

ABORIGINAL CULTURAL HERITAGE ACT — REPEAL

Motion

HON DR STEVE THOMAS (South West — Leader of the Opposition) [10.03 am] — without notice: I move —

That the Legislative Council acknowledges the Cook government's backflip on its Aboriginal Cultural Heritage Act 2021 and the associated regulations over the weekend, and as a result notes that —

- (a) the legitimate concerns of the landholders and the community were ignored by the government for months;
- (b) the outcome was the result of the government arrogantly rushing flawed legislation through the Parliament in contempt of due process;
- (c) the government arrogantly ignored opposition requests to seek further examination and consultation and to delay the implementation of the act and the regulations when it became obvious they were unworkable;
- (d) the government's disastrous process has caused enormous damage to future heritage discussions and the relationship between Aboriginal and non-Aboriginal Western Australians; and
- (e) the government's incompetence on this issue has undermined its own public support for the Voice referendum.

Well, members, as an old comedy program once said, "How embarrassment!" What an embarrassment. Honourable members, how good was this? Legislation that could not be explained, even with the best will of the public service, was pushed through Parliament and declared urgent in the lower house. We had briefings before the legislation was presented to the opposition, and it was pushed and rammed through, with the government showing contempt for not just the opposition, but also Parliament and the people of Western Australia. This was the best legislation it could come up with. Well, President, let us look at how it turned out. It started on 1 July. It is now 10 August and it is dead. That is the performance of this government. That is the performance of the Labor Party on legislation that it said was so critical. Let us say at the outset something that has been said repeatedly by, I think, everybody in this debate: the genuine protection of Aboriginal cultural heritage is important. The government said it, the opposition said it, the Western Australian Farmers Federation said it —

Hon Wilson Tucker: The crossbench said it.

Hon Dr STEVE THOMAS: The crossbench said it. The Pastoralists and Graziers Association of WA said it.

Hon Darren West interjected.

Hon Dr STEVE THOMAS: Let us not start. I will come back to Hon Darren West in a minute. He is the person who went out and defended the government.

Several members interjected.

The PRESIDENT: Order!

Hon Dr STEVE THOMAS: I have great respect for Hon Darren West because Hon Darren West at least had the courage to turn up at meetings throughout the wheatbelt and country Western Australia. Kudos to Hon Darren West for that. He turned up and ignored the criticism and concerns, told people there was nothing to worry about and backed in this legislation. How does Hon Darren West feel this week? He has had the rug pulled out from under him. He has been embarrassed throughout his entire electorate. I have enormous sympathy for him because it takes courage to turn up, and members should always turn up. I respect the Minister for Aboriginal Affairs—the current one—who turned up on Tuesday and spoke to the crowd of angry people. Kudos to him—he turned up. Hon Darren West turned up. Where were the rest of the regional representatives of the Labor Party? Where were they during those big debates? At least Hon Darren West turned up. He did not have anything sensible to say, but at least he turned up. Let us give him some kudos for that.

Several members interjected.

The PRESIDENT: Order!

Hon Dr STEVE THOMAS: Thank you, President. It is hard for members. You get some outrage when you kick a bruise.

The legislative concerns of landholders throughout Western Australia were raised repeatedly, consistently and constantly, and they were reassured by this government that there was nothing wrong with the legislation and the regulations. As we said, we were interested in protecting Aboriginal cultural heritage, but it should not be unworkable.

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Hon Darren West: But!

Hon Dr STEVE THOMAS: The fact that it is unworkable is the shame of the government.

Hon Darren West: No good ever comes after “but”.

Hon Dr STEVE THOMAS: Is the member saying—because we have had a bit of interjection, President, and I am happy to take up the cause—that the government is now defending its original position, or is it defending the Premier who came out this week and said, “We got it wrong; we overreached and we’re sorry”? Which is it? Bring on the interjection, bring on the argument, because members have to choose whether they agree with the Premier last week or the Premier this week. Are members taking Hon Darren West’s position, who for months said that there was nothing wrong with this legislation, or do they support the Premier’s position today that the government got it wrong? Where is the humility in the Legislative Council? Where is the government’s humility and where has it been over the intervening months?

Because we will run out of time very quickly, I will address a couple of issues that have been thrown out there by the opposition. The opposition raised concerns about this legislation from day one. The opposition raised concerns about the impact of putting in intangible heritage. The opposition raised significant concerns because we did not know what the regulations looked like. There has been discussion in the media about why the opposition voted with the government on a particular division. Let me explain that. Hon Dr Brad Pettitt gave a passionate plea on this legislation. He said that it would not impinge sufficiently upon the property rights of Western Australians and, therefore, he would not support the bill because it did not go far enough. The opposition decided not to support that position. The opposition did not support the Greens proposal that that legislation should be worse not better, and that vote occurred in this place in December 2021. Outside that, the opposition has asked the government to review the act and the regulations and to delay and defer its implementation because it was unworkable. The Premier and the Minister for Aboriginal Affairs have now had to come out and say they got it wrong. They accept it is unworkable. It has not worked. The government is still trying to back legislation that its own leadership says is wrong. Whilst we have this debate—and like I say, I am happy to talk to technical details—its own leadership has pulled the rug out from underneath every member who went out there for months and said this legislation is good legislation. The Labor Party and the Cook government now say this is bad legislation. Why was bad legislation put through this house? It is because of the arrogance of a government that had a massive win in 2021.

Just because we had the COVID pandemic and the government had a massive win and the control of both houses of Parliament, it stopped listening. The government stopped listening to Parliament and the people of Western Australia. The government dismissed their concerns, such was the arrogance that developed in this government and it is time for it to stop because we still see it today. We should be seeing from members opposite a level of contrition. At least the Premier and the Minister for Aboriginal Affairs have apologised. I am hoping that members opposite, if they get a contribution, might do the same thing. I presume the Leader of the House is giving the government’s response to this and I have great respect for the Leader of the House. I am a little disappointed that the former Minister for Aboriginal Affairs is not giving the response to this because I would have thought as someone who had direct authority over this, that would have been good, but I accept that the Leader of the House will no doubt give a passionate defence.

