

ABORIGINAL CULTURAL HERITAGE ACT — REPEAL

Matter of Public Interest

THE SPEAKER (Mrs M.H. Roberts) informed the Assembly that she was in receipt within the prescribed time of a letter from the Leader of the Opposition seeking to debate a matter of public interest.

[In compliance with standing orders, at least five members rose in their places.]

MR R.S. LOVE (Moore — Leader of the Opposition) [2.47 pm]: I move —

That this house calls upon the Premier to explain how his WA Labor government failed so significantly in developing and implementing the Aboriginal Cultural Heritage Act 2021 and calls upon the Premier to detail just how he intends to undo the damage done across our state.

Today, we saw one of the most, if not the most, spectacular backflips in the history of this Parliament. Only under a Labor government could we see such a shambolic mess—a government that does not listen to the people. We saw a similar situation a number of years ago when the former Premier appointed the member for Bassendean as the Minister for Fisheries. Labor attacked the fishing industry and wanted to remove its private property rights. Under the Aboriginal Cultural Heritage Act 2021, as it was laid out across Western Australia, people who wanted to go about their legitimate daily business—a farmer, a small landowner on the outskirts of a town or on the outskirts of the city with a large residential block, a person with an industrial block of land, a contractor to industry or a miner—had their industries, lives and businesses thrown into disruption and chaos. It was plain that this was going to happen. The government would not listen to the pleas of the opposition to delay the implementation of the legislation for six months to work through the issues and get a better understanding of the implications for the Western Australian community. Rather, the Premier arrogantly dismissed calls for a delay in the implementation. The minister set a transition day of 1 July and he himself admitted that it was an arbitrary decision. There was no real reason that the act had to be introduced on that day. People who went to those so-called education sessions in communities across the state echoed their concerns and told us that they were coming out of those sessions more confused than before they went in. Was this reported back to the minister? Perhaps the Premier could explain what he learnt about these interactions and this unhappiness.

Today the Premier announced that the laws will be overturned and part of the discussion says that the decision to revert to the original laws drew on legal advice from the Solicitor-General. Today he had the opportunity to explain what that advice was. He had the opportunity to tell us when that advice was sought, but instead of providing clarity to the community and a better understanding of the flaw in that legislation, we still do not know exactly what the flaw is. I would be interested to listen to the Premier give an explanation as to what he considers to be the flaw in the legislation that he pushed so vigorously through this place and that he allowed his minister to trot out on the people of Western Australia, despite the pleas of the opposition and the pleas of the public for this not to be inflicted upon them. The reaction to this legislation was such that finally the government began to listen. It also began to listen when the polling started to look a bit awful. I am sure it began to listen when Canberra got on the phone and said, “What are you doing over there?” This has been an issue not just in Western Australia, but also on the national stage. The appalling ineptitude of this minister has been there for all to see. The tin ear of this government led to its inability to listen to reason and to understand that the community had real concerns. They were not the concerns of interest groups or people who did not respect Aboriginal cultural heritage, but of people who were worried about how they were going to function under an excessively complex and costly process that the government had foisted upon them.

This process began in 2018. Everyone talks about the destruction at Juukan Gorge, but the review of the act began before then under former Minister Wyatt. When he began that process, a promise was made to produce a green bill that would be put out into the community and there would be plenty of discussion and consultation with the wider community. We know that the government claims that it did consultation, but that consultation was with a narrow range of interest groups. I do not believe that the public of Western Australia had any idea what they were about to receive in terms of Aboriginal cultural heritage legislation. In fact, it was clear from attending those sessions that very few people had any idea about either the act or the regulations, which were supposed to have been organised and made through a co-design process with the community. Instead, only very small sections of the community were ever given access to that information and provided with the legislation. The opposition, as we will hear, had very little opportunity to peruse that information and did the best it could with that shortened process that this government, for reasons known only to itself, decided to impose on this Parliament.

Despite the promise given by former Minister Wyatt that there would be a green bill and consultation, there was none, and that happened on this minister’s watch. He should take responsibility for the way that he needlessly pushed that legislation through Parliament in urgent fashion. It was a disgrace. By introducing legislation that was rushed, not properly explained and was ultimately, even by the minister’s own admission, seen to be bad legislation,

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he has damaged the Western Australian community by causing division. The legislation is so bad that today the Premier has had to throw it out.

