

**ABORIGINAL CULTURAL HERITAGE ACT**

*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 member for Central Wheatbelt seeking to debate a matter of public interest.

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

**MS M.J. DAVIES (Central Wheatbelt)** [2.50 pm]: I move —

That this house notes the government's shambolic introduction, consultation and commencement of the Aboriginal Cultural Heritage Bill 2021 and calls on the Premier to delay the implementation of the act for a period of at least six months.

Just so the Premier understands exactly what we are calling for, we are not calling for the bill to be abolished or removed; we actually voted for this legislation. We are asking for time. Quite frankly, the rank politics on display during question time from the Premier and the Minister for Aboriginal Affairs did them both a disservice. If the opposition was not interested in getting this right, why would I, as the member for Central Wheatbelt and the shadow Minister for Aboriginal Affairs, have offered my assistance to the minister's office to make sure his legislation could be well understood by my constituents and others across the state in advance of 1 July? That is what I have been doing, is it not, minister? I have actually been reaching out behind the scenes and helping his office and the department, as a member of the opposition, with all the resources available to us on this side—sarcasm intended, for the purposes of *Hansard*—to make sure we get this legislation right.

I will not tolerate being told we are dog whistling or that we are racist, because we stood in this house and dealt with the most appalling process for the introduction of this legislation. For members on the back bench who may not remember, the opposition was briefed on an overview of the legislation two days before it was brought to this house—a piece of legislation that is more than 200 pages long. We were not briefed on the detail; we were briefed on the overview, the same week we turned up to debate that legislation. We were given no professional courtesy and no opportunity to test with stakeholders what the government had put together. We were given no opportunity to actually review or scrutinise the legislation before we were on our feet until midnight on the first day of debate on the bill. That was negotiated by the then shadow Minister for Aboriginal Affairs so that we could go right through and get as much detail as possible, because we were told at the beginning of the process that the legislation would be going straight through, and that if it had to, the government would guillotine debate—which is exactly what happened: debate was guillotined on an issue on which the government said it had consulted and worked on and wanted to get the right outcome for. The government used both houses of this Parliament as a big rubber stamp.

That is what the government did. That is the arrogance of this government, and it has done the same thing with a whole raft of other pieces of legislation. Mark my words: that will come back to bite the government, because bad legislation is eventually outed. That is exactly what I said in the house when we had this debate, and the following day when we had another debate about all the other times the government has abused the processes of this Parliament. That is what it is. I said at the time that we had made the most sensible contribution that we could have made, not having been able to go through the legislation or to consult, talk to our constituents or invite comment from stakeholders. We were given no courtesy or opportunity to test anything appropriately for something that will have long-reaching ramifications for this state. I said that it was an abuse of the way in which this house should work, that all this place was to the current government was a big rubber stamp, and that the government thought it was above questioning. I said that the government should be willing to stand next to the legislation it brings to this place and allow it to stand up to the scrutiny of the opposition when it is questioned.

The government had no confidence in doing that; it guillotined debate and rammed the legislation through. What a disgrace. It was like the opposition had a crystal ball, because everything we said during that debate and after has come to pass. We are now dealing with a complete shemozzle of a situation in our communities, and it is creating unnecessary angst, concern and division for Aboriginal and non-Aboriginal people alike.

Has the minister received any feedback from Hon Shelley Payne on the meeting that was held in Esperance yesterday? Did he get a phone call from the Esperance Tjaltjraak Native Title Aboriginal Corporation about how it felt about the meeting that was held in Esperance yesterday? I am sure he did. I am sure Hon Shelley Payne called his office after she went through what the member for Roe will describe to the house in just a moment.

The minister pushed the legislation through because he wanted the win and the Premier wanted the win. He wanted the media statement out and to tick another box, but the problem is that he has not done the work to educate the people who will be responsible for making sure that there is no destruction of very precious Aboriginal cultural heritage. Surely, if the minister is committed to delivering on the intent of the legislation, he would do everything within his power to make sure that the people who are most likely to be the ones who can impact on Aboriginal cultural heritage are the ones who are educated. However, when I became shadow Minister for Aboriginal Affairs and raised this question with the minister, he told me that there would be education sessions a month before the

legislation comes into force. He said that there would be no sessions in the wheatbelt and that everyone in the wheatbelt could drive to Perth. I tell the minister that we have had to increase the size of the consultation sessions, not only in the wheatbelt, where there were no sessions until we asked for them, but also in Esperance, and I understand that Geraldton is booked and already oversubscribed, as are a number of other locations.

The minister will not be able to fulfil his commitment to get around the entire state to make sure that people understand their obligations, and that is what I come back to. It is all very well for the minister to flippantly say in this place that we all have responsibilities as landowners, local governments, businesses, prospectors, explorers, Aboriginal corporations and traditional owners, and that we have to acquaint ourselves with the legislation, but he was late in publishing the regulations—they came out just before Easter. There has been no opportunity for people to get across this significant change—despite what he and the Premier have said—to the legislation, regulations and process, so that they can adhere to the intent of the legislation and preserve and protect Aboriginal cultural heritage.

