

Mr Colin Barnett; Mr Eric Ripper; Mr John Day; Mr John D'Orazio; Chairman; Mr Mark McGowan; Mr Norm Marlborough; Mr Tony McRae

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**Division 3: Premier and Cabinet, Office of Native Title, \$6 442 000 -**

Mr Dean, Chairman.

Mr Ripper, Deputy Premier.

Ms A. De Soyza, Executive Director, Office of Native Title.

Mr M.S. Jaffar, Management Accountant.

Mr BARNETT: Output 8 deals with native title matters and I refer to the first table on page 91. The final budget figure for 2001-02 was \$2.7 million with the estimated actual outcome being \$5.6 million, an increase of virtually 100 per cent. What are the reasons for the increase in the budget by 100 per cent?

Mr RIPPER: The Leader of the Opposition has asked about the increase in costs of the Office of Native Title over 2001-02. That increase was related to the transfer of funds from the Department of Justice for tenure searches. Funds related to native title held in the Department of Justice were principally used for transfers to the Department of Land Administration for tenure searches to provide information on native title matters. Commitments and costs associated with the Burrup Peninsula and Maitland industrial estate native title negotiations have been incurred in this financial year.

Mr BARNETT: If it was accounted for by 10 researchers, they would have been paid extremely well -

Mr RIPPER: No, I said tenure research - research into land tenure matters.

Mr BARNETT: How much has been spent on the Burrup-Maitland native title issue?

[10.10 am]

Mr RIPPER: There are two ways in which to deal with that matter. The first relates to the cost of the negotiations and the second relates to the cost of the ultimate agreement. Given that an agreement has not yet been reached, we cannot say that the moneys have been spent. The Government is hopeful that an agreement will be reached to allow the gas processing projects to have access to the land. The negotiations are very important for the State's future. The Government wants the native title rights to be acquired as soon as possible. Costs have been incurred in the funding of the State's side of the negotiations, and in supporting the native title parties in the handling of their side of the negotiations. I do not have the figures for the costs of the negotiations to date. However, if the Leader of the Opposition wishes, I am happy to provide such figures by way of supplementary information.

Mr BARNETT: Yes, I would like the information about the costs of the Burrup Peninsula negotiations to date. I would also like an indication of the estimated costs for the coming financial year.

Mr RIPPER: I agree to provide that information.

[*Supplementary Information No A4*]

Mr BARNETT: I refer the minister to output 8. Does the Government believe that it is up to the Government to settle native title issues - I refer to either the granting of money or land - or does it consider that to be the responsibility of the proponent of a project?

Mr RIPPER: This is a complex issue. There are three native title parties whose rights to the access of the land must be negotiated. There are six proponents, and we are operating under tight deadlines. The Government could have sat back and let the six proponents negotiate with the three native title parties. However, this would have been a recipe for disaster, and all sides would have incurred huge expenses. Rather, the Government has met with the proponents, and, on behalf of the proponents, it is leading the negotiations to settle the native title issues. There have been some direct discussions between the proponents and the native title parties. However, the main negotiations have been conducted via the Government's leadership. In the Government's view, that is the best way in which to obtain a satisfactory and expeditious outcome, while also containing expenses.

Mr BARNETT: I refer to the land situated at the top half of the Burrup Peninsula, which is under the Burrup management plan. This plan was completed in 1997, and was formally adopted by the Cabinet of the day. The top part of the Burrup Peninsula was clearly identified as part of the conservation estate for conservation and recreational purposes. Has Cabinet and the Minister for the Environment and Heritage decided that that land will not be part of the conservation estate?

Mr RIPPER: The negotiations for the acquisition of the native title rights to the Burrup industrial land are based on the structure plan that was prepared by the previous Government. The Leader of the Opposition has said that the previous Government decided on the structure plan. As was apparently the practice in the previous Government, it did not make all the necessary decisions. For example, it was necessary to make a decision about the funding of aspects of the Burrup industrial structure plan. A submission in support of the Burrup structure

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plan, and associated costs, was presented to Cabinet. However, Cabinet approved the structure plan only and did not approve the costs.

Mr BARNETT: How does the minister know that?

Mr RIPPER: The Government has to know what decisions were made by the previous Government.

Mr BARNETT: Did the minister access cabinet records?

Mr RIPPER: Cabinet records are not accessed; advice is given by the departments about what previously took place. The department informed the Government that a structure plan was approved by Cabinet but that the costs were not. In effect, this is an example of another unfunded commitment made by the previous Government.

