

**ABORIGINAL HERITAGE LEGISLATION AMENDMENT AND REPEAL BILL 2023**

*Consideration in Detail*

Resumed from an earlier stage of the sitting.

**Clause 13: Section 18 amended** —

Debate was interrupted after the clause had been partly considered.

**Dr A.D. BUTI:** Before we start, I promised the member for Central Wheatbelt a list of the people who were invited to the meeting.

**Mr D.R. Michael:** Do you want to give it to me?

**Dr A.D. BUTI:** David is so nice, is he not? I have the details of the parties invited to the initial briefing with the minister on 22 August as well. I can provide some clarification to the Leader of the Opposition on clause 8. I did say that I would when I had that information. Is that okay?

**The DEPUTY SPEAKER:** With the indulgence of the house.

**Dr A.D. BUTI:** The Leader of the Opposition asked me a question about the scope of proposed section 71(3)(d) and (e). Transitional regulation-making powers of a broad nature are not unique to this bill. The provisions are tailored to the specific scenarios that might arise under the particular bill as we repeal the 2021 act and go back to an improved 1972 act.

Proposed section 71(3)(d) will provide for the making of transitional regulations that may —

provide for proceedings and remedies that might have been commenced by, or which are available to or against, a specified person or body to be commenced by, or be available to or against, another specified person or body;

Proposed section 71(3)(e) will provide for the making of transitional regulations that may —

provide for the transfer of, or the creation of interests in, specified property, rights or liabilities;

We had in mind that the repeal of the 2021 act would mean that certain bodies established under that act would be abolished and there may be a need for proceedings and remedies or property and assets to be transferred to another person or entity. For example, under proposed paragraph (d), if proceedings were commenced against a decision of the Aboriginal Cultural Heritage Council—the member had it right—or the local Aboriginal cultural heritage service before repeal day, a transitional regulation could be made that, upon repeal, the person who had taken proceedings against the ACH council or LACHS may proceed against the committee, which will be the new body under the new legislation.

In relation to proposed paragraph (e), the Aboriginal Cultural Heritage Council may have assets, property or liabilities that might need to be transferred to someone else upon repeal of the 2021 Act. Transitional regulations have been provided in draft form to the opposition, others and targeted stakeholders for consultation and feedback. In the course of consultation, further transitional matters that require a regulation to be made may be identified, and this broad transitional regulation-making power will allow us to properly address any of those transitional matters.

Ultimately, any regulations will be limited by the overall transitional purpose of the regulation-making power in proposed section 71. There may not even be occasions to rely on the regulation-making power given the short period that the 2021 act has been in effect, but we cannot preclude that possibility. That is why we have included it.

**Ms L. METTAM:** I refer to clause 13 and lines 1 to 20 on page 11. I note that native title parties are summarised in this provision. There is some concern that areas of the state not under a native title claim and still subject to negotiation or disagreement between differing traditional owners may not be adequately covered. More broadly to start with, how will this act be able to determine that if areas of representation overlap? That is my first question.

**Dr A.D. BUTI:** The whole intention here is to ensure that we cover everyone. The revision of the native title party definition is to ensure that, when possible, there is a native title party that has a right to review for the whole state. Regional corporations are explicitly given primacy over the settlement areas—principally, the south west settlement Indigenous land use agreements and the Yamatji nation ILUAs. Prescribed bodies corporate under the Native Title Act and registered claimants have a right of review over the entirety of their determination or registered claim areas. The previous definition applied only when native title existed or could exist. Any land over which land title was outside an ILUA, surrendered or compulsorily acquired was not the subject of that right of review. Given that the definitions of prescribed bodies corporate and registered claimants now include all land within the determination or registered claim boundary, paragraph (c) of the 2021 act definition that dealt with land title that had been surrendered or compulsorily acquired under an ILUA is no longer required. As with the previous definition, paragraphs (a) to (c) will not cover all the state; therefore, paragraph (d) will enable a person or a class of persons to be prescribed. The definition of native title is supplementary to the provisions in the amended regulations

that prescribe the specific bodies under paragraph (d). We have done that so there will be some body in any part of Western Australia that will have the right to review.

**Ms L. METTAM:** Further, I understand that the goldfields in particular has an issue. Can the minister provide some clarification about how it will work in areas with no-one? I will need the minister's clarification on this: if a regional corporation or ILUA is absent, how it will work in the goldfields?

**Dr A.D. BUTI:** In the goldfields, as the member says, no native title has been determined, so Native Title Services Goldfields will be the body that will have the right to appeal or review.

**Ms L. METTAM:** Further to that and further to the minister's original response, how will it be determined under the act who is the appropriate traditional owner if there is an area of disagreement between the representatives? I imagine that this could be a concern.

**Dr A.D. BUTI:** Under proposed new regulation 13 of the Aboriginal Heritage Amendment Regulations, we have prescribed some parties for specific issues, and one of those is Native Title Services Goldfields. A number of other parties are prescribed for native title clarification. If there is any doubt, the department will confirm which is the appropriate one. This provision is actually about the right to review, so if a party seeks a review, the determination will be made by the department whether that party has the right to review. I think the member's question is probably leading to whom a party should go to to negotiate with? But that will be in a different clause. This clause is about the right to review.

**Ms M.J. DAVIES:** I think this fits in with this clause. I raised a question about this in my contribution to the second reading debate and we touched on it, but I just want to be really clear. The minister said then that the native title group will be responsible if there is no Indigenous land use agreement or native title has not been settled. I imagine that the whole state has somewhere it can go. I raised a question and I know the minister said he had spoken to the group that raised it with me. The group is saying that the Native Title Act 1993 states that these Aboriginal groups can exercise only their facilitation-and-assistance function. The interpretation of that is that these Aboriginal groups will not be, and are not permitted to be, the body that makes decisions; they are an umbrella group that provides assistance and facilitation for those who will ultimately hold the ILUA or native title. I need some clarity on the advice that the minister has had that the provisions are not at odds with the commonwealth act, which prescribes their functions.

**Dr A.D. BUTI:** They are two different things. One thing is the role under the Native Title Act and the other thing is the role under this act. The definition in this act will determine whether they have standing. In the end, the State Administrative Tribunal will determine whether they have standing. I am sure we will get to the issue of whom people will go to to negotiate, which relates to section 18. This is about the right of review, which will be determined under proposed subsection (1AA) of this legislation. There will be some difference, but the Aboriginal groups have functions under the Native Title Act and then they will have functions under this act.

**Ms M.J. DAVIES:** Therefore, I understand that this act will empower them to have that power. My question is: will they have a right to say that they do not want that power; and, if so, what will happen then?

**Dr A.D. BUTI:** Then there will be no-one who will review that decision.

**Ms M.J. Davies:** Okay.

**Dr A.D. BUTI:** Yes. This provision will give Aboriginal groups the right to review. If they do not want to take that up, that is entirely up to them. No-one can force someone to seek a review, just like no-one can force a landowner to seek a review.

**Ms L. METTAM:** Will there be a requirement for multiple traditional owner groups to provide an approval?

**Dr A.D. BUTI:** That would be in incredibly limited circumstances. It would be very, very rare that that would be the case, but if there were more than one prescribed body corporate or registered claimant over an area, each would have a right to review. I do not have the actual numbers, but it would be incredibly few and far between.

**Ms M.J. DAVIES:** I am still on clause 13 on page 11. I go back to what I was talking about before, which was the consultation process that occurred in relation to empowering those groups. How was that conducted? Was that part of the discussions the minister had with those groups so they were aware that that potential responsibility was coming to them?

**Dr A.D. BUTI:** When we announced that we would be going back to the 1972 act, one of the major features discussed with various Aboriginal corporations was the ability to allow traditional owners to have a right of review. We had already made the announcement, so I am not denying that, but I have not found any Aboriginal corporations that have said it was not a good idea. I add that that was one of the criticisms that Aboriginal groups had been making for years.

**Ms L. METTAM:** Further to that, to what extent have those groups raised any concern about the capacity to respond to and make the time frames in the legislation?

**Dr A.D. BUTI:** I am not aware of anyone who has complained about not having the ability to make that time frame. We will impose certain time frames because we believe they are necessary.

**Ms M.J. DAVIES:** I do not want to fall foul as I did before by missing a clause. I refer to this whole clause just as an overview so I can make sure that I ask all the questions I need to ask. From the minister's perspective, clause 13 provides the right of review, it has a proposed section about the minister's responsibilities to make decisions, a gag provision and a provision about new information. Is that all dealt with under this clause? Have I missed anything?

**Dr A.D. BUTI:** No. There is new information, no gag and the right of review.

**Ms M.J. DAVIES:** Is the start of that the definition of who has the right to be a party to that? Is the purpose of having the proposed section we have just been talking about in case there is a request to review a section 18 application—so who will be party to that? Can I ask a general question? Will any other body outside of the landowner or the groups prescribed in this legislation be able to ask for a review?

**Dr A.D. BUTI:** No third party will be able to ask for a review.

**Ms M.J. DAVIES:** I go to new information. Still on page 11, there is a definition of “new information about an Aboriginal site”, and that will be the first time it is mentioned in the amended legislation. Can the minister provide some comments about why that has been included and what the process will be?

**Dr A.D. BUTI:** That is a really important part of the new regime because it comes out of the Juukan Gorge scenario. The situation at Juukan Gorge was that rock shelters were known to be Aboriginal sites when consent was granted in December 2013; however, new information about the age of the rock shelters was subsequently attained through archaeological excavation. Under the 1972 act there was no requirement for the landowner to report this information and no ability for the minister to reconsider the decision in light of this information. One of the outcomes of the Senate inquiry was that if someone comes across new information, there should be a legal duty to give that information to the minister. That is the rationale behind it.

**Ms M.J. DAVIES:** Practically speaking, how would that work, and what is new information? It is a pretty basic question, but it goes to some of the discussions that the Leader of the Liberal Party and others have had. I imagine that at any point in time, a whole raft of things could be discovered. The department is planning on undertaking its program, and then, obviously, projects will progress. As we had with Juukan Gorge, new information may come to light. What kinds of things could people bring to the minister's attention? Obviously, we will get to the time lines to be laid out for them to do that, but what kinds of things could they bring to the minister's attention?

**Dr A.D. BUTI:** That will be information about new Aboriginal heritage places or sites or new information about existing Aboriginal sites. I know that the member for Vasse will move some amendments, but basically it is any new information about Aboriginal heritage, because we are trying to protect it. If a decision was made and subsequently we had additional information, there would be an obligation. It does not mean anything will necessarily change, but it will depend on what that new information is. The information required to determine whether something is Aboriginal cultural heritage is in section 5 of the act, and it will be the same for all new information.

**Ms L. METTAM:** As the minister is aware, we have been advised by stakeholders that the new information definition could cause some confusion. Was any threshold considered regarding what would constitute an appropriate trigger point for new information?

**Dr A.D. BUTI:** Information that someone looks at in determining whether there is a need to go to a section 18 process will be the same information that they will look at if they come across that information after a section 18 has been granted. It will be the same information—in other words, Aboriginal cultural heritage.

**Ms L. METTAM:** I have a couple of questions. Can the minister give examples of information and, further to the member for Central Wheatbelt's question, the type of information that would not be required to be reported or is the expectation that it would be everything?

**Dr A.D. BUTI:** The stark example I gave was Juukan Gorge. For example, there could be new archaeological discoveries. When works are undertaken, new Aboriginal cultural sites could be discovered.

**Ms L. METTAM:** I guess I am looking at this in a different way. We can talk about the amendment later.

In the minister's response yesterday, when he referred to the amendment that will be moved, he said that the proposed amendment to include a significant test would increase the risk of another Juukan Gorge event occurring as it would narrow the scope and the intent of those clauses. I want to make it clear that it is not the reality or intent of the amendment. Can the minister elaborate further on the comments he made?

**Dr A.D. BUTI:** Deputy Speaker, would you like me to move the amendment and then I can elaborate on that?

**Ms L. METTAM:** I have a few other questions. I am a little lost about when to move the amendment.

**Dr A.D. BUTI:** We will discuss the amendment and then we can move it afterwards.

**The DEPUTY SPEAKER:** Just for clarity, we are not dealing with the amendment at the moment. We are taking further questions on clause 13.

**Ms L. METTAM:** I have further questions on clause 13. I am specifically talking about the issue of new information. Can this section be amended to incorporate an aspect that new information has to be material in nature to warrant reporting?

**Dr A.D. BUTI:** I would like to respond to part of that question after the amendment is moved. The amendment will provide for the landowner to decide whether it is significant, which would be a pretty tall order. The section 5 criteria that one utilises in enlivening the section 18 consent will be the same for new material. It would be inconsistent to have one criterion for the initial section 18 and a different threshold for the new information. We are trying to protect Aboriginal cultural heritage or allowing it to be harmed. It needs to be consistent; otherwise, it will be a different threshold. Also, the onus on the landowner would be onerous.

**Ms M.J. DAVIES:** When new information is brought to the minister, will it have to be verified as Aboriginal cultural heritage or will it just be that they believe it is Aboriginal cultural heritage? Will they have to engage a specialist or the traditional owners to provide a certain amount of information to the minister and the committee for their consideration? What will that process look like when they bring it to their attention?

**Dr A.D. BUTI:** There will be no obligation for the landowner to seek to verify information. Probably, in practical terms, the landowner may come across new information in a report or something, but there will be no actual obligation for the landowner to verify the new information they bring to the minister. They may say, “We believe this is new information.” It will then be up to the minister and the department to do their own research, if needed, if the landowner has not brought them a report or evidence, to determine whether there is new information that might lead to a change in that consent.

**Ms M.J. DAVIES:** I am going to posit an outrageous scenario, but this is probably where we get to do that to test what might happen. People do not want some projects to progress in the community. From time to time, in very highly contested areas of our state, people do not want particular projects to progress. Could the minister imagine a scenario in which someone might potentially plant something or use this legislation vexatiously, and how might that be dealt with? I am not saying that would necessarily be done by an Aboriginal or a non-Aboriginal person; I am saying that it could be done to thwart a project. How would that be managed by the department? Obviously, it would not be legal to do it, and it would be an enormous waste of money and time, but I would like some clarification from the minister on that.

**Dr A.D. BUTI:** There are two different possible scenarios in the member’s question. One scenario is that the landowner brings the information; the other is that a third party might want to try to stop a project. In the end, the minister will have the discretion to determine whether they accept the new information, but the minister will have to be able to verify it. The criteria under section 5 of the Aboriginal Heritage Act include any place of importance and significance where objects have been left connected with traditional cultural life; any sacred, ritual or ceremonial sites of importance to Aboriginal people; any place that, in the opinion of the committee, is of importance and significance to the cultural heritage of the state; and any place where objects to which this act applies are traditionally stored. That is the criteria under section 5, and it will be the same criteria for the new information. Whether it is a landowner who has an archaeological report or someone else, they will have to provide the information. The department, the committee or the minister will have to have information in front of them in order to change or vary the consent.

I should also say that section 54(1) of the 1972 act states —

A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.

Section 54(2) states —

A person who ... knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

**Ms L. METTAM:** Just to clarify the point about new information, anyone will be able to provide that new information. In terms of any amendment, would the responsibility not be on the state to then determine whether that heritage was of regional or state significance?

**Dr A.D. BUTI:** In the end, it is a section 18 notice, so it will be the minister who determines that. The minister will receive advice from the committee and maybe other information from the department, but the minister will have to act on some verification. Any new information that then involves a change—it may not change—will be subject to a review. The minister will have to make a decision only if that new information is brought to them from the landowner. If it is brought by another party, the minister will not have to do anything. They may, but they will not have to. The member for Central Wheatbelt raised a possible but highly unlikely scenario. Most landowners

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who have gone through the trouble of applying for a section 18 notice will probably not want to come forward with false or misleading information to have their section 18 notice revoked or varied.

**Ms L. METTAM:** As the minister has acknowledged, in other clauses of this bill and in the Planning and Development Act, there are provisions for issues of regional or state importance. Can the minister provide clarification around that?

**Dr A.D. BUTI:** That is with regard to the planning power, which is when state significance comes into play. That is also the case with the Premier's calling-in power.

**Ms L. METTAM:** There will be a time frame of 14 days for a land user if they come across new information. I am questioning the time frames here. However, the Premier's option is for a longer time frame. Can the minister provide some clarification around that?