No-one on this side is arguing that we should not be doing that, so the minister should not say that that is what we are doing; that does him, us and the broader public a disservice. It is unfortunate that what is happening in the community at the moment is the result of the shambolic way in which the minister has introduced this legislation.

Through the budget estimates hearings process, we know that the government is not ready because there are no local Aboriginal cultural heritage services in place with only a bit more than two weeks until the legislation comes into effect. The IT system will not be live until 1 July; give me an example of any IT system that is introduced and works seamlessly from day one after being created from scratch. No-one will be familiar with it. The government foisted new charges on project proponents and it admitted during the estimates hearings that it was a budget decision, so it did not consult on that at all with stakeholders. Those fees and charges were a budget decision, and a significant one at that. The government cannot even run an education system.

I am trying to think of a parliamentary way of using the adage about being unable to organise something in a brewery, so maybe a bunfight in a bakery. The government and the minister seem to be too inept to actually organise something so that we can make the information available to our constituents and stakeholders in advance of 1 July; it just will not be possible.

The opposition has asked the government to put aside its ego and actually delay the legislation by six months, at least, to take the tension out of this situation and to allow people to familiarise themselves with what the government has been working on and what the opposition agrees needs to be done so that we will not see being prosecuted after falling foul of what the legislation purports to do, which is to protect Aboriginal cultural heritage. The minister made it very clear during the estimates hearings that this is his deadline; I put it to him that he was under running orders from the previous Premier, but he said emphatically that this was his deadline and that he was pushing it. It is the government's doing and its mess.

It is legislation that most people would accept and understand as sensible and responsible policy, but not all of it is. The government will not get agreement from everyone; we understand that. This is a contentious area, and it is contested by Aboriginal and non-Aboriginal people. I am not so naive to think that the government will get full agreement, but what the government has at the moment is a reaction to people not understanding and not knowing what their responsibilities are. When people have their backs pushed up against the wall, they get defensive, they do silly things and they say things that are not appropriate. It does not give people the space to have respectful and responsible conversations. That is the pity of this, because that is what I see happening in communities across the state; it is creating unnecessary angst and division.

I hope that the government backbenchers who sat quietly while we debated this legislation and whom I called on to say whether they had done their homework—because the opposition was not given or afforded the opportunity to do so when the legislation was introduced—have been talking to the minister. Has Hon Shelley Payne come back to the minister with feedback on the meeting in Esperance? Have Hon Darren West and Hon Kyle McGinn come back and talked about the concerns coming from the pastoral and agricultural local governments and the prospector sectors? Are they doing their jobs or are they just being a number in the Parliament? If they are doing their jobs and the government is ignoring them, which is the only conclusion that I can come to, the minister would know just how pear-shaped this process is going.

I ask the minister to find time in his schedule to attend, to front, one of these meetings. Go out there. When dealing with difficult challenges, he should be the minister—the buck stops with you—who turns up and fronts the people who are asking the questions, not roll the department out to do the dirty work. The minister should turn up and do some of the hard work. I would welcome the minister coming out to Merredin and meeting the people involved. I know the minister thinks it is funny, but it is important. People want to do the right thing. That is overwhelmingly what people are coming to me and saying: “We don’t want to do the wrong thing. Give us a chance.”

I want to be very clear, and I point members back to the conversations we had when this legislation was being debated. The opposition supported it, despite the fact that we were put in the invidious position of having no time to debate or scrutinise it, and no opportunity to go out and do the job we are given as members of Parliament and members

of the opposition—to ask stakeholders and educate and consult the people we now know will be responsible and play a significant role in the system. All we are asking for is an additional six months at the very minimum. I can point the minister to parts of the debate to which we contributed. In fact, one of the lines I used at the time was—

I have no interest in playing into those politics or entertaining or exacerbating the arrogance and hubris that will ultimately be the downfall of a government that has the numbers ... With this piece of legislation, the government has not just overstepped the mark; it has pole-vaulted, long-jumped, whatever analogy you like, right over it.

The legislation, as I said at the time, had better be perfect. It is far from perfect, but what is worse is that people do not understand their obligations. The minister has the power to delay it, to take the pressure out of the system and to give his department some breathing space to prepare stakeholders and allow local Aboriginal stakeholders to do the same. The minister has that power. If he carries on regardless, then he has learnt too much from his previous leader. Arrogance and power are a poor combination.

We did not vote against this legislation. We are on record clearly stating that we agree with the intent of updating the Aboriginal Heritage Act. What was needed for something this important was a textbook approach to policy development and implementation, not a box-ticking exercise and not a rushed, rubberstamped act, but that is what we have.

My final note on this is important. I put on record my support for the Voice, and I am doing my bit to try to get it across the line. I am not over-egging it, but in parts of this state, people who were willing to vote yes and give consideration to what I think has been poorly articulated by the yes vote and the Albanese government are being hardened against it because they are dealing with this dreadful process. I implore the minister to consider that he is losing support, creating unnecessary angst and division, and putting pressure unnecessarily on stakeholders, including Aboriginal groups. All it would take is an additional six months at the least to get this back on track. I implore the minister to do something before it is too late.

I can tell him from yesterday's meeting that Aboriginal and non-Aboriginal people alike would have been united on one thing: this government is making it harder to achieve the intent of the act and to develop those positive relationships that we know are required to continue to ensure that we preserve and protect Aboriginal cultural heritage in this state.