Today, the Minister for Aboriginal Affairs has rejected any responsibility for the awful mess that Western Australia finds itself in. I cannot think of a more appalling and inept carriage of a piece of legislation in living memory, yet the minister survives. What does it take for someone to actually take responsibility in this government? How can Western Australians trust the Labor government going forward? The Premier might wish to explain how Western Australians can trust this minister who has shown that he does not listen to or understand the needs of the community. He has now been told to go back to the drawing board and rig up some modifications to the 1972 act. In today's news release, that has been seen as being the appropriate way forward. This minister stood in this very chamber and described the Aboriginal Cultural Heritage Bill 2021 as beautiful legislation that had a seamless introduction. He kept talking about the beauty of it! What was he looking at? It is the most appalling legislation that has ever been presented to the Parliament and it has thrown our great industries into chaos. It has caused immense concern and division across communities. At some of those meetings unfortunate comments have been made because people are under pressure, and if people are put under pressure, they react. The minister did that. He caused division in the community. He has a responsibility to accept that he has caused harm to the community and he should be considering his future as a minister of this government.

I will also say that if it were not for the work of many people outside of this place, such as those from the Pastoralists and Graziers Association, the Western Australian Farmers Federation and others, who worked tirelessly to raise concerns about the minister's carriage of this legislation and the legislation itself, its unfairness and the impost it was putting onto their industries and communities, I do not think we would have seen this reversal. I pay tribute to all those people across Western Australia who took the time to sign petitions and make their voices heard. I assume that they even went to some of the backbench members of Parliament and said that this is an appalling thing. We on this side of the house wonder how many backbenchers of this Parliament went to the minister and said that this is not good enough. We know that backbenchers were openly saying that the government had botched the implementation of this legislation. In fact, at that large public rally in Katanning, one of them openly admitted that the process had been botched, yet the minister remains a minister. This is an appalling situation with a government that will not take responsibility. It is a government that cannot be trusted. I implore the people of Western Australia to remember this, to remember the way that this government has acted and to remember that this is a Labor government that cannot be trusted. This is a Labor government that has failed in its duty to properly govern, to listen to the community and to understand the needs of all Western Australians. Today we have heard a disgraceful admission of failure, but this government should have admitted that six months ago when we were telling it that this was going to happen.

DR D.J. HONEY (Cottesloe) [2.58 pm]: I rise to strongly support this excellent motion from the Leader of the Opposition. This morning, the Premier made the anticipated public announcement that the Labor government will repeal the Aboriginal Cultural Heritage Act 2021 that it brought in, and we welcome that reversal, but we should never have been put in this position. This should be a moment of embarrassment for this government because this position came out of its hubris, its arrogance and its belief that it had the numbers in this Parliament and it could do what it liked, that it could do anything in this place and it did not have to take any account of us. Government members may think that we are a diminished opposition.

Ms C.M. Rowe: You voted for it!

Dr D.J. HONEY: I will deal with that in a moment, member.

Even today we hear this arrogance coming through mocking the opposition about our numbers and so on; however, it would do government members well to listen to the opposition. I come to that position of us voting for this legislation; this is the last paragraph of my speech in the third reading debate —

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.

We could not support it because of the shoddy process that was done in this place.

I now turn my comments to members opposite. They do not listen; they have tin ears. Members on that side did not listen to legitimate comments made by the opposition. If they had done so, they would not be in the humiliating position that they are in now. I do not know of another time when a government had to repeal legislation within 18 months because of an utterly failed process.

In the debate on the motion to suspend standing orders, I said —

Extract from *Hansard*

[ASSEMBLY — Tuesday, 8 August 2023]

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I also rise to strongly oppose this misuse of the government's numbers in this place and in the other place to try to rush the Aboriginal Cultural Heritage Bill and Aboriginal Cultural Heritage Amendment Bill through Parliament. This is an appalling abuse of power by this government.

...

Yesterday, we got a perfunctory 35-minute briefing on an overview.

...

We have no problem with it reading the bill into Parliament, but then the government plays this shoddy, disgraceful trick of trying to ram it through this place and forcing us to sit up to whatever hour to try to do whatever review we can of this enormous bill. What an absolute disgrace! What an insult to all the people who will be impacted by this bill.

...

The government has given the opposition no opportunity to, in practice, do any consultation with those people.

...

We know the government has done some consultation with some Aboriginal people. Because of that consultation, we have heard back from some of them. They are deeply unhappy with these bills. The Aboriginal Cultural Heritage Bill 2021 has nowhere near the unanimity of support that the government thinks it has in the Aboriginal community.

...

The government is embarking on a process that shows no respect for the role of the opposition. One of the things I enjoyed most when I first came to this Parliament was the opportunity to scrutinise, discuss and have reasonable debate about legislation. There is no way we can do that when we have been up until 11 o'clock at night. Most of us have had just a few hours of sleep and we have come back to this place. We will be forced to take this debate to all hours tonight and tomorrow as well. There is no way that we can physically give the bills the scrutiny that we need to. I have not even had a chance to get past the first 20 or so pages. The Aboriginal Cultural Heritage Bill is 260 pages long.