Hon Sue Ellery: Members are entitled to be out of the house on urgent parliamentary business and ministers are often in that position.

Hon Dr STEVE THOMAS: Yes, absolutely. That is fair enough and we accept it. Like I said, I am expressing disappointment. I am not condemning anybody for it.

Let us run through where we are. I went to numerous meetings in regional Western Australia on this legislation. I attended meetings in Perth where members of the Department of Planning, Lands and Heritage came up to try to explain it to people. The department, in my view, could not explain how the legislation and the regulations were going to work. They could not explain specific impacts. They could not describe how this legislation would impact on landholders in Western Australia. The government was clever. It said it would apply only to blocks over 1 100 square metres so the average quarter-acre blocks, and less, in metropolitan Perth were exempt. There were calls from regional communities and farming sector to have it applied to everybody.

Hon Darren West: You agreed with it.

Hon Dr STEVE THOMAS: No, I will get to it, member. I do not believe that if we blight one group of people, it is acceptable to impose that blight on everybody as a punishment. If we have a negative impact on one group of people, sharing that with everybody is not the response. The response needed was to change what the government was doing, not simply to apply it to everybody. I understand the farming community asking why every quarter-acre block and less in Perth is exempted but not us—“Give it to them too so then they will understand.” Spreading the problem is not the solution. I never said it was the solution and I argued against it. The solution was to put

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in a regime that might work. It was not the case. But the government refused to listen. Even when the opposition presented a petition with a massive number of signatures, a petition at that point a few short weeks ago, dismissed arrogantly by the state government, ignored by the Premier, dismissed as an e-petition and not a real petition at one point—dismissed.

Hon Darren West: Because in that house that is right. In the Assembly, it is not real.

Hon Dr STEVE THOMAS: That does not matter. Thousands and thousands of —

Hon Darren West interjected.

Hon Dr STEVE THOMAS: You are right. You are technically right, Hon Darren West. In that house the difference does not matter.

The PRESIDENT: Order! Including for having your back to the chair, order!

Hon Dr STEVE THOMAS: Hon Darren West is right; in that house the rules are different. That is no excuse for the dismissal of the concerns of ultimately tens of thousands of Western Australians who faced negative impacts based on the legislation that the government presented. It was arrogant. I was hoping with the change of Premier we would see a change in the level of arrogance that this government demonstrates. I was a little encouraged this week. It was a weekend of backflips over all sorts of things. I was encouraged to see the government, the Premier and the Minister for Aboriginal Affairs apologise, but it did not last long. We got to the start of this week and we have the same old government coming into the house and demonstrating the same old evidence. It is time for that to change. Enormous damage has been done. The actions of the government in not being responsive to the landowning community of Western Australia has not only damaged its relationship with landowners across this state—and it is damaged. The inability of the government to put forward legislation that functioned and worked properly has damaged the relationship of the government with Aboriginal people in Western Australia. It has damaged the relationship between Aboriginal people and non-Aboriginal people in Western Australia. It has set Aboriginal people against Aboriginal people. It has divided the community. It has made the situation worse and it has probably set Aboriginal cultural heritage—the genuine cause and argument for the protection of Aboriginal cultural heritage—back by years, if not decades.

Hon Shelley Payne: How much responsibility are you going to take for that, for your actions?

Hon Darren West: I think you need to shoulder some of the responsibility.

Hon Dr STEVE THOMAS: Well, Hon Darren West, let us take it at its absolute facts. The government announced this legislation. It pushed it through Parliament. It dropped the regulations. It said they were perfect and then five weeks after its implementation it withdrew them and threw them out because it said they do not work and it apologised. How much responsibility does the government think the opposition should take for that? How much responsibility does the government think the crossbench should take for that? The government put legislation in place. The government came back and said it messed it up. We did not help the government write the legislation. We did not even see it before the briefings came along. We did not help the government write the regulations. We did not see them in advance either. How much responsibility does the government think it can handball to the opposition? I know it has tried. The government has gone out there and said the opposition supported it, too.

The opposition supported the government's intent to genuinely protect Aboriginal cultural heritage. It did not support the government's bungles, incompetence and the presentation of that intent. It did not support the government's utterly incompetent delivery. The opposition has always said that genuine Aboriginal cultural heritage should be protected. It has always said that. We copped some criticism for that. I can tell Hon Darren West about some of the meetings that I went to in regional Western Australia. I am on the record. I put it in the press. I said it in the media. I said I am not out to cause hysteria. I am not out to make this worse than it is. I tried to tell people in those meetings how to deal with the act. I copped criticism for that. I went to meetings and other people there said I sounded like an apologist for the government and I was trying to explain how the legislation works. I went to meetings and tried to explain how the government's legislation works. There were no Labor members at the meetings I went to. I was trying to explain it. We do not need to be hysterical and make up stuff about this. The legislation we have is bad enough. There is enough to be concerned about in this legislation in reality; we do not need to exacerbate that. We do not need to exaggerate the problems we are going to have. There are plenty of real problems that we need to address. I am on the record. I put it in opinion pieces. I did it everywhere.

There were a couple of key issues that I addressed. This government made such a mess of this legislation that I called upon the leadership of the Aboriginal community to try to pick up the pieces and talk about their intent. The voice that was lost in this debate was that of the Aboriginal community. Whilst this government was running through its incompetent process, there was a role for the Aboriginal community to lead the debate and come out and say, "Well, actually, we're not trying to impose upon the farming community. We're not trying to stop you planting crops or diverting water or putting a pump in place; we actually want to protect genuine places of Aboriginal cultural

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heritage.” I thought that voice was missing. When the debate was going on, I was out there trying to tell people how to work with the legislation. Government members were absent. Ultimately, where I was in the south west —

Hon Kyle McGinn interjected.

Hon Dr STEVE THOMAS: The one person whom I know repeatedly went to meetings was Hon Darren West. I have already praised him for that, because he did turn up.

Hon Kyle McGinn: So I didn’t show up to meetings?

