Extract from *Hansard*
[COUNCIL - Tuesday, 14 November 2000]
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Hon Ray Halligan; Mr Tom Stephens; Hon Greg Smith; Hon Mark Nevill; Hon Norman Moore; President; Hon Helen Hodgson; Hon Giz Watson; Hon Tom Helm

NATIVE TITLE LEGISLATION - WESTERN AUSTRALIAN SENATORS' SUPPORT

As to Motion

HON RAY HALLIGAN (North Metropolitan) [5.32 pm]: I have a motion on the Notice Paper which reads as follows -

> This House calls on all senators representing the State of Western Australia to support amendments to the native title legislation that will end the impasse with the current workable Act.

Hon RAY HALLIGAN: I seek your guidance, Mr President. Circumstances in the federal Senate on Thursday last week appear to have overtaken the wording of the original motion that stands in my name on the Notice Paper. I wish to amend those words to reflect the current situation.

The PRESIDENT: The member is entitled to seek the leave of the House to change the wording of his motion if it is no longer current. That is a matter for the House to decide. Is leave granted to change the words of the motion?

Hon TOM STEPHENS: I presume that if leave were denied, the member would move to amend his motion.

The PRESIDENT: No, the mover cannot move an amendment to his own motion, but no doubt someone else would.

Hon TOM STEPHENS: Yes. I cannot see the point of this debate other than to give leave.

Leave granted.

Motion

Hon RAY HALLIGAN: I move -

> That this House condemns those senators, and particularly those senators representing Western Australia, who voted to disallow the Native Title (State Provisions) Bill, passed by this Parliament in 1999, as this legislation represented a significant opportunity for this State to resolve a number of the ongoing problems associated with native title in Western Australia.

Point of Order

Hon TOM STEPHENS: I remember a standing order about language used in reference to other Houses of Parliament. Does the use of the word "condemns" comply with our standing orders in reference to the way we deal with other Houses of Parliament?

Several members interjected.

Ruling by the President

The PRESIDENT: Order members! This is a serious matter to which I have had to give some thought. The Leader of the Opposition is correct inasmuch as a comity exists between the Houses of Parliament, whether it be the Legislative Assembly or other Houses of Parliament in Australia. That comity recognises the jurisdictional roles of other Houses and, by way of a courtesy, the various issues taken up by other Houses of Parliament. Nothing would prevent this House from condemning members of another House; however, it is language that should not be encouraged. The reason I say that is if in this House we begin to condemn members of every other House in Australia one by one for what they do, that would not recognise their right to debate issues in their constitutional jurisdictions and we will spend our time worrying about what other Houses of Parliament do instead of getting on with our work. That is one of the reasons that the comity between Houses exists - so that Houses can get on with their business without unduly worrying about issues in another House.

However, the motion is not out of order in its present form. It relates to issues that were raised in this House some time ago which were required to go to the Senate; therefore, there is a link in that respect. However, I say to members who may speak on this issue that no member in this place has a right to use unparliamentary terms about any other Parliament in Australia.

Debate Resumed

Hon RAY HALLIGAN: Thank you for that advice, Mr President. I shall talk first about the Senate itself, where all this took place. The federation of Australian colonies was proposed as early as 1848 but it was not until the 1890s that any serious moves were made to bring it about. A number of conventions were held and one convention in 1891 was significant because the delegates to that convention believed in a need for two Houses of Federal Parliament, one of which was eventually to be named the Senate. However, that was not the original suggestion for the name. A number of names were put forward, one of which was the States Assembly.

Eventually the wording of the Houses of Parliament in the United States of America was used. It was intended that the Senate would represent the States equally in the Federal Parliament. The framers of our Constitution at the 1891 convention were of the opinion that the members of the Senate should be appointed by the state Parliaments. They recognised that the States had an important role to play, not only in providing members to the Federal Parliament but also in the need to have members who represented those States. At the 1891 Constitutional Convention the framers of the Constitution agreed that senators would be appointed by the State Parliaments. Unfortunately, not a great deal ensued after 1891. A further convention was held in 1897-98. At that convention two significant changes were made to the original 1891 framework, one of which was that senators should be directly elected by the people, and not by the State Parliaments, therefore providing two Houses of Parliament each elected by the people.

The second major change at that subsequent convention concerned an attempt to provide a solution to a deadlock, should one occur, between the two Houses of Parliament. The convention tried to provide a solution to that deadlock, whereby the Governor General could dissolve both Houses of Parliament. Some people were concerned about what was being proposed. It is said that many delegates from the smaller colonies - as they were then - opposed the erosion of the Senate's independence from the Government that making the Senate dissolvable would entail. In fact, James Howe of South Australia went so far as to describe this provision as being a Frankenstein that would destroy States' rights. The framers of our Constitution continually spoke of States' rights.

After that convention in 1897-98 a number of States did not agree to what was proposed. The smaller States were not happy with what was proposed by, in particular, Victoria and New South Wales. However, they had no option but to compromise and go down the path that the larger States had insisted upon. In a number of instances States' rights were overlooked. That is recognised by a number of people, including Harry Evans, who, of course, is well known.

Hon Tom Stephens: I do not think he would take kindly to a motion condemning his House.

