ABORIGINAL CULTURAL HERITAGE BILL 2021
ABORIGINAL CULTURAL HERITAGE AMENDMENT BILL 2021

Cognate Debate

Leave granted for the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021 to be dealt with cognately.

Second Reading — Cognate Debate

Resumed from 30 November.

HON NEIL THOMSON (Mining and Pastoral) [3.25 pm]: I rise on behalf of the opposition, the Nationals WA–Liberal Party alliance, to speak on the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021. At the outset, the National–Liberal alliance will not oppose the bills, but we would like to raise serious concerns on a number of issues related to them, particularly the way in which these bills were put through the other place and brought into the Legislative Council. I acknowledge the complexity of this task. The challenge for the government in bringing these bills to this place has been substantial, so I acknowledge the government on that front. These are not easy bills to bring before this place.

I also acknowledge that the Aboriginal Heritage Act, which is currently in play, requires updating. There are a number of shortcomings in the Aboriginal Heritage Act that have been apparent for some time. Before I go through the few points I would like to make, I note that there was a version of the Aboriginal Cultural Heritage Bill in circulation last year. Some 100 amendments have been made to this version of the bill, and they are certainly not insignificant. A number of elements to this bill are unprecedented in their presentation to the regulatory environment in Western Australia.

I also acknowledge the concerns of traditional owners and Aboriginal people across Western Australia. That is a massive issue for the people of Western Australia and Aboriginal people who seek to have their culture and heritage protected. This is a very noble aspiration of the government and one that we support.

In the context of this second reading debate, I would like to say that these bills have not been easy tasks. We know the task has been difficult politically because a number of views are held, but there has been a significant issue with consultation, especially in its limitations and the number of groups that have been consulted with in recent times, particularly on this version of the bill. The Liberal Party received a copy of the final bill only hours before it was read into the other place. With 353 clauses and a significant amount of work still to be done on the regulations, there is an element of the government saying that we should trust it. That is providing significant challenges because of the impact the legislation will have on both Aboriginal people and businesses. The mining sector has been engaged to a large extent through consultation and support has been shown by the Chamber of Minerals and Energy and others in the mining sector. However, a large sector of the business community has not had the same level of engagement, particularly small-to-medium enterprises. They probably do not fully understand the legislation—nor could they understand the impact this bill will have on them. That is partly due to the impact on people in the community with landholdings of more than 1 100 square metres, and that cannot be properly understood until the regulations are prepared. That poses a significant risk to the people of Western Australia. In presenting our case, the opposition has taken the view not to oppose the bill. We understand and reiterate the challenges of presenting something like this to the house. However, it poses risks to Western Australians going forward, given the sense coming from the government of, "Trust us; we will deliver."

We understand that, I guess, at the heart of all this are the fundamental elements of belief in culture for Aboriginal people in the state, as has been the case since long before European settlement. The purpose of the bill is to protect elements that are pertinent to Aboriginal culture, particularly those in the existent landscape. That is a challenge due to our culture of digging, constructing and making things happen, and people in our society undertaking their day-to-day business. I reiterate that the interface required to present any kind of legislative framework will be significantly difficult.

From 2014 to 2017, I worked in the land area of the Department of Aboriginal Affairs. I must say that that experience was a tremendous opportunity for me to get to know a lot of Aboriginal people, and I developed a number of deep and enduring friendships with Aboriginal people. While I was in that role, the Port Hedland dredging issue came up and we saw Justice Chaney present his decision in 2015, which required decisions made under section 18 of the Aboriginal Heritage Act to be reassessed. Although I am certainly no expert at assessing matters within the framework of the Aboriginal Heritage Act, I had the task of chairing a committee—it was more an administrative role—that was established to reassess in the order of 121 decisions made by the Aboriginal Cultural Material Committee relating to section 18 of the act. The only reason that I made that point is that I understand the incredible difficulty that stems from the particularly narrow definition taken by the then department to proceduralise the issue of assessing what a "place" is. When tested in court, that definition was found to be deficient, which laid the foundation for the reassessment that had to be undertaken. That reassessment has continued to pose a problem under the existing act because it was made clear that a particular place could not be defined based on the existence of some sort of past or existing activity but had to be considered more broadly, and that has been the challenge for the minister.

