will be lost to everyone. It will be lost to the Aboriginal community and to the wider community.

Funding was mentioned during consideration in detail and we asked a number of questions about that. I think that the funding applied to this is a mere fraction of the funding that will be required. Just think about this, members: this bill will be onerous for not only proponents, but also local Aboriginal cultural heritage services. Some of the larger corporations—the Bunuba people, the Yamatji, the Kimberley Land Council and some of the other big groups—are big organisations. They are full of really impressive professional people. They have all the governance systems. They have accountants. They have computer systems. They have really good offices. They are really set up. They can handle this. This is just another thing that they will handle. They are very large, well-oiled organisations. But the majority of the 69 prescribed bodies corporate across the state—I think that is the correct number—probably will not. They are small groups. They do not have the governance systems and processes.

A lot of Aboriginal groups in the south west of the state, in particular, where native title has been extinguished, have not had larger settlements that come from mining operations enabling them to build up large organisations.

They will have to do all that. They will have really big responsibilities under this legislation. They will have to make sure that they understand it properly. They will have to have reporting requirements. They will be handling moneys and will have to have governance processes around that. They will have to have accountants, people in offices and administrative staff. I am not trying to gild the lily here. I think they will feel an enormous burden. This is a very complex piece of legislation. It is no simple matter to go through and understand it, but they are going to have to comply with it; it is not just the proponents that will have to comply with it. I really do genuinely believe that this will put a huge burden on them, and I do not believe, in many cases, that it will be practical for them to recover all the cost of that through fees, which I know is the model.

Again, when a large group, one of the well-organised groups in the Kimberley or Pilbara, is dealing with large mining organisations and has a lot of money coming through settlements and the like, they will be okay and will get by, just like the big mining companies will get by. This is not a bump in the road for the big mining companies. They do most of what is in this bill already. This bill may codify it a bit more, but they already do broad consultation. They routinely engage with elders and have Aboriginal people on their staff and so on. But for the other PBCs, the much smaller ones, this will be a real administrative struggle. I think the government seriously needs to look at their capacity building and make sure that all the frameworks are there. It is going to be a huge task. I do not think that $11 million will even touch the sides. The money that has been allocated will not even allow what needs to be done to be developed, I do not think.

I also see, on the part of government, that this legislation will now apply in detail and impose severe penalties on every single government department. Government cannot escape this. They will all have to deal with it in exactly the same way. I think that the responsible department—the Department of Planning, Lands and Heritage—particularly in the first few years of the bill's operation, will have an enormous administrative load. People will want to establish precedents, and the local Aboriginal cultural heritage services will be asking for support and help. I heard the minister say that we will see the regulations that will codify which activities will and will not be covered, but, given the penalties, I think that in the first instance anyone who is doing any work will err on the side of caution. People will over-report, over-apply and over-engage with government because they will not have any certainty and they will not want to fall foul of the legislation. The minister might say it is a good thing that they will do that. Good-o. That will be a good thing if it makes it clearer and everyone has a clear understanding. However, there will be a huge workload for the department because of that. Again, I do not believe that sufficient regard has been given to that.

I said earlier that I have spent a lot of my time focusing on landholders. The big miners have been well consulted with and, by and large, the Aboriginal community and stakeholders have been consulted with and their concerns have been covered. When I looked at the legislation, I saw that the Aboriginal cultural heritage issues had been covered. Certainly, we can see that most of the 100 changes that were made to the legislation took on the concerns of the Aboriginal stakeholders for this bill. The reason that I focused on landholders, as I have said right from the start, is that I do not believe there has been adequate consultation with all those groups.

The member for North West Central raised the issue of the right of veto. Many people in the Aboriginal community would like that right, but the government said that ultimately the minister would have to decide. I can understand the public policy reason for that. This legislation will work as intended for the big end of town because there will not be a right of veto. Ultimately, it will be a ministerial prerogative to decide contentious matters. However, we could end up with an effective right of veto for the small operators and landholders because some guy with a hobby farm in Baldivis who is impacted by this legislation will not appeal to the minister, and nor will he be able to. I think we could end up with the very unequal situation of this legislation impacting very dramatically on people who are of limited means, whereas the big end of town—let us face the reality: it was Rio Tinto that blew up Juukan Gorge, not a hobby farmer in Baldivis—will not be affected by it. Rio Tinto was affected by what it did, but it will not be affected by this legislation. However, this legislation could have a very dramatic impact on the small operators and landholders.

