

WAFARMERS
Shaping the Future of Agriculture

Buti's heritage is in doubt

By **TREVOR WHITTINGTON**

CEO WAFarmers

trevorwhittington@wafarmers.org.au



THE Minister for Education, Citizenship, Multicultural Interests, and most importantly to the State's farmers and pastoralists, 'Aboriginal Affairs', Dr Toni Buti BPE, Dip Ed, LLB, DPhil MLA is no fool, having racked up degrees in Physical Education, Education, Laws, Philosophy and Liberal Arts, at the University of Western Australia, Australian National University, Oxford and Yale.

Unfortunately, all those years hitting the books do not automatically make for a competent minister or even one capable of recognising when they are digging a political hole for themselves and the government.

Buti, while not responsible for the drafting of the heritage bill or the ramming of it through Parliament back in 2021, is responsible for the design of the regulations which has caused such an uproar across the bush over the last few weeks.

All of this noise could have been avoided if the minister had paid closer attention to the workings of his codesign workshop (or rather its failures) and the repeated warnings by the likes of WAFarmers, PGA and the CME that what was being proposed was unworkable.

Unfortunately, the departmental staff who were responsible for the drafting of the regulations were far from impartial public servants, rather they give every indication of having become activist bureaucrats, more intent on righting past wrongs by empowering future generations of indigenous to hold landholders to ransom, than building a workable system of identifying and protecting sacred sites.

Any dispassionate review of the detail of the new regulations would highlight that the three tier system that has been produced is overly prescriptive and confusing as it attempts to determine what's in and what's out, down to the last square metre, millimetre or kilogram.

Ask the department where the 500mm cut off applies be it to fence posts or deep ripping, or why moving more than 20kg of material is acceptable on firebreaks but not on new farm tracks and you will get a wide range of responses.

A diligent minister who had applied himself to the detail would have recognised the risks of running with a system that was overly complex and open to abuse.

A competent minister would have delayed the start date when they recognised that neither their department, the IT system, the Local Aboriginal Cultural Heritage Services (LACHS) or the industry were ready.

But Minister Buti did neither.

When challenged, his defence is that any criticism is simply fearmongering by dog whistlers, that the new Act is just an update of the 1972 legislation and there is nothing to fear as there are lots of new exemptions allowing farmers to get on with business as usual.

But try interpreting the section on agriculture in the regulations and determining if managing woody weeds or doing soil sampling is a Tier 1, 2 or 3 activity, especially where it is hard not to move more than 4kg of material or disturb less than 10m² of continuous ground or dig more than 500mm.

As an ex-teacher, Buti must be able to understand that you can't blame the students when the teaching material is poorly drafted or just plain confusing. I challenge him to put his own departmental advisers through an exam on the regulations and see how they go in producing consistent responses. I'm happy to make their papers.

No doubt the minister would be familiar with philosophical principle of the 'laws of unworkability', those laws or principles that despite their intended purpose or moral framework, are deemed impractical or infeasible to implement in practice.

The minister has already effectively admitted they need to be tweaked, but for political reasons he refuses to delay their introduction, or even to admit that the community is struggling to understand them.

Just how unworkable the new heritage system is, we won't know within the Minister's time frame of reviewing the regulations within 12 months. As I wrote in last week's *Farm Weekly* this will be a slow burn train wreck which will take years before its full implications are understood.

Anyone undertaking their own self-assessment who gets it wrong and comes to the attention of the LACHS and the Department could be dragged through the courts literally years after they built their fence or new shed, and only then will the inconsistencies in the regulations be identified.

In the meantime, those who choose to go through the process will face costs and delays plus the risk of potentially having heritage found where there is none.

Hence the minister has a problem, but while he continues to refuse to acknowledge that 600 angry people fronting up to a regional meeting, or the tabling of the Legislative Council's largest petition in WA history is a signal that he has not done his job properly means he is setting himself up to follow Dave Kelly out the door when the Premier finally wakes up and needs to find a new Minister to fix up the mess.

The fact that his department is not ready, its IT system is not tested, and the LACHS are not yet operational rests with him.

A minister with more experience in the real world of business, or how the public service works would have been suspicious of the potential of an activist department producing a set of regulations that could cause the government political grief.

A minister with more experience would have tested the regulations with trusted stakeholders before dumping them on the community with only weeks to run education sessions.