I acknowledge the challenges that my colleague Hon Stephen Dawson faces in this bill. I make that point to him because I certainly understand the difficulty he is faced with.

Notwithstanding that, we have a job to do because we believe that although this bill purports to do certain things, maybe it will do other things. The bill purports to provide Aboriginal people with the ability to determine which Aboriginal cultural heritage sites should be protected. It will give some degree of control to Aboriginal people, more so than is currently the case. It also seeks to allow greater transparency, protection and penalties in the Aboriginal cultural heritage space. However, that may not be the case for certain elements of the bill. In the short time I have, given the complexity of the bill, I hope to raise some of those concerns in my second reading contribution. It is noted that the bill also seeks to keep Aboriginal people involved in decisions about their heritage at the local level. We acknowledge the structure that will be put in place, particularly with the local Aboriginal cultural heritage services. However, that structure will be potentially problematic insofar as the bill will impose a new regulatory structure that has not been in place before. The codification of activities within that structure is yet to be fully presented, but they will become apparent, in the fullness of time, through the regulations. Certainly, I would like to put those comments on the record.

I will go through a number of other issues, including the mandating of consultation. There certainly is no argument about the formalisation of the roles of Aboriginal people and organisations and the alignment with native title. One of the good things that we have seen over time has been the unfolding of native title and the finalisation of native title determinations across our state, which is providing certainty for Aboriginal people, notwithstanding some of the angst and pain endured throughout that process for Aboriginal people and the general population. The determination of native title is at least providing a much more solidified framework over land use and future acts under which people can negotiate and form a consensus. We see an intention in the cultural heritage space to have a much stronger alignment, noting, of course, that the Aboriginal Heritage Act 1972 preceded the issue of native title by a long way.

In principle, this bill is an excellent attempt. However, the proposed amendments to section 18 of the Aboriginal Heritage Act are significant matters in the context of the comments in the media from Aboriginal people through advocacy groups like the Kimberley Land Council, the Yamatji Marlpa Aboriginal Corporation and other land councils across Western Australia.

The amendments will replace the section 18 process with a tiered approach to land use and, as members have no doubt heard, that is controversial. There is also the matter of decision-making through the local Aboriginal cultural heritage services framework.

That is my introduction to my second reading contribution. I will go through in a structured way some of the elements that I think would be worthy of further debate and deliberation, and I will seek a reply from the government on the following eight points that I will raise. In preparing this presentation, I have attempted to provide some structure. I feel a level of inadequacy in doing this because of the complexity of the legislation and the time available. I acknowledge that what I will present is certainly not the end of it, and I am sure members understand the need to proceed through to the committee stage and attempt our best to provide some input to this bill, and at least attempt to flag those matters that are of concern and hope that the government, noting the numbers in this place, will take them away.

Later in my presentation, I will move that this matter be referred to the Standing Committee on Legislation, and there is good reason to do so. In flagging that, I implore the government to consider this matter. It may have made up its mind not to support it—that is my expectation—but I am at least flagging that. Noting that we are six months into the government's second term, we have some time and I think there is a broad level of support from all sides for a more detailed consideration. In my view, it would be a feather in the cap of the government to agree to that. We will get to that discussion at the end of my presentation.

The first point I raise is the complexity of this bill. It is extraordinarily complex. It is 260 pages long. That does not necessarily equate to complexity in itself, but a number of new elements come into this bill. It contains 353 clauses and it will create a whole new regulatory regime in the codification and management of the tiers of Aboriginal heritage. That in itself makes it extraordinarily complex.

The bill contains a number of consequential amendments to other legislation. It is probably not as complex as some bills that have been before this place, but it contains significantly complex issues for the appeals process and the role of the State Administrative Tribunal and matters of recourse, particularly the impact that could have on smaller operators in our economy. That is probably where the major concern exists. I understand that between the introduction of the 2020 bill and the 2021 bill, the government conducted extensive consultation with the larger operators in our economy that, by and large, are comfortable with the proposal. However, there is a significant challenge for those who do not fully comprehend the impact of this legislation on them.