**MR P.J. RUNDLE (Roe — Deputy Leader of the Opposition)** [3.05 pm]: I congratulate the member for Central Wheatbelt for giving a perfect summary of what is going on at the moment. I was in Esperance yesterday, and we have a scenario in which the Minister for Aboriginal Affairs does not actually understand what is going on at the coalface. Along with the member for Central Wheatbelt and the rest of the opposition, I ask the minister to turn up at the coalface and look those 600 people in the eye, as Hon Shelley Payne had to do yesterday. We ask him to turn up to the seminars and information forums in Merredin and Northam that the member for Central Wheatbelt had to organise. He should turn up to those forums and look those people in the eye because he has actually created division because people do not understand the process.

That is why they are turning up in the hundreds. The seminar yesterday started half an hour late because people were lined up 50 metres out the door waiting to get in. That showed the level of concern. I have never seen the likes of it. It is not good enough. Every person in that information forum wants to protect Aboriginal cultural heritage, but after the government's appalling parliamentary process, they do not understand what they are dealing with. That is why they are turning up in the hundreds. My perception of yesterday is that it was disappointing to see the reaction and response of the people in the room because they were frightened, anxious and feeling a lot of angst.

I heard the minister on the radio yesterday talking to Andrew Collins, and the minister was contradicting the advice that his department is giving in the forums. On radio yesterday, the minister said that it is time to get on with it, that no local Aboriginal cultural heritage services are up and running, that the government has been great with its co-design. If a farmer wants to build a dam like for like, they should go into the department and look for a map. If a dam is already being used and it is like for like, they do not need approval. This is the stuff that the minister came out with on radio yesterday.

I ask the minister this: on my farm, according to the department's maps, there is no Aboriginal cultural heritage —

*Point of Order*

**Dr A.D. BUTI:** I ask the Deputy Speaker for a ruling on the member using his own pecuniary interests to make an argument in this chamber. He needs to be very careful. He got himself into trouble before on this.

Several members interjected.

**The DEPUTY SPEAKER:** Order, Leader of the House!

I thank the minister for that point of order. It is very interesting. There is actually no point of order but I will explain why that is the case. The member in his contribution can talk about his own interest as much as he likes, and it is up to him to declare in his contribution as much as he feels comfortable to declare. However, standing order 128(1), “Pecuniary interest”, states —

No member will be entitled to vote in any division upon a question in which that member has a pecuniary interest.

The member is allowed to talk about the interest as much as he wants but later on there needs to be a declaration. Several members interjected.

**The DEPUTY SPEAKER:** Members! Thank you, member for Central Wheatbelt. To clarify, that is only when there is a pecuniary interest related to the question, if that makes sense.

Several members interjected.

**The DEPUTY SPEAKER:** I will just take a little bit more advice.

I have a little bit more information for members. This is also referred to in the Code of Conduct for members of Legislative Assembly, which is at the back of the standing orders. Clause 3, “Disclosure of conflict of interest”, explains the requirement for members to make a disclosure. Clause 3(f) states —

A conflict of interest does not exist where the member is only affected as a member of the public or a member of a broad class.

It is up to the member for Roe how much he wants to disclose or talk about. As I said before, the conflict arises only when there is a conflict that relates to a particular question.

*Debate Resumed*

**Mr P.J. RUNDLE:** Thank you, Deputy Speaker. I have only a short time for my contribution but I want to say that this piece of legislation affects everyone who has a block of land over 1 100 square metres. I am concerned that the minister on radio gave contradictory advice, especially on tier 2 and tier 3 activities, to what his advisers said in Esperance yesterday. The continued assault on regional Western Australia concerns me and people are feeling it in our farming and regional communities. If it is not Aboriginal cultural heritage, it is live export, the south coast marine park, demersal fishing, forestry, firearms and the reduction of regional representation in Parliament. This government continues to sideline Western Australians.

To finish, I still remember the government’s appalling process of releasing legislation and regulations at four o’clock on the eve of Good Friday. The member for Cottesloe stood up at the end of that appalling legislative process and said that the opposition could not support the legislation and could not oppose the legislation because it did not get enough information.

**MR R.S. LOVE (Moore — Leader of the Opposition)** [3.15 pm]: I would like to make a brief contribution to the motion brought to the house by the member for Central Wheatbelt. I think she has outlined many of the concerns people have with the rushed implementation of this legislation. The minister revealed during the estimates process that 1 July was purely an arbitrary choice and there was no need to deliver the legislation in a particular time frame. We know that the whole process around the development of the act and its passage through Parliament was rushed. I know that the community has suddenly gained an understanding of the act and its implications, potentially, for every landowner with more than 1 100 square metres of land, which includes many landowners on the outskirts of Perth, for instance in the hills and rural residential areas. They may well be unaware of their obligations under the law and they may well be in areas of the hills with water or that have a history of Aboriginal use and potentially some level of heritage. I note that under the act heritage is not set at some point in the past; it is considered a living thing.