Go and read my speech in the suspension debate. I stayed in this chamber for that whole debate, and I outlined the problems of the process the government followed with that bill. The government embarked on a shoddy process because of its arrogance, because it had the numbers and because it thought it could do what it liked. The government forced through legislation because it thought it had some moral superiority. This sits entirely at government members' feet. They do not take proper note of the opposition. It is clear that the government got pressure from someone else. Until very, very recently, the government was going to force this shoddy bill upon the people of Western Australia.

MS M.J. DAVIES (Central Wheatbelt) [3.03 pm]: I rise to support the matter of public interest put by the opposition. I start with a quote from the Minister for Aboriginal Affairs, who on 13 June said —

It would be good if the opposition stopped fearmongering and scaremongering ...

There has been misinformation. Misinformation was presented by the opposition ...

The member said that this —

The act and the way that government presented it —

will come back and bite us. No, it will not. In a year or two or three, the opposition members will be the ones on the wrong side of history.

It did not take that long, and the government is on the wrong side of history. Its arrogance caught up with it. For the past six and a half years, this Labor government has used Parliament as a rubber stamp and ignored standing orders or safeguards put in place to ensure that the time and effort of industry and people who make this place work are not wasted. The government ignored the options to improve or test legislation. The government has instead stood behind political slurs, preferring polling to substantially developing and testing policy. The government has rammed through legislation using base wedge politics, instead of standing and defending and debating its proposed policy changes. It is cheap. The government used spin doctors, and it listened to its own spin for so long that it started to believe it.

The Premier can say as many times as he likes that he is sorry, and there is something strong about that, but the Premier and his government caused an enormous amount of angst and cost to the people of Western Australia because they failed to listen. They failed to accept on face value that some people on this side of the chamber and in the community came to this debate without a racist bone in their body. These people were simply trying to point out that the government's approach would not deliver the outcome that we all want—namely, to protect Aboriginal cultural heritage and find the balance between preserving private property rights and allowing development so that

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our state and nation can continue to operate. Sensible people came to this house to try to put that forward. What did we get in return? We were called racist. We were told that we had the wrong approach and were being overtly political. That shoe fits very well on the people sitting opposite.

The government marginalised groups and people who could have assisted it in getting this legislation right. The government defended and defended the legislation and then the regulations when it was plain to everyone that the government was wrong. The government repeatedly dismissed questions. I do not need to go through them. I re-read them the other day when I came to this place as the shadow Minister for Aboriginal Affairs and asked the minister why it was taking so long for those regulations to be brought to the community. The minister repeatedly said to me: “There will be no surprises. We’ve been talking to industry. They understand what is coming.” However, I am not sure that is correct. A petition signed by many people was presented to this Parliament and dismissed by the Premier. People rallied and a national interest developed in what was happening in the Western Australian Parliament, and, by gee, it takes a little bit to get the east coast media interested! The government cannot spin that away. The government stuffed it up on such an important issue. For those of us who genuinely wanted to get an outcome to be dismissed in that way was incredibly galling. The government had every excuse under the sun about why it was going to be okay, and it called anyone who had a question about it, who was not obediently following government along that path to failure, racist—if not to their face, in many different ways. That is the government’s failure: with its numbers in this Parliament, it failed to get regulations right, failed to consult, failed to build alliances and failed to educate the community. The government’s approach impacted both Aboriginal people and non-Aboriginal people in this community.

I have never sat through a more traumatic meeting, other than a live export meeting when I had to sit with a group of farmers from my electorate and animal activists in the same room, than the one I attended in Merredin with non-Aboriginal and Aboriginal people trying to get the best outcome in a very, very untidy forum. The minister was nowhere to be seen. He rolled out the department, once again, to do his dirty work. The Aboriginal people in the room, who are more than capable of speaking for themselves, were utterly frustrated, angry and feeling bereft that they had been so let down. In equal measure, the same was felt by the non-Aboriginal stakeholders in that room. That is what the government needs to stand up and apologise for, because I think it is doing so for political reasons, not because it thinks it got it wrong.

The action that the government takes next after making the apology and standing up and saying the word is what the Premier will be judged on. The Premier must be held to account for it. He is the one who needs to take this through because, quite clearly, his minister does not have the capability to do that.

MS L. METTAM (Vasse — Leader of the Liberal Party) [3.08 pm]: I rise to support the matter of public interest motion moved by the Leader of the Opposition, and back the comments already made this afternoon. I start by saying: what an abysmal first eight weeks for our new Premier, Roger Cook! The Labor Cook government is an absolute mess. How many Premiers can look back at the start of their leadership term, or any career, and see a backflip that has come so hard with an extraordinary change of heart in this botched piece of Labor legislation? Let us look back at some of the comments that Labor has made over the past six weeks. On Thursday, 29 June: “These laws are fair and simple.” On Monday, 17 July, we were told everything was running smoothly. On 24 July: “They’re botched.” On 25 July: “Nothing is off the table.” On 4 August, “We’re scrapping the act.” Then the day after: “No, no, we’re consulting,” apparently. Now it is: “We are overturning the act.” Let us not forget there was a complete leadership vacuum over the weekend, when there was considerable confusion about what was happening next. Let us not understate the concern, distress and division that has developed across this state as a result of the government’s handling of its botched legislation.