There are other matters, including the flaw in the bill that enables the CEO of the department and the Aboriginal Cultural Heritage Council to define "compensation". I think that should be appealable. I cannot think of any other situation when that has been the case.

It is a real pity that this legislation has been done in this way. With proper consultation, some of these issues could have been fleshed out properly. That would have given us a much better opportunity to form a final view rather than the position we are in at the moment. Clearly, we are not opposing the legislation, but we cannot support it either because we simply do not have enough information to do that.

DR A.D. BUTI (Armadale — Minister for Finance) [11.29 pm] — in reply: Firstly, I would like to thank all the stakeholders, particularly Aboriginal people, who were heavily engaged throughout the consultation phase. Secondly, I thank Hon Ben Wyatt, the former Minister for Aboriginal Affairs, for all his work over the years on the development of this bill. Thirdly, I thank Minister Dawson, who brought this bill to the stage it is at now. I am very pleased that I have the responsibility to bring the Aboriginal Cultural Heritage Bill 2021 to this house. It is a great privilege.

Fourthly, I would like to thank the staff of the Department of Planning, Lands and Heritage, the Department of the Premier and Cabinet, the Parliamentary Counsel's Office and the State Solicitor's Office for their work over the past few years to review the 1972 act and develop this very important piece of legislation. I thank all those who have worked on this legislation, particularly my advisers during consideration in detail—Mr Hayden, Mr Rodriguez and Ms Song.

I do not want to reflect too much on issues raised during consideration in detail as I believe I responded to those at the time and in my second reading reply. However, I would like to take this opportunity to stress that this bill will not place an additional burden on landowners with lots larger than 1 100 square metres. Under the 1972 act, all landowners, regardless of their lot sizes, are already subject to the requirements of the 1972 act when they wish to undertake an activity that may harm an Aboriginal site. The new bill will take a pragmatic approach to managing activities that may harm heritage. Unlike the 1972 act, the bill will provide exemptions for residential lots of up to 1 100 square metres. This acknowledges that such lots have size constraints that limit where dwellings or ancillary structures can be constructed. I also note that this size would not capture anything equal to or under the old quarter-acre lot size, which many will be familiar with. To be plain, if someone has a lot smaller than a quarter acre, they are exempt. For larger lots, the bill will provide a balanced approach that needs to be applicable across the state.

The bill will provide certainty around processes and decision-making by specifying activities that require approval should they harm Aboriginal cultural heritage and by including a due diligence process that outlines the pathway for evaluating whether an approval will be required. The due diligence process will consider existing land use and prior disturbance and will be subject to co-design with stakeholders. The co-design process will allow parties to contribute to the finalisation of the activity categories that will result in well-informed consultative decisions regarding the constitution of the activity tables. The co-design will allow for discussion of whether any other activities such as swimming pools and wine cellars, as mentioned by members in consideration in detail, should be exempt or not require approval under the new legislation.

I should also state that much attention was paid to the inspection powers. These powers are consistent with other state legislation in other jurisdictions. The opposition needs to decide where it stands on the bill. On the one hand, it claimed that the bill will significantly impact landholders, yet, on the other hand, it said that the bill does not go far enough to protect Aboriginal cultural heritage. Some of the points we heard from the opposition hark back to the days of scaremongering thrown around during the native title debate. Back then, the suggestion that Aboriginal people being provided with well-warranted rights and legal privileges would somehow halt development or prevent people from enjoying activities on their land turned out as expected—to be an exaggerated myth. That was in the 1990s and it is now 2021.

Mr D.A. Templeman: Harking back to Richard Court.

Dr A.D. BUTI: I hope that as a state we are beyond such scare tactics when the only outcome is division within the community.

Going back to the Richard Court days, the legislation that he put up, as I said in my speech, was defeated 7–nil in the High Court, because it was not only inconsistent, but also in contravention of the Racial Discrimination Act. How dare any conservatives tell us that we are not protecting Aboriginal culture!