Besides delaying the start of the new system, the number one

change to the regulations should be to allow a landholder to do a first and final review of their land to identify and map where any heritage sites exist. Adding the option of a jointly funded government landholder survey that draws a line in the sand on future heritage claims is the game changer that is needed.

Unfortunately, the wheels of government and indigenous bureaucracy move so slowly that we are likely to see the minister coming out post July 1 saying look I told you there was nothing to fear but odds on this will catch up with the minister, it's just a matter of time.

Legislative Assembly Hansard Tuesday 13 June 2023

ABORIGINAL CULTURAL HERITAGE ACT Matter of Public Interest

MS M.J. DAVIES (Central Wheatbelt) [2.50 pm]: I move — That this house notes the government's shambolic introduction, consultation and commencement of the Aboriginal Cultural Heritage Bill 2021 and calls on the Premier to delay the implementation of the act for a period of at least six months.

Just so the Premier understands exactly what we are calling for, we are not calling for the bill to be abolished or removed; we actually voted for this legislation.

We are asking for time.

For members on the back bench who may not remember, the opposition was briefed on an overview of the legislation two days before it was brought to this house— a piece of legislation that is more than 200 pages long.

We were not briefed on the detail; we were briefed on the overview, the same week we turned up to debate that legislation.

We were given no professional courtesy and no opportunity to test with stakeholders what the government had put together.

We were given no opportunity to actually review or scrutinise the legislation before we were on our feet until midnight on the first day of debate on the bill.

That was negotiated by the then shadow Minister for Aboriginal Affairs so that we could go right through and get as much detail as possible, because we were told at the beginning of the process that the legislation would be going straight through, and that if it had to, the government would guillotine debate—which is exactly what happened: debate was guillotined on an issue on which the government said it had consulted and worked on and wanted to get the right outcome for.

Mark my words: that will come back to bite the government, because bad legislation is eventually outed.

..... We are now dealing with a complete shemozzle of a situation in our communities, and it is creating unnecessary angst, concern and division for Aboriginal and non-Aboriginal people alike.

.....The minister pushed the legislation through because he wanted the win and the Premier wanted the win.

He wanted the media statement out and to tick another box, but the problem is that he has not done the work to educate the people who will be responsible for making sure that there is no destruction of very precious Aboriginal cultural heritage.

Surely, if the minister is committed to delivering on the intent of the legislation, he would do everything within his power to make sure that the people who are most likely to be the ones who can impact on Aboriginal cultural heritage are the ones who are educated.

However, when I became shadow Minister for Aboriginal Affairs and raised this question with the minister, he told me that there would be education sessions a month before the legislation comes into force.

He said that there would be no sessions in the Wheatbelt and that everyone in the Wheatbelt could drive to Perth.

.....The minister will not be able to fulfil his commitment to get around the entire state to make sure that people understand their obligations, and that is what I come back to.

It is all very well for the minister to flippantly say in this place that we all have responsibilities as landowners, local governments, businesses, prospectors, explorers, Aboriginal corporations and traditional owners, and that we have to acquaint ourselves with the legislation, but he was late in publishing the regulations—they came out just before Easter.

There has been no opportunity for people to get across this significant change—despite what he and the Premier have said—to the legislation, regulations and process, so that they can adhere to the intent of the legislation and preserve and protect Aboriginal cultural heritage.

Through the budget estimates hearings process, we know that the government is not ready because there are no local Aboriginal cultural heritage services in place with only a bit more than two weeks until the legislation comes into effect.

The IT system will not be live until 1 July; give me an example of any IT system that is introduced and works seamlessly from day one after being created from scratch.

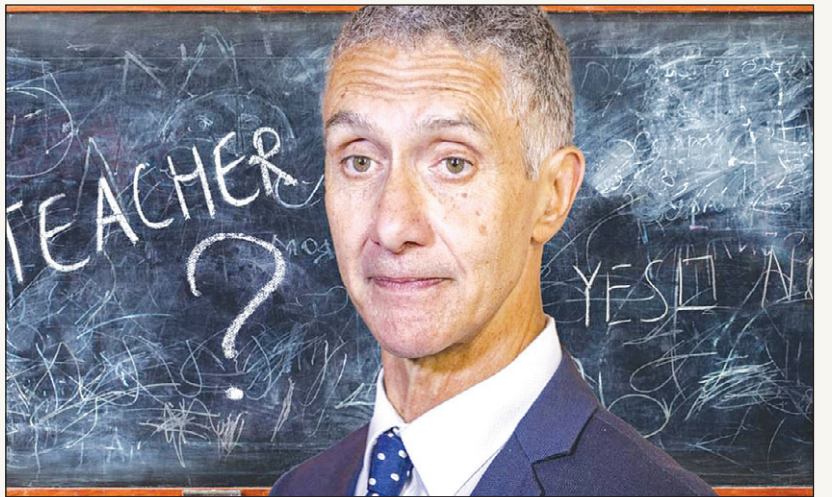
No-one will be familiar with it.