We heard from landowners, Aboriginal and non-Aboriginal people, and many industries across the board, concerned about what this legislation represents for cost, private property rights and obligations. As the member for Central Wheatbelt and others in this place have stated, we have always supported the intention of the proposed Aboriginal Cultural Heritage Act in protecting Aboriginal heritage, but argued that these laws went too far. They have been an overreach on private property rights, and they have been confusing and costly.

It was extraordinary that the Premier’s first response to the concerns raised in this place was to effectively reduce them to dog whistling, or dogs returning to vomit. These were really unremarkable comments which highlighted that this Premier’s first response was not to listen. This Premier was hoping these issues would go away, and they would have were it not for the people of Western Australia and their support of the petition tabled by my colleague in the other place, Hon Neil Thomson, which garnered 29 000 signatures, or for those who spoke up.

A landowner from Dunsborough raised his concern with me that his property up north would be deemed worthless. He was a big supporter of protecting cultural heritage, but it had come at a significant cost when trying to obtain the surveys on his land, a process he deemed confusing. If it were not for the signatures on the petition, landowners speaking to the media about their confusion, or the damage that this whole exercise caused to the reputation of Cook’s leadership, then we would not have seen this extraordinary backflip. We know the Premier’s first response

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was to dismiss these issues and hope they would go away. It is no coincidence that on the day that there was much enthusiasm for a rally at Parliament House we saw a rethink, a reverse position and the repeal of this legislation, something which is quite unprecedented. The numbers were quite significant, considering they were flagged, and there has now been this extraordinary backflip. They were still large in size.

It is clear that the people of Western Australia are watching with interest to see what the new amendments will mean to the old act. The opposition looks forward to the briefing this evening. We hope there is more than a backflip on this legislation and that a lesson has been learnt, because there has been an absence of leadership in the Premier's first few weeks in the role, and over the weekend as well. We heard his dismissal of the petition of over 29 000 signatures, when Premier Cook's first response was to rubbish it by saying, "I thought it was a proper petition, but it's just an e-petition." The Minister for Aboriginal Affairs was missing in action when there were calls for him to present to the media. There were many days when he simply did not show up. It illustrated a lack of priority. We heard some derogatory comments made in this place when the member for Central Wheatbelt asked questions about additional forums to better explain the Aboriginal Cultural Heritage Act. The questions were just dismissed. The minister instead requested that constituents come directly to him. That certainly was today's catchcry from Hon Neil Thomson, who had gathered hundreds of people here at Parliament House.

The people of Western Australia did not vote for the current Premier to be their leader. In his first eight weeks, he has shown that he is simply not up to the job. Although the opposition welcomes the repeal of this act, in his first eight weeks as Premier his initial response was to not listen. His first response was to provide derogatory comments in response to the genuine concerns of landowners, and many industry groups across this state, who support Aboriginal cultural heritage, but raised their distress about how these laws went too far. The Premier's comments were supported by a minister who did not believe it was worth showing up or speaking to the media, or providing additional forums, until the pressure was too great. We welcome this spectacular backflip, but it only comes after the Premier's spectacularly poor leadership performance over the last eight weeks, when his first response was to ignore the genuine concerns of Western Australians. That is why we in this house condemn the Labor government in this way and call the government out for its shambolic approach to legislation in this place.

MR R.H. COOK (Kwinana — Premier) [3.17 pm]: It will not come as a surprise to hear that we will not be supporting this motion. A lot of the issues around this seem to focus upon the question of leadership. Leadership is about the capacity to listen and the opportunity to then hear, make decisions and act on those decisions. That is what we have done in this particular case. In introducing the bill into this place in 2021, we were determined to put in place laws which would stop the events of Juukan Gorge ever happening again. This is an important objective of any government, given the global embarrassment associated with the destruction of that 46 000-year-old Aboriginal sacred site. If I can cast members' minds back to that time, we were all in agreement that we should move as swiftly as possible to put laws in place to make sure that that does not happen again. All members in this place voted for that legislation, which had been in the development and consultation stages for many years. There were countless hours of consultation undertaken to put in place a regime that everyone could agree upon, and there was significant agreement right across industry and the community.

On the basis of that agreement, we then sought to legislate and put in place those laws. Despite the efforts of the community and the mining and farming communities in that exhaustive consultation process, it would appear that the laws ultimately struck were not able to work as smoothly or as fully as we wished. That is regrettable. We have apologised to the community for that. As I said, many people spent many hours of work in the consultation and development of the aspirations, objectives, principles and application of this law. I want to acknowledge the time that was taken and really apologise to those people: the communities that had input into the 2021 legislation, the government officials who worked tirelessly to put these laws into place and everyone involved. Despite our collective effort, we are now not in a position to proceed with these laws.