Hon RAY HALLIGAN: I am not condemning his House; I am giving the history of what transpired. Even Harry Evans, in something he has written titled "Federalism and the Role of the Senate" talks about the theory underlying the bicameral structure of the Federal Parliament - that is, having two Houses, one representing the people voting as a whole and one representing equally the people voting in their respective States. That sounds simple enough in itself. Again, I remind members of the attitude of the framers of our Constitution in 1891. They believed that the States should have some control over their representation in Canberra. In fact, some of the wording used by Harry Evans suggests to me that the States still required representation as States, not to have people necessarily of a political party. Harry Evans quotes the founders -

> . . . the great principle which is an essential, I think, to Federation - that the two Houses should represent the people truly, and should have coordinate powers. They should represent the people in two groups. One should represent the people grouped as a whole, and the other should represent them as grouped in the States.

That requires some interpretation. Harry Evans has given an interpretation that suggests that what is currently being done in those Houses is as the framers of our Constitution wanted it. Others may conclude differently. I will repeat some of what Harry Evans says in this document. He says that political parties have helped to disguise the working of the federal system. Obviously some people thought that it should operate somewhat differently. He also says that political parties as such are not incompatible with that system. The founders were not so naive as to imagine that the electors of the States would not vote for parties. The problem is the rigidity of the party system and the factionalisation of parties. The founders did not envisage the situation whereby the leaders of the group which controls 51 per cent of the faction, which controls 51 per cent of the parliamentary party, which receives 40-odd per cent of the electors' vote, have absolute power to control the country. We have seen within our Senate over the years that one person alone has been able to control the vote of that House. That was never the intention of our founding fathers, and certainly never the intention of the framers of our Constitution. However, it is something that, unfortunately, we have had to live with.

When talking about the Senate, Harry Evans says that it does not perform its functions as well as they could and should be performed. He says there is always the hope of gradual improvement, a recognition that all is not as it should be or could be, and that hopefully there will be gradual improvement.

I am afraid that an opportunity for improvement, when senators could stand together to look after the interests of Western Australia, has been lost, because on Thursday of last week a decision was made. Therefore, we do not have that gradual improvement.

Compromise occurred in the past, and we certainly need compromise again. It is documented that the design of the Senate, as with many aspects of the Constitution, involved compromise as delegates to the convention wanted to protect the interests of all States. Obviously, they could not create a situation for the enjoyment of only some States, and compromise was needed. I see nothing wrong with compromise.

Senators from Western Australia should have worked together last Thursday for the good of this State. Some delegates to the convention in the late 1800s were extremely astute. It is said that senators began to vote as members of political parties rather than representatives of States, which obscured the value of state-based representation. That is particularly important. We seem to take things for granted. The Senate as created - I am not sure it has evolved in that way - enabled one member to control 75 others, which is not democracy. That is not state representation. The Senate's role is to represent the States equally. That equal representation of the States was intended by the framers of the Constitution to protect the interests of the less populated States. Therefore, each State has an equal number of senators and the Territories have fewer members.

Issues of state, not only party, importance continue to arise. Unfortunately, the Senate's principal function is only to review, not to protect States' rights. That is a great pity. Proportional representation was adopted in 1949 to enable the smaller parties and Independents to gain representation in the Senate. "Representation" is a very important word. It provided a place in the Federal Parliament for a wider range of community viewpoints, but the framers of our Constitution did not envisage that minor parties would have control of the Senate. They were concerned initially about States' rights.

Interestingly, since the 1987 election, the number of Labor representatives in the Senate has decreased, and the number of Liberal senators has increased. However, the Labor Party representatives of this State in the Senate have voted in a manner that is detrimental to the majority of people in this State. The vote was along party lines, without any consideration for the State of Western Australia and its needs. The result was achieved even though Labor Party members, both in Western Australia and Australia as a whole, are fewer in number than are coalition members.

The original framers of the Constitution wanted the Senate representatives of Western Australia to be appointed by the State Parliament. Harry Evans made the following comment regarding proposed reform -

> . . . the Senate was intended to represent State governments, and Senators were to vote in State blocs on instructions of their State governments . . .

He outlined the proposal to change to a German-style upper House, in which members are delegates of the State Governments. Therefore, this model is nothing new as it exists in Germany. Interestingly, Harry Evans also wrote -

> State Premiers periodically float this proposal: "Labor Premiers push for inquiry on Senate's role", *The Australian*, 11 July, 1995. In the German Bundesrat, so admired by Messrs Carr and Goss, the members, who are members of State governments, change not only with changes of government but also with ministerial reshuffles.

Two Labor Premiers, one former and one current, support the idea that senators from their States should be answerable to the state Premier. However, federal members and the leadership of the Labor Party think otherwise. It is of very grave concern that the federal leader of the Labor Party, Hon Kim Beazley, is a Western Australian. Former and current Labor Premiers advocate the German model concerning the way senators vote. Obviously, they do not express the view of the Federal Opposition.