Mr DAY: Is the minister saying that his Government never makes decisions in principle, the content of which is worked out and implemented down the track?

Mr RIPPER: I see - it was only an in-principle decision. I am responding to the Leader of the Opposition's assertions in previous question times that these matters were all completed. The structure plan was approved, but the funds were not.

Mr BARNETT: This is an estimates committee, not a political forum.

Mr RIPPER: I am happy to know that the estimates committee is not a political forum.

Mr BARNETT: I have asked a genuine question, and I have received a flippant answer.

Mr RIPPER: The Leader of the Opposition will receive a substantial answer; however, I thought I would just go over his Government's funding misdemeanours.

Mr BARNETT: This is meant to be an estimates forum.

Mr RIPPER: The Leader of the Opposition asked whether Cabinet had made a decision on the Burrup land that has been a part of the conservation estate. The native title parties have been offered the opportunity to co-manage the land, which has both sensitive Aboriginal heritage and conservation values. It has been proposed that the land will still be managed to protect its conservation and Aboriginal heritage values. However, the native title parties would be involved in the management of the land in a co-management arrangement with the Department of Conservation and Land Management. A conditional form of title would be offered to the native title parties, and the conditions would relate to the protection of the land for conservation and Aboriginal heritage issues. It would also provide for public access.

Mr BARNETT: Will that title be a freehold title with a condition attached to it?

Mr RIPPER: It will be a conditional form of title -

Mr BARNETT: What title?

Mr RIPPER: That is still to be determined in the negotiations -

Mr BARNETT: Only certain titles are permitted under the land legislation.

Mr RIPPER: The Government is contemplating a conditional form of freehold that would require the land to be managed for the protection of the conservation and Aboriginal heritage values. This would also require the involvement of the Department of Conservation and Land Management and public access.

Mr BARNETT: I assume that a conditional freehold title given to the northern half of the Burrup will not be a part of the conservation estate. It cannot be in the hands of native title parties and those of the Department of Conservation and Land Management.

Mr RIPPER: Has the Leader of the Opposition not heard of co-management? The native title parties and the Department of Conservation and Land Management will jointly manage the land. Will the Leader of the Opposition suggest how the interests of the native title parties might be better accommodated?

Mr BARNETT: I am trying to find the -

Mr RIPPER: Does the Leader of the Opposition have a different proposal for how the interests of the native title parties might be better accommodated?

Mr BARNETT: This is not the opportunity for me to respond to such issues. I am asking a proper question. The top half of the northern Burrup Peninsula was clearly identified - after a due planning process that extended over several years - as a part of the conservation estate for conservation and recreational purposes. That is without question. The Deputy Premier is now saying there will be freehold title with conditions. Will the native title claimant or the Department of Conservation and Land Management have the responsibility for that land?

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[10.20 am]

Mr RIPPER: The land will be jointly managed.

Mr BARNETT: Who will hold the title?

Mr RIPPER: The native title parties will hold the title and the land will be jointly managed. That approach is similar to many cases.

Mr BARNETT: For example?

Mr RIPPER: There will be more joint management of conservation lands between Aboriginal people and CALM.

Mr BARNETT: They are not conservation lands if they are held by the native title claimants; they are freehold.

Mr RIPPER: What does the Leader of the Opposition suggest will happen to these lands? Does he suggest they will not be managed for conservation purposes? Of course they will. The Leader of the Opposition said a decision was made to include these lands in the conservation estate. However, he utterly failed to deal with the native title issues on the Burrup. These claims were lodged in 1994 and 1995. Access to the industrial land on the Burrup cannot be had without negotiation with the parties who have a right to negotiate.

Mr BARNETT: Has the Deputy Premier heard about the liquefied natural gas train 4 project? It was native-title cleared.

Mr RIPPER: Did the Leader of the Opposition negotiate with the claimants?

Mr BARNETT: No.

Mr RIPPER: What did the Leader of the Opposition do?

Mr BARNETT: We negotiated with the company and we allowed the company to reach agreement with the native title claimants, as happens with any proponent for any project: the Government sets the framework and the proponent negotiates. This Government has decided to take a different tack on this matter; that is fine. What I am saying is that the northern part of the Burrup is clearly part of the conservation estate, which was agreed in an interdisciplinary, multi-agency analysis with full public consultation, with the native title proponents and with the community. This Government has now made a unilateral decision to make that estate freehold with a condition, if it can do it legally, that it be held by the native title claimants. It will not be -

Mr D'ORAZIO: Mr Chairman -

Mr BARNETT: Excuse me.

The CHAIRMAN: Can the Leader of the Opposition please ask the question?