It would have been the height of arrogance to say that regardless of the disquiet, confusion and anxiety associated with these laws we would push on. That would have been very easy for any government to do. What is not easy is for a government to admit that it has to make changes in order to continue to build consensus around the laws that it wants to see put in place. It is very important that we have that consensus, because no-one I have met wants to desecrate sacred Aboriginal sites. No-one I have met wants to do that, but there is confusion about the best way to go about undertaking those protections.

As I said, the laws were worked on by a whole range of people over a long period to put in place the sort of regime that we wanted, which was bringing people together and assisting landowners to work with local Aboriginal groups to discover, protect and preserve these sites. It is regrettable, but inevitable, given the disquiet in the community, that we are now in a position whereby we cannot move forward in the way that we intended. As a result, we have taken the decision. Yes, it is a tough decision. It is tough to say that you have got it wrong. It is tough to apologise and say, "We need to do better." As a result, we are up to making that call. I think that today's accusations of arrogance are entirely unfounded and inappropriate because we have demonstrated the exact opposite of arrogance.

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As I have said, we are here to serve the people of Western Australia, to listen to the people of Western Australia and to make decisions in the best interests of all Western Australians.

Many people are disappointed that we are not proceeding with the 2021 legislation. Many people thought it was a great piece of law and that if implemented, it would in time actually do what we all intended it to do. They may be right, but I think the level of anxiety in the community is no longer tolerable and we have to act to move forward in a different way.

Our overriding aim in this whole process is to make sure that we protect sites such as those that were destroyed in the Juukan Gorge incident. The simple but effective amendments to the 1972 act that we will propose will do those things. Firstly, they will require someone who has new information to bring that to the attention of the minister, and the minister must consider that information and act accordingly. Secondly, it will ensure that Aboriginal groups are not bound by non-disclosure agreements or gag orders—however you want to describe them—for other agreements that they have in place, and make sure they have an opportunity to raise their concerns regardless of these other arrangements. Thirdly, it will do an important thing by providing Aboriginal people with the same right of appeal that a proponent has. That is only fair. That is the very least Aboriginal groups would expect for these laws. They are simple but effective amendments that we will bring in to make sure that those laws can continue to ensure that another Juukan Gorge incident will not take place.

Despite clarifying that position point in question time today, there has been a range of accusations. The opposition continues to make the claim that we were somehow pressured by the federal government. As I said in question time, that is not the case; it remains not the case 20 minutes later. We have had no contact from the federal government to request us, either from a political or statutory perspective, to reconsider these laws. I spoke to the Prime Minister for a short while yesterday to inform him of these decisions and assure him that our laws would prevent another Juukan Gorge-related incident taking place, and that is important.

The second thing that we announced today, which is a very important feature going forward, is for the state to take a proactive role in the protection of Aboriginal cultural heritage by way of mapping and assisting communities to understand any areas of Aboriginal cultural heritage in their communities. This is a very important step. I have been involved in this field for many years, since the early 2000s. I have never understood why a state government does not take a proactive role and seek to map, understand and assist communities to protect and preserve. I believe that is a very important role that the state should play, and we will be utilising the resources of the Aboriginal Cultural Heritage Act to ensure that takes place. That will also enable us to play a role to assist any members of the community who wish to understand the nature of incidents of Aboriginal cultural heritage on their properties and will provide an important service to the community to make sure that we hold a central repository of these sorts of sites and hold on to them for the benefit of the Western Australian community.

This is sacred country that we all live on. Aboriginal culture is the oldest known living culture on earth. I think we all understand the importance of making sure that we preserve it and do our best to continue to be proud of it by way of our own actions of continuing to protect it, undertaking our own obligations under this act, not as an act of compliance—that is, doing simply what the laws tell us to do—but as an act of community responsibility. We all want to continue to play a role to make sure that we preserve this ancient, cherished, rich culture, and these laws will do just that. They will be enacted in a way that is about bringing community together by way of agreements and communication to continue to preserve Aboriginal culture for future generations. How we do that will continue to evolve and we will continue to learn from knowledge holders. Government can play an important role in discovering this important cultural heritage and seeking to protect and preserve it.

The other thing we will be doing is assisting Aboriginal community groups to better engage with government and industry in relation to these laws. From the perspective of native title representative bodies or prescribed bodies corporate, we know that they are given meagre funding from the federal government to discharge their responsibilities under the Native Title Act, but they do not have the resources and the necessary means by which they can respond to the Aboriginal Cultural Heritage Act or other heritage-related issues. By assisting them and providing them with some capability and capacity funding, we believe that we can once and for all play a constructive role in assisting these communities to be a part of it.