This is where the minister gets into trouble. He does not seem to understand the act that he has introduced. If he does not understand the act, how can the landowners I represent understand the act? For that reason, my electorate office and I am sure all the electorate offices of regional members of Parliament have received a lot of feedback from constituents—I mean a lot! Countless inquiries have been made in my office asking what I am doing to ensure the legislation is explained properly and people have access to information. I try to provide people with as much information as possible and encourage them to go to the websites et cetera. But it has been a rushed process. Last week I wrote to the Premier, asking him to consider stopping the process. He is the new Premier. He has a fresh mandate and he can stop this rushed process that is causing concern within the community. For the instruction of the house, I will read a few extracts from the letter so that members can understand some of what I wrote. I wrote about the fact that the bill was rushed through the Legislative Assembly, with more than 80 of the, I think, 353 clauses not debated because we had an arbitrary cut-off point that the government had proposed. I remember when the bill was first introduced. As the member for Central Wheatbelt said, we had a briefing on the Monday without being

given the bill. It was not discussed on the Tuesday immediately upon being read into the house because we managed to negotiate a final time line for the debate.

I will quickly read some of the salient points in my letter —

The challenge all stakeholders are facing is that in less than a month the Act will come into effect, and at the time of writing there are no Local Aboriginal Cultural Heritage Services in place, the Information Technology system that is being developed to manage the new system will only come on-line on 1 July, and there is considerable concern and scant information in the community about the impact and effect of the Act.

I will quickly go through this because I know the member for Vasse has some things to say on this as well. I went on to state —

There is clearly a desire for stakeholders to understand their obligations prior to the Act coming into effect—but the inexorable deadline for implementation set by the Government has left very little time for the communication and education to take place. This in itself is creating angst and anger—which may have been avoided with more time and a comprehensive communication strategy.

If the outcome sought by Government is to avoid the damage or destruction of Aboriginal cultural heritage in our State, then it is surely in it's best interests to ensure those who undertake 'disturbance' activities are appropriately educated and informed.

In this second term of your Labor Government, there have been significant changes for primary industries to grapple with—including the phasing out of native logging, changes to fishing provisions, amendments to animal welfare regulations, the looming phase-out of live exportation, and now the implementation of the Aboriginal Cultural Heritage Act. These sectors are fatigued by the persisting change—and many are family businesses who do not have the resources of the mining sector to wade through new and extensive regulations.

Hasty implementation of the new Act, along with a flawed process of development of the accompanying regulations, is not in the State's best interest. It is creating division, anger and distress—all of which could be avoided or mitigated if more effort and time is put into consulting and educating stakeholders.

Premier, I am asking for time.

Please consider delaying the start date for the ACH Act to allow industry and community stakeholders time to understand and prepare for the changes and allow the Department time to put in place the required infrastructure for the legislation to work effectively.

I continue to ask for that time.

**MS L. METTAM (Vasse — Leader of the Liberal Party)** [3.21 pm]: I rise to support this motion and the comments made by the opposition. Again, I will state on the record that the opposition supported this legislation when it was shambolically introduced into Parliament almost two years ago—about 18 months ago. As the member for Central Wheatbelt and the lead speaker stated, the approach of the government and its ministers has been shambolic from the start. This piece of legislation was rammed through Parliament. We were briefed on just the overview of the bill and debate was guillotined.

From the very outset, the opposition has supported the intent of the legislation. For the government to suggest otherwise and politicise the very real concerns that we are raising is absolutely disgraceful, given that this government has not done its homework to ensure that this important piece of legislation will be implemented with the respect it deserves. It goes without saying that the protection of key Aboriginal cultural heritage sites is important; absolutely nobody is arguing otherwise. However, it is also clear that the government has not done the groundwork or effectively managed the change. There is a lot of confusion and concern out there about how these changes will be implemented, enacted, monitored and enforced. The government has not met its own time frames in terms of ensuring that information be publicly accessible.

I heard from the member for Roe about the meeting in Esperance, which we understand to have had over 600 people in attendance. We also know that the information sessions in Geraldton were oversubscribed. Our colleague in the upper house the shadow Minister for Lands has attracted over 13 000 signatures for a petition seeking a reasonable period of online interaction, lodgement and approval of permits so that proponents can familiarise themselves with the system and provide training for their staff and business teams. That is just one section of the petition and is appropriate. The petition was put forward by the Pastoralists and Graziers Association of WA and has been promoted, and will be presented by, our shadow Minister for Lands in the upper house. On behalf of the broader community of Western Australia we are seeking a pause. We urge the government to ensure that it does its work to make the

information accessible and address the lack of clarity on how permits will be issued; that is an obvious concern. The cost and length of time to process permits is an issue as well.

I listened to an interview with a senior department head on 6PR last Thursday. From that interview, it was very clear that he could not definitively say whether the simple act of putting in a pool would be exempt. After digging through the legislation, I know that there is a table that sets it out and proposes the exemption of pools, but when asked in a range of different ways on 6PR, the representative from the minister's department could not actually provide a simple clarification.

Understandably, many people are confused. Here is an opportunity to address this very real concern. We urge the government to put a pause on this legislation's implementation date to ensure that people and systems are properly set up. This is the first opportunity to throw a bone to these extremely worried landowners, pastoralists and graziers and actually give them time and ensure that the systems are ready—because they clearly are not—and ensure that these changes will be a success.