The government foisted new charges on project proponents and it admitted during the estimates hearings that it was a budget decision, so it did not consult on that at all with stakeholders.

Those fees and charges were a budget decision, and a significant one at that.

The government cannot even run an education system.

The opposition has asked the government to put aside its ego and actually delay the legislation by six months, at least, to take the tension out of this situation and to allow people to familiarise themselves with what the government has been working on and what the opposition agrees needs to be done so that we will not



see being prosecuted after falling foul of what the legislation purports to do, which is to protect Aboriginal cultural heritage.

The minister made it very clear during the estimates hearings that this is his deadline; I put it to him that he was under running orders from the previous Premier, but he said emphatically that this was his deadline and that he was pushing it.

It is the government's doing and its mess.

...I ask the minister to find time in his schedule to attend, to front, one of these meetings. Go out there.

When dealing with difficult challenges, he should be the minister—the buck stops with you—who turns up and fronts the people who are asking the questions, not roll the department out to do the dirty work. The minister should turn up and do some of the hard work.

I would welcome the minister to come out to Merredin and meet the people involved. I know the minister thinks it is funny, but it is important.

The minister has the power to delay it to take the pressure out of the system and to give his department some breathing space to prepare stakeholders and allow local Aboriginal stakeholders to do the same. The minister has that power. If he carries on regardless, then he has learnt too much from his previous leader.

MR P.J. RUNDLE (Roe — Deputy Leader of the Opposition) [3.05 pm]:

..... I heard the minister on the radio yesterday talking to Andrew Collins, and the minister was contradicting the advice that his department is giving in the forums.

On radio yesterday, the minister said that it is time to get on with it, that no local Aboriginal cultural heritage services are up and running, that the government has been great with its co-design.

If a farmer wants to build a dam like for like, they should go into the department and look for a map. If a dam is already being used and it is like for like, they do not need approval.

This is the stuff that the minister came out with on radio yesterday.

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

I am concerned that the minister on radio gave contradictory advice, especially on tier 2 and tier 3 activities, to what his advisers said in Esperance yesterday.

MS L. METTAM (Vasse — Leader of the Liberal Party) [3.21 pm]:

Our colleague in the upper house the shadow Minister for Lands has attracted over 13,000 signatures for a petition seeking a reasonable period of online interaction, lodgement and approval of permits so that proponents can familiarise themselves with the system and provide training for their staff and business teams.

On behalf of the broader community of Western Australia, we are seeking a pause.

..... I listened to an interview with a senior department head on 6PR last Thursday. From that interview, it was very clear that he could not definitively say whether the simple act of putting in a pool would be exempt.

After digging through the legislation, I know that there is a table that sets it out and proposes the exemption of pools, but when asked in a range of different ways on 6PR, the representative from the minister's department could not actually provide a simple clarification.

Understandably, many people are confused. Here is an opportunity to address this very real concern.

We urge the government to put a pause on this legislation's implementation date to ensure that people and systems are properly set up.

DR A.D. BUTI (Armadale — Minister for Aboriginal Affairs) [3.26 pm]:

.....Last night on radio I said that if there is no cultural heritage in the area in which the land is used, there is no need for approval. That is the law.

The interviewer asked me about dams. I said that if the dam is in an area where there is no cultural heritage, approval will not be needed. That is the law. That is not contradictory.

But of course if there is Aboriginal cultural heritage, an approval process will be needed, depending on what tier of activity is undertaken.

I cannot stand here and I will not stand here and say that I guarantee that every regulation is going to be perfect. We do not know until it is in operation. That is why we have to get it operating. I have stated previously—I think I stated it in the estimates hearings—that in a year we will review the regulations.

The beauty of the regulations is that we can change them if we need to. If there is a need to tinker with certain regulations, we will tinker with them. We will not know until the system is operating.