Most of all, we will put in place laws that will take us from an activity-based regime to a knowledge-based regime. Those laws are simple. Everyone, regardless of their status as a landowner, has a responsibility to make sure that they protect Aboriginal cultural heritage and that they do not knowingly destroy or disturb Aboriginal cultural heritage sites, and that, if they want to carry out activities in those areas, they secure a section 18 notice under the act to make sure that the activities they propose to do can be done. As the minister has said on a number of occasions, that takes place only when there is an agreement between those Aboriginal groups and the proponent. That has been the process ever since the Juukan Gorge incident.

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I want people to understand the context of this and the impact that this will have upon people. Since February 2017, there has been a total of only 615 published section 18 notices—an average of fewer than 80 a year. It is important to note that these notices predominantly relate to government and mining industry matters. In fact, since 2010, nearly 90 per cent of all proponents seeking a section 18 notice have been either mining companies or state or local government, and only a handful of applications have related to residential developments. In fact, over the last 13 years, a review of section 18 decisions found that only 0.27 per cent of section 18 applications had come from the pastoral lease or farming communities. There were three section 18 applications in 10 years from farming; two were disallowed—one was forestry and one was in another process—and one was approved. I want to assure the community that these are not things that happen every day of the week; this occurs only when people knowingly seek to disturb an Aboriginal cultural heritage site or object. As I said, we encourage and, indeed, require people to enter into an agreement-making process with their local Aboriginal community so that there is a united way forward by way of consensus.

The government regrets and says sorry for these particular laws, but we have listened to the community. We have taken the opportunity to make sure that we hear the community and we have taken the tough decision to say that these laws are not good enough, because there is confusion and division in the community and that has produced anxiety. I made a commitment upon becoming Premier that I would govern for and listen to all Western Australians, and today I am delivering on that commitment. I am making sure that we listen to Western Australians, work with the community and govern on behalf of all Western Australians. That is what good government and good leadership is about, and I think that today we have provided that leadership.

DR A.D. BUTI (Armadale — Minister for Aboriginal Affairs) [3.33 pm]: In a recent online article, Paige Taylor stated —

The WA Liberals and Nationals will not volunteer it, but they actually voted for the new laws.

She also said that the tragedy of Juukan Gorge was utmost in everyone's minds when they voted for those laws. That was the central motivation for the laws that were passed in 2021. As I have said previously, at least the member for Cottesloe and the former member for North West Central have some credibility in critiquing those 2021 laws, because they participated extensively in the consideration in detail stage, but other members on the other side did not. The member for Vasse asked a few questions. The member for Roe asked a couple, if I remember correctly. The Leader of the Opposition did not stay very long for the consideration in detail stage—he left.

Several members interjected.

The DEPUTY SPEAKER: Members!

Dr A.D. BUTI: I did not interrupt members opposite, so how about they show some courtesy? I did not interrupt them once. I may be wrong, but I do not remember any questions being asked by the member for Central Wheatbelt. She may have asked questions, but I do not remember.

Ms M.J. Davies: You are wrong.

Dr A.D. BUTI: When I brought that up previously, she said that the reason she was not that interested is that she was not the opposition spokesperson for Aboriginal Affairs, but she is —

Ms M.J. Davies: Stop misleading this Parliament!

Dr A.D. BUTI: No; that is what you said.

Ms M.J. Davies: That is not what I said. Have you not learnt anything?

The DEPUTY SPEAKER: Member!

Dr A.D. BUTI: You are so hypocritical!

Ms M.J. Davies interjected.

The DEPUTY SPEAKER: Member for Central Wheatbelt!

Dr A.D. BUTI: Deputy Speaker, I did not interrupt them once. Can I ask you to please tell the opposition to not interrupt?

The DEPUTY SPEAKER: Yes.

Dr A.D. BUTI: I did not interrupt them once. As I listened to personal abuse being hurled at me by the member for Central Wheatbelt, I did not interrupt her. She should show me the same courtesy.

The DEPUTY SPEAKER: You did not.

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Withdrawal of Remark

Mr R.S. LOVE: I would like the minister to be asked to withdraw that remark. The member for Central Wheatbelt has given no personal abuse in this discussion—none—and I ask the minister to withdraw that suggestion.

The DEPUTY SPEAKER: There is no point of order there. Minister, you can carry on with your contribution to this debate. Members of the opposition, you were heard in relative silence for the majority of your contribution. Please show the same respect. Carry on, minister.

Debate Resumed

Dr A.D. BUTI: Thank you, Deputy Speaker. I will leave some time for the Attorney General to outline the hypocrisy from the other side.

As I mentioned, the overwhelming motivation for this legislation in 2021 was that no-one wanted a repeat of what happened at Juukan Gorge. There was a five-year consultation period on the act and the regulations. There was a co-design process that ran all last year, in which people from all different industries were able to have input. I think one lesson to learn from co-design is that sometimes people are not completely honest in their input; they may be afraid to say certain things that they probably should say to add to that co-design process.