Hon Dr STEVE THOMAS: I am talking about the meetings that I went to in the south west. The Labor Party was not present in the south west.

This legislation has done enormous damage to the government, but it has done even greater damage to the community harmony that I suspect it was supposed to deliver. It has done enormous damage to the relationship between Aboriginal and non-Aboriginal people. Members of the government might just have killed off the Voice. I am not a supporter of the Voice—I make that plain and obvious. I am not so much actively campaigning against it, but when we get to the campaign process, I will not be a supporter of the Voice. I think we are one people under the Constitution, so I am not a supporter of the Voice. For those members opposite who are, they have not done themselves or their federal colleagues any favours. I can imagine the pressure that came from federal Labor MPs in recent weeks, who would have been going, “Holy mackerel; you’re killing us!” Information about the dysfunction around the Aboriginal Cultural Heritage Act was going over to the eastern states. People in the eastern states were talking about it. They were going, “Wow; if this is what Labor is going to do in Western Australia, imagine what it’s going to impose upon us! We cannot trust the Labor Party on this issue.” That was everywhere. I cannot make a direct relational link between declining support for the Voice and the incompetent performance of the McGowan and then Cook Labor governments on the Aboriginal Cultural Heritage Act, but I can guarantee that it did not help! I say to those government members who are going to go out and campaign on the Voice that they should be prepared to answer questions about what the Aboriginal Cultural Heritage Act was going to do before they start to claim any high moral ground on the Voice.

Hon Lorna Harper: I’ve already been out campaigning on the Voice and I’ve not been asked.

Hon Dr STEVE THOMAS: I bet the honourable member will be, because people are asking questions about the government’s performance on this. People are asking why the government was so arrogant and dismissive of those concerns. I keep saying that that is what happens when there is a one-sided win in politics. When a government walks in and leaves an opposition that can make noises but cannot win a single vote in either house of Parliament, it is a dreadful outcome for democracy in Western Australia or any jurisdiction. What we get is the kind of arrogance and dismissive nature of the current government.

Several members interjected.

Hon Dr STEVE THOMAS: It is a disgrace. It will start to change, honourable members, because the true colours of the Labor Party in Western Australia have been displayed. The dismissive arrogance of this government in what should have been a sensible, constructive debate will be forever to the shame of the Labor Party in this state. In my view, the damage it has done is immeasurable.

HON MARTIN ALDRIDGE (Agricultural) [10.24 am]: It is with some sadness that I rise today to speak in support of this motion, because this situation was completely avoidable. In the time that I have got, I am going to try to cover off some of the reasons why I believe that to be the case. Members will remember that in 2021, we had a situation in which we had a new Parliament, a reformed government and COVID-19 spreading throughout our community. In late 2021, the Aboriginal Cultural Heritage Bill and the Aboriginal Cultural Heritage Amendment Bill were introduced into the Legislative Assembly as urgent bills. I looked at some of the speeches in the Assembly from that time; members had been effectively briefed on the Tuesday night on bills that they did not have a copy of, and then the debate commenced the next day, on the Wednesday. I think there were some 100 clauses that the Assembly did not get to in the consideration in detail stage before the government guillotined the bill. We can fast forward to the passage of those bills in the Legislative Council. Quite extraordinarily, this was probably the only occasion in my time in this place when we sat the week before Christmas. Keep in mind that we rise on the last day of November this year. We sat until mid-December—the week before Christmas—in 2021. We were dealing with the police compensation bill, then we had the urgent Aboriginal cultural heritage bills, the puppy farming bill and the industrial relations bill. I think we had about three days to pass all those bills in an extended sitting week. All those bills, in and of themselves, were significant, detailed and, in many respects, contentious, but that was the time frame the government provided for the Legislative Council to scrutinise those bills.

Hon Darren West: You had a month. Only the National Party would think that was too short.

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Hon MARTIN ALDRIDGE: We had two days in this place. Debate started on the Thursday and it was finished on the Tuesday. We then went on to the puppy farming and industrial relations bills. We had two days to consider this bill in committee, honourable member. Keep in mind that on the Wednesday, Hon Neil Thomson had moved to discharge the bill to a standing committee. Remember that, to date, there has been no explanation of why the Aboriginal Cultural Heritage Bill and the Aboriginal Cultural Heritage Amendment Bill were urgent bills. It would be interesting to get some explanation today of why at that point in late 2021, with all the issues we were dealing with—contentious matters and COVID in the community—those bills were so urgent that we proceeded in the way that we did. We had a division on whether the bills should go to the Standing Committee on Legislation, which I understand has not yet met in the two and a half years since it was reformed. The result of the division was ayes, nine; noes, 18. Unsurprisingly, every member of the government opposed the referral to the committee. Of greater note was that there was no government response to the motion to discharge and refer the bills to the committee; it simply went to a vote. I do not know that we would be standing here today having a discussion about repealing the Aboriginal Cultural Heritage Act after five or six weeks of operation had we allowed the Standing Committee on Legislation to do its job, because there was no rush.

The consultation that the government was able to do during this time was interesting. Just about every section of the business community that the government had spoken to said privately that this legislation was going to be unworkable and an unmitigated disaster, but that they could not oppose it, firstly, because of Juukan Gorge, and, secondly, because they would be labelled as racists. They then said that they would make it work. The bigger companies had the money to be able to manage it; they had the money to be able to employ specialist heritage advisers, consultants and government relations people. It was predominantly the small to medium-sized businesses that were turning up to the government or community forums that had the greatest concerns about the impact of this legislation on their lives and livelihoods.

I will quote from the Legislative Assembly on 13 June 2023. In response to a question asked by the Leader of the Opposition, Shane Love, about how prepared we were for the act that was to come into force on 1 July, the Premier responded —

... Every time, like a dog returning to its vomit, these guys trot out their straw man arguments to simply distract members of the community and raise these issues in people's minds. They are undermining harmonious reforms that are about the respectful observance of Aboriginal heritage. These laws are not radical. These laws are ready to go.