Sitting suspended from 6.00 to 7.30 pm

Hon RAY HALLIGAN: Before the dinner suspension, I referred to the federal leader of the Labor Party, a Western Australian, who, in a stance against the interests of this State, instructed members of his party to vote against the interests of the people of Western Australia. In response to the Queensland legislation, Senator Alan Eggleston stated in a media release -

> The morass of claims and counterclaims brought by the ALP Native Title legislation has resulted in mining exploration in WA all but coming to a halt, caused the deferral of many development projects including Stage two of the Ord River Irrigation Scheme and has paralysed the pastoral industry.
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> It was a sad reflection on the leadership of the ALP leader Mr Kim Beazley that the ALP in Canberra was opposing the Native Title legislation of the ALP Beattie government in Brisbane.
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> As a Western Australian, Mr Beazley understands full well how devastating the consequences of Keating's Native Title legislation has been in his home state and it is time Kim Beazley stopped pretending to represent the interests of WA and started demonstrating a real commitment to this state's economy.

Unfortunately, not only the Labor Party has successfully undermined the people and the economy of Western Australia, but also, some of the minor parties, particularly the Democrats, have played a part in that. Mr Eggleston said in a speech Senator Coonan had incorporated in the federal *Hansard* in August this year -

> My instinctive fears proved to be well founded when last year the Democrats rejected the Northern Territory native title legislation. This occurred even though the Northern Territory legislation was the product of a long process of consultation between all stakeholders. In view of this, I found it disturbing in the extreme that the Senate disallowed the Northern Territory legislation and I find equally disturbing today that the Democrats decision is to seek disallowance of the entire Queensland package.
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> For a Western Australian - a state of which over 80% is subject to native title claims - and which has borne the brunt of the devastating impact of the 1993 native title legislation - the positions of the Democrats and the ALP today are a disquieting warning of what may befall the Western Australian Native Title legislative regime when it is brought before the Senate for consideration of disallowance.

Unfortunately that was all too true. The Chamber of Minerals and Energy of Western Australia in its publication *Bedrock of the Economy 2001* also shares concerns about the native title regime. At page 45 under "Land Access" it reads -

> The minerals and energy sector requires access to large areas of land. This is initially for exploration for minerals and energy deposits. If exploration is successful, access to smaller areas is required to develop production and processing facilities as well as access to roads, energy and other infrastructure. In recent years, several developments have acted to prevent access outright, impose delays and add significant costs to obtain access to land.
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> Increasing areas of land are subject to environmental or other restrictive land use policies that prevent or hinder exploration and development. In most cases, minerals and energy activity is compatible with other uses as the land can be successfully rehabilitated. The reverse is not true, however, and sterilising areas of land denies the community the substantial benefits of minerals and energy development.
>
> The major source of difficulty with land access remains an unworkable native title system.

It is worth repeating that the Chamber of Minerals and Energy said that the major source of difficulty with land access remains an unworkable native title system.

> Seven years after the passage of the Native Title Act, and despite amendments at the Commonwealth level, the native title system still creates major difficulties by impeding access to land. At mid-2000, over 10,400 applications for exploration and mining titles were caught up in the Western Australian tenement application process - while an improvement on the situation in 1999 when the figure was 12,000, this is still an extremely large backlog.
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> Furthermore, there is still significant uncertainty as to where native title exists, who holds it and what rights it confers. A recent judgement in the Federal Court held that the Miriuwung Gajerrong people in the north of the State had native title over a large area of the East Kimberley and that these rights extended to resources in the area. A subsequent appeal to the Full Court restricted the area of native title, finding that it did not apply to areas of improved pastoral lease, town sites and developments such as the Ord Irrigation project. It also found that there were no native title rights to minerals resources.

The case has now been appealed to the High Court. It goes on and on, but I do not believe that anyone can but recognise that there are problems with the original native title legislation. No-one can disagree that there is a need for the Western Australian legislation to be able to be enacted, so we can overcome many of the problems that we currently face. When I say "we", I mean those of us who are trying to assist with the economic development of this State, which will help with the employment and the social welfare of the community.

I have some very grave concerns about the Labor Opposition in Western Australia and its attitude towards this Western Australian legislation and the economic development of this State. I will quote from *Hansard* the views of the leader of the Labor Party in this State, Dr Geoff Gallop. I do not wish these statements to be taken out of context. They refer to the appointment of Senator Ross Lightfoot to the Senate of Australia. At least he, in company with Senator Alan Eggleston and all the Liberal senators from this State, argues correctly that he is a senator representing the interests of Western Australia. On page 3167 of *Hansard* of 19 May 1997, Dr Gallop is reported as talking about States' rights being thrown out the door. There is a recognition of States' rights but obviously no obligation towards States' rights. On page 3166 of *Hansard* of the same date, he is reported as saying -

> . . . we see their hypocrisy -

He meant the Liberal Party -

- on the subject of States' rights.

I would like to know where the leader of the Labor Party Opposition in Western Australia stands on States' rights.

On the same issue on page 3171 of *Hansard* of 19 May 1997, one of his colleagues made, to my mind, some absolutely extraordinary statements. I am particularly pleased that this Labor member is not standing for the Senate. If he should do so in the future, I know where my vote would lie, because he said -

I turn now to the issue of State rights.

This is stated by a member of the Western Australian Parliament -

I consider myself to be an Australian first and a Western Australian second.