There is no doubt that since the beginning of the operation of the 2021 legislation, the complexities have come to the fore. I have had constant discussion with various industry groups. I went to the state council of the Western Australian Farmers Federation, and the main issues that it raised, which I outlined today when I appeared in front of the gathering at Parliament House, were issues about due diligence obligations, the cost of surveys, and also the tier system. That is the overwhelming reason we are seeking to repeal the 2021 legislation, which the Leader of the Opposition has publicly supported. We have also said that we are reviving the 1972 legislation, which the opposition leader has publicly supported. We have also said that we will have a right of review for traditional owners, the same right of review that is held by landholder proponents, which the Leader of the Opposition has also publicly supported. Obviously, the Leader of the Opposition supported the right of review —

Mr R.S. Love interjected.

The DEPUTY SPEAKER: Leader of the Opposition, please stop interrupting. Carry on, minister.

Dr A.D. BUTI: It is pleasing to hear the Leader of the Opposition supporting the repeal of the 2021 legislation, the revival of the 1972 legislation and the right of review for traditional owners—no more than is given to landholder proponents. Really, the only decent thing one can do is to ensure that traditional owners have these same rights. Every member of the opposition has constantly stated that they support the protection of Aboriginal cultural heritage. If one is going to support the protection of Aboriginal cultural heritage, we have to have a legal regime in place. We have to have something. People cannot just say that they support Aboriginal cultural heritage without a legal regime for its protection, as we have a regime for the protection of heritage per se. John Hassell, the president of the Western Australian Farmers Federation, invited me to speak today. He stated outside—he has also stated to me and the Premier—that he believes that we should protect and respect all heritage in Western Australia, which of course includes Aboriginal cultural heritage. People do not complain about the protection of heritage per se. There is a legal regime in place for the protection of heritage, administered by the Minister for Heritage, so why should there not be a legal regime in place to protect Aboriginal cultural heritage?

The 1972 regime has obviously been in place for 50 years. The Premier outlined the number of applications made under the section 18 process, which allows a land proponent to damage Aboriginal cultural heritage. In the last 13 years, there have been 1 098 section 18 consents and, of those, roughly 90 per cent were for either the mining industry, the state government or the local government and 0.27 per cent were for the pastoral farming area. The agricultural industry has worked with the 1972 regime since 1972, and it has caused no great hardship in that industry. It has been supportive of that regime, and that is what we will return to, but with those extra important protections so that we do not have another Juukan Gorge, which, as the Premier rightly said, was an international embarrassment. It was a shameful situation. That will be corrected. The act was amended in 2021 and we are going to maintain it. If a proponent who has consent under section 18 comes across new information, they have a positive duty to relay that to the minister. That is in the 1972 act. It was inserted in 2021 after the Juukan Gorge incident. It was one of the recommendations of the Senate inquiry, which had members from all parties and was chaired by a Liberal National Party member from Queensland, if I remember rightly. I think Senator Dean Smith from Western Australia was on that committee. It recommended that we have a positive duty, so that if new information is found, it has to be relayed to the minister. That is all very sensible and something that we should have.

As the Premier said, leadership is all about listening and taking decisive action. If things are not going according to what you thought was going to happen, you change course. That is what we have done. That is listening. That is not arrogance. That is listening and responding to the community concerns, which we will continue to do.

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The member for Central Wheatbelt said that the opposition and the community will be looking at the government as we go forward, but the community will also be looking at opposition members, who have stated that they support the 1972 legislation and the right of review by traditional owners and that they want to make sure that we protect Aboriginal cultural heritage. That is what we are doing. We have listened. We have apologised for the confusion and concern, and we have reacted to that.

MR J.R. QUIGLEY (Butler — Attorney General) [3.43 pm]: We have heard this afternoon criticism of both the Premier and the Minister for Aboriginal Affairs for admitting an error and saying sorry. This is a new thing in Western Australia. We have heard opposition members say, “When has a Premier done this before? When has a Premier come into this Parliament and admitted a mistake and said sorry?” There are plenty of occasions when they should have, and I will just remind members of a few.

Let us go back to the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill. When I was in opposition and sat over there with Ben Wyatt, we tried to explain to the then government that it was acting against the Corporations Act, the bill would fail in the High Court and it would waste millions of Western Australian taxpayers’ money on this folly of trying to pass the bill and take all the money off the liquidator and divide the money up itself. Would it listen? No. The then government passed the legislation and sent the Solicitor-General on a fool’s errand to Canberra to try to argue that it was constitutional. If anyone wants to see a bitterly embarrassing performance, they should look at the Bell case in the High Court and how the Solicitor-General got filleted trying to support what was the unsupportable error —

Several members interjected.