That was the thirty-first Premier of Western Australia—the consultative, humble Premier of our great state on 13 June, just days ahead of the bill's implementation. It would be interesting to know how that comment can be reconciled or how government members might characterise the media conference held by the government on Monday of this week. A few days later, the member for Belmont labelled members of the opposition as racist. I wonder how the member for Belmont would characterise her government's actions on Monday of this week.

I also want to draw upon an article that appeared throughout many regional newspapers. I will quote from the *Great Southern Herald* article titled "MP blasts agency for rocky rollout of updated laws". It reads —

A Labor MP has pinned blame for the shambolic implementation of updated Aboriginal heritage laws at the feet of the government agency overseeing the rollout while telling constituents she could "completely understand the angst".

A WhatsApp message sent on June 30 by Sandra Carr to a Chapman Valley community group reveals the Agricultural Region MLC appearing to throw the Department of Planning, Lands and Heritage under the bus over the new regime.

I want to draw member's attention to a principle called "ministerial responsibility". I think it is best summarised in a Senate report of the Legal and Constitutional References Committee from March 2006. I quote paragraph 1.13 —

The doctrine of individual ministerial responsibility is central to the Westminster parliamentary system. In general terms, the doctrine states that ministers are individually responsible to the Parliament for actions taken under their authority. In particular, this relates to the actions taken by the portfolio department and agencies for which they are responsible. In the event of departmental error, the principle requires that the minister accepts responsibility for the mistake and if possible corrects it. If the departmental failure is sufficiently serious, the minister should resign.

That may not be a doctrine that many members of the government are aware of but it is something they should all take responsibility for. They have a very significant caucus and backbench. Members were clearly out there defending their government's honour. Other members were clearly out there attacking their own bureaucracy. What were the other members doing to convince their government, their Premier or their minister that they were not ready to go? Keep in mind it was the opposition's position when we were accused of being racist that the government should

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simply delay the implementation for six months, sort out the regulations, educate the community and get Aboriginal groups onside because they were walking away from this just as quickly as members of the community. But we were called racist. We were like dogs returning to their vomit. I think every member of the Labor government, including the backbenchers, should think about their contributions to where we are today.

HON TJORN SIBMA (North Metropolitan) [10.34 am]: Members opposite might expect me to be somewhat lethal in speaking in support of this motion. I am speaking in support of this motion but I am absolutely not lethal. This is an unmitigated, unprecedented policy disaster. It represents a failure of legislation, a failure of regulation, a failure of implementation, a failure of communication and, ultimately, a failure of political leadership. It has been aggravated repeatedly by an arrogant dismissal of legitimate concerns expressed by the opposition and the crossbench in this chamber, in the other house, by the public and by other industry groups. The arrogant, dismissive treatment of legitimate questions and concerns was the defining feature of the previous McGowan government and, unfortunately, is the principal defining feature of this new Cook Labor government. Hon Martin Aldridge has done us all a service by reminding this chamber of the circumstances under which the act, now to be abolished or repealed at some stage, was debated in this chamber when it was presented to us as a cognate bill in the final sitting days of 2021. A bill of that magnitude, which I think was 353 clauses—intricate, complex and, in parts, very unclear—was not given the opportunity to be scrutinised because of a deliberate choice by the government to deal with it expeditiously. When a note of caution was expressed and we attempted to refer it to the Standing Committee on Legislation, that opportunity the government had to slow down and think about this was rebuffed without any argument or justification.

On 21 June this year, my friend and colleague Hon Neil Thomson brought a motion to this house that effectively called for the slowing down of the implementation of regulations, which were due to come into effect on 1 July. We had this debate on 21 June and some interesting contributions were made by government members to deny the need for the regulations to be slowed down. A contribution was made by Hon Rosie Sahanna and I thought she spoke very eloquently and passionately. The honourable member said at that time —

What is the opposition asking for? Does it think we would be better off keeping the 1972 legislation? That 50-year-old legislation legally allowed the destruction of Aboriginal cultural heritage sites, has ill-defined language and terms that can easily be misinterpreted, has no scope for a tiered approach to impact assessment, does not adequately cover ancestral remains and represents outdated concepts of the rights of Aboriginal people and their heritage. Are we better off with the 1972 act that does not outline any due diligence processes, is not clear on which activities do or do not require approval, does not acknowledge native title holders or knowledge holders and holds no statutory requirement to involve Aboriginal people in decisions on their heritage?

They are very fair observations. As of Tuesday, that is what we are going to get! Effectively, we are now going back to the 1972 legislation, with perhaps some add-ons. We do not know what those add-ons or embellishments are because we have not seen a bill; a bill has yet to be drafted and printed. What the opposition has received is a departmental PowerPoint slide that is effectively the outcome of the Attorney General's cogitations over the winter recess, which brings us back to the time line of this backflip. When did it occur? When did the penny finally drop that perhaps the government should have gone about this process in a more deliberative, considered and temperate fashion? That certainly was not the case on 21 June when we had the debate in this chamber, and it certainly was not the case the week preceding. When we expressed legitimate concerns, we were condemned as racists. I am still awaiting the Premier's apology for that slur.

Hon Kyle McGinn: Sorry?

Hon TJORN SIBMA: "Sorry" is a word that Hon Kyle McGinn is not familiar with, and it is a word that was grudgingly uttered from the Premier's mouth. Unlike my friend Hon Dr Steve Thomas, I do not think genuine contrition was shown on Tuesday.

Several members interjected.

The PRESIDENT: Order! Hon Tjorn Sibma.

Hon TJORN SIBMA: Thank you, President.

I think the Premier was expressing sorrow for his own political predicament. To the best of my knowledge, an apology has not been uttered to the Leader of the Opposition, Shane Love, or any member of the opposition for categorising us as dogs returning to our vomit. That is expressly what it was about; the government was attempting to slur the opposition and just about any person who expressed a view about the unworkability of the regulations.