Mr BARNETT: Yes. It will not be - correct me if I am wrong -

The CHAIRMAN: Ask the question, please.

Mr BARNETT: Mr Chairman, the question is: who will hold the title to the northern half of the Burrup Peninsula.

Mr D'ORAZIO: That has already been explained.

Mr BARNETT: I am trying to ascertain whether it will be freehold land held by the native title claimants or whether it will be part of the conservation estate with the title of that land vested in CALM.

Mr RIPPER: The land will be held under conditional freehold by the native title parties. The condition will require them to join with CALM in the management of the land for the protection of the conservation values and the Aboriginal heritage values of that land and to allow public access. If the Leader of the Opposition consulted with the native title parties in the development of the Burrup land, why did he not get their signature on documents, which would have allowed the proponents to access the industrial land and proceed? He did not do the job, thus when the proponents came along, although the Leader of the Opposition said he consulted with everyone and everyone agreed, arrangements were not made for the acquisition of native title rights on the Burrup industrial land.

Mr BARNETT: What arrangements are there for public access to the northern part of the Burrup Peninsula, including the beach areas, which I note are the only beaches now available to the people of Karratha?

Mr RIPPER: These negotiations are on foot. I have difficulty talking about them because the Government has been asked by the Native Title Tribunal to conduct negotiations on a confidential and without-prejudice basis. I am prepared to debate it to the extent that there has been a breach of faith by one of the parties giving

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information to the media, which is on the record. However, these matters are subject to negotiations. I assure the Leader of the Opposition that there will be access for the public.

The CHAIRMAN: The Leader of the Opposition can ask another question and then the member for Rockingham. The Leader of the Opposition has asked 18 questions.

Mr BARNETT: I am the Leader of the Opposition; that is why I ask questions at Estimates Committees.

The CHAIRMAN: Not under the standing orders.

Mr BARNETT: Why in these negotiations did the Deputy Premier or his officers not consult the Shire of Roebourne and local residents in the Karratha region?

Mr RIPPER: These negotiations are a legal process under the commonwealth Native Title Act. They are negotiations between the State and the proponents, on one hand, and the native title parties, on the other hand, about the acquisition of native title rights. The Leader of the Opposition should think about it. If we were negotiating for the acquisition of the rights of non-indigenous owners of property in Hope Valley or Wattleup, would the local council be required to tick off on the detail of the negotiations between the Government and those property owners?

Mr BARNETT: But you have extended native title to freehold.

Mr RIPPER: Does the Leader of the Opposition want the standard that applies to indigenous rights and land to be different from the standard that applies to non-indigenous rights and land? We are conducting negotiations on a confidential basis, as required by the Native Title Tribunal and the commonwealth Native Title Act, to acquire people's interests in property to allow industrial development to proceed.

Mr BARNETT: There is no excuse for excluding the community.

Mr MCGOWAN: My question to the Deputy Premier relates to page 92 under major achievements for 2001-02, which states that some determinations of native title claims were recognised by the Federal Court. Is the State of Western Australia involved in any native title cases currently before the High Court or other jurisdictions; and, if so, what is the nature of any matter before the High Court?

Mr RIPPER: The State could have been involved in an expensive native title case - the Yorta Yorta case - before the High Court. Some lawyers in the State's employ were keen for the State to spend more money on native title litigation by getting involved in the High Court hearing of the Yorta Yorta appeal relating to land in Victoria. I rejected the suggestion. The State will not spend money on fruitless legal argument. The State will not spend money on legal adventures with regard to native title. The Victorian Government, the Commonwealth Government and the native title parties in Victoria can deal with those matters before the High Court. We will not follow the practice of the previous Government of jumping into every native title fight going and waste taxpayers' money on those fights.

Mr D'ORAZIO: Dot point 4 on page 92 under major achievements for 2001-02 states that the State Government has created an Office of Native Title to handle native title matters across government. Will the Deputy Premier explain how that office has been beneficial to dealing with native title claims?

Mr RIPPER: The creation of the Office of Native Title was pursuant to the recommendations of the Wand review of our native title approaches in Western Australia. We need to coordinate activity across government and more work needs to be done in that way. We inherited a wide variety of people engaged in native title in the Department of Land Administration, the Department of Mineral and Petroleum Resources, the Crown Solicitor's Office and the Department of the Premier and Cabinet. We also inherited with that situation a focus on litigation instead of negotiation, which was why most of the resources for native title under the previous Government were allocated to the Crown Solicitor's Office. This Government wants to coordinate, on one hand, and focus on negotiation rather than litigation, on the other hand. That means strengthening the number of coordinators and negotiators located in the Office of Native Title.