**Dr A.D. BUTI:** On the issue of the importance to the state, if the member looks at the section 5 criteria, she will see it includes —

- (c) any place which, in the opinion of the Committee, is ... of ... importance and significance to the cultural heritage of the State;

That is still picked up in that provision. To answer the question, it will be 21 days for a landowner if they come across new information and the Premier's calling-in power is between 14 and 28 days.

**Ms L. METTAM:** Sorry; did the minister say 21 days for landowners and 14 for the Premier?

**Dr A.D. BUTI:** It is 14 to 28 days for the Premier.

**Ms L. METTAM:** Can the minister clarify why there is a difference?

**Dr A.D. BUTI:** There is not really, in the sense that we think 21 days is sufficient for people who come across new information to transfer it to the minister. The calling-in power is something that has to be considered very carefully by the Premier. That is why there is an extra week.

**Ms M.J. DAVIES:** I am working through this. We have gone through the definitions. I am now at clause 13(2) of the bill, which provides that the minister will need to publish the notice of the decision on a website. I will read section 18(3) of the act, which is immediately prior to where proposed section 18(3A) will go. It reads —

- Where the Committee submits a notice to the Minister under subsection (2) he shall consider its recommendation and having regard to the general interest of the community shall either —

It is "consent" or "wholly decline". It continues —

- and shall forthwith inform the owner in writing of his decision.

The amendment is that the minister will have to publish the notice of the decision on a website that is maintained by, or on behalf of, the department. I think it is fairly self-explanatory. I guess it is for the transparency and modernisation of the act, as publishing something on a website in 1972 was not an option.

**Dr A.D. BUTI:** Yes. There were no websites back then. The department, as a matter of practice, publishes these on its website. There was previously no statutory requirement for the minister to publish a notice of the decision but the Department of Planning, Lands and Heritage has been doing it for some time.

To go back to the member for Vasse, the 21 days was based on feedback from stakeholders about new information.

**Ms M.J. DAVIES:** We have talked a little bit about the right of review; clause 13(3) amends section 18(5) of the act. I am just trying to marry up my notes. My only question on that is: will only the native title party that is involved in the decision be able to call for a right of review? Can it be another body or a third party?

**Dr A.D. BUTI:** For the State Administrative Tribunal to take it on, the party has to show it is aggrieved. It has to be the aggrieved party.

**Ms M.J. DAVIES:** I refer to the time lines for the review process. Sorry, I might be asking the minister to double up here. The Leader of the Opposition said that is subsection (6) of the regulations. My question was really to clarify the time lines for the review process.

**Dr A.D. BUTI:** They will have 28 days to lodge the appeal or the review and then SAT will determine how long it will take to do the review, but it will be required to do it as quickly as possible.

**Ms M.J. DAVIES:** Will it be the normal SAT process with no possibility of setting time frames for that?

**Dr A.D. BUTI:** The member is right, but the Premier can call it in. The Premier can call it in before it goes to SAT or ask SAT to make the recommendation, but not a determination, and then the Premier will decide.

**Mr R.S. LOVE:** In response to the minister's response to the member's question regarding time lines, proposed section 18(9)(b) sets out that time lines can be made. Is it possible that in the regulation —

**The DEPUTY CHAIR:** What page?

**Mr R.S. LOVE:** Page 16.

**The DEPUTY CHAIR:** Page 16 is the next clause.

**Mr R.S. LOVE:** No, clause 13.

**The DEPUTY CHAIR:** Sorry, you are right.

**Mr R.S. LOVE:** We are still on clause 13. I refer to section 18(9)(b), from lines one to 10. Proposed section 18(10) states —

Regulations under subsection (9) may be made in relation to the jurisdiction of the State Administrative Tribunal ...

Is it possible that time lines could be set for the processes in SAT by regulation? Specifically, one of the concerns is the stop-the-clock processes that seem to forever keep things from moving along. Can we set some firm time lines for some of these processes?

**Dr A.D. BUTI:** That is a fair enough concern that would have been expressed. SAT is required to determine it as soon as possible and the backup will be the Premier's call-in power.

**Mr R.S. LOVE:** Is there no willingness to look at setting a regulation for some time lines for those considerations to be made?

**Dr A.D. BUTI:** As I think Hon Neil Thomson mentioned, he was critical that we would be interfering in the judicial process if we sought to do that.

**Mr R.S. LOVE:** I know we have progressed a bit, but we have not passed through the clause, so I will just go back to what I wanted to ask about. I refer to page 11, line 23, and the definition of “new information about an Aboriginal site”. The minister said that the criteria —

**Dr A.D. Buti:** Sorry, page 11?

**Mr R.S. LOVE:** It is page 11, new information, line 23, “new information about an Aboriginal site”. The minister mentioned in response to one of my questions it was similar or the same criteria as section 5. My question is really around the import of the Aboriginal Heritage Act 1972 guidelines that were provided to the opposition as part of the briefing on Friday. Appendix 1 of the guidelines lists the types of Aboriginal heritage and relevant landscape features. What is the legal status of the guidelines and that appendix? Is this a collection of learnings from court directions or are they a matter of policy? Can the minister give me some idea of whether these guidelines have any legal standing?

**Dr A.D. BUTI:** They are policy guidelines that help to guide people, but they do not influence the discretion of the minister to determine whether to vary, revoke, change or suspend a section 18 notice.

**Mr R.S. LOVE:** But they do provide guidance to landowners or people who become aware of new information that they are required to report. It has a list of information on the types of sites that people are required to report. I know it has been asked about before, but I go back to the idea of a mythological site, which is —

A place that is connected to the great spirit ancestors, in their various manifestations, of the ‘Dreamtime’ which continues to be important and of special significance to persons of Aboriginal descent.

How could a person become aware of something that is mythological? I might ask a further question after the minister answers that.

**Dr A.D. BUTI:** There are two things. That is basically caught by section 5(b) of the act. If a person is not aware of it, they will not commit an offence. The offence under section 62 is if someone knowingly harms Aboriginal cultural heritage. If a person does not know that a site is a mythological place, they will not commit an offence. An offence will be committed when people know about it or should have known about it. In most cases, people would not know, but if someone came to them with an archaeological report, they would have an obligation to give that information to the minister and the committee. That section has been in the act since 1972. It is an offence if a person knowingly destroys a site or should have reasonably known that it was such a site. Unless someone is an Aboriginal person or archaeological expert who has been involved in this area, it is unlikely that they would know that.

**Mr R.S. LOVE:** I have a further question about the ability of someone to know whether they need to report this. If any Aboriginal person came to the holder of a section 18 notice and expressed a view that that place was connected to spirit ancestors and was mythological in nature, would they be required to pass that information on? Would that be of sufficient import for that to happen?

**Dr A.D. BUTI:** It would depend who the Aboriginal person was. It might be someone from New South Wales. They would have to have some credibility. In any case, if a landowner wanted to provide that information, they could provide that information. All they would have to do is provide the information; they would not have to do anything else. If it was not credible, it would not result in any change. As I said, if it is not the landowner, there is no obligation on the minister to change. As I previously said, if any person, whoever they are, provides wrong information, that will be an offence.

**Mr R.S. LOVE:** Appendix 1 of the guidelines talks about the types of Aboriginal heritage and relevant landscape features generally. The government has made some undertakings around surveys. Would a survey of freehold land, for instance, be a definitive discussion of whether there was a mythological connection to that site, or could that be undone by a later assertion by an individual who claimed to have knowledge?

**Dr A.D. BUTI:** No-one, under any legislation, would be able to prevent anyone making a subsequent claim of new information, but even if it is mythological, that new information has to be backed up with documentation. We cannot prevent someone making that assertion or allegation, but it will not have credence unless there is clear documentary evidence to verify that it is a mythological site. They cannot just say it; they actually have to have proof of it.

**Mr R.S. LOVE:** We are talking here about the traditions of a people that go back well before documentation, and in some areas there may still be people who are not literate in the sense that we understand it—reading and writing. They will actually have to provide documentation to make that assertion; is that the minister's understanding?

**Dr A.D. BUTI:** No, they can make the assertion, but it will not have any credence unless they provide some evidence. It will go to the committee. The committee is made up of experts in a number of areas, and unless they can convince the committee, the assertions will have no credibility.

**Mr P.J. RUNDLE:** A minute ago the minister mentioned someone coming from New South Wales, for argument's sake. Where is the cut-off point for the credibility of the person providing mythological evidence? Is there a boundary as to where they might come from—another state, for example, or a different area of the state?

**Dr A.D. BUTI:** As with native title, they will have to show some connection to the land under consideration.

**Mr R.S. LOVE:** I would like to finish this off with the guidelines. We are dealing with an act of Parliament, and we have also been provided with regulations that are clear, known and disallowable by the Parliament. Why do we have another set of documents that seem to be quite legalistic in the way they are written, but that are not actually disallowable? They are fundamentally important in the guidance of the administration of this legislation. Surely it would be better to put these matters in the regulations so that they can be examined by the Parliament so that Parliament can ascertain whether or not that should be the law of the land.

**Dr A.D. BUTI:** They have no legal effect; they are purely guidelines to help people. They have no legal effect.

**The DEPUTY SPEAKER:** Further question, Leader of the Liberal Party.

**Mr R.S. LOVE:** Leader of the Opposition—I have not defected just yet! I think they are working on me, but no! That is quite extraordinary. These are decisions that are being made and factors that are being taken into account in interpreting the law. Can the minister explain to me the difference between that and a regulation?

**Dr A.D. BUTI:** A regulation is gazetted and part of the legal structure. These are purely guidelines to assist people; that is all they are. There are many guidelines in many areas of government that do not have legal effect. It is not unusual.

**Mr R.S. LOVE:** That is interesting, because I am sure the assertion was made in the briefing that unless the guidelines were followed, the minister would not contemplate making a decision. That was with regard to the need to consult according to the guidelines. If that is not the case, can the minister please tell me? If it is the case, surely that will become, in effect, a legal condition.

**Dr A.D. BUTI:** I am not sure—I was not there—but I think the member may be referring to the guidelines with regard to consultation. The minister—the previous minister and I—have made it clear that, in respect of consultation, we would expect them to show that they had consulted the traditional owners. In that, we have. In this, we are saying, “These are guidelines that may assist you, but they do not have legal effect. The legal effect is the evidence that you are required to prove that it is an Aboriginal cultural heritage site that needs protection.” That is determined by the act and then determined by the committee and the minister.

**Ms L. METTAM:** I am going to back to some comments the minister made earlier when I raised the need for a threshold or significance test. In our view, this is absolutely about ensuring that there is a threshold and a test to prevent a future Juukan Gorge incident. I want to clarify one of the minister's responses. He stated that this had already been dealt with and that a form of definition was already in section 5 of the act. Section 5 refers to “importance and significance”, not state and regional significance. Can I clarify that that is the case in the 1972 act?

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**Dr A.D. BUTI:** I will repeat what I have said previously. Section 5 has four criteria: any place of importance and significance where objects have been left that are connected with traditional cultural life; sacred, ritual or ceremonial sites of importance and significance to Aboriginal people; any place that, in the opinion of the committee, is of importance and significance to the state; and any place where objects subject to the act are stored. Those are the four criteria that will help determine whether there is Aboriginal cultural heritage that should be protected under the act.

**Ms L. METTAM:** Regarding the 1972 act, the minister stated that a defence could be that the person could not reasonably know. I want to know what is considered a benefit—benefit is the wrong word. What does the minister mean by “could not have been reasonably known”? What does “reasonably” mean in that context?

**Dr A.D. BUTI:** It is no different to what has been the case since 1972. We have not changed anything about that. In any case, an individual would start by ringing the department or by going to the department’s website. As time goes on, there will be more information. A survey might show the person that there is Aboriginal cultural heritage. If there is not and they have spoken to someone in the department, the person from the department will say that they think that will suffice, or they may say that they believe there is a reasonable chance that there will be Aboriginal cultural heritage there, in which case they may ask the individual to undertake consultation. However, as we have stated under our plan, if a landowner comes to the government, the government will do the survey.

**Ms M.J. DAVIES:** I think we are jumping around a little bit. I apologise to the minister because I am going to backtrack a little bit—still on the same clause, but to subclause (4). I will then go back to clause 13(5) just so that we progress through the bill. It might make it a little bit easier! To my understanding, clause 13(4) will remove the gag provision. Is that correct?

**Dr A.D. BUTI:** Yes, the gag.

**Ms M.J. DAVIES:** I do not think there is any objection to this and there has certainly been support from industry. The Association of Mining and Exploration Companies in particular has advised that none of its members still use those provisions. It is already the practice and it makes sense to have that included in the legislation. How will that practically work, given that the agreements the minister is talking about will be between the native title parties and a private organisation? Are we essentially saying that if they are in existence, they will no longer exist under this legislation even if there is a legal contract between the two? I just want some clarity on how that will work. I do not think anybody would oppose it now, but what will happen to those that exist already?

**Dr A.D. BUTI:** They may be in there, but they will have no effect. They will not prevent it.

**Ms M.J. DAVIES:** It just nullifies it.

**Dr A.D. BUTI:** Yes.

**Ms M.J. DAVIES:** How will the minister ensure that industry is adhering to this process? Will there be active monitoring or will it just come to the fore if there is a complaint? Is the department aware of where they exist, and has it been made aware of them in the past? Obviously, it has been a conversation within the sector because it has been brought in as part of the amendment of this legislation. I wonder how that will get monitored; will it be actively or reactively? I invite the minister to comment.

**Dr A.D. BUTI:** As in a lot of parts of law, it often has to be reported. In this case, it will more than likely be the Aboriginal group that wants to comment but says that it is gagged from making a comment that will provide us with that knowledge.

**Ms M.J. DAVIES:** Obviously, the legislation being passed is an opportunity for the minister to provide that guidance to industry. I presume the department will issue a directive to make sure that any contracts or negotiations will either include or no longer include that going forward. I think it is an important provision, so I imagine there would be an active industrywide promotion.

**Dr A.D. BUTI:** I do not disagree. There has already been extensive discussion about no-gag orders, but we will continue to ensure that that is relayed. It was in the 2021 act as well.

**Ms M.J. DAVIES:** Thank you. That is all I have under clause 13(4). If we move on to clause 13(5), we have already had quite an extensive conversation about new information. I will ask for some clarity, and then I think the Leader of the Liberal Party has some further questions about this matter.

I am sorry; there was a bit of toing and froing earlier, so I want to absolutely clarify something in my mind. Can any third party lodge a new information claim? From my understanding—I have a note in my scribbles—in the briefing, it was said that the minister will have discretion to consider new information from third parties, not only from landowners with an interest. Can the minister say yea or nay to that?

**Dr A.D. BUTI:** The landowner will have an obligation to relay new information to the minister. A third party may relay new information, but it will not have an obligation.

**Ms M.J. DAVIES:** The minister can accept new information from any sources. That goes somewhat to the question the Leader of the Opposition was asking and the minister's example of someone from New South Wales providing new information. How will it be determined whether that person has a legitimate interest in what is happening?

**Dr A.D. BUTI:** It will be based on the credibility of the evidence presented and by whom it is presented. The person presenting the evidence has to show us why they have that evidence and the credibility of the evidence. The committee will look at that evidence, and the minister will not have to vary anything as a result of the evidence.

**Ms M.J. DAVIES:** If it is a third party—a party outside the native title group or landowner—how will the third party be made aware? Does something in the regulations or in the bill say that the minister has to say that new information has been brought forward or will it just be that the process carries on and the third party may not be aware of it?

**Dr A.D. BUTI:** Does the member mean the third party?

**Ms M.J. DAVIES:** Sorry, I will clarify. If the third party is not related to either of the groups—the landowner or the native title body—and is separate from the project, how will the third party be made aware? Is there a requirement for it to be made aware as soon as new information is brought forward to the minister?

**Dr A.D. BUTI:** The third party does not have to be made aware. Do you mean the landowner?

**Ms M.J. DAVIES:** Yes.

**Dr A.D. BUTI:** I see. Sorry!

**Ms M.J. DAVIES:** Because that might be someone from outside.

**Dr A.D. BUTI:** Yes. If new information comes to the attention of the committee and the minister and either the committee or the minister is going to consider it, they will definitely let the landowner know, because the landowner will have the right to provide feedback because of procedural fairness. No decision will be made without the landowner having procedural fairness to comment or rebut.

**Ms M.J. DAVIES:** Thank you. Therefore, will there be a trigger point when that is provided within a certain time frame to the landowner and then the provisions and the regulations—in terms of providing information or advice; I am presuming that is in the regulations—will start the clock?