That is aptly presented in a document produced by the Department of Planning, Lands and Heritage, which I have before me. It is a significant document, containing a table that is several pages long. It sets out the clauses of the bill, notes on the consultation, the changes that have been made and the reasons for the changes. It goes through the clauses that have been changed. I certainly will not consume huge amounts of my time by reading it all, but I have

identified a couple of sections that I would like to read out, if only to make the point that we are now faced with certain complexities when debating and discussing this bill. For example, a change was made to proposed clause 14, "Act binds Crown". The paragraph following subclause (1) was deleted. It stated —

> Nothing in this Act makes the State, or the Crown in any of its other capacities, liable to be prosecuted for an offence.

The idea of the shield of the Crown is fairly largely accepted on a range of fronts in relation to various regulatory requirements. The document states that in this case, the change was made —

> … in response in Aboriginal stakeholder concerns that the provision provided that the State or Crown is not liable to be prosecuted for an offence under the Act. The amendment means that State or the Crown is now liable for prosecution for an offence.

That may be all well and good, but it highlights the need for this bill to be referred to a committee. There is a significant knock-on impact. It was not in the first bill but now it appears in this bill. I will give a hypothetical example, the premise of which I am yet to have explained. A manager within Main Roads might be responsible for some land clearing as part of a road widening project. They may inadvertently or otherwise find themselves being prosecuted before a court. The question is how that would affect that person in the employ of the state and who would be responsible: the minister, the accountable officer or someone else? No doubt we will get to that as part of our more detailed discussion.

Another complexity, which is of equal significance, is this issue of the interface with the Environmental Protection Act. For example, clause 90 —

Tabling of Paper

Hon KYLE McGINN: The member has been referring to a table in a document that he is reading. I ask that he table that document.

The DEPUTY PRESIDENT: Member, can you identify if the document is confidential?

Hon NEIL THOMSON: No, it is not.

The DEPUTY PRESIDENT: I assume you just have one copy of it?

Hon NEIL THOMSON: I am happy to table it; I have no problem with that.

The DEPUTY PRESIDENT: Members, just for clarity, the type of point of order that has been raised by Hon Kyle McGinn is typically addressed at the end of a member's speech, asking for a document quoted during the debate to be tabled. If it is the wish of Hon Neil Thomson to table that document now, he may seek leave of the house, but the appropriate time for the member to raise that point of order would be at the end of Hon Neil Thomson's second reading contribution.

Hon STEPHEN DAWSON: Mr Deputy President, I am not sure but I think a member can ask for it to be tabled at any stage. However, Hon Neil Thomson, if you are happy to continue with your contribution and perhaps if you are happy to table it at the end, I think Hon Kyle McGinn would probably be happy with that.

Hon NEIL THOMSON: Yes.

The DEPUTY PRESIDENT: Members, I draw your attention to standing order 59(2), which says —

> At the conclusion of a speech in which a Member has quoted from a document, the document shall be tabled upon the request of any other Member, unless the Member states the document is a confidential document.

I put to Hon Neil Thomson that he may at this point seek leave to table the document; or, at the end of his second reading contribution, he can offer that document for tabling at the request of Hon Kyle McGinn.

Hon NEIL THOMSON: Thank you, Deputy President. I will table it at the end of my presentation. It is a government document, by the way. It is available on the website, Hon Kyle McGinn.

Hon Stephen Dawson: Don't mention a website!

Hon NEIL THOMSON: Yes, do not mention a website.

Hon Kyle McGinn interjected.

Hon NEIL THOMSON: The member is welcome.

Debate Resumed

Hon NEIL THOMSON: I will not dwell on this, but in the limited time I have, I want to mention that there was an exemption category in relation to land tenure, for example, when an approval had been provided under the Environmental Protection Act, and this has been changed. One of the challenges we see in a general sense is the integration of certain environmental elements with this legislation. We are also seeing at the same time that certain

Aboriginal cultural elements have been integrated into, for example, the Conservation and Land Management Act and others, about which we have had some discussion. The understanding of the complexity and the interaction between those elements is very important. One thing we should not be doing is creating a level of duplication in our regulatory processes, because that will cause considerable difficulty for people in interfacing with that.