At the outset of my contribution, I mentioned the five cardinal sins, which can be evidenced through this absolute debacle. To some degree, they are consistent with the five stages of grief, or political grief. I think members opposite are at different stages along that journey. At the start, there was denial; there was plenty of denial in June and early

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July until, perhaps, the Utting poll was released, when they transitioned to the anger stage. The bargaining stage will come next, after which the depression stage will seep in and, finally, there will be acceptance. Some members opposite are at different stages of that journey, but I give them this advice: at least when the Premier was in the hole, he stopped digging. Do not persist defending the indefensible. The government has comprehensively got this wrong and it has comprehensively demonstrated to the entire population of Western Australia that it is not fit to govern. The new Premier has demonstrated that he stands for nothing. What does he stand for now? He had his chest puffed out and finger pointed in June. What does he stand for now in August? Is he standing for a competent government? Is he standing for a government that will listen? Only time will tell. We expect a degree of competence in our government; this government has demonstrated that it is incapable of living up to that. Potentially, it has the time to turn that around, but I would expect a much more chastened and far more deliberate government. Perhaps, from now on, some use might be made of the Standing Committee on Legislation. If the government does not intend to refer any bill to it, or allow any bill to be referred to it, perhaps we should disestablish it entirely. It is now a joke, a mockery and an emblem of an arrogant, dispirited and hopeless government.

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.44 am]: It will not surprise anyone that the government does not agree with the terms of this motion. The Premier announced the change, which is a first, on Tuesday, but some of the commentary suggests that that did not happen. I want to remind people what the Premier said at the press conference on Tuesday. He said —

There's been a lot of confusion surrounding the Aboriginal Cultural Heritage Act that passed our Parliament over 18 months ago. As you know, the laws only came into effect on July 1, five weeks ago now. As we said we would do, we established an implementation group to monitor and listen to any concerns.

...

It has become clear that the legislation now in place is not workable.

...

Put simply, the laws went too far, were too prescriptive, too complicated and placed unnecessary burdens on everyday Western Australian property owners. As Premier, I understand that the legislation has unintentionally caused stress, confusion and division in the community—and for that, I am sorry.

The original intent of the legislation changes in 2021 was to prevent another Juukan Gorge tragedy, and my government will deliver on that commitment. But our response to Juukan Gorge was wrong. We got the balance wrong and what we did hasn't worked. It is crucial that we manage Aboriginal cultural heritage in a commonsense manner so that we can move forward together as a community, so that we can restore confidence in our cultural heritage systems, strike the right balance and provide the community with a simple and effective system, one that ensures all landowners are equal and all have one simple obligation—to protect the heritage of our state.

Since I became Premier, we formed an implementation group to monitor, report and address any issues that arise and help provide options for improvements. As I said, this is a government that listens—a government that listens to everyone in the community. That is why, based on community feedback and following serious consideration, I and the government have made the decision to overturn the Aboriginal Cultural Heritage Act 2021. We will restore the original act from 1972, with some simple and effective amendments. The decision has not been taken lightly. It has been made based upon the best legal advice and after detailed discussion and analysis of the many options ...

I add that that includes listening to our regional members, the community and all the respective industry stakeholders. He continued —

But by reverting to the original 50-year-old legislation, we can reset, end all the confusion and, importantly, strike the right balance. We can ensure Aboriginal cultural heritage is valued and protected. And with simple amendments, we can deliver a commonsense approach and prevent another incident like Juukan Gorge. Importantly, all WA property owners can continue to operate and manage their property just like they have for the past 50 years, without any fear of unknowingly disrupting cultural heritage sites.

It is a commonsense approach to drive Aboriginal cultural heritage protection. All additional obligations placed on landowners in 2021 will be removed. The new legislation will provide confidence to all WA property owners that they can continue to operate on their property just like they have for the past 50 years without fear of committing an offence by unknowingly disrupting cultural heritage. The exemptions that were introduced as part of the 2021 laws will no longer be required under the restored 1972 legislation because every landowner is equal. The changes announced will impose no new burden on landowners.

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In essence, the amended 1972 act will prevent landowners from knowingly or recklessly damaging an Aboriginal site. The act, as proposed to be amended by a bill, will give both relevant traditional owners and landowners the right to seek review of a decision under section 18; that is a critical change. The act will also include an obligation to notify the minister when a person becomes aware of new information. That is critical because that did not happen with Juukan Gorge. Every Western Australian will have an obligation to not knowingly disrupt, disturb or destroy Aboriginal cultural heritage.

This will ensure that the minister can consider the section 18 consent in light of new information and take further steps to protect an Aboriginal site through the new conditions that will be in the section 18 consent arrangements. The section 18 process will be strengthened with these changes, which mainly affect miners and the government's Main Roads. When section 18 has been approved, the proponents will need to notify the minister of any new information. Our amendments will expressly make it clear that gag orders—and this was critical to the Juukan Gorge situation—which constrain traditional owners from raising their concerns will be unlawful. Australian Aboriginal culture is one of the world's oldest, going back at least 60 000 years. These amendments to our existing laws will protect it forever.

I will make some comments about some of those made by Hon Dr Steve Thomas. No one has pulled the rug from under our regional members. I am not supposed to talk about things that happen in Labor caucus, but Labor caucus listened to our regional members, and the Premier and the minister acknowledged that. They listened. Members were able to and did consistently bring issues that they were hearing in their communities to the attention of government. That drove part of our reconsideration of the bill. It is a furphy that we were either asked, directed, requested or in any way required, or even communicated with, by the federal government to take the position that we have taken. We were not. The first communication was when the Premier rang the Prime Minister on Monday afternoon, I think it was, to tell him of our intention.

What this government will not accept is advice on leadership and humility from members of the opposition, who, when they were in government, were led by the infamous emperor in his emperor's palace, and I remind members —

Hon Dr Steve Thomas: You should learn from this.

Hon SUE ELLERY: We have! That is the point! We are doing something that your government, when in government, could never do! Does the member remember the Redress scheme? Does he remember when his government cut that, heartlessly? Heartlessly cutting the funds for people who had been abused while in state care. Does the member remember that? Was there ever an apology for that? Not a word. Does the member remember the debacle that was the build and implementation of Fiona Stanley Hospital? Does he remember what the Premier said at the time when there were sterilisation units that did not work, therefore implements to perform surgery were not actually sterile? Does he remember that? Was there an apology? What did Colin Barnett say at the time? He said, "I am sick of the grizzlers." He said he was sick of people grizzling about things like the sterilisation unit at the hospital not working.