That is absolutely marvellous coming from a member of the Western Australian Parliament! He said it again, so I suggest that it was not a slip of the tongue. The member for Belmont said again -

I am an Australian first and a Western Australian second.

Hon Bob Thomas: He is a proud Australian.

Hon RAY HALLIGAN: He did not say "proud" at all. He said, "I am an Australian first", before which he said, "I turn now to the issue of State rights", having said nothing in-between. He said immediately, "I consider myself to be an Australian first and a Western Australian second." That is absolutely marvellous! It shows everyone exactly where the Labor Party stands as far as Western Australia, the community of Western Australia and the economy of Western Australia are concerned.

I have a compliments slip from Senator Hon Peter Cook, which refers to the fact that he is supposedly a senator for Western Australia. I suggest that the wording needs to be changed to "a senator from Western Australia". Unless he stood in the Senate and voted for Western Australia, I do not believe he is for Western Australia because he is not for Western Australia if he votes against Western Australia. He is a senator from Western Australia, and not one of whom I am particularly proud.

Hon Bob Thomas: That is your view.

Hon RAY HALLIGAN: That is fine, and I will have my view.

I have no intention of continuing down this path. I am sure many other speakers will be able to provide sufficient information and a particularly good argument as to why this motion should be agreed to and why it is that after Thursday of last week, it should be obvious and will be made known to the people of Western Australia just who in Canberra stands for Western Australia. I commend the motion to the House.

HON GREG SMITH (Mining and Pastoral) [7.48 pm]: It gives me great pleasure to support the motion of my colleague Hon Ray Halligan. It was a disappointing day for Western Australians last Thursday when the Senate disallowed our state native title provisions. Another disappointment was the way in which it was done. The debate was brought on and was over and done with in one hour. I think the debate surrounding whether to adjourn the debate until the next sitting of the House took longer than the debate on the disallowance of our Western Australian legislation.

One of the most intriguing aspects is that the Australian Democrats, which were the party for great public consultation, which said that we must talk about such things in the public arena and consider them properly, was condoning bringing on the disallowance motion and dealing with it in one hour and voting on it. That is exactly what happened. After the time that we spent in this Chamber and in this State trying to come up with a workable solution to the native title situation in which we found ourselves, it was an insult to Western Australia to bring on the motion for disallowance of our legislation and after an hour's debate, simply disallow it. Hon Ray Halligan has covered the question of States' rights and the role of the Senate at length, so I will not reiterate those comments.

I, too, was concerned when I heard about Senator Peter Cook's comments. He has an office in Kalgoorlie and I presume he has some idea of the issues surrounding native title and the problems confronting industry, the Government and anyone else who wants to use land in Western Australia. The native title regime is very difficult to navigate. This State's legislation provided practical, workable solutions predicated on a state-based native title tribunal that could deal with some of the outstanding claims.

People who have not had much to do with native title issues do not realise the problems involved. It is all well and good for naive ideologues like the Australian Democrats to support the disallowance of this State's legislation. They sit in the comfort zone in Perth and meet people who are part of the Aboriginal industry and who are making a lot of money out of the native title issue. They have a concept of the dispossessed noble

savage, but the reality is that we have 10 000 outstanding claims in Western Australia. Individual claimant groups may have 300 areas about which they must negotiate. It is physically impossible for them to turn up to the plenary conferences, meetings and negotiations and to work through the issues.

Last week I spoke to a gentleman who is trying to develop a gypsum deposit in the southern Murchison. His development is affected by two claims - one lodged by the Nyoongahs and one by the Pandawn group. He has negotiated his way through the Nyoongah claim - they were good to deal with - and the future act process has been completed. However, after a year of trying to negotiate the Pandawn claim, he still has not spoken to an Aboriginal and he is nowhere near achieving a resolution. This is affecting one of the biggest gypsum deposits in Australia. A gypsum manufacturing plant could result from this project and that would generate employment.

Point of Order

Hon MARK NEVILL: There is no quorum. Only two Labor Party members are in the House, which indicates the ALP's interest in this legislation.

The PRESIDENT: It does not matter which members are in the House, if there is no quorum, I must ring the bells until a quorum is formed.

Hon MARK NEVILL: There are also no members of the Greens (WA) or the Australian Democrats.

Hon W.N. Stretch: I am not surprised.

The PRESIDENT: Order! A quorum is present.

Debate Resumed

Hon GREG SMITH: I would be happy if the Australian Democrats were in the Chamber for this debate, because they are naive ideologues who do not understand the issues facing industry and those trying to operate within the system.

The 10 000 claims lodged in Western Australia have been lodged by about 320 different claimant groups. One group might be expected or required to negotiate with 300 or 400 people. The process does not work because those involved cannot get to all the required meetings.

This state legislation simply removed the claimants' right - not the native title holders' right - to negotiate. Under the federal legislation, those trying to resolve native title are required to go through the future act process and to get the signatures of all claimants, but they cannot even get them to a meeting. It is physically impossible for the claimants to get to every meeting if they have 400 different claims in progress. This is a totally impractical and unworkable situation.