**Dr A.D. BUTI:** If the minister decides that he or she is not going to consider that, there will be no need to let the landowner know. But if they are thinking of considering it, they will let the landowner know. Under procedural fairness, there is not a stipulated time frame, but they will need to provide what is considered to be adequate time for the landowner to respond, because if the landowner does not have time in which to respond, and then the minister decides to vary the section 18 consent, there would be a right of review.

**Ms M.J. DAVIES:** Therefore, there will not be a particular prescribed time line for when a third party brings something to the minister for them to then provide it to the landowner. Will we just hope that it gets done in a timely fashion?

**Dr A.D. BUTI:** That is right.

**Ms M.J. DAVIES:** Was it considered that the time line should be clear for potential impacts on projects that are underway for the landowner and proponents?

**Dr A.D. BUTI:** It was hard to stipulate a time frame because it depends on the complexity of the new information, so more time might be required. Rather than stipulating that it had to be 10 or 20 days, the landowner might require a longer period to respond, so it would have been a bit onerous. If the minister took a year to decide, the landowner could continue with the section 18 consent anyway, so it would be in the landowner's interest in that respect. However, putting a time frame on it would have been difficult because it would depend on the complexity of the new information and how long the landowner would need to provide their answer to the new information.

**Ms L. METTAM:** Do all four paragraphs in section 5 of the act need to be met for a site to be considered an Aboriginal site?

**Dr A.D. BUTI:** Just one paragraph needs to be met, as it is for a normal section 18 application.

**Ms L. METTAM:** To that extent, is this not a cumulative proposition? Is it just one of the four items?

**Dr A.D. BUTI:** That is right, but of course the more parts it has, the more chance it will be considered to be something that needs to be protected.

**Ms L. METTAM:** I go back to my point on the threshold. Can the minister understand the need for some clarification here to ensure that there is a threshold of significance, because it is not spelt out in those four parts?

**Dr A.D. BUTI:** The threshold will be the same as it is for clause 13(5). This is about protecting Aboriginal cultural heritage. It is the same threshold.

**Ms M.J. DAVIES:** We are still within the same clause, but I will move to proposed section 18(6A). This is what will happen subsequent to the new information, as I understand it, and what the minister may do with a consent that has been provided when presented with new information. Having regard to the general interests of the community, the minister can either amend, revoke, revoke and give new consent, or confirm the consent. Proposed section 18(6A) says that the minister “may” make a decision, and proposed section 18(6B) says that the minister “must” make a decision. I think in my own head I figured out that the minister will have four options after the minister has been presented with new information, but the minister will not have any choice; the minister will have to do something. Is that how those two proposed sections work together?

**Dr A.D. BUTI:** Yes, because proposed section 18(6A) is for new information from any source and proposed section 18(6B) is for new information from a landowner.

**Ms M.J. Davies:** Say that again, sorry.

**Dr A.D. BUTI:** If the new information comes from a landowner, the minister must make a decision. That may be to not confirm the consent. But if it is from any source, the minister may consider it, but the minister will not have to make a decision. The minister can leave the status quo. It is the same option, but for one the minister will be obligated to make a decision and for the other the minister may make a decision.

**Ms M.J. DAVIES:** Okay. I am with the minister. How will that work practically when the minister is considering that and what interaction will it have with the Aboriginal Cultural Heritage Committee?

**Dr A.D. BUTI:** The minister will have the statutory right to consider whether the minister will take the information from any source and make a decision or ignore the information. However, if the information is from a landowner, the minister must make a decision. The minister will have the same options for both; that is, to amend the consent of any condition, revoke the consent, revoke the consent and give a new consent, or confirm the consent. That will be available for both provisions, but if a landowner provides the information, the minister will have to make one of those four decisions. In effect, if the minister does not make a decision at all, that will confirm the consent and the status quo will remain.

**Ms M.J. DAVIES:** Thank you for that further clarification. What interaction will the minister have with the ACMC while he or she is making that decision?

**Dr A.D. BUTI:** The minister will have statutory discretion to either consider the committee’s advice or not consider the committee’s advice.

**Ms M.J. DAVIES:** To be clear, the advice would always be sought when new information is provided, but the minister might not make a decision. Will the minister have to seek advice from the ACMC?

**Dr A.D. BUTI:** It will literally depend on what the new information is. The new information will determine whether the minister will take advice from the committee. More than likely, in most cases, the minister will, but we are allowing the minister the option of not always having to take the advice that the committee provides. More than likely, the minister would take that advice, in most cases.

**Ms M.J. DAVIES:** I have a further question to that, so I am absolutely clear. If new information can be provided, the minister will not be obligated to then provide it to the committee for advice. The minister could just make a decision within the minister’s own remit without seeking the committee’s advice. There is no obligation in either the regulations or the legislation for the minister to seek the advice of the committee when new information is brought forward.

**Dr A.D. BUTI:** Later we will move to section 39 of the 1972 act, which deals with the functions of the committee. It states —

- (1) The functions of the Committee are —
  - (a) to evaluate on behalf of the community the importance of places and objects alleged to be associated with Aboriginal persons;
  - (b) where appropriate, to record and preserve the traditional Aboriginal lore related to such places and objects;
  - (c) to recommend to the Minister places and objects ...

But the minister does not have to take that advice.

**Ms M.J. DAVIES:** I understand that the minister does not have to take the advice, but I am asking whether the minister will have to seek it in every case.

**Dr A.D. BUTI:** This is about new information, not normal information.

**Ms M.J. Davies:** No, it is okay. I understand the normal ones.

**Dr A.D. BUTI:** The minister has that discretion.

**Ms M.J. DAVIES:** We could envisage that there might be quite significant amounts of new information for certain projects. In practice, if a committee with expertise was there, we would think the minister would rely on it rather than the minister's own internal resources. I wonder what the minister's view is. Would that not leave the minister exposed in some circumstances? Having been a minister, I would think it was risky when making these types of decisions to rely only on the minister's own remit.

**Dr A.D. BUTI:** It will depend on each individual circumstance. The new information may have no credibility, so the minister will not then have to seek the advice of the committee, but in practice, it is more than likely that the minister will seek the advice of the committee about the new information. However, there is not a statutory requirement to do so because we do not want to clog up the work of the committee if there is no need for it.

**Ms M.J. DAVIES:** Is that because the committee has specific time lines in that when it gets information, it has to deal with it? The committee's time lines are prescribed, are they not, whereas the minister does not have that same prescription?

**Dr A.D. BUTI:** The committee does not have prescribed time lines in regard to new information. To have a statutory requirement to seek or consider advice of the committee every time new information is brought forward is not necessary because the new advice may have no credibility. That is why there is not a statutory requirement. But in good practice, if there is some credibility, the minister will seek the advice of the committee. It will be more so in regard to sources other than the landowner. As the member mentioned, people may come up with things that have no credibility, so why waste time?

**Ms M.J. DAVIES:** I turn to resourcing. This is a new function for the department and the minister. Does the minister envisage that there will be a need for additional resources from the department's perspective? I understand that the new information will apply to not only section 18 applications, but also consent that has been provided in all eternity.

**Dr A.D. BUTI:** Certain dates apply to new information depending on when the section 18 application was granted. There will be requirements for additional resources. The department has additional resources in place for the 2021 act, but now some of those functions will not be needed. If extra resources are needed, that will go through the normal budgetary process. As I said, the department already has extra resources and some of those will now be able to be distributed for the administration of the amended 1972 act.

**Ms M.J. DAVIES:** The minister just stated that there were some time prescriptions around the application of the new information. I was of the impression that this applied to every section 18 consent that had been considered and will be considered.

**Dr A.D. BUTI:** It is, but it is about when they learn of the new information. On page 14, proposed subsection (6) talks about when someone becomes aware of new information, and there are three different scenarios. As a result of feedback we received from industry, we provided those different conditions.

**Ms L. METTAM:** Can the minister see how having a threshold could assist in these matters and provide clarification?

**Dr A.D. BUTI:** I completely agree, member for Vasse, and we have a threshold in section 5 of the act.

**Ms L. METTAM:** The minister has said about section 5 of the act that not each of those criterion in all four parts have to be met, and they do not all point to regional or state significance.

**Dr A.D. BUTI:** If the purpose of the act is to protect Aboriginal cultural heritage and a section 18 consent is granted because the determination is that there is Aboriginal culture heritage, it would be inconsistent to then say that when new information becomes available, a higher threshold would need to be met. That would be inconsistent with the initial protection of the Aboriginal cultural heritage. It would be an inconsistency.

**Ms L. METTAM:** The member for Central Wheatbelt referred to this earlier. Can I clarify that when the minister seeks the benefit of advice from the committee, that will be at the discretion of the minister and is not covered in the legislation?

**Dr A.D. BUTI:** It is not in the legislation, but because the minister's decision can be reviewed by the State Administrative Tribunal, the minister will have an obligation to make the appropriate decision.

**Mr R.S. LOVE:** I refer to proposed subsection (6C) on page 15 that begins on line 15. It states —

If the Minister proposes to exercise a power under subsection (6A) in relation to a consent, the Minister may suspend the consent. A suspension cannot extend beyond when the exercise of the power under subsection (6A) has taken effect.

Does that mean that the minister will set a suspension period that cannot be extended? Could it be reinstated once it is suspended after that time, or will the minister have to make a decision? Perhaps the minister might explain the import of that, because when I look to the explanatory memorandum, it pretty well just restates the clause.

Dr Tony Buti; Ms Libby Mettam; Ms Mia Davies; Mr Shane Love; Mr Peter Rundle; Ms Merome Beard

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**Dr A.D. BUTI:** The suspension could continue only for the decision period, and not further than the decision period.

**Ms M.J. DAVIES:** I did not hear the answer to that question. That was about the suspension of the decision. My apologies, I missed the minister's response. I can go back to *Hansard*. I just want to be clear.

**Dr A.D. BUTI:** The Leader of the Opposition was referring to proposed subsection (6C) and how the suspension could not extend beyond the exercise of power. The suspension could not extend beyond the decision period.

**Ms M.J. DAVIES:** Just to round out proposed subsection (6D), I ask the minister to explain. My notes just say "please explain". On line 20 of page 15, the bill states —

- (6D) A consent given under subsection (6A)(c) —
- (a) is taken to have been given under subsection (3)(a); and
  - (b) is subject to the condition in subsection (6)(c).

If there is an easy way of explaining the effect of that provision, I would welcome that from the minister.

**Dr A.D. BUTI:** It means that consent that is granted after new information has been provided has the same effect as the consent.

**Ms M.J. DAVIES:** So new information is brought to the minister, the minister considers it, chooses to revoke the exercise and gives a new consent. Potentially, that consent is still subject to that whole process again.

**Dr A.D. BUTI:** That is exactly right.

**Ms M.J. DAVIES:** I refer to proposed subsection (6) — "After section 18(8) insert:". I am just clarifying that that is the head of powers for one of the three sets of regulations, which is the general regulations. Is that correct?

**Dr A.D. BUTI:** That is the time line portion of those regulations.

**Ms M.J. DAVIES:** Can the minister perhaps expand a little to provide some clarity to the house on what that brings into effect whilst I am finding the regulations?

**Dr A.D. BUTI:** Proposed subsection (b) on page 16 of the bill relates to the regulation time frames, which have a general power to make regulations on time frames.

**Ms M.J. DAVIES:** Are they contained in the Aboriginal Heritage Amendment Regulations 2023?

**Dr A.D. BUTI:** They are contained in part 3 of the amended regulations.

**Ms L. METTAM:** I understand that we are dealing with the section on time frames. These time allocations are important but there are some assumptions in the legislation. In relation to the 70-day assumption, is it 70 calendar days or 70 working days?

**Dr A.D. BUTI:** It is 70 calendar days.

**Ms L. METTAM:** Is there an extension for 30 calendar days?

**Dr A.D. BUTI:** That is correct.

**Ms L. METTAM:** Can the minister provide some clarification on how this period was determined? How did the government come up with this period?

**Dr A.D. BUTI:** That was after discussion with the department, which has its own key performance indicators for time frames, and that was considered to be the appropriate time frame.

**Ms L. METTAM:** Under previous acts, how long has that taken, on average?

**Dr A.D. BUTI:** Does the member mean under the current Aboriginal Heritage Act for a section 18 notice?

**Ms L. METTAM:** Yes.

**Dr A.D. BUTI:** I do not have the actual average. I will try to find that for the member, even if I have to do that in my third reading speech.

**Ms M.J. DAVIES:** I turn to clause 13(10), which brings us to the end of this proposed section. It reads —

Regulations under subsection (9) may be made in relation to the jurisdiction of the State Administrative Tribunal under subsection (5) and, to the extent necessary for such regulations, the *State Administrative Tribunal Act 2004* section 92 is excluded.

Can the minister provide advice on the last part of that section and why there is an exclusion, and point to the regulation that this refers to in the papers that have been created for consultation?

**Dr A.D. BUTI:** Under section 92 of the State Administrative Tribunal Act, the rules may provide for the State Administrative Tribunal to extend or shorten the time frame for procedural matters, including the commencement of proceedings. The end result of clause 13(10) will be that SAT rules dealing with time frames

will have no effect on applications made under section 18(5) of the 1972 act. Proposed new regulation 15 will allow 28 days for an application for review to be made to SAT. This is consistent with the time frame under the SAT act and the rules. It also allows the SAT president to extend the time limit, whether or not the time limit has expired.

**Ms M.J. DAVIES:** I have that regulation in front of me now, and, as the minister just said, it allows the president of the State Administrative Tribunal in particular circumstances to extend the time limit under regulation 15(1). Is that a stock standard regulation? Does that exist in other legislation or regulations? In what sort of circumstances would the minister envisage there being a requirement to extend those time frames, and how many times can that power be exercised?

**Dr A.D. BUTI:** It is under the SAT act. An example of a situation whereby SAT may want to extend the time frame would be if one party such as a landowner has had insufficient time to gather the evidence they need for the review process.

**Ms M.J. DAVIES:** Will the legislation enable them to extend it more than once, or is there a limit on that?

**Dr A.D. BUTI:** It will be one extension for each application. If the party does not apply within the time period, it will be up to SAT to determine, but the party will need to make another application in order to have another extension.

**Further consideration of clause 13 postponed, on motion by Dr A.D. Buti (Minister for Aboriginal Affairs).**

[See page 4956.]

**Clause 14: Section 18A inserted —**

**Dr A.D. BUTI:** I move the amendment to clause 14 standing in my name.

Page 20, after line 12 — To insert —

**18B. Change in ownership of land subject of s. 18 consent**

(1) In this section —

*owner*, in relation to land, has a meaning affected by section 18(1) and (1a).

(2) If there is a change in ownership of land the subject of a consent under section 18(3)(a), an owner of the land must give notice in writing to the Minister within the period prescribed by the regulations.

Penalty for this subsection: a fine of \$1 000.

(3) If, on receipt of a notice under subsection (2), the Minister is satisfied that the consent, or a condition to which the consent is subject, does not, because of the change in ownership, have its intended effect, the Minister may amend the consent accordingly.

(4) As soon as practicable after making a decision under subsection (3), the Minister must —

(a) give written notice of the decision to the person who gave notice under subsection (2);  
and

(b) publish notice of the decision on a website maintained by, or on behalf of, the Department.

(5) If there is a change in ownership of land the subject of a consent under section 18(3)(a), the Minister may, on written application by an owner of the land, revoke the consent.

(6) Regulations may provide for and in relation to notices for the purposes of this section, including the following —

(a) additional notice requirements to be imposed on an owner of land or other persons;

(b) the information that must be included in a notice;

(c) the period within which a notice must be given.

As I have already indicated, a number of the other amendments on the notice paper, including the amendments contained in postponed new clause 12A and clause 13, are consequential to this amendment.

This amendment will insert new section 18B into the act that will provide for the transfer of a section 18 consent when there has been a change in ownership of land. Proposed new section 18B will provide for notification requirements and sets the parameters for decision-making, including the requirement on an owner of the land to notify the minister within a prescribed time frame when there is a change of ownership of land that is the subject of a section 18 consent. The proposed penalty for failing to do so is a fine of \$1 000. It will include the ability for the minister to amend the consent. Having regard to the new owner, we will consider whether the original consent

and conditions are still appropriate. There is a requirement for the minister to give written notice of any amendment to the consent, allowing the minister to revoke the consent if the new owner applies for a revocation in writing.