**DR A.D. BUTI (Armadale — Minister for Aboriginal Affairs)** [3.26 pm]: I will address some of the wild and inaccurate allegations and statements made by the members of the opposition shortly. I will state out front one of the reasons that we will not be extending this for another six months. As night follows day, all that would involve is another six months of scaremongering. I previously mentioned the native title debate that we had in 1993. I remember that I was on Albany Highway in Cannington. The equivalent of morning breakfast radio or ABC Radio National back in those days was on. Pru Goward was a political commentator on ABC. We know where her political allegiances lie. She complained that Paul Keating was rushing through the Native Title Act, even though there had been extensive debate and consultation. It would not matter if we extended this for a year. The opposition would still say that it had not been given enough time.

I would like to know what other piece of legislation in recent times had, basically, a five-year gestation period. There was an extensive consultation period on the act and on the workshop. The member for Roe and, I think, the member for North West Central asked why I had not attended one of these education sessions. Did they attend any of the workshops? They may have. I did; I attended the workshops when the hard grind was done and people were listened to, which fed into the regulations. What other piece of legislation has had this extensive a consultation and co-design process on its regulations? There may be some, but I do know of any since I have been in Parliament for nearly 12 or 13 years. It is just absurd to say there has not been sufficient consultation. There has been nothing that even resembles this amount of consultation before.

I am a bit confused by the member for North West Central. One minute she says —

**Ms M.J. Davies:** The member for member for North West Central is not here.

**Dr A.D. BUTI:** Sorry, I meant the member for Central Wheatbelt.

**Ms M.J. Davies:** No wonder I couldn't get an education session; you do not even know where I am from!

**Dr A.D. BUTI:** That is pretty cheap, isn't it? Will the member admit that that is pretty cheap?

**Ms M.J. Davies:** Like for like—right back at you, minister!

**The DEPUTY SPEAKER:** Carry on, minister.

**Dr A.D. BUTI:** Seeing that the member wants to be so silly and immature, I will talk about the education sessions. When she raised her question without notice about the education sessions, I replied that at that stage, we would not be having any additional education sessions. After that, I went and spoke to my department staff who said "Look, we can probably do it", and I came and told her within an hour. I sat down next to her and gave her the courtesy of telling her that we would be having sessions in the wheatbelt. Of course, she went on regional radio that night or the next morning and did not mention that. She still went with the narrative that we were not going to hold any sessions in the wheatbelt. Shame on the member! She did not mention that we had a conversation in which I said I would be having some education sessions in the wheatbelt.

**Ms M.J. Davies:** I did.

**Dr A.D. BUTI:** You did not.

The member talked about this legislation, saying the opposition voted for it and it was good legislation. A bit later in her contribution she said that it was not good legislation and the legislation would come back and bite us. Is it good legislation or is it not good legislation?

**Ms M.J. Davies:** Go back and read the *Hansard*.

**Dr A.D. BUTI:** We will go back and read what she said in *Hansard*. She did say it was good legislation, but 30 seconds later she said it was not good legislation.

I will talk about some of the facts before I refer to some of the contributions. I reiterate that today landowners and land users have to ensure that they are not contravening the current act. It has been unlawful since 1972 to damage

Aboriginal cultural heritage without legal consent under section 18 of the Aboriginal Heritage Act. That is the situation today. The opposition keeps trying to say that from 1 July, there will be new obligations. The obligation is there today. It is a much more laborious bureaucratic process than will take place after 1 July. The new tier system has come about as a result of consultation and various workshops. It will obviously put Aboriginal people at the centre of this process, as they should be. It is a simple approval pathway. If a section 18 requirement is in existence now, that will remain.

I turn to the member for Roe. Very interestingly, he talked about the government creating division. As I stated in question time, he said after a briefing that the act would grind normal farming activity into the ground. That is not true. It would be nice if he would just tell the truth. It will not grind normal farming activities into the ground. He then mentioned my interview on radio last night in which he said I contradicted myself.

**Mr P.J. Rundle** interjected.

**Dr A.D. BUTI:** I did not interrupt the member. Last night on radio I said that if there is no cultural heritage in the area in which the land is used, there is no need for approval. That is the law. The interviewer asked me about dams. I said that if the dam is in an area where there is no cultural heritage, approval will not be needed. That is the law. That is not contradictory. But of course if there is Aboriginal cultural heritage, an approval process will be needed, depending on what tier of activity is undertaken. I do not see any contradiction there. Maybe the member found some, but I did not.

The division is being caused by the opposition.

**Mr P.J. Rundle** interjected.

**The DEPUTY SPEAKER:** Member for Roe!

**Dr A.D. BUTI:** The opposition could show some leadership and go out and tell people that they have obligations. As we stand here today, they have obligations.

**Mr R.S. Love** interjected.

**The DEPUTY SPEAKER:** Leader of the Opposition, as the minister mentioned earlier, you were largely uninterrupted by the opposition through the whole of your contribution. Let the minister respond. It is the government's turn now. Carry on, minister.

**Dr A.D. BUTI:** We have had a number of education sessions, and they will continue. The member mentioned that they have been overprescribed. Yes, there has been greater interest than we thought. We are seeking to have further sessions.