Mr MCGOWAN: I congratulate the Deputy Premier on the more cooperative and consultative approach that appears to have been taken to the determination of native title matters since he became responsible for these matters. Does the Deputy Premier expect any further native title claims to be settled in the coming year? If so, where will those claims be made and what arrangements does he expect will be entered into?

[10.30 am]

Mr RIPPER: I thank the member for the question. Yes; I expect there will be more settlements of native title claims. About 130 claims in Western Australia are registered with the Federal Court. We have a lot of work to do to settle those claims. The claims most likely to be settled in the near future include the Martu claim and claims in the western desert area. Negotiation on the Martu claim has reached a conclusive stage, and we will

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proceed to resolve the claims in the western desert area fairly quickly. I have the objective of resolving by consent a lot more native title claims over the life of the Government, and in particular in the forthcoming financial year. I do not necessarily want to be held to a particular target because of the difficulty and the complexity of some of the negotiations, but it would be a great thing if we could settle another 10 in the forthcoming year.

Mr MCGOWAN: How does the minister and the Government prioritise which claims will be put forward for negotiation as matters of more urgency than others? Why are the Martu claim and the claims in the western desert area reaching finalisation and others are not?

Mr RIPPER: The approach taken by the Government on coming to office was to look at the claims that had the most chance of reaching an early consent determination. We had a choice of allowing cases to go forward to litigation or pulling them out of the litigation stream and negotiating them. We have chosen our priorities on those two bases. In many cases, the State has not had its own choice of priorities. The coalition Government put a lot of native title claims into the litigation stream. Once claims are in the litigation stream, they are subject to management by the Federal Court. The Federal Court is inclined to have an unrelenting timetable. Hearings are scheduled, and it is very difficult to get those hearings rescheduled and therefore get matters out of litigation and back into negotiation. We have taken up this issue with the Federal Court. However, to date, some of the Government's choices have had to be made because a case is either negotiated now or it goes to litigation. The Karajarri determination is an example of that. It was before the court and we dragged it out of litigation and put it back into negotiation. There has been a partial determination as a result of those negotiations. We need a better way to deal with these issues. The Office of Native Title has been consulting with native title representative bodies across the State to try to get some consensus on the cases that should have priority for the future. Overriding that will always be the Federal Court schedule in which cases have previously been put into the litigation stream and judges do not want to let go of them.

Mr DAY: Further to the general issue of the settlement of claims, most people in the community support a cooperative and conciliatory approach being taken to settling these issues, as far as it is reasonably possible to do so. Things have moved on a lot in the past decade. However, the minister will be aware of concerns that have been expressed by both the mining and pastoral industries about claims being settled too quickly or too easily in some cases and, in particular, about the exclusion of parties from those industries that will be directly affected by the outcome of the settlements. They are advised of negotiations or brought into the process very late in the game. Also, there is the prospect of water rights and access rights being unduly compromised, which may impact negatively on those industries. Generally, most people want a cooperative approach to be taken, but there must be an appropriate balance. Can the minister respond to the concerns that have been expressed by those industries?

Mr RIPPER: I am aware of concerns that have been expressed by the Chamber of Minerals and Energy of Western Australia. I have had meetings with the chamber on these issues. To reach a consent determination all the parties to the claim, including all the respondents, must consent. The respondents in many cases will include mining companies, pastoralists, local governments and so on. The focus of the State's negotiations tends to be with the native title claimants. However, in the final analysis, all the respondents to the claim must sign off. The Chamber of Minerals and Energy has not necessarily been happy that it has not been involved in the negotiations. Some of its constituent companies might have been involved in the negotiations because they have a direct interest in the land concerned, but the chamber itself has not been involved. It has not been involved because it is not a party to the legal case; its constituent companies are.

Mr DAY: My understanding is that the chamber is taking up the concerns of its members rather than seeking to act on its own behalf.

Mr RIPPER: One of the objectives of the Office of Native Title will be to do more work with the other respondents to native title claims to prepare everyone for the signing of the consent determination. The Federal Court has to ratify any consent determination. It is not as though the State and native title parties can reach just any old agreement between themselves on the basis that there was no evidence or insufficient evidence. The other parties must sign off and the Federal Court has to be satisfied that the consent determination is justified. As a result of discussions with the Chamber of Minerals and Energy, there have been some changes to the way in which proposed consent determinations have been phrased. The matters raised by the chamber relate to the ones raised by the member; that is, water rights, access rights and so on.