It will also allow a regulation to be made for and in relation to the notices of change of ownership of the land. This amendment will ensure that a consent does not cease when there is a change in ownership of the land subject to the consent. If we did not move this amendment, that would be the case—with new ownership, the new owner would need to apply for a new consent. I ask the chamber to support this amendment.

**Ms M.J. DAVIES:** I understand that this has come about as a result of conversations since the bill was introduced. So we are clear, for anyone reading back in *Hansard*, this is an amendment to the bill. I ask the minister to clarify whether it was the case in the 1972 act that if there was a change of ownership, the new owner had to go through the whole process again? Is this the remedy to resolving what has been a challenge under the old system?

**Dr A.D. BUTI:** The member answered her own question; yes, that is the case.

**Ms M.J. DAVIES:** Is there any circumstance in which when that transfer occurs, the minister is empowered by anything within the legislation or the regulations that can amend or change the section 18 provisions? Is there any loophole or any opportunity for that to be opened at that point of transfer?

**Dr A.D. BUTI:** The minister will have the ability to amend the consent only to ensure the original intent of the consent is still complied with. The minister has the ability to amend the consent in order that the original purpose of the consent is followed through with.

**Ms M.J. DAVIES:** Could the minister provide me with an example of how that might look? Is the minister talking about a technicality or is it a change in some of the elements of consent? I am trying to understand what that might look like.

**Dr A.D. BUTI:** As an example, the original consent may have said that there was a concern that part of an area included Aboriginal cultural heritage. It may be that the new owner wishes to now do something on that area where there was previously a condition to avoid damaging it. That may need to be amended to allow the new owner to do some project on that land.

**Ms M.J. DAVIES:** At that point, in the minister's hypothetical example, would that transfer go to the Aboriginal Cultural Heritage Committee? I know we are talking about a hypothetical, but to me that sounds like that that would be a change in the use for which the consent was provided. Even if it was not at the request of the landowner, is there potential for the minister to initiate that as opposed to the landowner, and what risk will that pose to the owners?

**Dr A.D. BUTI:** In the hypothetical situation I was thinking about on my feet, that was quite a significant one, so the minister would not have a statutory obligation, but it would go to the committee. If there is a change of name in regard to the land, that would not necessarily need to go to the committee.

**Ms M.J. DAVIES:** Okay. Is it envisaged that this proposed new section will apply only to administrative changes when there is a change of ownership, not a substantive change in the way that the land will be used?

**Dr A.D. BUTI:** It is all about allowing the power to amend the section 18 consent to ensure that the purpose of the original section 18 consent is still complied with.

**Ms M.J. DAVIES:** The reason I am asking is that I understand some sections of industry have asked for this; predominantly I think it has come from the property sector. Other sectors are probably a little bit nervous that changes could be made, and we might imagine that is from a resource sector perspective. We are just trying to get clarity about what a minor amendment would be or whether it is just administrative so that it is clear, but without amending the terms of the consent substantially or materially.

**Dr A.D. BUTI:** I remember we started from a position at which this ability to transfer was not there, but the power to amend conditions is not a blanket power to impose new or different conditions. The power is to amend conditions for the purpose of ensuring the conditions continue to have their intended effect following the changed ownership of the land.

**Ms M.J. DAVIES:** The minister said that there is a regulation-making power in this proposed new section. Can the minister point to those regulations for clarity?

**Dr A.D. BUTI:** It is regulation 20.

**Mr P.J. RUNDLE:** When the land is transferred, will there be some sort of notification at Landgate or whatever to tell the new owner that they need to give notice?

**Dr A.D. BUTI:** One hopes that like with any condition that is attached to land, part of the due diligence will be to seek it out.

**Mr P.J. RUNDLE:** Obviously, there is a fine attached. Will the department set up a process with, say, Landgate so that along with all the other things that go with a transfer of land, notice should be given of this?

**Dr A.D. BUTI:** I will take that on notice and provide a response during the third reading.

**Amendment put and passed.**

**Ms M.J. DAVIES:** I understand that proposed section 18A is about the call-in powers of the Premier. Can the minister advise why this power will be given to the Premier and not the minister?

**Dr A.D. BUTI:** Because it is harder to call in my own decision.

**Mr P.J. Rundle:** Come on; give it a go!

**Dr A.D. BUTI:** I could try!

**Ms M.J. DAVIES:** That was very succinct. There are time lines for how this will progress. As I understand it, the Premier will have a number of options. The Premier will be able to call it in as soon as the decision has been referred or ask the State Administrative Tribunal to consider it and then call it in. Perhaps the minister can clarify exactly what the powers will be so that we can ask questions.

**Dr A.D. BUTI:** The Premier will be able to call in an application before it goes to SAT or to ask SAT to hear it and provide a recommendation, but not a determination.

**Ms M.J. DAVIES:** I have heard in briefings and from my colleagues that the call-in powers in the bill are similar to powers in other legislation, particularly in the planning portfolio. Can the minister confirm whether that is the case? What circumstances does the minister envisage those powers being exercised in?

**Dr A.D. BUTI:** The powers will be similar to those in the Planning and Development Act. The difference is that in the planning act, third parties have a limited right. I am not the planning minister so I stand to be corrected on that. However, that is beside the point; they will not have a limited right under this bill. The issue will have to be of state or regional significance; that will be the barometer for the Premier to use the call-in power. If something is considered to be of state significance or regional importance and should allow the section 18 consent to go forward, the Premier could call it in and make a decision.

**Ms M.J. DAVIES:** I asked this during the briefing, but it would be handy to have the answer in *Hansard*. Does something being of state or regional significance refer to the actual physical site that is being considered or the project that the applicant is trying to progress? I imagine that some projects would ultimately provide the state government with significant royalties. Likewise, some areas of the state are already recognised as sacred sites. Will it be one or the other, or will it be both?

**Dr A.D. BUTI:** It is both.

**Ms M.J. DAVIES:** We could have a situation in which a project goes through the section 18 process and a review is called. The Premier then has the option to say, "This is of such significance that I'll be making this decision." When the Premier makes that determination, what is the requirement for them to seek advice and from whom do they seek advice to determine the outcome in making that decision? Is it within their own remit or their own office? Are there guidelines and an internal process? Is there a requirement for the Premier to seek advice once again? It will already have been to the committee. What are the parameters within which the Premier will be making the decision?

**Dr A.D. BUTI:** If we turn to page 18 of the bill, proposed section 18A(7) states —

If the Premier gives a direction under subsection (3)(a), the owner of the land the subject of the application, and each native title party in relation to the land, may make written submissions to the Premier.

Proposed subsection (8) states —

In determining the application, the Premier —

- (a) must take into account submissions made under subsection (7); and
- (b) must have regard to the general interest of the community; and
- (c) may take into account any other matter that the Premier considers relevant.

**Ms M.J. DAVIES:** I thank the minister. That is still pretty broad, though, is it not? It refers to each native title party in relation to the land; they do not have to, but they can make written submissions. Under proposed subsection (8) the test, if you like, is that it must have regard to the general interest of the community and that the Premier may take into account any other matter that the Premier considers relevant. That is a broader remit for the Premier. There are time lines in the legislation within which the Premier is to make a decision; we will get to that in a moment. Ultimately, once the Premier has made the decision, is that it?

**Dr A.D. BUTI:** It is, but a judicial review of the decision can be sought. That would not be a merit-based review, but a judicial review.

**Ms M.J. DAVIES:** I turn to the time line that is outlined under this proposed section. I am trying to understand how long that process might run for. There are time lines in the legislation, and if all of them were to run through to their full extent, how long could it potentially be before someone has an answer, once it has been called in by the Premier?

**Dr A.D. BUTI:** We have the various time frames. Under the regulations, clause 19, “Time limit for making determination under s. 18A(9) of Act”, states —

If the Premier gives a direction under section 18A(3) of the Act, the Premier must determine the application within 28 days after the day on which the application, with recommendations in the case of a direction under section 18A(3)(b) of the Act, is referred to the Premier, or as soon as practicable after that.

**Ms M.J. DAVIES:** I thank the minister. To clarify, it states —

If the Premier gives a direction under section 18A(3) of the Act, the Premier must determine the application within 28 days after the day on which the application, with recommendations in the case of a direction under section 18A(3)(b) of the Act, is referred to the Premier, or as soon as practicable after that.

There is a “as soon as practicable”; is that administrative? Is that if it happens to fall on a weekend or something? Just for clarity, anytime I see “as soon as practicable”, I know there is wriggle room in there, which puts the fear of God into the parties involved that there is no clear time frame.

**Dr A.D. BUTI:** That wording is used to ensure that any procedural irregularity is taken care of.

**Ms M.J. DAVIES:** The other part is obviously what happens when the call-in takes place. As I understand, proposed section 18A(6) states that the Premier may suspend the decision the subject of the application, in which case the decision is, while it is suspended, taken not to be made. Is it that the Premier is suspending the consent? Can the minister explain what that particular proposed section will actually practically do?

**Dr A.D. BUTI:** It will suspend the consent that is under review.

**Ms M.J. DAVIES:** Thank you. Is the consent suspended for the entirety of the site as in proposed section 18? Perhaps this was a separate section of the act, but I thought that there had been discussions at some point around the ability to hive off parts so that if this was outside a working area or areas like that, it would not produce a grinding halt to a project. Could the minister clarify that for me?

**Dr A.D. BUTI:** What the member is referring to is regarding new information, not the power to call in.

**Ms M.J. DAVIES:** If someone has made an application, the decision is being reviewed, it has gone to SAT and the Premier has called it in, the decision that is made is suspended and is deemed not to be in place. Is it true that nothing can happen until the Premier makes the final decision?

**Dr A.D. BUTI:** The wording is that the Premier may suspend, but they do not have to. It would depend on the actual circumstance.

**Ms M.J. DAVIES:** Okay. The remainder of that proposed section states that it cannot extend beyond the exercise of power under proposed subsection (9), which is the Premier actually making the determination. The options that the Premier will have will be essentially the same as what the original decision was, which was to confirm the decision, amend the consent by amending the conditions, revoke the consent or revoke it and give new consent. Otherwise, the Premier can just confirm the decision as it was made by the minister in the first instance. Is that correct or does that refer to the SAT decision?

**Dr A.D. BUTI:** I refer the member to page 18, proposed section 18A(9), line 20, which states “In determining the application, the Premier must do one of the following”, and it then sets out what the Premier must do. It is not the determination of SAT —

**Ms M.J. DAVIES:** Because you have called it in?

**Dr A.D. BUTI:** Yes, but it must be called in before the determination.

**Ms M.J. DAVIES:** At no point will the Premier make a decision after SAT has made a determination—he has to do it before. I understand that SAT can consider it, but that no determination can be made?

**Dr A.D. BUTI:** That is part of the call-in provisions. One is to call it in before it goes to the State Administrative Tribunal, and the second is to call it in, ask SAT to hear it and make a recommendation but not a determination. If the determination has been made by SAT, the Premier will not be able to call it in.

**Ms M.J. DAVIES:** I think proposed section 18A(10) is self-explanatory. It just says what the Premier has to do for his determination.

To me, proposed section 18A(11) is not entirely clear. Could the minister provide some advice because it refers to a whole raft of different sections of the amendment act?

**Dr A.D. BUTI:** The consent given by the Premier will not be subject to an application to SAT; no-one will be able to go to SAT to seek a review of the decision of the Premier.

**Mr R.S. LOVE:** The explanatory memorandum refers to sections 246 and 247 of the Planning and Development Act 2005. The minister just referred to the determination made by the Premier, which will not subject to review by SAT. The planning act has a stipulation at the very end of section 247 —

(5) The decision of the Minister is final.

For clarity, I wonder why similar wording is not included in this provision, seeing that it is loosely modelled—I would say fairly loosely modelled—on the Planning and Development Act. Obviously, it is undertaking different tasks, but it has that final wording that I think would make it quite clear if it were included.

**Dr A.D. BUTI:** It has the same effect. It is different wording, but it has the same effect. We are excluding the right of review.

**Ms L. METTAM:** I want to clarify, in the proposed section that is dealing with state significance, how state significance and regional significance will be defined as they relate to the Premier's call-in powers.

**Dr A.D. BUTI:** It is not defined. It will be determined on a case-by-case basis. It is nearly impossible to define what is of state or regional significance.

**Ms L. METTAM:** My next question is that some “materiality” is built in, I guess, by using the terms “state or regional importance”. I point out that there is this materiality for the Premier to use the powers but no threshold for new information.

**Dr A.D. BUTI:** As I said, it is not defined as I think it is nearly impossible to define. I think it is not defined under the planning act either.

**Clause, as amended, put and passed.**

**Clause 15: Part V heading replaced —**

**Ms M.J. DAVIES:** We are at clause 15, which says —

Delete the heading to Part V and insert:

**Part 5 — Aboriginal Cultural Heritage Committee**

I will not dwell on this because we will get to the composition of the new committee in coming clauses. I seek some reflections from the minister about how similar, if not the same, the committee from the 2021 act will be to the committee in this amended act. How will it differ from what was previously in the act—the Aboriginal Cultural Material Committee?

**Dr A.D. BUTI:** There are 11 members of the current Aboriginal Cultural Heritage Council, which includes two Aboriginal co-chairs—one male, Ken Wyatt; and one female, Irene Stainton—and the majority of members are Aboriginal. Those 11 members went through an expressions of interest process will all be the initial members of the Aboriginal Cultural Heritage Committee. They will take on the functions outlined in the bill before us.

**Ms M.J. DAVIES:** The Aboriginal Cultural Material Committee will no longer exist. Can the minister reflect on the composition of that so that we can compare and contrast what is and what will be?

**Dr A.D. BUTI:** Yes. Sorry. I am not sure of the actual composition of Aboriginal and non-Aboriginal members as it is today. All I can say is that for a long period, even back when Hon Dr Kim Hames was looking at introducing amendments to the 1972 act, there was quite a lot of criticism of that committee because there was no requirement for Aboriginal representation or dominant Aboriginal composition. Therefore, for a long period, that has been under some criticism and we believe that the Aboriginal Cultural Heritage Council, which still serves a function under the current 2021 act, was the appropriate constitution to have in the new Aboriginal Cultural Heritage Committee, and those 11 members should automatically transfer over. They are not required to transfer over; they were all asked, and they have all agreed to. We think that that is the most appropriate way forward.

**Clause put and passed.**

**Clause 16: Sections 28 to 36 replaced —**

**Ms L. METTAM:** This clause deals with the composition of the Aboriginal Cultural Heritage Committee. It will ensure that there will be people of Aboriginal descent on the committee, including the chairpersons who will represent

both women's and men's business. Is the minister confident that that objective will be met? How difficult does the minister think that will be?

**Dr A.D. BUTI:** We are confident. We have the current Aboriginal Cultural Heritage Council members, and we believe that they are outstanding individuals. We are confident that the requirements under the bill will be able to be met as we go forward. Therefore, we are very confident.

**Ms M.J. DAVIES:** I am sorry I do not have the list of the people in front of me, and so I am not doubting their skills at all. The minister has said several times that it will be a skills-based committee. Is there a matrix or list of skills that will be required of people to be on the committee? I understand that, as it stands at the moment, the eminent individuals who are on it are no doubt qualified, but as we move forward, what will the minister be looking for in terms of skill base? Will the minister be looking for particular types of degrees or working history? Will the minister be looking at a particular landowner group, or is it all of the above? How will that be determined? With the greatest respect, I do not mean just while the minister is in government, as this will be in perpetuity. I would like guidance for future governments on what that committee should look like so that it is very clear and the committee's standing is never called into question.

**Dr A.D. BUTI:** Under proposed section 29(3)(a), the minister must ensure that —

the members have, between them, such knowledge, skills and experience as the Minister considers appropriate to enable them to effectively perform the functions of the Committee under this Act;

There is not a matrix as such, but, as with a lot of boards, there is no determination that a board must have one person with a certain skill set and another person with another skill set. There will be an overall judgement. For instance, the current Aboriginal Cultural Heritage Council comprises a lawyer, a geologist, people who work in native title, a former minister of the Crown, and some who have vast experience in the public service. The member was a minister and will know that some boards have sectorial representation. That is definitely not what we are seeking for this committee. The members on the committee will be there to represent their duties on the committee, not a particular industry.

**Ms L. METTAM:** Excuse my ignorance, but can the minister clarify that the membership of the committee will be at least six individuals, so two persons who are to be appointed chair and an additional four persons?