One group of people - the legal profession - is doing very nicely out of this process. During the native title debate in this Chamber we had one or two Aboriginal people and half a dozen lawyers in the public gallery. The lawyers had the most to lose from the amendments to the native title legislation. A very professional lobby group is making money out of native title. These people went to Canberra to lobby members of the Australian Labor Party, the Greens and the Australian Democrats to support the disallowance of our legislation. They believe that the amendments will take the lawyers out of the equation and put Aboriginal people into it, which was the intention. Industry and those of us who know something about the process find that frustrating.

I question the underlying agendas of members who supported the Senate's disallowance vote on our state legislation. A point of order was taken about the word "condemns". Condemning the Senate in this case is appropriate because land management is a state issue. The State is responsible for administering land regardless of the activity involved. The Senate has indulged in a folly and started to interfere with the State's management of its business. God help us if we ever pass another piece of legislation which involves state responsibilities and which is subject to disallowance by the Senate.

One of the reasons cited for not ramming the legislation through the Senate was that Senator Brian Harradine - one of the architects of its return to the Senate for review - was not present. He was the most important man in Australia when he had the balance of power. Now that the Australian Democrats have the balance of power, they say he does not matter. The debate was brought on despite the fact that he was not present. Members were not concerned that a member who had taken a great deal of interest in the original Native Title Act was not present to debate this issue.

The response from the Democrats was, "We do not want any public debate. We just want to get this into the Senate, get it disallowed and get it over and done with." I find that extraordinary.

As I said, the people who are pursuing this disallowance and the native title issue have an underlying agenda. Whether it is the Greens (WA) or the Australian Greens, I do not think I have ever heard them articulate ways to

improve the health, education and employment prospects of indigenous people. However, it is very convenient for them to say we must protect native title, because they have found that if they want to pursue their environmental agenda but cannot convince the public that a certain thing should not be done on environmental grounds, they will take some poor unsuspecting Aboriginal by the hand, lead him to the spot and say, "This must be a sacred site for you." I have heard it said somewhere that in Tasmania, the Aboriginal word for sacred site was "dam", and in Western Australia it is "mine". It seems to me that people like our friends in the Greens (WA) have little regard for improving the health, education and employment prospects of Aboriginal people but have a great deal of regard for using Aboriginal people to support their environmental agenda. If there is one thing on which the Leader of the Opposition and I do agree, it is that the most important thing that we can do for indigenous people in Western Australia is to improve their living conditions, school attendance and retention rates, and health. There is no proof that the native title situation that we have had for the past six years has done any of that; if it had, and if I thought native title could do that for Aboriginal people in Western Australia, I would support it.

I have said that a person in my electorate is trying to develop one of the biggest gypsum deposits in Australia. He wants to build a factory to produce gyprock board - under a different name, of course, because I think that is a registered company name - and to provide jobs. However, in 12 months he has not seen one Aboriginal to try to negotiate his way through the native title process on that deposit. One of the claimants in that Pandawn case is Joan Martin, a former Mt Magnet indigenous person, who had a Homeswest house in Paris Way, Karrinyup. When Homeswest offered her a house outside the metropolitan area, she refused because she wanted to live in Perth. This person has a huge tract of land in the southern Murchison that he wants to spend millions of dollars to develop, and this is only one of the claimants with whom he needs to negotiate, but as yet he has not even sighted an Aboriginal.

One of the other issues - the list is long - is that recently in my home town of Mt Magnet, a code division multiple access mobile phone tower was put up. That tower is on the top of Mt Magnet hill and will have a range of up to 50 kilometres, so it will cover most of the pastoral properties and the mines, and everyone was looking forward to having a CDMA phone. Yesterday my father-in-law had to walk for 20 kilometres to get home to the station because his ute had broken down. If he had had a CDMA phone, he could have phoned home and asked someone to pick him up. However, the CDMA phones are still not working in Mt Magnet. The reason is that the CDMA tower is 150 metres from the powerlines, and they cannot get the native title claimants to sign off on something as simple as running the power to that phone tower. They intend to get over that by putting in a generator, because it is easier to buy a generator and run it 24 hours a day than it is to try to get through the native title process; members should not think they have not tried. The Leader of the Opposition stands in this place and in his electorate and says all we need to do is negotiate; if we sit down and talk, we will get through it. How can we do that when in many cases we cannot even get the claimants to go to a meeting?

The same thing is happening in Karratha. I know another person who wants to develop an aquaculture project. He has lived in Karratha for 20 years, knows most of the Aboriginal people, gets on well with them, and is quite happy to give a lot of jobs to indigenous people. All he wants to do is get on with the project. They are planning to spend $20m to produce a vitamin - beta carotene - that will improve the health of Aboriginal people and the problems they have with their eyes if they have quantities of it; and he has said they can have as much of the product as they want when they start to make it. He said he has outfitted three football teams, and has bought two buses and four four-wheel drives, and numerous meals. He said they have walked around every square inch of the block, which is only about 10 hectares; one can stand in one corner and see every square inch of it. He said that $70 000 later - he has now stopped counting, but he knows it has cost $70 000 just in cash - they do not have one signature on a piece of paper.