It is widely acknowledged that the 1972 act does not provide a useful supporting framework to promote and encourage good relationships between Aboriginal people and land users, which is critical to ensuring that the protection of Aboriginal cultural heritage and economic development can coexist successfully. We know that, irrespective of the outdated standards set by the 1972 act, a number of organisations with operations in WA have voluntarily adopted international standards of best practice in relation to Aboriginal cultural heritage in this state. At the core of this best practice approach is a focus on achieving good heritage outcomes through the making of agreements founded on respectful and positive relationships between land users and Aboriginal people.

This bill will build on this agreement-making process and will cement best practice agreement-making principles. The legislation includes the requirement of informed consent for management plans agreed to between proponents and Aboriginal partners. This means that consent is given voluntarily without any coercion, intimidation or manipulation, and includes full and proper disclosure by the proponent of the method, and other feasible alternative methods, for carrying out their proposed activities. No Aboriginal cultural legislation in Australia includes the requirement for informed consent. This is best practice. The bill includes a clause to limit the circumventing or contracting out of provisions of the proposed act by contractual terms in private agreements between proponents and Aboriginal groups, often referred to as a gag clause. This is a huge and significant change in the balance of power—including an old and outdated agreement. All Aboriginal cultural heritage permits and management plans approved or authorised under the bill will be subject to a standard condition that requires the proponent to notify the Aboriginal Cultural Heritage Council of any new information about the existence or the characteristics of Aboriginal cultural heritage. This condition will also apply to transitional section 18 consents, being those section 18s that were applied for and granted during the transitional period.

The bill needs to be seen in the context of the 1972 act. It takes enormous steps to ensure that there is a real and effective Aboriginal voice in decisions impacting Aboriginal cultural heritage. The bill will strike a balance by ensuring Aboriginal people are at the heart of agreement-making and have a real role in negotiating outcomes to agree on how proposed land uses can proceed without causing the hurt and distress that damage to important cultural places or objects creates for Aboriginal people.

This bill will present a transformative, contemporary and respectful vision for the management of Aboriginal cultural heritage in WA. It will build on the many successful examples of collaboration between Aboriginal people and industry, and empowers traditional owners to negotiate agreements that can deliver broad outcomes and benefit their community. This is the most progressive Aboriginal cultural heritage legislation in this country. It is the only Aboriginal heritage legislation in Australia to require Aboriginal people to give informed consent for agreements reached. It will be the only legislation in the nation that provides for penalties to be paid into an Aboriginal cultural heritage compensation fund to provide compensation to an Aboriginal person, group or community in respect of Aboriginal cultural heritage that has been harmed. It is the only legislation that responds to a gag clause; it kills them off. And it finally ensures Aboriginal voices are heard. The legislation includes the highest maximum penalties in the country for harm to Aboriginal cultural heritage.

For far too long Aboriginal people have been disempowered under the 1972 act and they have not had a voice in how their heritage is to be managed, which has resulted in Aboriginal cultural heritage being damaged or destroyed against their wishes. This has to end. This bill seeks to address past wrongs. No longer will Aboriginal people be observers in matters pertaining to their heritage. They now have statutory roles in the legislation and will be actively involved in heritage matters. No longer will Aboriginal people be silenced by gag clauses, thereby allowing Aboriginal people to object to activities they see as detrimental to their heritage and also request the minister to intervene. No longer will Aboriginal people be subject to a government body asserting the significance of their heritage. Aboriginal people themselves will determine the importance of their heritage. This bill supports the pursuit of self-determination by traditional owners across the state through the designation of Aboriginal cultural heritage services. This is aligned with the government's Aboriginal empowerment strategy and the Closing the Gap implementation plan.

This bill will place Aboriginal cultural heritage centrestage to appreciate its importance to Aboriginal people and the wider community, and to preserve its value for generations to come. This bill absolutely will deliver better protection for cultural heritage in Western Australia, and I encourage the community, particularly the Aboriginal community, to understand how important these changes are.

I encourage Aboriginal communities and decision-makers not to be captured by those who have long since profited in their roles as gatekeepers of relationships between proponents and Aboriginal people. These new laws mean that the right Aboriginal people get to determine how their culture is to be considered, valued and managed. This government is immensely proud to progress this once-in-a-generation transformative legislation to Parliament.

I commend the bill to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.