Mr BARNETT: I return to the Burrup Peninsula. Most of the proposed projects - perhaps up to four or five - on the Burrup Peninsula will be located in the Hearson Cove area. Is it not the case that Hearson Cove was used as the original construction site for the North West Shelf project and therefore its title precedes the native title

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legislation and is available for development? I am not denying that there is a wider issue of native title on the Burrup Peninsula, but developments at Hearson Cove precede the Native Title Act.

Mr RIPPER: Is the Leader of the Opposition asking whether native title has been extinguished on a particular piece of land?

Mr BARNETT: Effectively, yes. A previous title was issued during the initial construction of the North West Shelf project in the late 1970s. That was the construction lay-down area for the North West Shelf project. Title was issued for that purpose; therefore, it precedes the relative key dates for native title on the land in Hearson Cove, which is the site of the proposed industry.

[10.40 am]

Mr RIPPER: I would need to seek technical advice on whether native title had been extinguished on a particular piece of land and how its tenure history affected the rights of native title parties. There is no way that the State would be engaged in negotiations for the acquisition of native title rights if all native title rights had been extinguished.

Mr BARNETT: Have your officers investigated the title situation with respect to Hearson Cove, which is distinct from the rest of the Burrup Peninsula?

Mr RIPPER: The Leader of the Opposition is asking me about a particular piece of land. The preliminary advice available to me is that native title has not been extinguished on that land. However, I am prepared to have that matter further investigated and I will give him an account of the legal status of that land insofar as native title is concerned.

Mr BARNETT: I therefore seek, by way of supplementary information, an account of the titles issued over land on Hearson Cove and the dates and purpose of those titles.

Mr RIPPER: I propose to do more than that. I will advise the Leader of the Opposition of the status of the Hearson Cove land with regard to native title.

Mr BARNETT: I am requesting detail of the titles granted over that land for construction purposes.

The CHAIRMAN: Minister, will you provide that information by way of supplementary information?

Mr RIPPER: Yes, I will.

[*Supplementary Information No A5*]

Mr BARNETT: I continue with my questions on the Burrup Peninsula. In terms of negotiations, in which land has been discussed that is now freehold with conditions for native title claimants and monetary payments, what is the total amount of monetary payment being offered, what share of that is to be borne by the State and/or individual proponents, and how much will be borne by each proponent?

Mr RIPPER: These negotiations are confidential. We are in the middle of the negotiations. There has been a breach of faith by an adviser to one of the groups with the release of certain information that relates to the negotiations. At this delicate stage of the negotiations, I am not prepared to further break the confidentiality that has been asked of us by the Native Title Tribunal. These are legal processes. The Government is required to negotiate in good faith, which it intends to honour. Part of that requirement would be to respect the confidentiality of the negotiations.

Mr BARNETT: I can accept that there may be some sensitivity about how much individual companies will contribute, but if the taxpayer is to bear part of this compensation package, that is clearly a matter for this estimates committee. I seek information on that.

Mr RIPPER: I am happy to provide information at a later stage, but not during this estimates committee, because the State is involved in negotiations. I do not think that the Leader of the Opposition wants us to provide the exact extent of the Government's preparedness to make contributions. He would not want us to reveal the exact nature of our negotiating position when we are involved in negotiations. That would compromise the interests of taxpayers and the possible success of the negotiations.

Mr BARNETT: Will the taxpayer, through the State Government, contribute financially to the settlement of native title on the Burrup Peninsula; and, if so, what amount has been indicated at this point to native title claimants? I formally seek that information by way of supplementary information.

Mr RIPPER: I ask the Leader of the Opposition to put that question on notice.

Mr BARNETT: I am seeking the information now.

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Mr RIPPER: The Leader of the Opposition is seeking that information now, but I will not provide it by way of supplementary information. I ask that the Leader of the Opposition put a question on notice and -

Mr BARNETT: I think that it would be possible to answer me within 10 hours.

Mr RIPPER: When it is possible for me to answer the Leader of the Opposition without compromising the negotiations, I will answer his question.

Mr BARNETT: I would like to record in *Hansard* that the Deputy Premier has refused to detail whether taxpayer funds will be used to settle on the Burrup Peninsula and the amount of that settlement.

Mr RIPPER: That is not an accurate description of what I just said. I said that if the Leader of the Opposition were to put the question on notice, I would provide an answer when it did not compromise the State's negotiating position.

Mr BARNETT: I am putting it on notice now through the estimates committee. It is public money.