**Dr A.D. Buti:** Yes.

**Ms L. METTAM:** We have spoken about the two chairs. Do we already know what the composition of this committee will be? I understand that the members of the Aboriginal Cultural Heritage Council from the 2021 act will transfer to the committee? Can the minister clarify that as well as the make-up of the committee?

**Dr A.D. BUTI:** The member is right. Under the act, it has to be at least six members and up to 11. There will be two co-chairs and then four to nine other members. We currently have 11 members on the Aboriginal Cultural Heritage Council and they will transfer to form the Aboriginal Cultural Heritage Committee.

**Ms L. METTAM:** Further to the member for Central Wheatbelt's question, obviously this will be a very important committee. The roles of the members of the Aboriginal Cultural Heritage Council will change and they will not be full-time roles. Forgive me if this is already set out in the bill, but can the minister clarify how often the committee will meet and what the requirements of them will be, given the time frames that have been outlined in the bill for making decisions on behalf of the state?

**Dr A.D. BUTI:** That will depend on the workload and the demands. There will not be a stipulation that it must meet for a certain period in a month but, more than likely, we believe it will meet about every two weeks. It will depend. If more materials come before the committee and more section 18 applications, it might meet more or it might meet less, but we think it will be every two weeks.

**Ms L. METTAM:** I refer to the workload of the committee as we transition under the new act. How many section 18 applications or other matters will the board have to deal with when the committee members take on this new role?

**Dr A.D. BUTI:** The member is asking me to predict the future, which I am unable to do. One would say that the demand will probably be greater than the demand on the Aboriginal Cultural Heritage Council now because of the section 18 applications. The Aboriginal Cultural Material Committee will perform the same functions. Maybe it was the member for Vasse who referred to the section 18 time frames. The information that I have received is that the average time has been approximately 100 days, but there will be a target of 56 days and that is why more resources will be employed in the department to assist with that.

**Ms L. METTAM:** Just to clarify, there will be more resources from the department to support the committee to do that, but by nature of the changes, will there be more involvement in making those decisions?

**Dr A.D. BUTI:** No, because it will provide recommendations to the minister as the committee does today.

**Ms M.J. DAVIES:** I refer to proposed section 30, "Procedures", which states —

Subject to regulations made for the purposes of section 32, the Committee may determine its own procedures. Just so I am clear, can the minister point me to the regulations that refers to. I know there was some consternation about the 2021 act and the ability for the committee to, really, set its own rules. I think the 2021 act had far broader powers for the committee. I am trying to clarify what it will be restricted to, or what its remit will be, and for the purposes of *Hansard* so the regulations and the procedures—in the minister’s words, what procedures the committee determines—can be read together.

**Dr A.D. BUTI:** The regulations being referred to are in part 4 of the Aboriginal Cultural Heritage Amendment Regulations 2023. I will not read through them because they are quite substantial, but the regulations are in part 4. As the member said, proposed section 32 is “Regulations about Committee”, which states —

Regulations may be made about the Committee, including the following —  
Those regulations are listed there.

**Ms M.J. DAVIES:** The other part of my question was: is there a difference in that remit to what was in the 2021 act? I might be mistaken, but is there a difference with the remit of the committee’s power to make its own rules that there was not in the 2021 act? Have I misunderstood? When the bill refers to procedures, are the procedures for how section 16 and section 18 applications will be dealt with, or does the committee have the power to initiate other activities?

**Dr A.D. BUTI:** The committee’s functions are a creature of the legislation we are debating. Its functions under the new regime are important but not as onerous as they would have been under the 2021 act when it was looking at management plans. It is not unusual for a committee to have the ability to make determinations on certain aspects of how it functions. That is not out of the question. The key issues in the regulations regard conflicts of interest, appointments et cetera.

**Ms M.J. DAVIES:** Can the minister provide me with an example? The minister says it is not unusual for a committee to be able to determine its own procedures. I am looking for an example of what that may refer to. Why is it necessary for that to be part of the legislation?

**Dr A.D. BUTI:** There will be administrative issues such as who takes the minutes or whether the committee can meet remotely—those sorts of matters that need some flexibility.

**Ms M.J. DAVIES:** The Leader of the Liberal Party asked how often they would meet. Will the minister be able to instruct the committee that it must meet within a time frame, or will that be one of the determinations that the committee can make itself in terms of its meeting schedule? How it will deal with those determinations? Obviously, I understand that will be within the time frames that are outlined within the act and the regulations, but is it a power or a power of suggestion?

**Dr A.D. BUTI:** If the minister is concerned about when the committee is meeting, the minister could seek to have a meeting with it or could even make regulations, but under division 4, regulation 35 “Holding meetings”, it states —

- (1) The first meeting of the Committee must be convened by both chairpersons, and subsequent meetings are to be held at times and places determined by the Committee, unless the meeting is convened under subregulation (2) or (3).
- (2) A special meeting of the Committee may at any time be convened by the Minister, a chairperson, or both chairpersons.
- (3) If at least half the number of Committee members in office give notice in writing to a chairperson requesting the chairperson to convene a meeting in relation to any matter, the chairperson must convene a meeting to be held within 14 days after the request is made.

While I am on my feet, adding a bit more to the time frame that the member for Vasse asked, the key performance indicator will be 58 days, but the statutory requirement will be 70 days.

**Ms M.J. DAVIES:** I am not entirely sure where this might fit, and I suspect this was an issue under the Aboriginal Cultural Materials Committee. If the committee meets, does the decision have to be unanimous? How will it be determined and if there is a difference of views about providing consent and the recommendation to the minister, how will that be resolved? Will the minister be provided with that advice at the time or would they just be provided with a “we recommend” or “we do not”?

**Dr A.D. BUTI:** Under division 4, regulation 39 mentions the meeting. It states —

- (2) Questions arising at a meeting must be determined, in open voting, according to how a majority of votes are cast.
- (3) In the case of an equality of votes being cast on any question, each Committee member presiding has a casting vote in addition to a deliberative vote.
- (4) If, after votes are cast on a question under subregulation (3), there is still an equality of votes, the question is determined in the negative.

**Ms M.J. DAVIES:** Regulation 31 immediately follows those procedures and it refers to subcommittees. Can subcommittees only be formed from the membership of the actual committee or will there be power for the committee to call in additional members, if required, to form those subcommittees? What kind of subcommittees does the minister envisage that might be? I presume this is based on the previous committee and that subcommittees may well have existed before.

**Dr A.D. BUTI:** I refer the member to regulation 28, “Subcommittees”. It states —

- (1) The Committee may establish subcommittees to assist it in performing its functions.
- ...
- (3) The Committee may —
  - (a) determine the functions, membership and constitution of a subcommittee; and
  - (b) appoint members of the Committee or other persons as it thinks fit to be members of a subcommittee.
- (4) The Committee may give directions to a subcommittee on the following matters —
  - (a) the functions to be performed by the subcommittee;
  - (b) the subcommittee’s procedures;
  - (c) reporting by the subcommittee on the performance of its functions.

A subcommittee may be formed because there might be a particular technical issue and it wants to bring in additional expertise to consider it.

**Ms M.J. DAVIES:** Just to be clear, can they bring in additional advisers? They will be remunerated. Will that be covered in the act and the regulations for those subcommittees and anybody who is brought in?

**Dr A.D. BUTI:** Clause 31 relates to remuneration. It states —

- (1) A member of the Committee, or of a subcommittee, is entitled to be paid the remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner unless the member is a public service officer.

That is reasonably standard.

**Ms L. METTAM:** Can the minister indicate what the remuneration for the members of the committee or the subcommittee will be?

**Dr A.D. BUTI:** I understand that what they are currently paid will be transferred to their new roles. I know the member is going to ask me how much that is. If I do not provide that information tonight, I will provide it to the member during the third reading.

**Ms L. METTAM:** The minister said that the remuneration will be transferred. Are subcommittees currently set up? What is the remuneration for their members?

**Dr A.D. BUTI:** They are not, but they may be. As I said, remuneration will be determined by the minister on the recommendation of the Public Sector Commission. If the members are public service officers, obviously they will not get paid extra.

**Ms L. METTAM:** I refer to the committee and the ability to create a subcommittee. Will the committee be able to bring in other expertise? Will remuneration be provided for that expertise?

**Dr A.D. BUTI:** Boards throughout the public service and industries often seek advice from other people. I do not see that the committee will operate any differently. They will not become members or even part of the subcommittee, but the committees can seek advice and invite experts to maybe deliver a lecture or provide advice on something.

**Ms M.J. DAVIES:** I am looking at the regulations for the committee. During the briefing, we spoke about conflicts of interest. Obviously, that is a fairly standard process. Can there be a conflict if something relates to a traditional owner group that one of the members may be a part of, whether they have interest in a project or the landowner proponent? I presume it applies across the board. How might that work in determining whether there is a conflict and how will that be dealt with if a number of members are unable to participate due to those conflicts? I see in the regulations that alternative members are able to be brought in. Will they sit in abeyance or will they be deputised onto the committee on specific occasions?

**Dr A.D. BUTI:** As the member knows, when she was a minister, the Premier would have started every meeting asking whether anyone had a conflict or wished to declare a conflict of interest. That will be the same in this case. The current committee, the Aboriginal Cultural Material Committee, and the Aboriginal Cultural Heritage Council have governing documents, including the charter, the tender reference, the code of conflict and a conflict of interest

Dr Tony Buti; Ms Libby Mettam; Ms Mia Davies; Mr Shane Love; Mr Peter Rundle; Ms Merome Beard

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policy. As the member knows from the time she was a cabinet minister, a conflict of interest can be anything that may be seen to cloud someone's advice or view, whether it is a pecuniary interest or a non-pecuniary interest.

**Ms M.J. DAVIES:** Clause 32(b) states —

alternate members of the Committee to deputise for members temporarily unable or unavailable to act;

How does that work practically? The minister will appoint the committee members. Will he then seek nominations for those who might step in? Where will they be deputised from?

**Dr A.D. BUTI:** If a committee member other than the chairperson is unavailable because of illness, absence or another cause, the minister may appoint another person. This provision does not envisage a conflict of interest. We cannot guard against everything, but it is highly unlikely that, out of 11 members, four or five members at any one time will have to declare themselves unavailable or unable to consider a matter because of a conflict of interest.

**Ms M.J. DAVIES:** I thank the minister. I was not specifically referring to a conflict of interest, but I appreciate the explanation. I was referring to the regulation that may be made that alternate members of the committee will deputise for members temporarily unable or unavailable to act. Will that be from within the committee or external to the committee?

**Dr A.D. BUTI:** They would act temporarily in the member's place. If someone were unable to fulfil their duties or attend meetings because of illness or some other reason for absence, the minister may—they do not have to—appoint another person as an alternate member to act temporarily in that member's place.

**Clause put and passed.**

**New clause 16A —**

**Dr A.D. BUTI:** I move —

Page 23, after line 6 — To insert —

**16A. Section 55 amended**

In section 55 delete “the giving of”.

**Ms M.J. DAVIES:** Does the minister want to speak to the amendment first to explain it?

**Dr A.D. BUTI:** Yes. I move to insert this new clause 16A. This amendment is consequential to clause 14, which deals with transferring section 18 consents on a change of ownership of the land. Section 55 of the Aboriginal Heritage Act provides that breaching the conditions of a consent constitutes an offence. The deletion of the words “the giving of” clarify that the offence is a breach of any condition to which the consent was made subject.

**Ms L. METTAM:** Can I get some clarification on why this has been moved as an amendment and was not in the bill? Was it in relation to feedback that the minister has received? I am generally seeking clarification.

**Dr A.D. BUTI:** This is a consequential amendment as a result of the transfer of the section 18 consent.

**New clause put and passed.**

**New clause 16B —**

**Dr A.D. BUTI:** I move —

Page 23, after line 6 — To insert —

**16B. Section 58 amended**

In section 58 delete the Table and insert:

**Table**

s. 17	s. 18B(2)
s. 43(7)	s. 55

New clause 16B seeks to amend section 58 by deleting the existing table and inserting a new table. This amendment adds new section 18B(2) to the table of offences to which section 39 of the Criminal Code, which provides for the criminal liability of officers of a body corporate applies. New section 18B(2) will be contained in clause 14 and requires the owner of the land subject to a section 18 consent to give the minister written notice of a change in ownership within a prescribed period. I ask the house to support the amendment.

**Ms M.J. DAVIES:** Can I clarify that this is essentially creating an offence for someone who does not advise the minister that a change of ownership of land with a section 18 consent attached to it has been made?

**Dr A.D. BUTI:** Yes, and the offence can be committed by a body corporate.

**Ms M.J. DAVIES:** Can I clarify what the penalty for that offence will be?

**Dr A.D. BUTI:** It is \$1 000.

**Ms M.J. DAVIES:** Can I clarify this is for a corporate body? It is not that I am advocating for greater penalties but \$1 000 does not seem like a very significant amount for a corporate body. I understand there has to be a penalty attached. I assume that the penalty is consistent, as far as I have seen, through the rest of the legislation. Can the minister advise?

**Dr A.D. BUTI:** It is a \$1 000 offence for the landowner not notifying, but if it is a body corporate, under the Sentencing Act, it is five times that amount.

**Ms M.J. DAVIES:** My brain is just catching up. It is \$1 000 under this act but if it gets prosecuted under the —

**Dr A.D. Buti:** No.

**Ms M.J. DAVIES:** Say it to me again.

**Dr A.D. BUTI:** It is \$1 000 for an individual but for a body corporate, it is five times under the Sentencing Act.

**Ms M.J. DAVIES:** Okay.

**New clause put and passed.**

**Clause 17: Section 67A inserted —**

**Ms M.J. DAVIES:** Minister, I want to clarify this is the regulations for the fees. I am trying to find it; bear with me. While I am looking for the regulations, can the minister outline exactly what this clause provides for? I am just going to try to find the actual regulations in my file.

**Dr A.D. BUTI:** This new section will provide an express head of power to make regulations for cost recovery purposes.

**Ms L. METTAM:** While the member for Central Wheatbelt is busy scrambling, with regards to the regulations in section 18, the applications attract a \$250 submission fee and an additional \$5 096 per site. Can the minister outline how the state arrived at those two figures?

**Dr A.D. BUTI:** I mentioned it in my second reading speech. It was based on the department's calculation of the cost of administering this process provided by the approximate number of sites, which is around 480.

**Ms L. METTAM:** What is the fee specifically intended to fund? Is it full cost recovery?

**Dr A.D. BUTI:** It is the operational costs of the department in assessing the section 18 application.

**Ms M.J. DAVIES:** I found the regulations. There are three sets of regulations. I have amendments on the go and my notes and the running sheet, which the government has been very good to provide us so that we can see the order. My well-planned plan of attack has gone to pot.

I want to clarify, because this is the proposed section whereby the regulations come into play and there was considerable angst about costs in the 2021 version of the bill. Although it gave clarity on the costs and charges from a government perspective and also what could be charged by the entities that people would be dealing with such as the local Aboriginal cultural heritage services, in this bill, there is literally a flat fee, as I understand it, of \$250 for every application. Thereafter, there is a charge of \$5 096 per site within a section 18. There could be multiples of those. But there will be exclusions. So, perhaps the minister could talk through those exclusions just for clarity on the record.

**Dr A.D. BUTI:** Not everyone was disappointed about the 2021 act, I can assure the member. Some were very, very happy. As the member knows, there was a taxing power in that act that we do not have in this legislation. This is just recovery of costs. In respect of the question of exclusions and so forth, the base fee for a section 16 request is \$250; if the person making the request is a commercial proponent or government proponent, an additional fee of \$5 096 is payable per investigation site.

**Ms M.J. DAVIES:** The exclusions from “commercial proponent” are a government proponent, a small business and a non-profit organisation, so they do not have to pay the \$5 096 charge, as I understand it. The definition of a “small business” is included in the regulations as the definition provided in the Small Business Development Corporation Act. I understand that this charge and the way that we are planning to apply it has been done so that there are not likely to be charges for prospectors. I think there is a view that farmers or pastoralists will not be charged if they are required to use it and that only government proponents and large project proponents will be charged. Can the minister clarify that Aboriginal corporations are exempt unless they are making an application for a commercial purpose?

**Dr A.D. BUTI:** An Aboriginal corporation, unless it is a commercial venture, will be also excluded. Small business and non-profit do not pay, and the government and commercial proponents pay.