The DEPUTY SPEAKER: Members!

Mr J.R. QUIGLEY: I seek protection from these bullies, Mr Deputy Speaker! The then government never apologised for that.

Take the Palmer case. What do we know about that? We know that the Solicitor-General of the day, Mr Bob Mitchell, SC—he did not publish this; we know this from Michael Mischin—advised the government to appeal against the arbitrator’s decision in favour of Palmer, but Premier Barnett refused to accept the advice of the Solicitor-General and screwed it all up and left us liable for \$30 billion. Did the Liberals ever come into this chamber and apologise for that? Not once. We had to fight that, and the Australian government is now having to fight it in Geneva because Barnett did not take the advice of the Solicitor-General.

Point of Order

Dr D.J. HONEY: I believe that the Attorney General is not within standing orders when he continues to refer to former Premiers by their surnames. He should use the proper honorifics in this place as a sign of respect.

The DEPUTY SPEAKER: There is no point of order. Carry on, Attorney General.

Debate Resumed

Mr J.R. QUIGLEY: That is the western suburbs’ view of the world.

To continue, we said that the anti-association laws brought in by that dud Attorney General Porter could not possibly survive constitutional challenge because of the basic Kable principle. It was known to everybody in the law.

Mr R.S. Love interjected.

The DEPUTY SPEAKER: Leader of the Opposition!

Mr J.R. QUIGLEY: The laws fell over in Adelaide and in Sydney, but because of the arrogance —

Several members interjected.

Point of Order

Mr D.A. TEMPLEMAN: Members opposite were not interrupted during the debate and I ask that you give this side the same courtesy.

The DEPUTY SPEAKER: Opposition members, I have asked you before not to interject. We have limited time left. You have had your say. It is the government’s time to respond. The Attorney General is picking up on comments that you made. Carry on, Attorney General.

Debate Resumed

Mr J.R. QUIGLEY: There are many occasions when the Liberals should have come into this chamber and said, “We were wrong; we have spent a lot of taxpayers’ money and we have caused a lot of financial damage to this

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state”, but they never had the temerity or the integrity to come into this chamber and say, “We got it wrong; sorry.” I welcome and praise both the —

Several members interjected.

The DEPUTY SPEAKER: Leader of the Opposition and Deputy Leader of the Opposition, both of you have been warned. Carry on, Attorney General.

Mr J.R. QUIGLEY: I welcome this new epoch in WA politics when a Premier can come into this chamber and act with integrity and courage. It is not easy—as Sir Elton sang, “Sorry seems to be the hardest word”—because, in saying it, you are admitting you have made a mistake and done wrong, but you have done it honestly and then you have fixed it. People will forgive error if the person who has made the error sets it right. What they cannot and will not stomach is the sheer utter hypocrisy of opposition members coming in here and attacking the Premier and the minister who are setting this right.

Several members interjected.

The DEPUTY SPEAKER: Opposition members! Leader of the Liberal Party!

Mr J.R. QUIGLEY: You cannot listen, can you? The Deputy Speaker has told you to keep your trap shut!

We cannot stand the hypocrisy and the community will not stand the hypocrisy. Members opposite have called for the act to be repealed. We are repealing it, and now they are blaming the Premier for repealing it. What a lot of hypocrites! Sharpen up!

Division

Question put and a division taken with the following result —

Ayes (6)

Ms M.J. Davies
Dr D.J. Honey

Mr R.S. Love
Ms L. Mettam

Mr P.J. Rundle
Ms M. Beard (*Teller*)

Noes (43)

Mr S.N. Aubrey
Mr G. Baker
Ms L.L. Baker
Ms H.M. Beazley
Dr A.D. Buti
Mr J.N. Carey
Mrs R.M.J. Clarke
Ms C.M. Collins
Mr R.H. Cook
Ms L. Dalton
Ms D.G. D’Anna

Mr M.J. Folkard
Ms E.L. Hamilton
Ms J.L. Hanns
Mr T.J. Healy
Mr M. Hughes
Mr H.T. Jones
Mr D.J. Kelly
Ms E.J. Kelsbie
Ms A.E. Kent
Ms S.F. McGurk
Mr D.R. Michael

Mr K.J.J. Michel
Mr S.A. Millman
Mr Y. Mubarakai
Ms L.A. Munday
Mr P. Papalia
Mr S.J. Price
Mr D.T. Punch
Mr J.R. Quigley
Ms M.M. Quirk
Ms R. Saffioti
Ms A. Sanderson

Ms J.J. Shaw
Ms R.S. Stephens
Mrs J.M.C. Stojkovski
Dr K. Stratton
Mr C.J. Tallentire
Mr D.A. Templeman
Mr P.C. Tinley
Ms C.M. Tonkin
Ms S.E. Winton
Ms C.M. Rowe (*Teller*)

Question thus negated.