I am not talking about people who are not showing goodwill. A picture is portrayed of evil capitalist developers or mining company people who are operating without goodwill and are trying to pillage and plunder the land of our indigenous people. That could not be further from the truth. These people are operating with the utmost goodwill. They called a meeting and said they would like to meet with all the claimants to find out what they want. The first request was that they would each like $300 a day to attend the meeting. They said all right; they would do that. Some people came, there was a lot of talk, there were a lot of lawyers, and nothing was resolved.

The last claim that I will talk about to demonstrate the reality of this situation is just east of Port Hedland. The claimant has lived in Port Hedland for 25 years and knows all the local indigenous people. He has a couple of native title claims over a granite deposit - just a low grade deposit, not a multimillion dollar goldmine or anything like that. He went to a meeting and sat down with them all. They went out and walked around the site that he wants to develop, and they then sat around the table and said there is nothing there; they do not need to worry about it; they will sign it off. However, the person who was trying to negotiate to get a title to this bulk commodity deposit was then asked by the lawyer whether he would please leave. He walked out of the room,

and when he was asked to come back 15 to 20 minutes later, he was told by the lawyer that there might be some native title issues they needed to deal with, and they had better have another look. This was after the indigenous people who have lived there all their lives - and he has lived there nearly all his life - had all agreed there was nothing there that needed to be resolved. He has offered a couple of them jobs and money. I think he offered 3 per cent of his gross, a royalty similar to that which the State could expect, and it is still not resolved. That gentleman's native title issues still have not been laid to rest.

As a State Government, we set out to establish a system to deal with native title issues as they exist. The system provided for a native title tribunal and the removal of the right of claimants to negotiate on leasehold land to be replaced with the right to consult. It must be remembered that the right to consult was for claimants, not for titleholders. It was simply for people who claimed they might have native title. I would like members to think about that because there is a vast difference between a holder of native title and a claimant to native title. The right to negotiate, whether members like to admit it, is a right to veto. Until the future act process is signed off, claimants cannot advance to the next step; the right to consult would not have been much different. However, if claimants do not attend meetings - as I said, someone tried for 12 months to have a meeting - leaseholders can go to a state-based tribunal and say that they have tried to have meetings and no-one turned up. That will put the onus on the claimants. They will know that if they do not attend meetings they may not get much. However, if they do attend, landowners or leaseholders are happy to negotiate or consult to avoid heritage issues and damage to sacred sites. If they want jobs, most developers and miners have no problem with providing employment, vehicles and even training. Some people in Western Australia would like to see our indigenous people stuck on the government drip. Some people appear to have an underlying agenda to see indigenous Australians remain welfare dependent. Attempts made to get them off welfare and into employment to give them some pride in what they are doing are stifled. The Government would love nothing more than to have Aboriginal people working in and helping to develop the mining industry. I cited four instances of people who have offered jobs, money and other benefits so that they could get on with their projects; not one case has been negotiated to a conclusion.

I am not the only member who feels this way. Hon Mark Nevill threw his hands in the air. He knows the issues of native title and has seen them first hand. He gave up on the Australian Labor Party. I believe Julian Grill has privately said he wished we would fix it. If he did not say that, John Bowler, the ALP candidate to take Julian Grill's place in Eyre, has said publicly that he does not agree with what the Senate has done.

I must admit that I lost a bottle of red wine when John Bowler was preselected. I said to him, "John, you are actually a reasonably good bloke. You understand Kalgoorlie and you stick up for the bush. I do not think the ALP is likely to preselect you. It would go against their normal modus operandi." However, it did preselect him. The *Kalgoorlie Miner* last week stated that he said he was disappointed about what the ALP did in the federal Senate because he knows the present system is unworkable. He knows that it is costing jobs and money and is creating division in regional Western Australia, not only between Aborigines and non-Aborigines but also between Aboriginal people.

When this matter was debated in the Senate, Senator Bolkus, the lead speaker and mover of the motion, made a few statements. I will not go through all the matters that I have highlighted in the documents I have with me as they would not add significantly to the debate, but I shall refer to one matter. He said that there was absolutely no need for the State Government to be doing what it is doing, and referred to the recent Nganawongka and Spinifex decisions. Those decisions were negotiated by the State Government to do exactly what we wanted to do under the Native Title (State Provisions) Bill and under our state legislation. Judge Madgwick handed down a decision in the Nganawongka Wadjari and Ngarla native title claim about which the Premier's media statement of 29 August said -

> In handing down his decision today, Federal Court Judge Madgwick acknowledged that the native title claimants had agreed to replace their right to negotiate with the right to be consulted.

This case had to go through the Federal Court to get to that stage. However, those rights were discussed and agreed to in the negotiated outcome with which the native title claimants were happy. They agreed to replace the right to negotiate with the right to consult. The federal judge made some comments when he handed down his decision that every member in this place who has criticised the State Government's handling of native title should read because they are relevant to the debate on how the State Government handled the issue. The Premier's media statement quoted some of the judge's comments. He said that State Governments are necessarily obliged to subject claims for native title, over lands and waters owned and occupied by the State and State agencies, to scrutiny just as carefully as the community would expect in claims by non-Aborigines to significant rights over such land. He said that the State is faced with a good many such claims and a deal of proper caution is to be expected. He said that he saw no evidence of anything other than proper caution on behalf of the State. He further stated that one not infrequently encounters a reluctance, both by departmental and

ministerial wings of governments, to alter decisions once reached. In this case, however, the settlement indicated a welcome degree of openness to change and a constructive attitude for the future on the part of those who made the decisions on behalf of the State.