Mr RIPPER: If the Leader of the Opposition were in negotiations with a major developer on a big project, for which the developer had placed certain demands on the State for infrastructure support, and the Leader of the Opposition had a cabinet decision or some other authority to negotiate up to a certain amount, would he put that amount on the table of the estimates committee and thus alert his negotiating partners to all the details of his negotiating position? Would that be a responsible way in which to handle taxpayers' money? It would not be. It would probably threaten the success of the negotiations if he were to reveal all those matters. Of course, there is some taxpayer commitment to resolving native title on the Burrup. We want these projects to go ahead.

Mr BARNETT: How much? It is not a hard question.

Mr MARLBOROUGH: Time will tell.

Mr BARNETT: I seek a point of order. I am not going to tolerate responses from other members of the estimates committee. If we cannot ask the minister questions and have them answered by him, what is the point? We should not have interjections from other members.

The CHAIRMAN: Thank you. I ask the member for Peel to cease interjecting. The minister has indicated to the Leader of the Opposition that he is not willing to provide that information by way of supplementary information. We will move on.

Mr BARNETT: I refer to proposed access to the Burrup Peninsula. If the northern half of the Burrup Peninsula is held freehold by native title claimants, will they be able to charge for access or restrict access, and what will be the criteria for access for other members of the community?

Mr RIPPER: There is no proposal for people to be charged to access the Burrup Peninsula or that people would have an ability to charge for access. I am very disturbed by the direction of the Leader of the Opposition's questions. We have inherited a position of some complexity. There are three native title parties with rights to negotiate over this land, six proponents and \$6 billion worth of investment at stake. We are faced with tight deadlines. If the Leader of the Opposition wants to scaremonger and frustrate these negotiations, thus jeopardising \$6 billion worth of investment, he should carry on like he is at the moment. He is seeking to scare people and derail negotiations. It is in the interest of the State that these negotiations proceed satisfactorily and to an expeditious conclusion. If the Leader of the Opposition wants to throw grenades at these negotiations, he will put at risk \$6 billion worth of investment. He should not jeopardise the State's ability to get a solution that will be of benefit to the State.

Mr BARNETT: The minister can say what he wishes but he should not threaten a parliamentary committee in that way. This is an estimates committee. I am entitled to ask what is the level of financial exposure to the taxpayer of these negotiations on the Burrup Peninsula. What could be more accountable and direct than to ask a minister, who also happens to be the Treasurer, during an estimates committee, what is the level of financial exposure to the State over the native title negotiations on the Burrup Peninsula? That is the bottom line for an estimates committee.

Mr RIPPER: Yes, there will be a taxpayer commitment if an agreement comes off. However, we do not yet have an agreement. No expenditure is currently required because we do not yet have an agreement. When we have an agreement, I will be very happy to talk about the arrangements. That is why I have told the Leader of the Opposition that I will provide the answers to his questions but not right now, and not by way of supplementary information, because I do not wish to compromise the negotiations. However, if the Leader of the Opposition were to put the question on notice, full accountability and all information will be available when

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we have reached a position at which the negotiations will not be compromised. That is how it should be dealt with. I ask the Leader of the Opposition not to ask in the middle of negotiations for information that would jeopardise the success of those negotiations.

Mr BARNETT: I refer to the budget estimates for 2002-03 on page 76 of the *Budget Statements*. What proportion of the expenditure under output 8, headed "native title", has been allocated to settlement of the Burrup Peninsula?

Mr RIPPER: Again, the Leader of the Opposition has asked for information that I believe has the potential to compromise the success of the negotiations. The information will be provided to the Parliament and the public in due course, but not right now.

Mr BARNETT: The estimates show \$6.4 million for native title for the coming year, but the minister will not answer a question about what has been budgeted for the Burrup Peninsula.

[10.50 am]

Mr McGOWAN: Is it possible for the budget to come up with ways of dealing with the standards of the consultants employed by native title claimants? Some concern has been expressed about the standards of the people employed by native title claimants. Has the minister put in place any provisions for dealing with those standards?

Mr RIPPER: I am very concerned about the standards of the people involved as advisers, consultants and legal representatives in native title issues. A particular example relates to the Burrup negotiations. One of the native title parties, the Wong-goo-tt-oo, has not been as prepared to engage in negotiations as the other two parties. The information that was released, that had the potential to compromise the negotiations, came from an adviser to that group, which is also represented by a lawyer who appears more intent on prolonging the case and therefore the legal fees, than actually getting a solution. It is a matter of regret that Ian Viner, who is the representative of that particular group, would behave in the way that he has.