**Mr P.J. Rundle:** Ha, ha.

**Dr A.D. BUTI:** Why is that funny, member for Roe? Why is it funny that people may be interested to receive information? There was very little attendance at the workshops in certain areas. I assume the department worked on that basis. Now there is greater attendance, of course fuelled by some misinformation in some cases. People want to attend these education sessions. We are seeking to put more on. What is wrong with that? Why would that be funny, member for Roe? I do not think that is funny at all. I do not think it is funny that farmers and other land users are concerned. I do not think that is funny. I hope these education sessions will alleviate much of their concern because they do not need to be concerned. It would be good if the opposition stopped fearmongering and scaremongering and joined us to give the clear facts about the obligations that —

**Mr R.S. Love:** It's not the opposition that has caused this; it's community concern caused by the process that you put in place. It's your fault.

**The DEPUTY SPEAKER:** Members!

**Dr A.D. BUTI:** There has been misinformation. Misinformation was presented by the opposition in the Channel Seven piece that went to air on the weekend. It was massive misinformation that was reminiscent, as I stated, of what happened back in the early 1990s.

The member said that this 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. As I stated, they were on the wrong side of history when it came to that native title debate. As we know, the Tories in WA—the National Party and the Liberals—thought that the recognition of native title was the worst thing since sliced bread. Actually, sliced bread is pretty good! They thought it was the worst thing that had ever happened. Richard Court tried to introduce legislation to basically invalidate the Native Title Act. What happened? The vote was seven–nil in the High Court of Australia. The High Court determined that the WA legislation that was supported by the conservatives, the National Party and the Liberal Party, was unconstitutional. What did it say? It said that it violated the Racial Discrimination Act. The black mark on the conservatives in this place is that they introduced legislation that violated the Racial Discrimination Act.

I have a newspaper article from 1995, which states —

Premier Richard Court's folly has left a costly stain on WA history.

His foolhardy pursuit of ideological fantasy has left WA morally isolated, derided, out of pocket and beset by increased confusion and uncertainty about the effects of Aboriginal claims to their traditional lands.

The High Court ruling that unanimously threw out WA's ill-conceived challenge to the Commonwealth's native title legislation is a disaster for the Court Government and a needlessly expensive embarrassment for the people of WA.

Another newspaper article headed "Farmers condemn decision" states —

WA's rural sector has condemned the High Court for leaving the State at the mercy of the Federal Government's native title legislation, which it says is unworkable.

We know that is false. We know that is not the case. If that were the case, why do we have booming resources and agricultural industries in Western Australia? It is because native title has not done that. The scaremongering that occurred under the National Farmers' Federation during the native title debate is unfortunately being replicated today. It continues —

Pastoralists and Graziers' Association president Tony Boulton and WA Farmers Federation president Alex Campbell were due to be briefed by key Government officials, including Premier Richard Court and relevant Ministers, late yesterday.

Mr Campbell said he was extremely concerned and disappointed by the decision.

"Today's High Court decision ruled on constitutional validity and not its practicality," ...

The National Farmers' Federation said that the federal Native Title Act prevented any proper use and further use and development of agricultural property and it would interfere with proprietary rights. How wrong the federation and the Pastoralists and Graziers Association were back then and how wrong the opposition is today. Another article states —

The WA economy was dangerously exposed to the High Court rulings, the Chamber of Commerce and Industry said yesterday.

That has been proven to be false. We have the best economy in Australia. The agricultural and resources sectors play a major part in that. Native title has not been an inhibitor and neither will this legislation.

I bring the debate back to the facts because the Leader of the Opposition says it is up to us to articulate the information. We are. But every time we do, he says that is not right. But it is right. We can do no more than to state the facts. If the opposition does not want to believe it, that is up to it, but do not come around and tell us that we are not giving out the information because we are giving out the information. This process has not just started. Whether we gave six months or 12 more months, the opposition would seek to divide Western Australians on this point. As I stated in my response to the question from the member for Kimberley, it seems to be only when it comes to Aboriginal issues that it is alleged we are creating division. The member for Roe has stated that we are trying to divide Western Australians. No, we are not. We are trying to protect Aboriginal cultural heritage. That is what we are trying to do. The opposition is saying that should happen and we should try to protect Aboriginal heritage. We need to put in a mechanism and regime to ensure that happens.

I will just repeat: if there is no Aboriginal cultural heritage in the area that someone seeks to use, they will not need approval. If there is Aboriginal cultural heritage, we look at what the activity is and whether it is like for like. I assume most farming activity will be like for like. They do the same thing year in, year out.

**Mr R.S. Love:** Shows what you know.

**Dr A.D. BUTI:** If it is a residential —

**Mr R.S. Love:** You think farming is just static and it does not change over the years—nothing is done differently from one year to the next.

**The DEPUTY SPEAKER:** Members!

**Dr A.D. BUTI:** It is the same like-for-like activity. It does not mean there cannot be changes in the actual technique, silly.