On that point, I will say, as a person who is just getting on with their life and interfacing with this regulatory regime, that when persons go about their business, they generally seek planning approval to undertake certain activity. They might need a building approval under the Building Act. That is usually interfaced with local government, which has an established approval process that people are able to utilise and apply and everyone is clear about what is required of them. There are also mining approvals for the mining industry. I am sure people involved in the mining industry understand the mining approvals requirements. However, I reiterate that the challenge and the complexity that will be faced are the risks that will be posed to the establishment of a new regulatory process and interaction. As somebody who has been involved in the consulting industry in the Kimberley, for example, I can see that if I had not been elected to this place, I probably would have looked at this bill and thought what an incredible opportunity it will be for someone like me and for others. I know that for others in the consulting industry, it has in fact been a massive opportunity to make a significant amount of money because of the establishment of the approvals processes, the IT, the guidelines, the approach and the integration with potentially up to 60 or 70 regulatory bodies, being mainly the local Aboriginal heritage services. We know that currently, there are approximately 70 native title determinations with a prescribed body corporate, each of which has the option of becoming effectively a regulatory body. There will be a huge opportunity for some enterprising person who wants to get into the business of providing an interface between persons and companies doing things on our landscape and those involved. In fact, that was raised with me by a number of Aboriginal people, who were concerned about the possibility that their culture would effectively be hijacked through a bunch of, in their terms, "white fellas" who would do quite nicely out of the process and create what they said would be a very bureaucratic process that they would lose control of. I think that needs to be considered in the establishment of this process. That is the complexity.

I know I will have to run through this fairly quickly, but the second issue I would like to raise is the degree to which the legislation is contentious. This is a highly contentious bill. We have seen significant concerns raised. We have seen the open letter to the Premier. I am availing myself here of the documents. I will table all the documents I have in my possession. Members are most welcome to read them as we go through this discussion, but again I draw members' attention to something that was in *The West Australian*, which starts —

> Dear Premier Mark McGowan
>
> Open Letter—Opposition to Aboriginal Cultural Heritage Bill

It is signed by a number of very distinguished people and outlines their concerns about this matter. I will read only the first paragraph —

> We bring to your urgent attention widespread Aboriginal opposition to the Government's proposed *Aboriginal Cultural Heritage Bill*, 2021 and notify you of its serious breaches of Australia's international human rights commitments.

The names on there are significant. The leadership there is significant. I think it is a highly contentious bill. Again, I say to the minister that I am not critical; I understand the difficulty and the challenge, but I think as a reasonable step, within the confines of the contentious nature of the bill, it would be good if we had the matter referred to committee. In fact, that is a recommendation of the Kimberley Land Council. I have another letter that was sent on 24 November by Mr Anthony Watson, chairman of the Kimberley Land Council, to the elected members of the Parliament of Western Australia. I am sure Hon Kyle McGinn has a copy of this in his possession. This letter was sent to all members of Parliament and it is titled "Urgent request—Vote no to the Aboriginal Cultural Heritage Bill". I said at the outset of my presentation that we will not vote no to this. We will not stand in the way of the government on this matter. We are not opposing the bill, but we are raising our grievances because we agree with the second recommendation of the Kimberley Land Council —

> Refer the Aboriginal Cultural Heritage Bill for further investigation by the appropriate Standing Committee.

I again implore the minister and the government to heed the concerns. I trust the people seated in this place, and particularly the Standing Committee on Legislation, which would be able to consider this matter in detail, because I think a major issue is the lack of consultation. A number of matters were raised in this letter, under the headings "Failure to embed Free Prior and Informed Consent", "No right to say no", "Rebranding Section 18", "Burdensome agreement making", "Protected Area limitations", "Loss of rights of review", "Ineffective consultation" and "Unclear regulation process". There are concerns.

I have another letter, from the Amalgamated Prospectors and Leaseholders Association of WA, which again raises concerns, in particular about unknown sites. Again, I am happy to table this letter, which contains concerns from the people who represent the smaller prospecting part of our community. They are an important part of our economy.