Mr McGOWAN: What has he done?

Mr RIPPER: The Wong-goo-tt-oo, or their legal representatives, do not appear to be ready to participate in the negotiations in the same practical way as the Ngaluma Injibandi and Yaburara Mardudhunera groups. I am very disappointed in the approach that has been taken by the adviser and legal representatives of the Wong-goo-tt-oo, that their adviser, Rory O'Connor, has apparently released to the media information which was confidential to the negotiations, and that their legal representatives have apparently been more interested in prolonging the legal manoeuvres than in getting ahead and negotiating with the State. Those two people have not, in my view, behaved as they should have in native title negotiations.

This raises the question of the need for standards or a system of accreditation for native title advisers and consultants. I have asked the Office of Native Title to investigate that issue and consult with the National Native Title Tribunal. Nationwide standards may be needed for the accreditation of native title consultants and specialists. For example, how can the Government determine who is a proper anthropologist to be involved in providing advice on native title matters to both claimants and to the State? There is room for improvement in this area, and the Government will be seeking to work with the National Native Title Tribunal to get a better approach. I do not want cowboys involved in native title issues, and I do not want native title parties to be poorly advised. I do not want dodgy anthropology complicating the settlement of claims. The Government wants professional, accredited people providing this advice. This is an area that needs rectification.

Mr BARNETT: I refer to page 91, where the services provided in relation to native title by the Department of the Premier and Cabinet are described as including policy advice. Has policy advice been given about water rights for native title claimants, including both surface and sub-surface water? If so, what is that advice?

Mr RIPPER: The question of water rights has arisen in a number of consent determination matters. The State's position is that there are no native title rights in flowing or subterranean water. When a consent determination is reached, sometimes the other side of the negotiation has a different view. Some native title claimants and their advisers live in hope that the High Court might change the law and find that native title can exist in flowing or subterranean water. When reaching a consent determination with the State, which applies to their land forever, these native title claimants do not wish to adopt a position in which they agree with the State that there is no native title in flowing or subterranean water, and then find that, in a few years time, if the High Court makes such decision, they have given away rights which could otherwise have been theirs. The claimants therefore seek a form of words in the determination which does not close off the possibility of their having access to those rights, should the High Court change the law. They are trying to protect themselves, so that they are not disadvantaged by reaching an agreement now, should the law change in the future. The position of the State is



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that the law will not change - we do not think the High Court will make that sort of decision - and there are therefore no native title rights in flowing or subterranean water.

Two methods have been used to approach the issue of the form of words. The first is to include in the agreement the wording that the rights in flowing and subterranean water are the rights that exist at law, leaving unanswered the question of what those rights are. In the view of some people the law has not yet been finalised on that issue. A more effective way of dealing with this issue was suggested and supported by the mining industry. Under this approach, the parties have agreed that, should the High Court change the law in the future, this matter can be reopened without objection. The parties, including the State, can then argue their respective positions on the applications of those new rights, if any, to the land in question. The two approaches have been described as the "at-law" clause and the "come back later" clause. The latter, apparently, has the support of the mining industry.

Mr MARLBOROUGH: Can the minister advise how many native title claims are presently before his department, and the status of those claims? How many of the claims before the department are presently being actively negotiated between the parties? In particular, what is the status of native title claims over the Kalgoorlie and Laverton mining regions and the town of Kalgoorlie?

[11.00 am]

Mr RIPPER: The member has asked me two questions. I will answer the second one because I need advice on the first question as to the number of claims that are subject to negotiation. There is a very big native title claim in the goldfields called the Wongutha claim. It is an amalgamation of a large number of smaller claims. The Wongutha claim has been subject to mediation and negotiation. It is a very complex claim; the land area claimed is about the size of Victoria. There are hundreds of respondents to the claim including mining companies, pastoralists, local government authorities and commonwealth agencies. Given that the agreement of all parties has to be obtained in order for a consent determination, the member can see what a complex negotiation it is.

Mediation has concentrated on the question of access. We have sought agreement on matters that people are more likely to agree on and we have put aside matters on which they are more likely to disagree. We have concentrated on questions of access and protocols that might apply should native title be found to exist. The matter cannot be resolved to the satisfaction of all the respondents without going to court. Hearings have been held at which Aboriginal claimants have presented evidence of their connection to the land. There will be further hearings on those matters. As well as the large number of respondents, there are at least six overlapping claims. Evidence will need to be heard by a court of the claims to connection in the overlapping claims. The Wongutha claim is, unfortunately, a very difficult one to settle. It may not be possible to settle it by negotiation because it may not be possible to get the agreement of all respondents other than the State to the existence of native title. A dual approach is being taken; some evidence is heard before the courts, and negotiations on aspects on which there is potential for agreement are proceeding. I am seeking advice as to the total number of matters handled by the Office of Native Title. I am advised that the office is consulting at the moment with representative bodies on the prioritisation of claims and we will have a better idea later of how many claims are actively under negotiation.