Do members remember when there were changes made to education? Do they remember that? Do they remember when the then Minister for Education went on radio and said there was no intention to make cuts to education? Do they remember that four days later he announced 500 cuts of 350 education assistants and 150 school support officers? Do they remember that? There was no apology. Remember what the then Premier said to members of the parents and citizens association who met with him to express their concerns? Do members know what he said to them? He said, "Get a life!" That is what he said. He said, "Get a life!"

Hon Peter Collier: That is rubbish.

Hon SUE ELLERY: That is what he said! That is what he said.

Hon Peter Collier: You are misleading the house.

Hon SUE ELLERY: I am not misleading the house at all and you will get your opportunity to defend your position. There was no apology! There was no apology whatsoever. He was asked by PerthNow —

But some parents would argue why are we spending money on Elizabeth Quay and a new stadium when we're cutting public education? What do you have to say about that?

What did the Premier say? He said —

What I'd say to you and people listening, (is) get a life.

That is what he said. I will not take advice on arrogance or humility or leadership from people in the opposition. Why was Colin Barnett thrown out of government? It was because there was an accumulation of a whole range of things that he said and did and never took a backward step from. He never acknowledged when he got it wrong. Do members remember the cuts to the funeral fund? Do they remember that? Funds were made available through

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the then Department of Communities for those people who because of their financial situation could not afford to pay for the funerals of their loved ones. He cut it. He cut the money. Imagine finding yourself in a position in which you are already living a life that is incredibly economically disadvantaged and, to save a few bucks, the Premier cuts the funeral funds. Does the opposition remember that? Does it remember the promise to privatise Western Power? How did it go with that? Do members remember that? Do they remember?

Several members interjected.

The PRESIDENT: Order!

Hon SUE ELLERY: Does the opposition remember the debacle that went with Serco running Fiona Stanley Hospital? Does it remember that? Did it ever apologise for getting that so wrong? Did it apologise for lead in the water at Perth Children's Hospital? No, it did not. We had to get elected and fix it. When it comes to acknowledging that we got it wrong, this government and this Premier, within two months of him being in the position, has done what none of what the opposition could do over eight years in government. Yes, we did get it wrong. We did. We have acknowledged that and the Premier and the minister have apologised. If the opposition wants an apology from me, I will give it to them now. We did get it wrong. It takes real leadership to acknowledge that. It takes real leadership to say to our backbenchers, "We want to hear from you on the issues that people are raising with you in your local community." Colin Barnett, when he was Premier, sat in Hale House and completely isolated himself, not just from his backbenchers but also the rest of cabinet. That is not what Premier Cook is about. He has listened and he has acted.

To some extent, some of the points raised are, in fact, correct. We did get it wrong. It was overreach. It was unworkable. Those things have been acknowledged and apologised for. The opposition should get off its high horse when it comes to telling us about leadership and humility, because the runs are on the board. This is one of the things about being in Parliament for as long as I have, and it is a long time—more than 20 years. I have been on the other side. I have been in government, I have been a backbencher, I have been in opposition for eight long years—what does not kill you makes you stronger—and now I am back in government. I have seen various governments. I have worked with four Premiers. I have observed Colin Barnett as Premier and I have observed other Premiers in my time in politics outside of Parliament. I do not remember Richard Court apologising for what Graham Kierath did when he introduced individual workplace agreements, which destroyed the security industry and destroyed contract cleaning. I do not remember an apology for that. We did get it wrong. We have apologised, but I will not accept advice on leadership and humility from the Liberals and Nationals.

HON JAMES HAYWARD (South West) [10.59 am]: I would like to contribute to support this motion. The Aboriginal Cultural Heritage Act fail is an embarrassment, and, sadly, has done significant damage to reconciliation in Western Australia. The government effectively called anybody who disagreed with this legislation a racist, and there has been no apology for that. There have been apologies, as was just pointed out, for getting it wrong, but there has been no apology for the attack on members of the opposition in the other place and on those who did not support the legislation. Of course, the people who did not support legislation were quite wideranging and varied, and included the Kimberley Land Council and other Indigenous people who raised issues. They were also treated with contempt for their objections to this legislation. We know that the ACHA went too far; it had good intentions but completely missed some universal truths. It did not respect private property rights, and it was a recipe for conflict, and we saw the conflict play out. It is positive that the Premier has taken it on the chin and agreed that he and his government got it wrong. It was very brave of Minister Buti to make that position clear.

One of the television shows I do not mind watching is a show called *MythBusters*. Members might wonder why I am speaking about *MythBusters* today. It is a television program that explores a myth—an idea or something somebody says. Somebody might say a can of deodorant can be shot out of a window and knock somebody off a bike 800 metres away. The *MythBusters* guys test the myth to see whether it is possible. In many ways this legislation has exposed some myths we have heard from the Labor Party over the last two years. Every week in this chamber we hear that anything that goes wrong in government, pretty much any challenges that the government faces, is always caused by the previous government and that it is responsible for any difficulties faced by the state. It is a problem because the last government got it wrong. We hear this government constantly talk about financial issues and the track record of the Liberal–National government and how all the problems and challenges associated with the state are all because of that government. Even, as Hon Peter Collier pointed out, going back to Graham Kierath—30 years, or I think it is more than 30 years, but it is a long time ago. The government seeks to push the blame and get rid of its responsibility. This legislation is a myth buster. It is a myth buster because the Labor government had it for five years—over its entire time in government. There is nobody else to blame for this mess. The government has to take responsibility for the entire course of this legislation and it does not have any recourse whatsoever to the opposition or non-government members in this place, this Parliament or previous Parliaments. From that perspective, this complete failure is one this government gets to own all by itself without the opportunity to blame others. It really has exposed the myth that things that go wrong are the result of somebody else's previous policy decisions.