They refer to the lack of clarity and understanding of how the legislation will impact on them. A letter from the Australian Association of Consulting Archaeologists raises a number of concerns and its three key points are: "Unequal rights for review", "Insufficient support and funding provided for Aboriginal Cultural Heritage Services" and "Inadequate definitions". We know the major issue is that this legislation will establish a whole regulatory process that could involve up to 70 different organisations providing approvals when there is no funding to provide ongoing support, apart from the $10 million that has been allocated for their establishment. Certainly, in my experience of matters of Aboriginal cultural heritage services in my region, I have been told that to run a service to the competency that might be required could involve a cost of $3 million a year for each service. When the department was asked about this, it had a figure of about $200 000, which seems extraordinary. Members can see that this is an issue. Of course, the other matter raised was the inadequacy of the definitions, and I will table those at the end of my presentation. It is highly contentious.

The other element of contention—it is probably more so because this matter of contention has not been raised—concerns all those people and services that do not know how this will impact them. I had some conversations with the Pastoralists and Graziers Association. It had some early consultation on the first draft of the bill, but it certainly has had no time to digest the bill that is currently before us. What about the Western Australian Farmers Federation? We might ask, for example, about the Construction Contractors Association of WA and the Housing Industry Association. What about small landowners in peri-urban areas—people who run orchards and undertake certain activities? Maybe there will be an element of protection. However, there are some concerns about what their obligations will be and their risk of prosecution through inadvertent actions or otherwise. There are also some risks in relation to costs, and I will get to that. This matter of contention gives us reason to refer the bill to a committee for further consideration. Such a committee might seek further input on the bill from a much broader range of people and groups and could assess it with a much more incisive view of specific clauses and the impact they might have.

The third point I would like to raise is what I suggest is an insufficient regulatory impact statement. As members know, I asked a question on this matter in Parliament yesterday. I must say that the answer was insufficient.

Hon Stephen Dawson: With the greatest respect, honourable member, the answer was the answer.

Hon NEIL THOMSON: The answer was the answer; however, my view is that it was insufficient. The answer gave the perception that there might be a regulatory impact statement in the public domain. I do not know whether I am not looking properly, but as far as I can see, there is no regulatory impact statement entitled "Aboriginal Cultural Heritage Bill 2021". The answer stated that somehow this regulatory impact statement was made public in August 2021. The bill was not even presented until the last few days; it was only recently presented. We see there is a great process for regulatory impact statements. Why am I focusing on this issue? It is because if an independent regulatory impact assessment were undertaken by Treasury or the line agency and then reviewed by the Better Regulation Unit, it could actually objectively assess the effects on our economy. It could objectively weigh up the costs and benefits of the said legislation or regulatory controls. It is very difficult to weigh intangible benefits, but we should at least know the costs. My back-of-the-envelope calculation is that this could cost in the order of $100 million a year in direct regulatory costs, approval costs, licence costs and application fees—the costs to get things done and go through the process—once each of the local Aboriginal cultural heritage services is in operation. They will need to operate within the constraints of their budgets and will fund themselves through application fees. It might be $300 million or $500 million a year.

We do not know, because nobody on the other side appears to have spent the time to assess it. Who knows the impact it will have on proponents who are required to undertake due diligence and, even in cases in which due diligence is undertaken, they could get a permit and still find themselves exposed to this law. In itself, that will mean a boon for consultants. I am clearly in the wrong business now but it is going to be a boon for consultants. We are going to see a significant industry created around this process. We know how it will work. People will outsource consultants. It will be fine for the large mining companies that have consultants all lined up to go through the process and tick the boxes to make sure everyone is happy, but will it be effective and will it improve outcomes for Aboriginal people? There is a lot of cynicism in the Aboriginal community about it. We have seen how this process will work. Members of the advocacy and environmental movements will potentially use this legislation as some form of weaponisation, which I think is a real risk. The structure and design of the regulations should be very thoughtfully considered. I have seen it firsthand, particularly with the embedding of both environmental and cultural values into legislation. It does not appear that the government has gone through this process, which will have such a significant impact, and undertaken a regulatory impact statement.