**Ms M.J. DAVIES:** The government proponent, which is defined in the regulations, means anyone who is defined in the Public Sector Management Act or an entity listed in the Public Sector Management Act. Will government

Dr Tony Buti; Ms Libby Mettam; Ms Mia Davies; Mr Shane Love; Mr Peter Rundle; Ms Merome Beard

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departments be required to pay or not? I imagine that Main Roads and the Water Corp—it is not a department but a statutory authority—will be required; is that correct?

**Dr A.D. BUTI:** Commercial proponents and government proponents, even though they are not commercial, will have to pay.

**Ms L. METTAM:** As I understand it, payment will be made at the time of submission. If the committee determines that some sites do not meet the threshold of section 5 and are not considered a heritage place, will the state provide a refund of the fee for those sites?

**Dr A.D. BUTI:** No, because this is cost recovery. This is the payment to undertake the process and that process will still need to take place. Those fees will not be reimbursed.

While I am on my feet, I said that I would try to provide the member with information about remuneration of the council. The current annual remuneration for members of the Aboriginal Cultural Heritage Council is \$28 948 for the chairperson and \$17 462 for members. An acting chairperson receives \$459 per meeting.

**Ms M. BEARD:** I want to clarify the Small Business Development Corporation Act threshold for what is deemed to be a small business. Is it a business that has 20 or fewer FTEs? Is there no ceiling for turnover in terms of what constitutes a small business?

**Dr A.D. BUTI:** Under the Small Business Development Corporation Act, “small business” means a business undertaking —

- (a) which is wholly owned and operated by an individual person or by individual persons in partnership or by a proprietary company within the meaning of the *Corporations Act 2001* of the Commonwealth and which —

- (i) has a relatively small share of the market in which it competes; and
  - (ii) is managed personally by the owner or owners or directors, as the case requires; and
  - (iii) is not a subsidiary of, or does not form part of, a larger business or enterprise;

or

- (b) which is declared by the Governor by Order in Council pursuant to subsection (2) to be a small business for the purposes of this Act.

**Ms M. BEARD:** If a proprietary limited company has three businesses that trade under that company, will that be treated as one entity or will it have to pay three sets of fees?

**Dr A.D. BUTI:** It will depend. They are allowed to be a subsidiary or form part of a larger business. If they form part of a larger business, they will not be considered to be a small business under the act.

**Ms M. BEARD:** What if ABC Pty Ltd has three or four different businesses linked to it that operate with a business name as separate businesses?

**Dr A.D. BUTI:** It is not the name that will be the issue; it will be whether they are a subsidiary of the larger business or enterprise.

**Ms L. METTAM:** Will government departments, including government trading enterprises, be exempt from paying the \$5 096 fee?

**Dr A.D. BUTI:** No.

**Mr R.S. LOVE:** I heard “exempt from paying the fee”. There is still a fee, but it is at a lower level—is that correct?

**Dr A.D. BUTI:** There is an application fee of \$50, yes.

**Ms M.J. DAVIES:** I think we covered this information in the briefing, but just for the purposes of this discussion, the cost recovery figure of \$5 096 is quite specific. As I understand it, the calculation by Treasury was that the duties carried out by the department in relation to this function come out at \$2.4 million a year. That is where the calculation came from. Presumably, that is reviewed at the end of every year. Would there be a reduction if there was a reduction in the work that the committee was doing, or does the minister envisage that remaining as it currently is in the regulations?

**Dr A.D. BUTI:** It is a cost recovery. For instance, if the \$2.4 million ended up being \$2 million, the regulation would have to be changed because it would not then be compliant with the regulation. The government could, though, say that it was actually \$3 million and the government would not then have to increase the charges. But obviously, if it was less it would have to, because it is only cost recovery. If it were more, it would be at the discretion of the government whether it did or not. I should add that the director general of the department has discretion to waive the fees.

**Ms M.J. DAVIES:** I have a question about that, but in relation to the amount of \$5 096 multiplied by the number of proposed investigation sites, that could be quite significant in some cases. I understand that the CEO has the ability to amend, but was consideration given to capping that amount? Some industry groups have said to me that there could potentially be, in one section 18 application, upwards of 40 or more sites. Again, I do not think that is an issue for the bank balances of BHP or Rio Tinto, and they are not going to quibble over the prospectivity of their potential projects, but there will be other projects for whom that could be a deterrent. I would like some advice from the minister on whether consideration was given to capping, or will it fall to the discretion of the minister or the CEO in such cases?

**Dr A.D. BUTI:** As the member said, it will not be an issue for the big mining companies, but if it is a farmer, for instance, and it looks like it might be prohibitive, the CEO will have discretion to waive the fee. With regard to the change in fees, a budget process will need to be gone through. The whole thing is about cost recovery based on what is believed to be the costs incurred by the department in assessing the process, times what we think will be needed for the \$2.4 million. But the CEO always has discretion to waive the fees, and hardship will obviously be one of the factors that are considered.

**Ms M.J. DAVIES:** I thank the minister. I presume that would involve a written application to the CEO.

**Dr A.D. BUTI:** Just for a bit of compare-and-contrast, in the 2021 act there was a schedule of fees. Obviously, that was a very different system, but if someone were going to prepare an ACH plan or a management plan, they would need to engage upfront with traditional owner groups and, potentially, consultants. There was a schedule of fees, and a lot of the people at the community meetings I attended were aggrieved by those fees. Under this legislation there is no such schedule. I want to put it on the record that project proponents will be engaging in a market-based conversation with whomever they need to engage with to prepare their application for a section 18. One of the discussions we had during the briefing was about what will happen if there is an unscrupulous group—as there can be in any section of the community—that has prohibitive or ridiculous charges. Is that something that people could put forward to the minister for consideration when they are making that application? They might say, “Look, we couldn’t engage because we didn’t think the terms were fair”, and that would form part of their section 18 application. They may not be able to provide the information that the committee would expect. That is currently, and will remain, the case as is under the 1972 act. However, I should add that one request that came forward to us under the 2021 act, particularly from the farming sector, pleads for the government to pay for the surveys. That is what we agreed to.

**Ms M.J. DAVIES:** I understand that about the surveys. As the former Minister for Water, I understand that we have a groundwater investigation program in which the state actually invests in identifying where those resources are for the benefit of the entire state. To me, it seems that that is an eminently sensible request and I am very pleased that the government has gone down that path. We will wait to see what that looks like going forward. I know that we discussed this earlier, but as part of that commitment, if there were a requirement for a farmer, or an exempt small business, under the fee structure for the \$5 096 charge, would they then apply to —

**The ACTING SPEAKER (Mr P. Lilburne):** Excuse me, members, the minister is having difficulty hearing. Thank you very much.

**Ms M.J. DAVIES:** I am very offended that the member for Willagee and Minister Templeman are not interested in exactly what I am talking about at all hours of the night and day!

**Dr A.D. Buti:** The member is actually asking very good questions.

**Ms M.J. DAVIES:** Thank you, minister. Was there an undertaking that the government would pay for that on application if there were a requirement to clear as well as the proactive program of undertaking investigations under proposed section 18A?

**Dr A.D. BUTI:** That is not what we envisage going forward. The member did ask me the question —

**Ms M.J. Davies:** Sorry, I thought that —

**Dr A.D. BUTI:** Is the member talking about the application or the surveys?

**Ms M.J. Davies:** The surveys.

**Dr A.D. BUTI:** Sorry, I thought the member was going back. We will be paying for the surveys. We will have a strategy of priorities and a land proponent that is not in one of those mining and construction industries. We will also pay for and conduct the surveys.

**Ms M.J. DAVIES:** Sorry, I got distracted in that conversation. I wanted to be clear that if unreasonable charges were required by proponents in the preparation of an application —

**Dr A.D. Buti:** That is what I thought you were asking.

**Ms M.J. DAVIES:** Yes. I got sidetracked. There were distractions over the back. I wanted to be clear that if unreasonable charges were required, that could form the basis of the application and the minister or committee could consider that as part of the process. I am not saying that that is likely to be the case, but it will be at the whim of the market and what individual organisations may feel is reasonable to charge the government to provide information that will assist it in making that application. I do not expect that there will occur, but we have to anticipate that that could happen.

**Dr A.D. BUTI:** I thought that I had answered the member by saying that that consideration can be taken in by the committee. We hope that that does not happen very often or at all but, yes, it can be taken into consideration.

**Ms L. METTAM:** I have a pretty simple question, I think. If payment is meant to be made at the time of submission, why does the act allow for interest payable on unpaid fees?

**Dr A.D. BUTI:** Is the member talking about the application fee or the total cost?

**Ms L. Mettam:** The submission fees.

**Dr A.D. BUTI:** The application fees?

**Ms L. Mettam:** Yes.

**Dr A.D. BUTI:** It is like everything; it is supposed to be paid within a period. It must be paid within a period of 14 days after the date on which the request was made. Sometimes people will not comply with paying that fee within that time. That is obviously when interest will be payable. A person should pay it—they have 14 days to do so—and if they do not, there could be an interest component.

**Mr R.S. LOVE:** Strictly speaking, this question is not about fees, but the minister spoke about the surveys in response to a question from the member for Central Wheatbelt. Is there an indication of the total amount of money that the government has put aside for the surveys? Are there any restrictions on the category or size of the landholdings that can apply to have the property surveyed?

**Dr A.D. BUTI:** There has not yet been a determination on the cost. We will examine that process over the coming months and how much we believe it will cost. We are planning a 10-year process, so we do not know the cost at this stage. It will then be subject to the normal budgetary process, but there will not be a restriction on the land size. The issue will be who has asked for the survey—for example, whether it is a farmer vis-a-vis an extractive industry or a mineral company et cetera. It is not about the size of the land but who is the landowner.

**Mr R.S. LOVE:** Farmers will be one category and rural residential holders will be another. Will the category include a household block size and not-for-profit organisations? Is basically anyone exempt except a mining or extractive industry? Is that pretty much the category?

**Dr A.D. BUTI:** Yes. It will be mining, extractive industries and commercial and industrial subdivisions.

**Mr R.S. LOVE:** It will be for a new subdivision of an industrial nature, but will an existing area of industrial land also be eligible for the government-assisted survey?

**Dr A.D. BUTI:** I will seek clarification but, at this stage, from what I understand, if it is not a commercial or industrial subdivision or a mining or extractive industry, and the landowner wants to engage in a possible section 18 application, they can go to the government for a survey, but I will seek clarification on that.

**Mr R.S. LOVE:** Potentially, could a person or organisation that wishes to undertake a residential subdivision also apply to the government to undertake that survey?

**Dr A.D. BUTI:** I think that would be a commercial subdivision, but I will seek clarification.

**Mr R.S. LOVE:** I submit that if we are talking about a commercial subdivision for land use, that would be for commercial use, based on the use of the land. The minister mentioned industrial land, but not residential land, so I assume that will be exempt. We would not like to see an increase in housing costs for Western Australians.

The other issue I want to raise is about who will undertake the survey. Will it be undertaken by the government through some paid organisation or will it be those organisations that no longer exist—the local Aboriginal cultural heritage services? Might the government contract those people involved at the local level for this service? Can the minister explain who would be the surveyor and how it would be undertaken?

**Dr A.D. BUTI:** That still has to be finalised, but it will be a combination. Obviously, people will need to go to the traditional owners in some instances. I should let the member know that Main Roads Western Australia and other government departments have done substantial surveys that just have not been put into a central registry. That is what will happen. A lot of surveys have been done by government departments and they will go on the registry. The surveys will be done by a combination of experts in surveying—there are always improvements in technology—

and, in many cases, people will need to go to the traditional owners to corroborate or clarify the situation. It will not be one particular person.

**Mr R.S. LOVE:** Once a person has that survey done by the government-approved process, whatever that might be, does that survey have that status forever or is it end-dated at some point? Having had that survey done, how does the landowner then feel assured that that is forever?

**Dr A.D. BUTI:** It remains forever unless there is new information, like in the Juukan Gorge situation. The landowner can rely on that survey, and that remains the case unless there is new information, and then the criteria to rectify it have to be gone through. I know some people say that the survey should be forever. That is the case unless there is new information about Aboriginal cultural heritage, because this act seeks to protect Aboriginal cultural heritage. If new information comes forward about Aboriginal cultural heritage, it has to be considered, but it still has to pass the criteria.

**Mr R.S. LOVE:** A change of mythological status or definition, for instance, affecting an area of land, may be over numerous landholdings. It may be a waterway, a range or any sort of feature that might go over numerous landholdings. Would there be a process of alerting and informing the landowner, the people who have been supplied with the survey, that there had been a change and that they need to be aware of it?

**Dr A.D. BUTI:** I feel like we dealt with this before. If there is new information and it has not come from the landowner, the minister does not have to consider it, but if it has come from the landowner, the minister has to consider it. If there is new information, the minister has to give that to the landowner, so under procedural fairness the landowner has the ability to rebut it or provide information to the contrary.

**Ms M. BEARD:** Further to that point—apologies if this has been covered—if a property has had a survey undertaken and the owners have owned the property for some time, if they go to sell it, is it incumbent on the purchaser to get a new survey or is the survey transferred to the new owner of the property? Does the survey stay attached to the property or does the purchaser of the property have to secure a new survey each time?

**Dr A.D. BUTI:** The survey is not owned by anyone. It is owned by government; it is on the registry.

**Ms M. Beard:** Is it transferable?

**Dr A.D. BUTI:** It does not transfer; it is there. It remains valid. The transfer relates to the section 18 consent.

**Clause put and passed.**

**New Clause 17A —**

**Dr A.D. BUTI:** I move —

Page 23, after line 28 — To insert —

**17A. Section 68 amended**

(1) In section 68 delete “The Governor” and insert:

(1) The Governor

(2) At the end of section 68 insert:

(2) The regulations may provide —

(a) that contravention of a regulation is an offence; and

(b) for the offence to be punishable on conviction by a penalty not exceeding a fine of \$20 000.

(3) Section 57(1) does not apply to offences against the regulations.

This new clause 17A seeks to amend section 68 by adding new subsection (2) of the Governor’s regulation-making power. New subsection (2) will allow the regulation to provide for an offence if the regulation is contravened and provides for a fine not exceeding \$20 000. This amendment provides express certainty that regulations can prescribe offences, and penalties for those offences; the need for it was identified in the preparation of the regulations to support this bill. I ask the chamber to support the amendment.

**Ms M.J. DAVIES:** As the minister has just explained, there will now be a penalty of a fine not exceeding \$20 000 for a breach or an offence under the regulations. Can the minister clarify whether there can be multiples of that \$20 000, or is it capped and an individual or a corporate body cannot be charged anymore?

**Dr A.D. BUTI:** The fine relates to the offence itself. If someone commits an offence, the fine cannot exceed \$20 000, but if they had many, many offences, under a normal reading it could be more.

**Ms M.J. DAVIES:** From recollection, maybe in the Heritage Act, there are daily fines for offences. This has been put to me, and I want to understand whether the government has considered at all the way that offences and penalties

are framed in the Heritage Act for built heritage. Why are they not consistent with the 1972 act as they are the in the Heritage Act?

**Dr A.D. BUTI:** We cannot impose a daily fine in the regulations, but section 57 of the act, “Penalties” has a daily penalty. That has not changed; that has remained there. In the case of an individual, it is a daily penalty of \$400 and in the case of a body corporate, it is a daily penalty of \$1 000. That has been there for some time; we have not changed that.

**Ms M.J. DAVIES:** Those daily penalties apply, as the minister says. The penalties in the Heritage Act for built heritage are quite substantial. I understand that the penalties in the 2021 act aggrieved a number of people. In some parties, they were welcomed because it sent a strong signal to people who might be in a position to potentially destroy Aboriginal cultural heritage that that was not something that could be endorsed. On the other hand, some thought it could potentially be the ruination of them if they inadvertently went down that path. The government has come back to a different position, but it has been put to me that there seems to be in the Heritage Act quite substantial penalties that are not reflected in the 1972 act. Can the minister explain the process the government went through to arrive at these penalties and why we have come to the fine of \$20 000? As I understand it, there are no imprisonment penalties contained in the bill at all.