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The idea that people would be vilified and attacked for having a different point of view, for having a position that is not the same as the government's, is pretty low. We have heard comments such as "like a dog returning to its own vomit" and "straw man". Some of those things that were said in the other place were pretty low. It was pretty low politics, and the state of Western Australia deserves better. The Premier needs to own those comments as well. This has set back reconciliation.

The other thing is that the Aboriginal Cultural Heritage Act, like the Voice, at the moment is really a bunch of feel-good talking points that defy logic and reality. Earlier, we heard the Leader of the Opposition say that he thought we were all one nation under the Constitution, and there was an interjection from Hon Darren West saying, "That is what 'yes' means: that we are one people." I think that is what he said. The problem, Hon Darren West, is that, unfortunately, because of all of the promotion of the Aboriginal Cultural Heritage Act the government has been doing over the last few months—telling people it would be good legislation, that it would be good for Western Australia, that people would have nothing to worry about and there was nothing to be concerned about—the Labor Party cannot be believed. This is the damage that the Aboriginal Cultural Heritage Act has potentially caused to the Voice. As others have said today, how our new legislation was rolling out and the difficulties with that was reported all over the country, and the country is looking because it is in the middle of making a decision about how Australia might potentially move forward on reconciliation and working with Indigenous people to bring about better outcomes. That is a very, very worthwhile pursuit and something we should all be engaged in doing. The problem is that people are looking at the model, and the model that was put into place in Western Australia was clearly unworkable. There were warning signs all the way along that it would not work. People were giving that feedback, including Indigenous groups like the Kimberley Land Council and others. Aboriginal groups were screaming out saying that they would not be ready for this legislation because it was too soon. There were calls from people, including the honourable member sitting next to me, saying there should be a delay to allow these things to work more correctly. All of those things were ignored, and they were ignored by the government to the detriment not only of this act but ultimately, I believe, to the detriment to the Voice yes campaign as well because people are connecting the two things. I think that is unfortunate.

In closing, this is a mess that the government must own. This government has been in control of it all for five years. The next time we are in this place, next Thursday or the Thursday after that, and government members attempt to say that it is all somebody else's fault, perhaps they can think about what their government has done, the money it has wasted, the angst and pain it has caused, and the time and energy it has consumed doing this whilst not dealing with other important matters. I think those things need to be reflected on.

HON SOPHIA MOERMOND (South West) [11.07 am]: Many people have communicated with me about the Aboriginal Cultural Heritage Act. Many people from my electorate in the south west felt they were already not being heard because the electorates in the upper house will be abolished. Because I have received many emails about that, I went to the farmers meeting in Katanning. It was notable that the Minister for Agriculture and Food was not there, but Hon Darren West —

Hon Darren West: It was a cabinet sitting day.

Hon SOPHIA MOERMOND: All right.

Anyway, Hon Darren West was there. I felt he was very courageous in being there, and I think that is a shame because a member should not have to be courageous to speak to the people in their electorate. There I noticed something that is relevant to parts (d) and (e) of Hon Dr Steve Thomas's motion; that is, there has been an increase in racism, and that was really obvious at that meeting in Katanning. I think that is an incredible shame. I feel that the relationship between First Nations people and Caucasians, non-First Nations people, has been set back by this, and it will take a while for our society to heal. I also think it is a shame that this has influenced and will influence the debate on the Voice, and that is just so very sad.

HON DARREN WEST (Agricultural — Parliamentary Secretary) [11.08 am]: I am mindful that there is less time than speakers, so I will be very brief, but I have been mentioned a few times today, and I thought it was important to get a couple of points on the record.

Can I acknowledge the wonderful contribution made by the Leader of the House earlier? I think that summed it up better; there is no more that I can say to that. I think it has been a difficult time for the government—there is no question there. It has been a difficult time for some of us as members. I remain committed to better the lives of Aboriginal people in Western Australia. I find it disappointing that not everybody shares that commitment. Why is it that when we try to better the lives of Aboriginal people, hate is poured all over Aboriginal people and it is poured all over those who try? It has been an extremely disappointing time for me.

The intent was good, and the laws were supported by the opposition, but not for long. The opposition talks about backflips and does it with a straight face. The opposition backflipped on this. It went to Rockingham, held a community forum and tried to use the issue. It got its vote up to 17 per cent—well played. It backflipped first

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and landed on its face, and now its leader has changed her mind about the Voice in the last 24 hours. It talks to us about backflips. We have been consistent on this all the way through, but we realised that we got it wrong. This became apparent to me at Katanning. I went to Katanning to listen, and it became apparent to me, sitting in Katanning, that there was so much fear and misinformation swirling around in that crowd. A man stood up and asked this, and I will never forget his exact words: “I have got a 25-acre block. If a carload of Aboriginal people drives past and decide they want my block, can they take it from me?” That was his question. About then, I thought, “We are not going to win this. We cannot come back from here. This is unsalvageable now. If that is the view that people have been led to believe, we are in trouble.” That was the turning point for me: when that person genuinely asked that question.

We have had members talking about how people will get fined or put in jail for building a sandcastle on the beach. We have had members saying that it is \$30 000 to put down a bore, when it is 100 bucks. They have not helped. The opposition will gloat at this and will see it as a little win, but it is not a win. I have the deepest respect for Aboriginal people across Western Australia, and I will continue to work on their behalf to make things better because nobody can say that anyone has done enough to improve the lot of Aboriginal people.

I will read out the meaning of “respect” for members opposite. Respect is —

1. a feeling of deep admiration for someone or something elicited by their abilities, qualities, or achievements.
2. due regard for the feelings, wishes, or rights of others.

That is what respect means, and I think members over there may need to look that up from time to time. We are going to take a step back on this legislation, but we are going to do that so that we can continue to move forward.