The next associate point I would like to raise is red tape. Without repeating myself, there could potentially be an incredible increase in red tape. I will refer to another document that was provided—a table. It is available, but I will present everything I have here for the sake of *Hansard*. There is going to be a multi-tiered approach to land use approvals under the Aboriginal Cultural Heritage Bill. There are categories of exempt activities, including small-scale residential, emergency services and recreational activities, for example, that do not require approvals. Tier 1 activities are identified as activities that will be specified in the regulations, so what those activities will be has not been specified. We need a degree of faith to take on this bill, at least for this place to vote on it. Tier 1

activities are defined as activities with minimal ground disturbance. There seems to be an absolute fixation on ground disturbance. I am not quite sure why that is, given the intangible and complex nature of Aboriginal culture expressed by Aboriginal people. Why is there an absolute fixation on ground disturbance alone and the impact it might have, especially with minimal ground disturbance activities? Tier 1 activities will not require approval but will require proponents to take all reasonable steps possible to avoid or minimise the risk of harm. Tier 2 activities will cause the most problems under this bill. The large end of town—the Rio Tintos and BHPs of this world—have considerable resources at their disposal, legally, archaeologically, in consultation and in joining with Aboriginal people in their discussions about both native title and cultural heritage. They have considerable resources and they can deal with the transaction costs that will be required to engage with these laws when they come to fruition.

The tier 2 activities will be specified, again, in regulations. We do not know whether they will be in respect of building a farm dam, making a track, digging a foundation or extracting a tree from an orchard. Maybe exemptions will apply to already disturbed land or maybe an exemption will apply just through the regulations. We do not know. We can possibly take that on faith. My concern is that once we set this architecture in place, with its raft of consultants all sitting behind those LACH groups, we will see something of an industry built up, which will create something of a potential problem, particularly for those who might inadvertently do something to harm Aboriginal people in some way. Again, this is about transparency of information. The history of the government in providing information to the public is extremely poor. In my experience as assistant director general of the Department of Planning, Lands and Heritage and as the secretary of the Western Australian Planning Commission, there is difficulty in providing information on public geographic information systems, and there has been significant work done over the years.

Tier 2 activities will be specified in regulations but are defined in the bill as low-level ground disturbance activities. If we go to the DPLH information sheet, we see that there is not much information about what those activities are, but there is a symbol of a spade. According to the information provided by the department, if Aboriginal cultural heritage is present, the activity will require an Aboriginal cultural heritage permit. The bill will require proponents to take all reasonable steps possible to avoid or minimise the risk of harm to ACH. There will be a discussion around some of the due diligence obligations that will be upon people who are probably completely unqualified and ill-equipped to undertake that due diligence. I think that this part of the bill poses the greatest problem. This part of the bill is where our community is running blind, as it has such little information, and where the government has failed in its consultation. This issue could be corrected, to some degree, by referral of the bill to a committee for proper consideration. The committee could make recommendations to guide the drafters of the regulations so that we end up with a workable bill that will not result in punitive outcomes for unwitting members of our community. I think that this is a significant issue that should be considered.

Tier 3 activities will be specified in regulations. As I said, the industry at the big end of town does the moderate to high–level ground disturbance activities. The proponent and an Aboriginal party can reach agreement with the Aboriginal Cultural Heritage Council, which approves an ACH management plan. As well-equipped as these groups are to undertake this transaction—they can prepare the documents, engage the consultants and ensure that there is compliance—this is in fact the area in which Aboriginal groups like the Kimberley Land Council would like to see a greater say among Aboriginal people and a greater power of control over the process than what is currently presented here today.