The judge correctly said that it would be totally irresponsible for the State Government to say that because they are native title claimants, we should disregard all other Western Australians' interests and give native title claimants priority over the land; people who promote the Government's present position acknowledge that irresponsible attitude. The racists in this debate are members such as the Leader of the Opposition. He said that indigenous people or native title claimants should have more rights over land than other title holders. All the Government sought was to give native title no greater and no lesser significance than any other title. It is astounding to say that is discriminatory and it is incredible to say that we should not support it.

It is an insult to the people of Western Australia that the Senate disallowed the Native Title (State Provisions) Bill 1999, and that one group of people that is simply claiming land - they are not title holders but native title claimants - should have more rights over a piece of land than other legitimate title holders. The other decision that was held up by Senator Bolkus as being an example of what the Government should do was the agreement with the Spinifex people in which the State Government retains the rights to minerals, petroleum and water. I remember that when Justice Lee handed down the original Miriuwung-Gajerrong decision, the Leader of the Opposition came into this place celebrating. He was jumping up and down with glee. He thought it was fantastic that the Miriuwung-Gajerrong people had been granted the rights to minerals and water, and to control other people's access to the land. We have since seen commonsense exercised by the Full Bench of the Federal Court, which said that was unconstitutional and that it went beyond the realms of possibility to grant those rights to native title holders. People need to remember that the Government has never disputed that the Miriuwung-Gajerrong people may have some rights as native title holders. Its argument related to the extent of those rights, and what they allowed them to do or to control.

The arguments in the Senate of Senator Bolkus, who was the mover of the motion to disallow the Western Australian legislation, reflected on two negotiated outcomes by the State Government that did exactly what he disallowed. That is the most amazing point. In one speech Senator Bolkus tells us how it can all be done and how the State Government has done it. He then moved to disallow the instrument we put in place to achieve that outcome. I have no doubt that the legal profession reigns supreme in Canberra. A multitude of lawyers would have been in Canberra lobbying and portraying the State Government as stripping these people of their rights and taking away their right to negotiate. There was a story on *Four Corners* about the involvement of the president of the Liberal Party in a court case that was brought on by native title claimants in which the legal fees were between $900 000 and $1.2m. Hon Tom Stephens is supporting a system that gives the president of the Liberal Party the ability to earn $1m in legal fees by representing native title claimants. The funds in the Aboriginal and Torres Strait Islander Land Fund total $1.2b. If anyone cared to work it out, with the $50m a year the fund will receive in perpetuity, in five years the fund could purchase every pastoral property in Western Australia.

Neither Senator Peter Cook, who has an office in Kalgoorlie, nor two other Western Australian senators were in the Senate when the debate was taking place or when the vote was taken. The Senate is the States' House. In Senator Peter Cook's literature, he promotes himself as the senator for Western Australia. The ALP members in the Kalgoorlie area are developing a familiar pattern. Whenever something that is important to their electors comes on for debate or for a vote they are nowhere to be seen. They are not at Parliament; their seats are empty. The people of Western Australia should ask themselves when they go to the polls to elect people to support them, to stand up for them, and to represent them in Parliament, whether they want members who are not there when their constituents need them the most to represent their interests. They look for a pair, or they disappear so there is no sign of them. The people in places like Kalgoorlie, which is a very parochial town, are getting sick and tired of it. The members they have elected to represent them are not in Parliament when the people expect to be represented. I can understand Hon Tom Stephens' agenda; his first job when he left school was working for the Aboriginal industry, and he has been a part of it ever since. It was a sad day last Thursday when Western Australian Labor senators voted to disallow legislation that enabled the Western Australian Government to manage its own land.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [8.26 pm]: Hon Greg Smith has clearly outlined the technical and political concerns the Government has about the native title legislation. I get the impression from observing Australian Labor Party members in the House tonight, that they are as enthusiastic in this House as the ALP members were in the Senate when they set aside one hour to debate the future of Western Australia's native title legislation. It is an absolute disgrace that senators from Western Australia, representing the Labor Party, could be party to a debate in the Senate on the future of the Western Australian Parliament's native title legislation that was restricted to one hour.

It is interesting, as previous speakers in this debate have said, that this Parliament has passed legislation and, because of the nature of the federal native title legislation, it must run the gauntlet of the federal Attorney General and the potential for disallowance in the Senate. The federal Attorney General found the legislation to be in order and in line with the Native Title Act yet, for base political reasons, the Senate has disallowed it. That is a very sad day for Western Australia.

One of the great tragedies of modern political life in Western Australia is the lack of understanding of the mining industry by members of Parliament representing city electorates, and many city people. They do not recognise that with an annual turnover of $21b, the mining industry is the absolute cornerstone of our economy. They do not understand that when the mining industry sneezes; the State's economy gets pneumonia. It is a very important industry for Western Australia, which is going through tough times that have been exacerbated by the indecision in respect of native title issues. There is no doubt that the exploration industry has been severely affected by the native title legislation which does not allow people to explore on Western Australian land. Also, without doubt, there is a backlog of exploration and mining claims because of the unworkability of the federal native title legislation.