**Mr R.S. Love** interjected.

**Dr A.D. BUTI:** You are not a farmer so how would you know?

**Mr R.S. Love** interjected.



**Dr A.D. BUTI:** If it is on residential land less than 1 100 square metres, it will be exempt. If it is residential land greater than 1 100 square metres, lifestyle activities and maintenance activities on that land will be exempt. If it is residential property greater than 1 100 square metres and the activity someone is engaging in on the property is a lifestyle or maintenance activity, it will be exempt. Most of the large blocks in the hills that the member was talking about will be exempt. The point is they are not exempt under current legislation. This is the issue. Unfortunately, because people's minds do not turn to Aboriginal cultural heritage—all of us as a whole—we had not thought about it, but it is illegal now. There is no exemption now. This legislation will provide for exemptions that do not exist now.

With the new exemptions, the system for approvals will be more streamlined and faster than what we currently have. Members may know that sometimes section 18 applications can take ages—a long, long time. Under this approval process, they will be shortened. There are many processes and activities for which people will not need approval. I am asking the opposition to join us in listening to the facts and to relay that to their constituents. As I said, any change creates uncertainty. It will create uncertainty. We are talking here about regulations. It does not matter which government, but when we design regulations, we do not know completely how well they will operate. I cannot stand here and I will not stand here and say that I guarantee that every regulation is going to be perfect. We do not know until it is in operation. That is why we have to get it operating.

I have stated previously—I think I stated it in the estimates hearings—that in a year we will review the regulations. The beauty of the regulations is that we can change them if we need to. If there is a need to tinker with certain regulations, we will tinker with them. We will not know until the system is operating.

We do not want to delay the operation of this legislation for two main reasons. I will talk about this next week, but when this act becomes operational, it will result in the repeal of the Aboriginal Heritage (Marandoo) Act 1992, which basically suspended Aboriginal cultural laws from a certain mining region. That will be repealed. Plus, the current system requires the Minister for Aboriginal Affairs to sign off on section 18s, which allow for damaging Aboriginal cultural heritage even if the Aboriginal traditional owners do not necessarily agree that that should happen. Under section 18, we have that power. I do not think we should have that power. In the end, though, under this legislation, there is no Aboriginal veto right. If there cannot be an agreement for a management plan where approval is needed, it will come to the minister. We hope that the Aboriginal Cultural Heritage Management Council will be able to mediate any disagreement or concerns between the proponent and the Aboriginal group.

There is an issue with LACHS—local Aboriginal cultural heritage services. Granted I would like there to be more than are accepted at the moment. But that process will happen over the years as we go along. In the budget, we invested \$77 million, plus \$10 million on top of that, for LACHS. Under the act it is intended that someone goes to a LACHS to find out information on Aboriginal cultural heritage. But if there is not a LACHS, they will go to the prescribed body corporate or the native title rep body. If there is not a LACHS, it is not fatal to the process. The intention under the act is there will be a LACHS, and in most cases it will be the prescribed body corporate. It will be the same body. We are funding them to the tune of at least \$300 000 a year to help with basic administrative costs and there is a schedule of fees. A thing that we have put in this legislation that the opposition must support is a schedule of fees that will cap the fees that can be charged for different services. That is not the case at the moment. We have listened to farmers. We have listened to pastoralists. We have listened to miners through this co-design process and we have taken that on board in the design of the regulations that will go operational on 1 July. The department has reassured us that as of 1 July, the system will be up and running.

I think there needs to be a psychological shift in the opposition and those who are peddling the disinformation. We are not suddenly creating Aboriginal cultural heritage obligations. They are there now. As I said, we are going to have exemptions that are not there now, so it will be better. There will be more exemptions than currently is the case. A farmer at the moment does not have this exemption for like-for-like activities. I am sure that Aboriginal cultural heritage out there is being damaged, contrary to this act, but people have not set their minds to it and also there has not been enforcement of it. As was stated by the mover of the motion, we all want to protect Aboriginal cultural heritage. If we want to protect Aboriginal cultural heritage, we must have a system that will allow it to be protected, but we have done it in a way that will ensure that land use will still take place. Our thriving agricultural economy and our thriving resources economy will still take place. That is the beauty of this legislation and the regulations that we have gazetted and will become operational on 1 July.

**Mr P.J. Rundle:** Are you going to turn up to one of the education forums?

**The DEPUTY SPEAKER:** Order, member for Roe!

**Dr A.D. BUTI:** Whether or not I attend an education forum is irrelevant. I am more than prepared to meet concerned people. For instance, I am meeting Tony Seabrook on Thursday. He had the temerity to say on radio, before I spoke, that we had not reached out to him. His organisation had been invited to these co-design workshops but he did not attend, as far as we are aware. I attended those workshops. The member for Roe may understand—or he may not, but I am sure he will appreciate—that ministers have many demands. Many of those workshops are taking place

during the next three weeks of Parliament so I will not necessarily be able to attend them. If the member wants to bring a delegation of his constituents to my office, let me know and I will meet them. I have no concerns about doing that or meeting with any of his constituents. I have never been afraid to meet people, but I also have to manage my time. It is more important to have people giving educational sessions rather than the minister being there to make a little speech and then leave. I do not have time during the next three weeks of Parliament to go out to the education sessions, just as the member does not.

Several members interjected.