Although I do not necessarily have a view on that specifically, it is a worthy reason to refer this to the Standing Committee on Legislation for further consideration. If someone falls foul of the law for tier 3 activities, which involve a higher level of activity, it can probably be more easily addressed by those people who are equipped to deal with such things as compensation, negotiations and legal ramifications. It may be those unwitting parties, who are probably at the smaller end of town, who have the lowest risk of doing harm. The government has an obligation to consider that matter with due concern and diligence. I raise the lack of transparency and the red tape this bill will impose, and the effect it will have on our economy. Will it cost a billion dollars a year? Will it result in significant delays in some of the most basic and simple applications? We do not know. Will it create a degree of confusion? I think there will be confusion around the transition requirements once this bill is proclaimed. I understand that a prescribed body corporate is not obliged to be a local Aboriginal cultural heritage service. The answer provided by the department in this discussion was less than satisfactory, because if there is some confusion about who will apply for a permit and there is no process to apply for a permit, who will be liable for any harm that might be caused? How will this be managed? What will happen in the simple act of someone undertaking a tier 2 activity in the situation that a LACH service does not apply? Maybe the minister can provide an answer to that in his response.

My fifth point relates to compliance, which is a massive issue. The flip side to compliance is enforcement. This bill contains some significant enforcement powers. For example, once it is established, the inspectorate will be able to enter premises. The history of governments generally in managing inspectors, not only this government but across the board, has been poor. We have seen that in the area of safety. This bill will effectively outsource inspectors with significant powers—powers to stop cars, to check things and to open things. I would like to discuss this in further detail, but, noting the time, I will not go into the clauses of the bill. However, clauses 238 to 245 certainly

provide some incredible powers. A regulatory impact statement would have dealt with what is lacking in this bill, such as how it will deal with enforcement. The bill will give someone the power to stop and search and to initiate prosecution, yet in this situation, rather strangely, there is a lack of impartiality in that aspect because the outcome of a prosecution resulting in a fine will be that the funds end up in a trust account disbursed to the people who are, effectively, undertaking these prosecutions.

When we look at the principles in the Doha Declaration, which is an international declaration of enforcement bodies, we see that there are three simple principles. I am not sure that this government has gone through and run the ruler over this and looked at these three principles. They are necessity, proportionality and proportion. That bothers me greatly, again, for those unwitting persons who might find themselves at the coalface of some sort of prosecution in which a less than impartial decision might be made. I am not saying this of all potential LACHS. In my experience, I know many prescribed bodies corporate that will want to work cooperatively, but when there are 70-odd, there is the possibility that some will not. At the Committee of the Whole stage, I will have many questions about the accountability of these bodies, whether it be through the Ombudsman, the Corruption and Crime Commission or others, when some partiality might be applied and, again, there is some risk of unwitting persons finding themselves at the wrong end of this. I add three other principles that should be considered—privacy, oversight and impartiality. The lack of separation of roles, the identification of potential noncompliance, the investigation, the prosecution, and the issue of the receipt of benefits from fines I think pose some significant risk to this new regulatory regime that will be established.

Noting the time, I will not go into further major discussion on that, because this is very complex. As I said at the outset, I appreciate the complexity and I sympathise significantly with the minister. I think it is—I am trying to think of a term that is not unparliamentary—perhaps people can say a sandwich. We will not go into that in detail, but it is a difficult job.

Hon Stephen Dawson: Given there are many starving people in the world, I think many people would love to have a sandwich to eat.

Hon NEIL THOMSON: That is right. The government has a very difficult job. I acknowledge the government for the work it has done in presenting this bill, but I will not use unparliamentary language in the description of this particular sandwich. I understand the significant amount of work that has to be undertaken. The structure of the body that is going to be involved in that regulation-making process needs some consideration. The breadth of it is problematic and I hope that the breadth of input will be significant, because there is an issue about the transitional arrangements that will need to apply once the bill takes effect.

In wrapping up, I say that we do not like to be where we are at with this bill at this time. I would have appreciated a much lengthier opportunity of several months for detailed consideration of the final bill that has come before this place and a much wider consultation with all those impacted, including those who are not supported by a well-funded advocacy body. I think that is a symptom of this government's single-minded focus on those groups, one could say, that might have put some accelerant onto this issue. I am obviously referring to the thing that everybody talks about—the incident at Juukan Gorge. This is not just about Juukan Gorge; this is about landowners with 1 200 square metres, of which, in the metropolitan region and peri-urban area alone, there are something like 50 000.

