ABORIGINAL AFFAIRS PLANNING AUTHORITY AMENDMENT BILL 2012

Second Reading

Resumed from 26 September.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [7.45 pm]: I am happy to take the call, but my colleague Hon Sally Talbot will be relieving me any minute now.

HON SALLY TALBOT (South West) [7.45 pm]: I am pleased to say that the opposition will be supporting the Aboriginal Affairs Planning Authority Amendment Bill. In fact, it was not a hard decision for us to make, and it was not a hard process to be briefed on the content of the bill, because all I had to do was go to the bill that was introduced by the shadow minister, the member for Victoria Park, into the other place on 20 June—only a few months ago—because that bill is virtually identical to this bill. The measures in this bill are long overdue. It was, therefore, very gratifying to see WA Labor move on this bill so promptly, and that has now been followed by the government.

For the benefit of honourable members who have not had a chance to reacquaint themselves with the measures that we are looking at today, I will briefly go over them. Western Australia is the only state in this country to still have a measure on its statute book that if an Indigenous person dies without a will, that person's affairs are automatically taken over by the Public Trustee. It may not seem to members that there are many problems with this, and I do not intend to take up any unwarranted time going through these matters in great detail, because they have already been placed on the public record by the member for Victoria Park, who went through all the reasons that the existing legislation is so immensely problematic. The existing legislation may not immediately appear to be problematic, because, of course, a number of non-Indigenous people also use the Public Trustee to deal with their affairs. However, in the case of Indigenous people, these measures can clearly be traced back to what is quite rightly known as the infamous Aboriginal Affairs Bill from, I think, 1905. Not only is the language in the existing provisions offensive, but also there are several measures in the existing provisions that are almost certainly illegal under the Racial Discrimination Act. Of course, these measures are also very costly. I think that currently, about 4.4 per cent of a deceased person's estate is paid to the Public Trustee for administration fees. As I have said, if an Aboriginal person dies intestate, that person's affairs are automatically taken over by the Public Trustee. The measures in this bill will ensure that the same policy is applied to both Indigenous and non-Indigenous people so that it will become a matter of choice. Some Indigenous people may choose to use the Public Trustee to administer their estate, just as non-Indigenous people do. But Indigenous people will be given the right to choose to administer the estate of a deceased relative who has died without leaving a will.

The motive force for these changes comes from the Law Reform Commission 2006 report on Aboriginal customary laws. I refer honourable members to that report, which is very comprehensive and goes into a number of different measures. Those that we are considering today are some of the substantive ones. Today we are specifically looking at the repeal of part IV of the act. That is the total removal of part IV, which WA Labor obviously supports. That was part of the content of the bill that was introduced in the other place by WA Labor. We are looking at the removal of section 33 and those highly offensive definitions of aboriginality, which are couched in terms of "full blood" and "quarter blood", which leads to not only offence but an enormous amount of confusion. We get to a point at which certain Indigenous people are allowed to make decisions about the administration of deceased intestate estate and others are not because of this extremely old-fashioned and, as I said, offensive definition contained in section 33. Therefore, that is being removed. Section 35 is also being removed, which concerns the automatic vesting of the estate in the Public Trustee.

I notice that the government in the second reading speech refers to the fact that a number of other policy measures will be considered as part of the implementation of the measures contained in this bill. It is not clear to me that we need to go into committee, so if the minister is able to answer some of those questions in his second reading summary, that will suffice for my purposes. I would like to know exactly what the government is planning to educate community members about the changes included in this bill, particularly with the provision of wills and estate planning advice to people. Presumably that measure will not be provided at no cost to the government. Therefore, I would like the minister, if he can, to outline how much he expects that to cost and where that money will come from.

I must say that the government has a particularly lousy record in the administration of Indigenous affairs. I have put it on record many times that I thought that the current minister, Hon Peter Collier, got off to a flying start when he came into this place and said he saw himself as a minister who would act as the coordinator or perhaps convenor of discussions in a number of disparate areas that affect Indigenous people. I cannot say that the minister has done anything to live up to that promise that he made to the Indigenous people in particular and to the whole community of Western Australia in general. We had the disgraceful situation at Oombulgurri, where the community was systematically dismantled. The minister knows my very firm and very strong opinions on

that. I still believe that we could have had a different outcome given that there were some very, very difficult circumstances surrounding the beginning of the collapse of that community. We also saw a wholly inadequate response to the stolen wages issue. I am not convinced that the government has got anywhere close to working its way through the disgust and unhappiness that surrounded the decision on stolen wages. In general, there is no doubting that the government has played a very major part in fomenting the unrest and the unhappiness that surrounds decisions such as the James Price Point decision in Broome. The government rode in and thought, presumably, that it was on its white charger to rescue the situation for industry in the Kimberley. Of course, it has ended up in a situation in which nobody, from industry to the local green activists to the Indigenous community, thinks that the government has done anything other than to add to the confusion. The government should be commended for the measures contained in this bill, but we are not building on any particularly splendid record here over four years.

I assume that the minister has the documentation that was provided to me about the differences between the bill being introduced by the government and the bill that was introduced in the other place by the opposition. I wonder whether the minister would also consider in his second reading summary a couple of points of difference between the government's bill and Labor's bill, particularly in relation to the amendments that we have proposed to two other acts—namely, the Administration Act 1903 and the Unclaimed Money Act 1990 in section 9(1)(a). We talked about the need for a different definition of "aboriginality". I would like to hear why the minister considers that that is not a necessary part of putting these measures into effect. I know that the technical explanation is that the minister has repealed those sections of the act, but it is still not clear to me why we do not need to retain some kind of special provisions for unclaimed money for Aboriginal people. It would be helpful if the minister could also consider that.