**The DEPUTY SPEAKER:** Order, members!

**Dr A.D. BUTI:** Bring those constituents to me and I will. That is the challenge for the member if he has such concerns. Bring them to me and I will speak to them.

Besides the face-to-face education sessions, there are online sessions and there is extensive information on the website. The member mentioned having received feedback from Hon Darren West, Hon Shelley Payne and Hon Kyle McGinn. Yes, it was very positive. Hon Darren West said that he went on the website and could not believe the amount of information that was on it. It also dispels some of the misinformation being peddled by the opposition.

**Ms S.F. McGurk:** You have to read it. You have to do some work.

**Dr A.D. BUTI:** People do have to read it. Please read it and do not mislead the house or mislead the people who the member says are scared about the new legislation, because the obligations are on there as we speak.

**MS D.G. D'ANNA (Kimberley — Parliamentary Secretary)** [3.52 pm]: As I rise to contribute to the motion, I make a valid point and acknowledge that we are all here on the Whadjuk land of the Noongar people. I acknowledge all the First Nations people and the referendum later this year that talks about putting Indigenous people at the forefront of the issues that affect them.

I was going to read all the good things in my last contribution to the Aboriginal Cultural Heritage Bill 2021, but I probably will not have time. I would like to point out some issues that I have heard during this debate on the impact of rushing the bill and the comments that we are creating division and scaremongering. Although some say that people are confused, I have it on good authority that Hon Neil Thomson has been out there contributing to some of the scaremongering. The member for Central Wheatbelt says that she supports the legislation, and I am sure that she does, but Hon Neil Thomson has been emailing constituents and speaking to the media and referring to it as a terrible law that will hurt farmers and tradies. A constituent from Broome emailed me. A paragraph of the email that I have highlighted says —

I received this newsletter from Neil Thompson yesterday which I find completely disgusting and to be divisive misleading propaganda. This type of correspondence only works to divide Indigenous people and our allies and non-Indigenous people. I have called Neils office and expressed my views but wanted to pass on to you in the event you would like to take further action.

He is quite happy to speak to either me or my colleague Hon Rosie Sahanna. I note for context that this person is an Indigenous person who lives in Broome.

Furthermore, I would like to acknowledge my colleague Hon Rosie Sahanna. I know she has been working her guts out attending consultations. There were 94 co-design workshops held across the state, with more than 1 100 attendees. I know that she personally attended at least 28 of those workshops, representing the minister, and met with the department, and I commend her for that.

I think this act is about proponents finally needing to consult and have conversations with Aboriginal people about Aboriginal cultural heritage. I can admit that there have been some concerns about the local Aboriginal cultural heritage services, but there was support from this government to get that up. The calls to delay the implementation of this act are offensive to Aboriginal people who, for far too long, have not been listened to and have been represented by legislation that holds outdated concepts of the rights of Aboriginal people and Aboriginal heritage.

*Division*

Question put and a division taken with the following result —

**Extract from *Hansard***  
[ASSEMBLY — Tuesday, 13 June 2023]  
p2676e-2686a

Ms Mia Davies; Mr Peter Rundle; Mr Shane Love; Ms Libby Mettam; Dr Tony Buti; Ms Divina D'Anna

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Ayes (5)

|               |                |                                  |
|---------------|----------------|----------------------------------|
| Dr D.J. Honey | Ms L. Mettam   | Ms M.J. Davies ( <i>Teller</i> ) |
| Mr R.S. Love  | Mr P.J. Rundle |                                  |

Noes (45)

|                   |                  |                   |                                |
|-------------------|------------------|-------------------|--------------------------------|
| Mr S.N. Aubrey    | Ms J.L. Hanns    | Mr S.A. Millman   | Ms R.S. Stephens               |
| Mr G. Baker       | Mr T.J. Healy    | Mr Y. Mubarakai   | Mrs J.M.C. Stojkovski          |
| Dr A.D. Buti      | Mr M. Hughes     | Ms L.A. Munday    | Dr K. Stratton                 |
| Mr J.N. Carey     | Mr W.J. Johnston | Mrs L.M. O'Malley | Mr C.J. Tallentire             |
| Mrs R.M.J. Clarke | Mr H.T. Jones    | Mr P. Papalia     | Mr D.A. Templeman              |
| Ms C.M. Collins   | Mr D.J. Kelly    | Mr S.J. Price     | Ms C.M. Tonkin                 |
| Mr R.H. Cook      | Ms E.J. Kelsbie  | Mr D.T. Punch     | Mr R.R. Whitby                 |
| Ms L. Dalton      | Dr J. Krishnan   | Mr J.R. Quigley   | Ms S.E. Winton                 |
| Ms D.G. D'Anna    | Mr P. Lilburne   | Ms M.M. Quirk     | Ms C.M. Rowe ( <i>Teller</i> ) |
| Mr M.J. Folkard   | Ms S.F. McGurk   | Ms R. Saffioti    |                                |
| Ms E.L. Hamilton  | Mr D.R. Michael  | Mr D.A.E. Scaife  |                                |
| Ms M.J. Hammat    | Mr K.J.J. Michel | Ms J.J. Shaw      |                                |

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Pair

Ms M. Beard

Ms H.M. Beazley

Question thus negatived.