ABORIGINAL HERITAGE AMENDMENT BILL 2014

Introduction and First Reading

Bill introduced, on motion by **Dr K.D. Hames (Minister for Health)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

DR K.D. HAMES (Dawesville — Minister for Health) [11.55 am]: I move —

That the bill be now read a second time.

The Aboriginal Heritage Amendment Bill 2014 amends the Aboriginal Heritage Act 1972. Aboriginal heritage is Western Australia's inheritance. It is a source of enormous pride and celebration for the whole state, and its protection is too important not to get right. The Aboriginal Heritage Act 1972 was enacted some 42 years ago and has been subject to limited amendment since that time. However, much has taken place over the same period that necessitates improvement. The recognition of native title by the High Court more than 20 years ago is probably the most significant development. In addition, the method of protection of Aboriginal heritage has become increasingly over-processed and inflexible and, as a result, expensive and time-consuming. The aim of this bill is to make a series of amendments to the act to improve its efficiency and effectiveness, while ensuring the continued and enhanced protection of Aboriginal heritage. These amendments build upon the administrative reforms that the Department of Aboriginal Affairs has been implementing over the last few years.

The amendments to the act will deliver a number of key benefits. Firstly, the amendments will enhance the protection of the state's Aboriginal heritage by significantly increasing the penalties for site damage. For example, the maximum penalty will be increased to $1 million when bodies corporate are convicted of a second or subsequent offence—up from $100 000. For individuals, the penalties will increase to a maximum of $200 000 for second and subsequent offences—up from $40 000. Terms of imprisonment for individuals are retained and strengthened. Courts will also have the ability, upon conviction, to order site remediation when this is a possibility. Importantly, the time available within which to commence a prosecution against an alleged offender will increase from 12 months to five years. This is particularly important as much of the state's Aboriginal heritage is located in hard-to-get-to remote areas and often 12 months is insufficient time in which to conduct an investigation. Secondly, the amendments will streamline the decision-making processes for applications made under section 18 of the act. It is important to note that although administrative processes will be streamlined by the amendments, protection of Aboriginal heritage will in no way be compromised.

The revised process provides for applications involving areas where no site exists, or where no site damage will occur, to be handled by the chief executive officer of the Department of Aboriginal Affairs. Under the new model, the CEO will have the ability to issue a "declaration" under section 18A(3)(a) when there is not a site on the land, or issue a "permit" under section 18A(3)(b) when a site will not be destroyed or significantly damaged by an act. This is currently the role of the Aboriginal Cultural Material Committee. In making this decision, the CEO will be required to assess the information provided against the criteria outlined in section 7A and any matters prescribed in the regulations. Section 7A will require the CEO to consider the following: any existing use or significance of the area/object; any former or reputed use or significance of the area/object; anthropological, archaeological or ethnographical interests; aesthetic values; any matter prescribed in the regulations; as well as the associated sacred beliefs, ritual and ceremonial usage. All of these criteria, but in particular the last one, inherently involves the participation of Aboriginal people to assist in the identification and assessment of these factors.

The ACMC will retain its current role of assessing proposals when damage to a site may result, and making recommendations to the Minister for Aboriginal Affairs. The department estimates that this streamlining could see as much as 90 per cent of the current section 18 "traffic" dealt with in a far more efficient manner. The improvement in efficiency will benefit all stakeholders while also ensuring that sites are protected.

Thirdly, the amendments provide the opportunity to empower Aboriginal people by encouraging early engagement between land users, such as project proponents, and those Aboriginal people who speak on behalf of the area. The current section 18 focuses on land users seeking approval where impact to a site may occur, which typically happens towards the end of the approvals process. The new streamlined section 18 process will encourage early engagement between land users and Aboriginal people, and will be an important factor in the CEO making a decision to issue a permit or declaration. By encouraging early engagements, the process will move away from site damage and towards site avoidance. The input of those Aboriginal people who speak for the particular area of country is essential if we are to achieve this goal.

Many land users and Aboriginal people have already have heritage agreements in place—many stemming from the Native Title Act 1993 processes, particularly in the north of the state where many mining companies have comprehensive agreements in place. The amendments allow the CEO to effectively recognise these agreements through the permits and declarations process. Although the Department of Aboriginal Affairs currently engages Aboriginal people as part of its administrative processes in the evaluation of sites and section 18 applications, there is no formal requirement to do so. The requirement for the CEO to assess the information provided against criteria outlined in section 7A and any matters prescribed in the regulations will ensure that Aboriginal people are involved in this process. It also means that the decision-maker, whether the minister or the chief executive officer, will be required to have regard to the views of whichever Aboriginal people are entitled to speak for the land that is the subject of the decision-making process.

The bill also contains a number of other improvements, including —

> the ability to have section 18 permits transferred from one party to another without the need to make a new application—for example, when a project is purchased by another company;
>
> the ability for a legal land user rather than just the landowner to make a section 18 application;
>
> the creation of a new register of declarations and permits which will make every decision by the minister and the chief executive officer freely available and will significantly increase the transparency of the decision-making process;
>
> the clarification of roles in relation to the assessment of Aboriginal heritage sites, making it clear that the Department of Aboriginal Affairs chief executive officer has this role;
>
> removing the requirement to have an anthropologist on the ACMC, as Aboriginal people are more than able to speak on behalf of themselves without perpetuating previous policies of having someone speak on their behalf;
>
> fine-tuning of the provisions relating to the appointment of honorary wardens so that the minister is better able to appoint honorary wardens that have powers appropriate to their role in helping protect Aboriginal heritage; and,
>
> finally, the act will contain an in-built mechanism requiring its review every five years so that it remains relevant and effective.

The amendments will also provide the Department of Aboriginal Affairs with the ability to recover the costs of providing services provided under the act. The amendments will also bring better balance and a more contemporary approach in public administration to the existing act. A draft of the bill was made available for public comment between June and August 2014. During the consultation period, senior executive staff from the Department of Aboriginal Affairs undertook a statewide consultation process, providing briefings in regional locations, including Kununurra, Carnarvon, Karratha and Broome. Native title representative bodies were consulted during this process, including the Kimberley Land Council, the South West Aboriginal Land and Sea Council, the Yamatji Marlpa Aboriginal Corporation, the Central Desert Native Title Service and the Goldfields Land and Sea Council. In addition, departmental staff held a number of meetings with a wide range of other Aboriginal organisations, land users, industry, peak bodies and service providers. Several amendments were made to the draft bill as a result of feedback received during the consultation process. A consistent feature in most of the responses to the consultation process related to the regulations. Many stakeholders wanted to view the draft regulations to have a better understanding of how the changes will actually work. Some stakeholders asked how the regulations would require the voice of relevant Aboriginal people to be taken into account during the decision-making process. This is an important consideration and the Department of Aboriginal Affairs will continue to engage with key stakeholders in relation to the scope of the draft provisions and to progress the development of Aboriginal heritage regulations.

This bill, supported by agreed regulation, will improve processes and, importantly, will also further enable Western Australia to protect its Aboriginal heritage into the future.

I commend the bill to the house.

Debated adjourned on motion by **Mr D.A. Templeman**.