I do not think those 50 000 people have any idea of what is coming their way, and, quite frankly, I do not either. We are not yet privy to the regulations, so we do not know how the legislation will impact on people or what their obligations will be. I am not even sure the middle managers who will make those decisions know. I hope the minister will bring some clarity to how those underpaid and overworked persons who operate within our public service undertaking a number of activities for the good of our state will be impacted. I hope they will not be. I hope that it will go to the top if there is any breach. We have, effectively, been asked to take on trust this whole issue and come to this place and vote on the matter. Really, it is on the government's head.

It may seem harsh—it is not my intention to be so—but this bill has been shoved through this Parliament in an unseemly way to this point. My concern is the reason for that is that the government does not want ongoing criticism. We have seen protesters on the steps of Parliament House. I am sure the colourful and even articulate protests will continue. The last thing the government wants is for those protests to gain any kind of momentum and for a wider coalition of people, both Aboriginal and non-Aboriginal, to somehow join together in their concern about the structure of this bill. I think the bill suffers from a deficiency of bureaucracy and design. The legislation is probably good on paper, or as a whiteboard diagram, but it will be quite a complex law that will potentially have a negative impact and not achieve the outcomes that we hope it will achieve—that is, that we never again see another Juukan Gorge incident. We have had a lot of discussions about that and I have made some points about the dismantling of the former Department of Aboriginal Affairs. I will end on this point. Although I think that department and the act had some serious deficiencies, I must say, overall the rolling of Aboriginal heritage into the Department of Planning, Lands and Heritage has had very negative outcomes. I know firsthand from persons involved in the heritage area, particularly a number of Aboriginal employees —

The DEPUTY PRESIDENT: Order, member. I am sorry to interrupt your speech at this point, but I understand that you indicated during the course of your contribution to the debate that you would do two things. One is that you would move a motion to refer this bill. You also indicated on a number of occasions your intention to table a number of documents. You will lose the opportunity to do so if you do not seek leave. If you do seek leave, I ask that you give consideration to Hon Kyle McGinn's request so that he does not have to rise under standing order 59 at the end of your contribution.

Hon NEIL THOMSON: Thank you, Deputy President. I seek leave at this point to move a motion without notice —

The DEPUTY PRESIDENT: Member, I interrupted your contribution because you indicated that you wanted to seek leave to table a number of documents. I ask that if you are going to do that, you also give consideration to Hon Kyle McGinn's request.

Hon NEIL THOMSON: Just so that I am clear on the procedure here, if I seek leave, I can do that, and then I will move the motion.

The DEPUTY PRESIDENT: Then you will have 29 seconds to move a motion, yes.

Hon NEIL THOMSON: I seek leave at this point to table a number of documents for Hon Kyle McGinn.

[Leave granted. See paper 977.]

Discharge of Order and Referral to Standing Committee on Legislation — Motion

HON NEIL THOMSON (Mining and Pastoral) [4.29 pm] — without notice: I move —

> That the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021 be discharged and referred to the Standing Committee on Legislation for consideration and report by 7 April 2022.

Division

Question put and a division taken with the following result —

Ayes (9)

Hon Martin Aldridge	Hon Dr Brad Pettitt	Hon Wilson Tucker
Hon Peter Collier	Hon Tjorn Sibma	Hon Dr Brian Walker
Hon Donna Faragher	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*

Noes (18)

Hon Klara Andric	Hon Sue Ellery	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Dan Caddy	Hon Peter Foster	Hon Shelley Payne	Hon Darren West
Hon Sandra Carr	Hon Lorna Harper	Hon Stephen Pratt	Hon Pierre Yang *(Teller)*
Hon Stephen Dawson	Hon Alannah MacTiernan	Hon Martin Pritchard	
Hon Kate Doust	Hon Ayor Makur Chuot	Hon Matthew Swinbourn	

Pairs

Hon Nick Goiran	Hon Samantha Rowe
Hon Dr Steve Thomas	Hon Jackie Jarvis
Hon Steve Martin	Hon Rosie Sahanna

Question thus negatived.

Second Reading Resumed — Cognate Debate

Debate interrupted, pursuant to standing orders.

[Continued on page 6237.]