At this point I am happy to leave my remarks at that. I will listen carefully to the minister's consideration of those couple of points that I have made during the second reading debate. At this stage I do not intend to go into committee.

HON ROBIN CHAPPLE (Mining and Pastoral) [7.56 pm]: I rise tonight on behalf of the Greens to support the Aboriginal Affairs Planning Authority Amendment Bill 2012. My colleague Hon Sally Talbot has again colloquially managed to steal all my thunder, so my notes have gone out the window. Clearly, the recommendations of the Law Reform Commission in its 2006 report identified the need to resolve this longstanding injustice. I will not go back over what my honourable colleague has said already.

Like Hon Sally Talbot, I am concerned to a degree about what budgetary provisions will be available to the department to roll out what will be a very, very complex proposal to remote communities and communities that have very little or no English speaking ability. Obviously, the government will also have to roll it out through the metropolitan area. Like Hon Sally Talbot, I recognise that there is also the issue of how will wills be maintained or kept in remote communities, by whom and by what authority amongst what is a highly mobile and transient community in many places. Although the education program might say, "You need a will" given places such as Kiwirrkurra or Tjun Tjun Tjarra and Well 33, how will those wills be maintained and in what process, if the department is successful in getting people to take up that opportunity?

I suppose the other point is that the courts might be involved in this process to a large degree in going back and appointing the Public Trustee when wills do not exist and/or indeed when there is conflict about the outcome of a death with a considerable estate or an estate left behind. In the briefing there was sort of an indication that the actual Public Trustee may still end up with just about as much work as it currently has. I would like to get the minister's views on that.

My recollection is that the Public Trustee costs are around $1 000 for handling these cases and will be the same into the future. It will also be interesting to know what role the Public Trustee will play if, as a result of a death, we find that there is no will. At what time and over what values will the Public Trustee become involved and at what time or at what value will the Supreme Court maybe take on the roles of determining the outcomes of estates to which there is no will? If the amount involved is under $1 000, will the Public Trustee still be involved, given the actual cost to the Public Trustee in the first place? What would happen for estates under $5 000 and under $100 000? At what stage will the Public Trustee not be involved in those sorts of financial arrangements? A good understanding of where the Public Trustee may be involved in the future would be really useful. As I have made clear, whilst I agree with the repeal of these ostensibly very, very racist provisions in the original act, I am concerned that the Public Trustee will still have to play a significant role. How will the Public Trustee have to deal with the issue in future by comparison with how it dealt with the issue in the past? Those are my questions around that issue, but I suppose the most important one is literally how the minister and his department are going to have the wherewithal and the staff to actually administer what will be a very serious education program to remote communities and indeed to the Indigenous community at large. Again, I would also like to test whether there is going to be some provision of holding wills on behalf of people in remote and/or transient communities.

Seeing that the minister is seeking advice, I will talk some more. In summing up again, the Aboriginal Affairs Planning Authority Amendment Bill 2012 is a great bill. It will change the act. I am not sure whether the act as it currently operates disadvantages Aboriginal people socially. I will be interested to know what role, as I have said, the Public Trustee may play in the future. The minister has now regained his seat, so I will stop waffling.

HON PETER COLLIER (North Metropolitan — Minister for Indigenous Affairs) [8.03 pm] — in reply: I thank honourable members for their indications of support for the Aboriginal Affairs Planning Authority Amendment Bill 2012. I think we are all in furious agreement with regard to this bill. In response to Hon Sally Talbot, I am well aware of her colleague's bill but I want to get this particular amendment through in as seamless a fashion as possible. There are evidently other areas that we can deal with and we could have dealt with in a much more comprehensive bill. As I have mentioned publicly, I became aware of this situation only earlier this year. That is why we have expedited it. Certainly post-election, one way or another, because we are both committed to this, we will certainly be making further inroads in this particular area, but at this stage this bill does serve to resolve an issue that is quite unpalatable to everyone. That is what we are doing.

With regard to information, we had pretty much the same situation with regard to the stolen wages legislation and ensuring that we disseminate the information right throughout the state, particularly in the rural and remote areas of the state. The Department of Indigenous Affairs will work with community organisations such as the Aboriginal Legal Service, community legal centres and Legal Aid to communicate the change to the law, and there will be associated communication programs. We will continue to work with organisations such as the Arts Law Centre of Australia in providing funding for wills estate planning and advice in remote communities. There will of course be information on DIA's website and other information material.

There are a couple of issues with regard to —

Hon Robin Chapple: Minister, if I could just go back, in that regard to which you have just answered Hon Sally Talbot and me, what sort of budgetary allocation will you be making available to roll out the advice? You cannot just do it by the website. You are going to have to do something really proactive.

Hon PETER COLLIER: It will be done within the resources of DIA. We have not asked for additional funding.

Hon Robin Chapple: The resources of DIA are abysmal at the moment.

Hon PETER COLLIER: That is how it will be done.

Some questions were asked with regard to the role of the Public Trustee. The Public Trustee has undertaken to administer estates worth less than $100 000 if the family requests it or it is expected to do so. One exception is if the estate is insolvent and a trustee is bankrupt; it would be better doing it in those circumstances. If it is more than $100 000, each will be determined on its merits.

How is a will going to be kept in remote communities? The Public Trustee has a wills storing service, and that will be used in that particular circumstance.

Hon Robin Chapple: And the communities will be advised of this process?

Hon PETER COLLIER: Absolutely.

Having said that, this is a very uncomplicated bill but it is a very necessary bill. I thank honourable members for their indications of support. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Peter Collier (Minister for Indigenous Affairs)**, and transmitted to the Assembly.