Mr MARLBOROUGH: I will pursue the second part of my question regarding the goldfields. During a recent visit to Kalgoorlie, concerns were raised about development in the Kalgoorlie town site as a result of native title claims. Do they carry any validity; is any appropriate urban development being held up in Kalgoorlie-Boulder as a result of native title claims recently being negotiated?

Mr RIPPER: There are no issues regarding urban development not proceeding that have been brought to my attention. That is not to say that there may not be some issues. We will seek advice from the Department of Land Administration as to whether it has any proposals currently awaiting native title negotiations. The information will be provided as supplementary information if the member wants it. People who have a registered claim to land with the Federal Court of Australia are entitled to negotiations if the land is to be developed. Under the previous Government, an issue arose in Kalgoorlie that prevented land from being developed. I believe that issue has been resolved.

The CHAIRMAN: What information will be provided as supplementary information?

Mr RIPPER: We will provide information as to whether there is any urban development in the Kalgoorlie region that is subject to delay as a result of native title.

[*Supplementary Information No A6*]

Mr BARNETT: Is the Office of Native Title negotiating over either mineral rights or mineral royalty sharing with any native title claimants? If so, which claims are involved?

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Mr RIPPER: The State's position is that there is no native title over mineral resources. Therefore, the State will not negotiate on the existence of native title over mineral resources. People might put it to us that they want native title over mineral resources. I have attended meetings with Aboriginal people in which they have said that their title extends to the centre of the earth. The State consistently takes the view in any negotiation that there is no native title over mineral resources. The State does not support royalty-style payments for mineral resources in native title negotiations.

Mr BARNETT: No such negotiations are occurring with officers from the Office of Native Title?

Mr RIPPER: I am advised that no such negotiations are occurring. People might put things to us in negotiations that represent their point of view and the State has to respond to such propositions. I have indicated how the State will respond. There is no native title over mineral rights and we do not support royalty-style arrangements.

Mr McRAE: Dot point four at page 92 of the *Budget Statements* states that the Office of Native Title was created to coordinate the handling of native title matters across government. Does that include the coordination of native title considerations and processes for resolving the disbursement and handover of lands under the Aboriginal Lands Trust? Is there a coordination role for the Office of Native Title in dealing with those matters? If that is the case, has there been any success in this area?

Mr RIPPER: The Minister for Indigenous Affairs, supported by his officers including those responsible for the Aboriginal Lands Trust, is on the cabinet standing committee on native title. As such, he is part of the decision-making process on native title. We seek to coordinate the activities of the State in settling native title negotiations and in the administration of Aboriginal Lands Trust land.

Mr McRAE: Does that mean that the processes of negotiation on native title will include the transfer of Aboriginal Lands Trust titles?

Mr RIPPER: Those matters are considered in the negotiations. There is no hard and fast rule. Some circumstances involve two or more groups of people with an interest in the same land. Some groups will have native title rights on land and others may not have the same rights but have resided on the land and claim a historical connection. Native title is sometimes agreed to exist over an area and within that area there will be Aboriginal Lands Trust land that is associated with people who claim a historical, but not a native title, connection to the land. Therefore, there are some complexities. Obviously, there is a need for coordination of the work of the Aboriginal Lands Trust and the Office of Native Title. As far as I can see, those two organisations have been cooperating well. That is reinforced by the fact that native title is the subject of a cabinet standing committee on which both the relevant ministers sit.

[11.10 am]

Mr McRAE: I cannot see a specific reference in the *Budget Statements*, but on the output performance measures generally, is the minister able to advise of Western Australia's performance in the national context?

Mr BARNETT: No wonder you couldn't find a reference to that.

Mr RIPPER: We have done well in settling three native title claims since we have come to office. I believe the previous Government managed to settle two in eight years. We are taking a very proactive approach to, and leadership role in, the settlement of the Burrup issues. It is to the State's credit that we are undertaking those negotiations. I look to Queensland, which has had some success with native title negotiations. It is ahead of us in the number of consent determinations it has reached. However, I hope and expect that Western Australia will ultimately do better than Queensland in its native title negotiations.

**The appropriation was recommended.**