**Dr A.D. BUTI:** When we announced the changes we are making, we made it quite clear that we were seeking to keep the amendments to as few as possible. We were driven by the need to ensure that we did what we could to comply with the Juukan Gorge Senate inquiry. That is what we have done. The penalties that are in the act have not changed. That is what we are moving forward with, because we considered that we should continue with the situation and did not seek to go further than that. Penalties that apply under the 1972 act are \$20 000 for a first offence, and—I think this will answer the member’s question—\$40 000 for a subsequent offence, for an individual. The penalties under the act we have not changed. We wanted to keep the amendments to as few as we possibly could.

**Mr R.S. LOVE:** Just for clarity, this section provides a penalty for an offence against regulations, which is not exactly specified in the current act. Section 57(1) of the current act sets out penalties of \$20 000 for a first offence and \$40 000 for a second offence and imprisonment for two years. There is a penalty of imprisonment in the 1972 act for committing an offence against the act itself. The matter that we are discussing at the moment simply relates to an infringement of the regulations, for which there is a financial penalty of \$20 000. Is that the situation?

**Dr A.D. BUTI:** That is right. There is no penalty of imprisonment for a breach of the regulations. The penalties in the act remain the same.

**New clause put and passed.**

**Clause 18: Section 69 amended —**

**Ms M.J. DAVIES:** I think this is one of the ones that gets inserted in the bill and then it is deleted at a later point. It is just a timing function.

**Dr A.D. BUTI:** Yes, section 69 will come into operation the day after assent and the additional defined terms to be inserted by clause 18 will come into operation on a later date fixed by proclamation. Clause 18 amends section 69 to add new defined terms, which will come into operation on a day fixed by proclamation.

**Ms M.J. DAVIES:** Is section 69 a new section? Are we amending that?

**Dr A.D. BUTI:** Yes, that is correct.

**Clause put and passed.**

**Clause 19: Sections 72 to 87 inserted —**

**Dr A.D. BUTI — by leave: I move —**

Page 25, line 15 — To delete “appointment” and substitute —  
office

Page 25, line 21 — To insert after “if” —  
it

Page 34, line 4 — To delete “an” and substitute —  
the

Page 38, line 16 — To insert after “Act” —  
(including regulations made under that Act)

Page 38, line 17 — To insert after “Act” —  
(including regulations made under that Act)

Page 38, line 23 — To insert after “Act” —

(including regulations made under that Act)

These amendments are minor and technical in nature. They were recommended by the Parliamentary Counsel's Office during the drafting of regulations to support the bill. In order, the amendments are to deal with the following: to clarify that a committee member has a term of office rather than a term of appointment in proposed section 72; to insert the word "it" into proposed section 72, which was inadvertently missed during drafting; to replace the word "and" with the word "the" in proposed section 78 to clarify that the specified land is the whole of the area of land that is part of the Aboriginal Heritage (Marandoo) Act area; and three amendments to proposed section 84, which are worded the same, to make it clear that the phrase "offences committed under the 2021 act" will include offences committed under the 2023 regulations. I ask the house to support these amendments.

**Amendments put and passed.**

**Ms M.J. DAVIES:** As I understand it, the clauses from this point forward are transitional amendments.

**Dr A.D. Buti:** That is right.

**Ms M.J. DAVIES:** If we went back to the commencement section, there is a specific time that they will be in power, and then they will vamoose from the bill, if I am right in my interpretation. Essentially, these provisions have come about as a result of having to deal with the hangover of the Aboriginal Cultural Heritage Act 2021.

**Dr A.D. Buti:** That is correct.

**Ms M.J. DAVIES:** We see under clause 19, at proposed section 72, "Abolition of bodies and appointment of members of Committee". We have spoken at length on the fact that there will no longer be an Aboriginal Cultural Material Committee; there will be an Aboriginal Cultural Heritage Committee, which was the council. Proposed section 73 deals with the protected area orders. As I understand it, these areas were already identified in the Aboriginal Heritage Act 1972; they were then transferred into an instrument in the 2021 act and will now be transferred back under the 2023 act. Can the minister confirm that, for the protected area orders, that is correct?

**Dr A.D. BUTI:** That is correct.

**Ms M.J. DAVIES:** Under "Protected area orders", proposed subsection (4) states —

If any conditions were stated in the protected area order ...

I presume that means everything that was sitting within that protected area order goes with it, as it was prior; there is no opportunity for any changes by the government as the transition is made?

**Dr A.D. BUTI:** That is correct.

**Ms M.J. DAVIES:** Proposed section 73(7) states —

No person is entitled to be paid compensation under section 22(2) in relation to an area that is a protected area by virtue of subsection (2).

Can the minister explain what that means and why it has been necessary to include that?

**Dr A.D. BUTI:** Section 22(2) of the 1972 act provides a right to compensation for a person holding any interest in land the subject of the protected area. This is now being dis-applied.

**Ms M.J. DAVIES:** Sorry, I am not entirely clear. Can the minister give me an example of what that might look like? I am just trying to understand. If it is being dis-applied, I am not entirely sure why it was applied in the first place.

**Dr A.D. BUTI:** That is a very good question. I want to deal with what we have before us. We are ensuring that is no longer to be paid.

**Mr R.S. LOVE:** Is the minister saying that the protected areas fall away; therefore, the compensation that might have been attached also falls away? Is that what is happening here? I am just trying to understand what exactly is the effect.

**Dr A.D. BUTI:** When the protected areas were first designated, compensation may have been paid. We are now returning those protected areas under the 1972 act, so we are not going to double dip by allowing further compensation to be paid.

**Ms M.J. DAVIES:** For proposed section 74, "Previous concerns under s. 18", can the minister confirm that this section means anything that was in effect as a section 18 or had a section 18 applied to it will be subject to the new information clauses? Is it that anything created as a section 18 will have the new information applied to it going forward, whether it was created prior to 2021 or now?

**Dr A.D. BUTI:** That is correct, member.

**Mr R.S. LOVE:** I am going to skip ahead a little bit because this is something I wanted to ask but have not. I am sure the member for Central Wheatbelt has been through this much more than me but on page 38, we have proposed section 84, "Offences" under the 2021 act. I quote —

- (1) Any proceedings for an offence committed under the 2021 Act before repeal day may be continued, or commenced, on or after repeal day as if the 2021 Act had not been repealed, and a person may be punished for the offence accordingly.

Can the minister confirm that they would be subject to the penalty structure that was in the 2021 act?

**Dr A.D. BUTI:** That is a very good question. Yes, however, the announcement made by the Premier a while ago was if they have deliberately gone out of their way to destroy Aboriginal cultural heritage, the department will seek to prosecute. If they have not deliberately gone out to damage Aboriginal cultural heritage, the department will take a light-touch approach. As far as I am aware, there have been no instances so far under the 2021 act in which that would be the case. As I say, I am not completely sure, but I do not think there has been a case in which there has been proof of someone deliberately going out of their way to destroy Aboriginal cultural heritage under the 2021 act.

**Mr R.S. LOVE:** Could the minister confirm whether there have been or are currently any prosecutions underway under the 2021 act?

**Dr A.D. BUTI:** My understanding is that there are no current investigations under the 2021 act.

**Mr R.S. LOVE:** I am asking whether there were any prosecutions under the 2021 act.

**Dr A.D. BUTI:** There have been no investigations so there would be no prosecutions.

**Mr R.S. LOVE:** To be clear, on a couple of occasions we have had briefings with members of the department. A very senior member of the department gave an undertaking that no prosecutions would be undertaken. Now that the repeal bill has been read into Parliament, can the minister give me an indication whether that is the case? If a prosecution were to occur tomorrow, would it be under the provisions of the 2021 act or the 1972 act?

**Dr A.D. BUTI:** It would be the provisions of the 2021 act because that is the act we are dealing with at this stage. That will be the case. I repeat that the department has been following educational processes and only if someone has wilfully gone out to deliberately damage Aboriginal cultural heritage there would be an investigation and prosecution. As you and I stand here today, I am unaware of any instances in which that has happened.

**Mr R.S. LOVE:** To confirm, though, whilst the 2021 legislation stands on the books, people are still potentially subject to being prosecuted and receiving the penalties that exist in the act. The minister's only proviso is that it must be a deliberate and wilful act rather than an act of ignorance. We have that excuse of ignorance.

**Dr A.D. BUTI:** I hope that it is not an excuse of ignorance. As I said, I make it quite clear for maybe the third or fourth time that if anyone has gone out and deliberately damaged Aboriginal cultural heritage under the 2021 act, they will be investigated. If they have not, an educational approach will be taken. I do not think I can say any more. It is quite clear that is the case. I am confident that people want to do the right thing, as the members opposite have all said is the case. I would find it surprising if anyone deliberately went out to destroy Aboriginal cultural heritage and I hope we do not have a situation, before this act is repealed, in which our belief in our fellow citizens is betrayed. I do not believe anyone is going out to deliberately damage Aboriginal cultural heritage. We do not have any knowledge, as far as I am aware, that that is the case, so I hope that remains.

**Mr R.S. LOVE:** I have one last question on this matter. Will all the conditions that exist in the 2021 act—the defences, if you like, such as due diligence and all those things—still be discussed and decided as though the act is still in place, and still continue even after the repeal of the 2021 act, if the matter takes place before the repeal date?

**Dr A.D. BUTI:** The offences are preserved, so that is the case.

**Ms M.J. DAVIES:** I have a couple of questions about the ACH permits and the ACH management plans. I refer to proposed sections 76 and 77 under this clause. Can I get an understanding of whether there have been any applications or processes begun for ACH payments or those management plans; and, if so, what will happen to them? I understand they will get transferred to the committee. Will they need to resubmit any information, or is it simply the case that wherever they are up to in the process, if it has not already been approved, the committee will pick it up and apply the old section 18 process? Is there going to be a further imposition on them, given that they have already started, or will they see the process through under the 2021 act?

**Dr A.D. BUTI:** As of 18 September 2023, and since 1 July 2023, 112 draft permit applications have been commenced in the ACHknowledge Portal. A further 22 permit notices were lodged. These permit notices have commenced the consultation period. There are no permit applications for which a fee has been paid to instigate formal lodgement and commencement of assessment. As of 18 September 2023, and since 1 July 2023, 37 draft management plans have commenced in the ACHknowledge Portal. A further two management plans have been lodged indicating commencement of the consultation period. There are no management plans for which a fee has been paid to instigate formal lodgement and commencement of the assessment.

In regard to the other part of the member's question, for applications to transfer a notice for section 18(2), the committee can request further information if it wants, such as applications for permits and application plans. So, basically, the application will transfer to the new process, but the committee can seek further information if it requires.

**Ms M.J. DAVIES:** Will what has been paid to get to this point be refunded or will it cut off when the transfer occurs and will they continue under the new system? How will that operate?

**Dr A.D. BUTI:** Those fees have been paid for a service. I presume the member is talking about the service to obtain the survey. That will not be recompensed because that was done under the 2021 act.

**Ms M.J. DAVIES:** My next question is on proposed section 79. Proposed subsection (3) seems to be quite a powerful catch-all provision. It states —

While the Minister in relation to the 2021 Act continues in existence under subsection (2), the Minister has the powers to do any act that the Minister considers necessary or convenient to do for the purpose for which the Minister is continued in existence.

In layman's terms, that sounds like the minister can do whatever he likes!

**Dr A.D. BUTI:** What's new?

**Ms M.J. DAVIES:** It is very good when you are the minister, but I am not sure that industry or stakeholder groups would agree. Perhaps the minister could provide some clarification of why that is necessary and what, if any, limitations the minister will have on how he will use those powers.

**Dr A.D. BUTI:** The minister, in relation to the 2021 act, will continue as an entity for the purpose of dealing with and finalising any on-foot proceedings commenced by or against the Aboriginal Cultural Heritage Council or the minister before repeal day. It is to ensure that the minister can do what is necessary in respect of the 2021 act. In actual practicality, I do not think much will be happening.

**Ms M.J. DAVIES:** Will the minister be limited to the powers in the 2021 act? I add that those powers are considerable, so that might raise some concerns about what the minister might decide to use them for. Is there a requirement to tell anyone if the minister plans to use those powers?

**Dr A.D. BUTI:** As the current minister, I can assure the member that no-one needs to worry about that. This is for the purpose of dealing with and finalising any proceedings commenced by or against the ACH Council or the minister before that day. I cannot use the 2021 power for the 1972 act.

**Ms M.J. DAVIES:** All right. It is on the record. The minister is not going to be all-powerful. As I understand it, this is part of the transitional amendments. Will these amendments disappear from the act eventually or sit there forever?

**Dr A.D. BUTI:** They will stay with the act, but they will eventually become redundant.

**Mr R.S. LOVE:** Sorry, I have been in and out a bit, so I am not sure, but I know there was some discussion earlier about the directory. I am talking about clause 81 on page 37, which states —

On repeal day, all of the information and documents that were transferred under section 331 of the 2021 Act must be transferred to, and recorded in, a register under section 38.

That just restates the existing information. Is that the same information that was in the register, or does that expand the register under section 38?

**Dr A.D. BUTI:** Only the information that was on the register at the time of the 2021 act coming into effect is being transferred back to the register. That includes the 78 protected areas. All other information will be retained on the Aboriginal cultural heritage information system. This will include the lodged places that were transferred into the directory under the 2021 act.

**Mr R.S. LOVE:** Of those groups that the minister spoke about, can he give me an indication as to the volume of extra information that was loaded into the information system? Can he give me some idea of the process that happens from here to consider the information, and whether it will sit there indefinitely or come into the register? What will the process be for the bulk of that information, and how much of that information is there?

**Dr A.D. BUTI:** I am seeking advice on how much there is, and I am sure I will get that soon. There will need to be some adjustments made to the IT system to allow that to happen, but I will provide the Leader of the Opposition with information on the volume involved when I can.

**Mr R.S. LOVE:** To clarify, the implementation date was 1 July. How much difference is there between the register on 30 June 2023 and the register that we can expect to see transferred back? Will there be a great deal of difference? Are there many sites? Can the minister give me some idea about what changes will take place?

**Dr A.D. BUTI:** The advice I have just received is that there will be no new information going back into the register, so there will actually be no difference.

**Mr R.S. LOVE:** So the only new information is sitting in the information system, not yet processed in any way to be available to people on the register. What import will that have for landowners who want to know whether their activities may lead to potential damage to an Aboriginal site? If it has not yet been processed and has not been through the committee, can the minister give me an idea of what that information means in respect of a landowner's ability to undertake activity? When the minister has given me an answer, I will ask him one more question.

**Dr A.D. BUTI:** The information on the system at the moment relates to the 2021 process. As we move back to the 1972 act, that information will become a lodgement place for information that can be set up for the application for a section 18. Obviously, as we go through the survey program, there will be a lot more information that will go on there.

**Mr R.S. LOVE:** That brings me to the survey. The survey program will presumably go out and field test some of the information that is now being put on the information system. It will be informed by that information system. Will it also inform the information system, and will the surveyed information also ultimately end up on the register?

**Dr A.D. BUTI:** As I have said, we are still working out the detail of the survey program, but the survey program will be able to access and examine any Aboriginal cultural heritage that may already be there to see about that. Also, there is better technology that will be able to provide greater refinement. It might even be able to narrow or enlarge an area in some cases. Can it be field tested? Yes.

**Mr R.S. LOVE:** I do not think the minister quite got to the last bit of that. What will happen if the survey goes out and finds something? Will that then go into the information system or straight onto the register? What is the process?

**Dr A.D. BUTI:** Once the survey is done and there is an indication that there is Aboriginal cultural heritage, that will become a lodgement place that would then be assessed by the Aboriginal Cultural Material Committee—no, the Aboriginal cultural heritage committee—to determine whether it is in an Aboriginal cultural heritage site. That would then be put in the public domain. That is the information that the landowner would go to.

**Mr R.S. LOVE:** We are presumably going to have a whole lot of new information if the government-funded surveys all go ahead. What plans are in place to actually streamline that to enable the timely consideration of the information? I can see a problem here—that if the information is not actually tested, it might actually lead to a situation in which nobody is willing to give an approval because they have not really fully understood all the information that is available. They know it is there, but do not know whether it is right or wrong, or material or immaterial. It could in itself end up blocking development and people moving forward, as they have to consider all this extra information.

**Dr A.D. BUTI:** I do not actually think that that will be the case. Part of the reason that we decided that the government should undertake the surveys is because industry was crying out for that. I know that the farming industry was crying out for us to do the surveys.

**Mr R.S. LOVE:** Sorry, but we are here to talk about what might happen if that information is not treated in a timely manner and sits on the information system. That will itself be a problem. What plans are in place to actually provide the resources to process that information? On its own, data is not actually knowledge.