HON NEIL THOMSON (Mining and Pastoral) [11.13 am]: I want to rise in support of this motion. We have seen an out-of-touch government and an absolute debacle. I could talk at length about the abuse and the diminishment of opposition members’ motivations when legitimate concerns were raised. The opposition put a position of not opposing the legislation because we believed in its intent. We effectively supported it on the division because we supported the legislation’s intent, but we saw the rollout done in a way that absolutely took the community by surprise, when the regulations came out in April, and that led to a massive backlash because the architecture of these laws was fundamentally flawed. It was not the intent; it was the architecture.

There is a lesson that members opposite need to learn. They need to take a forensic view of their own proposals. They need to base them on sound economics and sound social assessments. When I came to this place, I stood up for my inaugural speech and spoke about my work in the regulatory reform unit at Treasury and how I believed so much in the work put forward by some of the Labor Party’s forebears—people like Paul Keating, who brought in the competition principles agreement and who understood the effects on people of regulatory impacts and overburdening people with complex laws that could never be implemented. It seems that that legacy has been trampled on because of the vibe and because of opposition members’ constant desire just to get on something that gives them a headline about a feel-good outcome but does not actually do the hard work of government. Members opposite are not fit to be in the halls of government. Those Labor Party forebears, the Hawke–Keating Labor Party, knew what they were doing when they did the work in reforming our economy and the banking sector. Now, today, we see attacks on the Governor of the Reserve Bank, for example. Again, no respect is given to the institutions that hold up our economy and support the strength of our community. There is no respect and no assessment. Instead, they go on the vibe. Here, we have the Prime Minister going on a vibe in relation to the Voice, and what disruption and division that is causing.

I stand with Hon Sophia Moermond; I was very disappointed with some of the racist comments that were coming through. Did the government ever stop to think about what it was unleashing when it did not take a measured approach? It does not deserve to stand in the halls of government. When government takes the reins of power, it has to govern in a measured way for all people. It has to consider the real-world impacts of its decisions. We have seen this even today.

I spoke to the Amalgamated Prospectors and Leaseholders Association. There are still operators and prospectors—50 of the tribute agreement people—who have been driven off their leases because they cannot operate because of fear of these new laws. The question is: will they will be returning? That is disruptive and has had a very real economic impact on people going forward.

Several members interjected.

The ACTING PRESIDENT: Order, members! I would like to hear what is going on. The debate is interesting, but might I suggest that the member moderates his tone to reduce the ire experienced on the other side.

Hon NEIL THOMSON: If the members opposite would just listen for once, I could speak in a way that would ensure that they are the humble government they claim to be.

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On the back of the apology by the Premier, I read today in the *Countryman* that he said that the concerns raised were “shrill”. What a disgrace! I thought that was a sexist term about this side of the place. I hope the Premier was not directing that at Hon Libby Mettam, but that is what he said and what was quoted in the *Countryman*. How disgusting!

I hope more apologies are coming from the other side. Members opposite should listen for once and think. They cannot retreat from this without going back and learning the lessons of this. They should learn the lessons so that they can understand the impact on real lives. I have got hundreds of emails from people not being able to sleep. Those are the people I am concerned about—the hundreds and thousands of people who came to those meetings and raised those issues.

Hon Kyle McGinn: Hundreds of thousands?

Hon NEIL THOMSON: Hundreds and thousands—those people came to raise their concerns. There were constant rebuttals from the other side when 30 000 people signed that petition. That petition put a very reasonable request to delay, and there was a complete dismissal of it. Members should pause and think about what they have done. They should pause and think about how they have thought about this policy and the policies they continue to bring into this place without proper assessment. There is great responsibility when members hold government, and we have not seen that responsibility being exercised by the Cook Labor government.

HON WILSON TUCKER (Mining and Pastoral) [11.19 am]: I was not going to say anything, but it is a Thursday, so I felt compelled to. I was originally reluctant to say anything because I do not think claiming moral victory and putting the boot in for the sake of it actually moves the debate forward. But—there is always a “but”—I take the opportunity to remind the chamber that the crossbench were the only members in WA Parliament to vote against the Aboriginal Cultural Heritage Bill 2021. Much has been said about Hon Darren West and that infamous Katanning town hall meeting. In the words of Hon Darren West “The only people who opposed that bill were the Greens, the cannabis party, bless them, and the guy with 98 votes.” I imagine that the irony in that statement has been fully felt in the last few days. The honourable member is absolutely right: the crossbench were the only ones to oppose that bill. We opposed the bill for a number of reasons that I do not have time to go into. However, in broad strokes, it was the rushed nature of the bill, that the bill left too much detail in the hands of regulation and that the regime would impose too much bureaucracy on land users, farmers and miners. Obviously, miners with deep pockets were not impacted. They can jump through those hoops as they have the funds and the resources to do so.

Hon Dr Steve Thomas: Hang on, you do not get to rewrite history. Hon Dr Brad Pettitt opposed it because it did not go far enough.

Hon WILSON TUCKER: That was the last point. Thank you, honourable member.

Not least, the bill did not go far enough in protecting Aboriginal cultural heritage and preventing potentially another incident such as Juukan Gorge. A lot of the proponents, the Aboriginal groups, were mostly concerned about the veto powers giving the minister the final right of say. Members can take their pick about why the crossbench opposed this bill, but there were certainly a number of reasons. I think the Premier made the right decision in reversing these laws. It certainly takes a level of courage to do so.

As a supporter of the Voice to Parliament, I am saddened that we may face a reality in which WA could be the linchpin that fails the referendum. I think that is a very real and sad reality that we are facing. We have seen what happens when referendums fail, certainly in WA, and the appetite of the government of the day to revisit them. If this referendum were to fail, I imagine that Canberra’s appetite to revisit constitutional recognition and the Voice could be set back years and years. I personally believe that the Voice is a good instrument and could produce better outcomes for Indigenous people. It is sad that these two issues have been conflated and this is the reality we face.

The Leader of the House mentioned that the Premier will be listening. I hope moving forward that the Premier will also be listening to WA Parliament and the crossbench. We were not trying to point score; we were trying to raise legitimate and genuine concerns from the community about ACH. I hope that the Premier will listen to the crossbench moving forward.

Motion lapsed, pursuant to standing orders.