**Dr A.D. BUTI:** As has been stated a number of times during consideration in detail, the department will have an increase in resourcing to allow for it to do this in a timely fashion. There is a time stipulation regarding the section 18 application. If a landowner commences a section 18 application, there is a time period within which that has to be processed with whatever information is available. It cannot be elongated just because there is no information. Once the section 18 process is started, a process has to be followed according to the act. I repeat that I believe that the survey will not be done without the consent of landowners. However, I believe that many landowners will want surveys to be done.

**Ms L. METTAM:** This is not on the survey, but it relates to this clause.

**Dr A.D. Buti:** Sorry, which clause are we up to?

**The DEPUTY CHAIR:** Clause 19, as amended.

**Dr A.D. Buti:** Which part?

**Ms L. METTAM:** Proposed section 85, entitled “Dealing with seized things”. Can the minister provide some information on the number of items that have been seized?

**Dr A.D. BUTI:** From my understanding, nothing has been seized.

**Clause, as amended, put and passed.**

**Postponed new clause 12A: Section 17 amended —**

The clause was postponed at an earlier stage of the sitting.

**Dr A.D. BUTI:** As I think I explained previously, this new clause 12A seeks to amend section 17 and is consequential to proposed new section 18B, which is to be inserted by clause 14 of the bill. Proposed new section 18B will provide for section 18 consent to be transferred on the change of ownership of land. The amendment proposed here to section 17 of the act makes it clear that the consent it amends is given under section 18(3)(a). The amendment proposed to section 17 of the act makes it clear that the consent of the minister will be given under section 183(3)(a). I move —

Page 10, after line 17 — To insert —

**12A. Section 17 amended**

In section 17 delete “the consent of the Minister under section 18.” and insert:  
under a consent given under section 18(3)(a).

**Mr D.A. Templeman** interjected.

**The DEPUTY SPEAKER:** There is a stray cow in the chamber!

**Ms M.J. DAVIES:** It does not take much for me to lose my train of thought at this stage!

This clause is subsequent to the transfer of ownership when a section 18 consent is applied. The only question I have on this is about something that industry mentioned to me on the timing of when that would be given. Someone who is undertaking a contractual agreement will want to know that that has been transferred or will be approved before they put their money on the table and purchase it. It will become part of the purchase or the transfer, potentially. How will the timing work practically? Am I explaining myself clearly enough?

**Dr A.D. BUTI:** The transfer will happen after the new ownership changes.

**Ms M.J. DAVIES:** The question I asked was about the risk when potentially purchasing something. I understand that the request for this clause came from the Property Council of Australia. From an industry perspective, it was most keen to see this implemented. Potentially, there is still a risk that consent may not occur after the transaction has occurred. The proponent who is purchasing the product may get a product that is not what they were anticipating. I guess people want certainty before they make a transaction. How was that discussed and resolved within government to bring it to this point?

**Dr A.D. BUTI:** The member is right that this has come about because of industry concerns. Industry seems to be quite happy with this proposal. It has not relayed any concerns about it to me, anyway. The fact is that landowners will be encouraged to discuss these conditions. We do not believe there will be great concern about the risk because we would hope that any new landowner would do their own due diligence on this. We cannot guarantee everything, but we believe that the risk will be minimal compared with the benefits.

**The DEPUTY SPEAKER:** The member for North West Central. No, the member for Central Wheatbelt.

**Ms M.J. DAVIES:** They are interchangeable, apparently.

Thank you, minister. Going back to the conversation that we had earlier, it is not as though there will be any material change, as I understand it, to the section 18 consent. Presumably, it would be the minister’s view that there would be no material risk in having that applied after the transaction.

**Dr A.D. BUTI:** That is correct.

**New clause put and passed.**

**Postponed clause 13: Section 18 amended —**

The clause was postponed at an earlier stage of the sitting.

**Dr A.D. BUTI —** by leave: I move —

Page 10, after line 21 — To insert —

*approved determination of native title* has the meaning given in the Native Title Act section 253;

*claim area*, in relation to a registered native title claim, means the area registered on the Register of Native Title Claims under the Native Title Act section 186(1)(e) as covered by the registered native title claim;

*determination area*, in relation to an approved determination of native title, means the area registered on the National Native Title Register under the Native Title Act section 193(2)(c) as covered by the approved determination of native title;

Page 10, after line 25 — To insert —

**National Native Title Register** has the meaning given in the Native Title Act section 253;

**native title** has the meaning given in the Native Title Act section 223;

Page 11, lines 1 to 20 — To delete the lines and substitute —

**native title party**, in relation to land, means the following —

- (a) if the land is the subject of a settlement ILUA — a regional corporation in relation to that land;
- (b) if the land is not the subject of a settlement ILUA and is within the external boundary of the determination area of an approved determination of native title (the **relevant determination**), regardless of whether native title in relation to the land has been extinguished or surrendered — a registered native title body corporate in relation to the relevant determination;
- (c) if the land is not the subject of a settlement ILUA and is within the external boundary of the claim area of a registered native title claim (the **registered claim**), regardless of whether native title in relation to the land has been extinguished or surrendered — a registered native title claimant in relation to the registered claim;
- (d) a prescribed person or a person of a prescribed class;

Page 12, after line 16 — To insert —

**registered native title claim** means a claim (within the meaning of the Native Title Act section 184) details of which are contained in the Register of Native Title Claims;

Page 12, after line 18 — To insert —

**Register of Native Title Claims** has the meaning given in the Native Title Act section 253;

I talked about this, but I will talk about it a bit more. The first group of amendments to clause 13 deal with the definition of “native title party”; that is why I have moved the amendments to insert the new definitions into proposed section 18(1)(IAA) of “approved determination of native title”, “claim area”, “determination area”, “National Native Title Register” and “native title”. Secondly, I seek to delete the definition of “native title party” currently in the bill and replace it with a new definition. The revised definition of “native title party” that replaces the definition in the version of the bill as introduced gives priority to regional corporations and ensures that prescribed bodies corporate and registered claimants have a right of review to all land within their determination or claim boundary regardless of whether native title had been distinguished or surrendered. Thirdly, I seek to insert two more definitions relevant to the definition of “native title party”: “registered native title claim” and “Register of Native Title Claims”. Taken together, this group of definitions will ensure that the correct Aboriginal organisations are recognised in the section 18 process, including for the purpose of exercising a right of review to the State Administrative Tribunal under section 18(5).

**Ms M.J. DAVIES:** We have already discussed this at length. I raised questions about the role that various native title bodies will play where there is no specific native title settlement and the fact that they have the opportunity not to participate in that process. I do not propose to discuss it any further. I think there will be an opportunity to do that in the Legislative Council, and between now and then there will be more time to deal with the amendments. Unless I am missing something about these amendments, we discussed this at length earlier in the evening.

**Dr A.D. BUTI:** The member is not missing anything in the amendments; is that what she said?

**Ms M.J. DAVIES:** I am saying we have discussed them at length, so if there is anything you would like to raise, raise it now or forever hold your peace! It will only come back in the Legislative Council!

**Dr A.D. BUTI:** The member should be complimented on her interrogation!

**Amendments put and passed.**

**Dr A.D. BUTI:** I move —

Page 12, after line 28 — To insert —

- (1A) In section 18(2) delete “shall, as soon as it is reasonably able,” and insert:  
must

This amendment is one of a number of minor technical amendments recommended by Parliamentary Counsel’s Office. This amendment seeks to insert a new subclause (1A) into clause 13 of the bill to provide that the committee must make a recommendation. The use of the word “must” in place of the words “shall, as soon as reasonably able” makes it clear that regulations could prescribe a specific time frame for the committee to make a recommendation to the minister under section 18(2) of the act. I ask the house to support this amendment.

**Amendment put and passed.**

**Dr A.D. BUTI** — by leave: I move —

Page 14, line 10 — To delete “the owner” and substitute —  
an owner of the land the subject of the consent

Page 14, line 19 — To delete “the owner” and substitute —  
an owner of the land the subject of the consent

Page 14, line 25 — To delete “the owner” and substitute —  
an owner of the land the subject of the consent

Each of these three amendments is related to transferring section 18 consents on a change of ownership of land. Each of these amendments clarifies that there may be more than one landowner and it is the land that is the subject of the consent rather than the consent attached to the owner. I ask the house to support these amendments.

**Amendments put and passed.**

**Ms L. METTAM:** I move —

Page 14, line 34 — To insert after “the Minister may,” —  
if the new information raises issues of State or regional importance and

As I spoke about in both my contribution to the second reading and through the process of consideration in detail, this amendment is about adding clarity and certainty. The intent of the amendment is to prevent a future Juukan Gorge incident. Yesterday, the minister responded that the proposed amendment to include a significant test would increase the risk of a future Juukan Gorge event occurring as it would narrow the scope. I do not believe this to be the case and it is certainly not the intent of this amendment. It would be good if the minister could elaborate on his comments, if he is able to respond. As we understand, under the proposed amendments to the Aboriginal Heritage Act 1972, new heritage information within the section 18 approved area could come to the minister in one of two ways. If a proponent holds a section 18 approval, they will be required to notify the minister as soon as they become aware of new heritage information, at which point the minister would be compelled to decide to cancel, confirm or revoke the approval, or from any other person, including people who have no connection to the land. That is concerning. We have heard much concern across industry as well that with the first avenue for the provision of new information, there will be nothing to stop any person from providing new information to the proponent. In some circumstances, the proposed amended heritage act could compel the proponent to notify the minister, which, in turn, would require the minister to be involved.

The suggested opposition amendment is designed to ensure that government and ministerial intervention on section 18s is preserved for situations in which information identifies the values that are significantly different, are of a state or regional significance and have not been contemplated in the assessment and the grant of the original section 18. The alternative approach by the government, which was proposed by the government’s repeal and amendment bill, would have intervention triggered by any new information regardless of this significance.

The minister kept referring to section 5 as providing a threshold for the definition of an Aboriginal site. He also stated that it could be one of four options mentioned as a reason for there being no threshold. This is about new information on an existing site. I seek the minister’s clarification. It could include an artefact scatter of two metres wide for an original section 18 application when it was, in fact, one metre wide. In that scenario, would the minister be able to overturn a proponent’s section 18 application? I seek that answer in his response.

Regardless, there has been much interest in this legislation, which provides some certainty and consistency. It is very much about preventing a future Juukan Gorge. Without a minister turning their mind to the question of significance, they would not be turning their mind to whether new information might result in such a significant scenario being repeated.

**Mr R.S. LOVE:** I would like to hear more from the member.

**Ms L. METTAM:** Without an alternative definition, the process could unnecessarily take up additional government resources and time of departments, ministers and the State Administrative Tribunal. Just like our First Nations people, landowners need clarity when protecting their heritage and culture. There is an opportunity for further clarity in this bill. On behalf of the opposition, I am seeking an insertion through this amendment, which would provide some further clarity and strengthen the act and its intent—to prevent a future Juukan Gorge. We believe that incorporating a significance test by way of this amendment would be a way of achieving that and protecting the intent of the act. We urge the minister to consider this amendment.

**Dr A.D. BUTI:** I thank the member for Vasse for explaining why she moved the amendment. I have considered it. As I indicated, we will not be supporting the amendment. The effect of the amendment moved by the member for Vasse is to amend proposed section (6A) to provide that a minister may only amend, revoke or confirm consent

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on receipt of new information of that minister if the new information raises issues of state or regional importance. As I said last night and again today, this would have the effect of diluting the protection provided by the new information condition and increase the risk of another Juukan Gorge incident.

I also note that the new information conditions are already in operation in relation to consents granted between December 2021 and July 2023 under the 1972 act. The provision already requires a minister to exercise their powers having regard to the general interests of the community, which is consistent with the power to grant a section 18 consent. The addition of new information about an Aboriginal site that raises issues of state or regional importance would also see that the test for granting consent and the test for amending, revoking or confirming consent upon receiving new information is different. If the member's intention is to reduce red tape and uncertainty for landowners, the amendment will not achieve that end. The provision of the act still requires landowners to notify the minister of any new information. The scope would only be narrowed for the minister, who would be required to determine whether the new information is of state or regional importance. This additional assessment to be undertaken by the minister will only increase uncertainty for landowners. The bottom point is that this amendment seeks to have a different standard for an original section 18 application than for the consideration of new information. That is something we will not contemplate.

*Division*

Amendment put and a division taken, the Acting Speaker (Mrs L.A. Munday) casting her vote with the noes, with the following result —

Ayes (5)

Ms M.J. Davies	Ms L. Mettam	Ms M. Beard ( <i>Teller</i> )
Mr R.S. Love	Mr P.J. Rundle	

Noes (33)

Mr S.N. Aubrey	Ms M.J. Hammat	Mr D.R. Michael	Mr C.J. Tallentire
Mr G. Baker	Ms J.L. Hanns	Mr S.A. Millman	Mr D.A. Templeman
Ms L.L. Baker	Mr T.J. Healy	Mr Y. Mubarakai	Mr P.C. Tinley
Dr A.D. Buti	Mr M. Hughes	Ms L.A. Munday	Ms C.M. Tonkin
Mr J.N. Carey	Mr H.T. Jones	Mrs L.M. O'Malley	Mr R.R. Whitby
Mrs R.M.J. Clarke	Mr D.J. Kelly	Mr S.J. Price	Ms C.M. Rowe ( <i>Teller</i> )
Ms C.M. Collins	Ms A.E. Kent	Mr D.A.E. Scaife	
Mr M.J. Folkard	Dr J. Krishnan	Ms J.J. Shaw	
Ms E.L. Hamilton	Mr P. Lilburne	Dr K. Stratton	

**Amendment thus negatived.**

**Dr A.D. BUTI:** I move —

Page 15, line 17 — To delete “consent.” and substitute —  
consent in whole or in part.

By way of brief explanation, this amendment clarifies that if the minister becomes aware of new information about an Aboriginal site and proposes to exercise a power under proposed section 18(6A) in respect of a consent, the minister may suspend the consent in whole or in part. I ask the house to support this amendment.

**Ms M.J. DAVIES:** I have a clarification because these amendments came in a little bit later. I appreciate that we had a briefing but will this allow the minister to say that, essentially, it may not apply to the entirety of section 18, so there can be parts of a business or operation that can continue while the decision is being made.

**Dr A.D. BUTI:** That is correct, member. It was in response to feedback.

**Amendment put and passed.**

**Dr A.D. BUTI:** I move —

Page 15, after line 24 — To insert —

(5A) In section 18(8):

- (a) delete “this section to a person” and insert:  
subsection (3)(a)
- (b) delete “by or on behalf of that person”.

By way of explanation, as with new clause 12A and the group of three amendments to section 18 in paragraphs (a) to (c) on page 14 of the bill, this amendment standing in my name is related to transferring section 18 consents on

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a change of ownership of the land. This amendment seeks to refer to a consent granted under section 18(3)(a) of the act rather than consent granted to a person. I ask the house to support this amendment.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 20 to 23 put and passed.**

**Clause 24: *Environmental Protection Act 1986* amended —**

**Ms M.J. DAVIES:** I will be very brief. The Leader of the Liberal Party referenced this earlier in our conversation. It is in relation to consequential amendments to the Environmental Protection Act. Obviously, this is just a basic amendment to refer to the change in the act, but there was conversation earlier around how the duplication that exists in the functions within the EPA will be dealt with. It is another opportunity for the minister to say it is a priority for the government and that the government will continue to work to make sure we can streamline that. Within the context of feedback that we have received from industry across the board, it makes no sense to have an Aboriginal Heritage Act and an Environmental Protection Act that are essentially doing the same thing, yet in the Environmental Protection Act—I know you are not the minister—the minister is charged with looking at very similar issues. They would be limited in their expertise compared with the Aboriginal Cultural Heritage Committee that exists within this function.

**Dr A.D. BUTI:** The member raised a very important point there. As I said, this is a work in progress. We are seeking to move towards responding to those concerns of industry. I hope that the duplication of the process, in particular, can be rectified. What can be considered by the Environmental Protection Authority will take a bit more work. That is a statutory authority. Of course, one can amend the act, but one has to also consider it possibly contravening—I do not know; I am not saying that this would be the case. But there could possibly be Racial Discrimination Act implications. That may not be the case, but that will have to be worked through.

**Clause put and passed.**

**Clauses 25 to 30 put and passed.**

**Title put and passed.**