This Parliament made a decision, based on the requirements and constraints of the federal Native Title Act, to enact its own legislation. This legislation, which was debated at great length, provided for the establishment of a native title commission in Western Australia under a state regime that gave a right to consult, as opposed to a right to negotiate, on leasehold land. This was seen as a very important initiative because, as Hon Greg Smith said, it removed the capacity of people to use that process for all sorts of unfortunate and unacceptable purposes. Undoubtedly, the whole idea of a right to negotiate is fundamentally flawed. The right to negotiate is given to native title claimants as well as, ultimately - if we get any - to native title holders. One has no more rights than anyone else to a piece of land unless one is a native title holder. The federal Act provides that right to negotiate for claimants, who are using it to hold people to ransom. It is not acceptable.

Two issues are of very serious concern to me tonight. First, the Senate has been given the power in the federal Act to disallow the State's legislation. The sovereign power of the State Parliament is under threat. The Parliament is entitled to pass legislation and to have it enacted as the law of the land, and it should not have to run the gauntlet of the Senate, which effectively is making decisions for the Western Australian Parliament. That is not acceptable. I am concerned that federal senators seem to think it is fair and reasonable, after one hour of debate, to get rid of legislation that was debated for many hours in this Parliament. The Senate overturned a decision of both Houses of this Parliament. This watering down of States' rights, and the ongoing centralisation of policy making in Australia, is a cause for alarm.

Hon Greg Smith: Secede!

Hon N.F. MOORE: I do not disagree. It would be a sensible approach to give serious thought to that proposition. The time will come when this Parliament will be subservient to the Federal Senate, which makes decisions for only base political reasons. The Labor Party gets into bed with the Democrats and Greens to prevent state legislation being passed. We have the extraordinary situation of tiny minority groups holding the rest of the nation to ransom to ensure we go down the politically correct path on such issues.

The capacity to resolve the unworkable nature of the federal Native Title Act in Western Australia has been taken from us. The state legislation would have enabled us to proceed more expeditiously on a range of issues affecting native title and the allocation of land for mining and other purposes in WA. Our legislation has been thrown out the door, and we must operate under the federal Native Title Act. This is another centralist move to ensure that the WA Parliament has no say on these matters.

I return to my earlier point: To put constraints and restraints on the mining industry in this State is to put our future economy in jeopardy. I refer to the economy our children and our children's children will rely upon to share the sort of prosperity we enjoy. Any member who thinks the mining industry is not fragile should look at the dramatic fluctuations in commodity prices, the lack of exploration and how investment money is headed to places of certainty overseas. This country was once regarded as one of the safest on earth regarding sovereign risk, but that is no longer the case thanks to the political correctness of the Senate, the minor parties and the Labor Party. The mining industry not only creates $21b worth of wealth for this State, it employs many thousands of people. I thought the Labor Party, the Australian Democrats and Greens would regard that to be of some significance.

Interestingly, not everybody in the Labor Party shares the party view. This is a good thing. As Hon Greg Smith mentioned, the Labor candidate for Eyre, Mr John Bowler, was quoted in the *Kalgoorlie Miner* the other day. The article read -

> Mr Bowler said he was disappointed at the way the Senate had treated the WA legislation.

That comment was encouraging. He stated -

> "Eastern States politicians just don't seem to understand problems caused by the failure of the current (Federal native title) legislation," he said.

We are worried not about eastern States' politicians, but about Western Australian politicians. John Bowler states that people in the eastern States are making these decisions, but those with their hands up acting against the interests of WA are the federal Leader of the Opposition, Kim Beazley, and the Labor senators who bothered to turn up for the vote. It was not eastern States' politicians; it was Western Australian politicians. This motion is aimed at telling those Western Australian senators who voted against the interests of Western Australia that this House does not like that and it is not acceptable. They have a responsibility to their own State and they should put their State ahead of their leader's politics. On this occasion they failed to do so. Mr Bowler should know that we are not talking about eastern States' politicians; the decision has been made and is being implemented by his own colleagues from Western Australia. Mr Bowler also said in that article -

> "(If I am elected) as a member of Parliament for this area, I am not going to sit aside and watch this situation continue."

I do not know what he proposes to do, but there will be fun and games in the caucus room if he ever gets into Parliament, because he will find out, as Hon Mark Nevill obviously found out, that one cannot make any progress with this Labor Party lot. That is the reason that in the mining and pastoral areas the Labor Party is finding it hard to convince people that it has their interests at heart. I thought that John Bowler's leader would drag him into line very quickly when he started to say the sort of thing he has said in that article.

Tonight, members of the Labor Party in this House have the opportunity to take up the suggestion made by Mr John Bowler, who they hope will be a member of Parliament for their party, to tell those eastern States' politicians where to get off, and at the same time to tell the Western Australian senators who did not do the right thing that this House does not agree with them. I am sure that Mr Bowler would seek to convince his potential future colleagues in this House that they should support this motion. I suspect that if Mr John Bowler were here, he would put up his hand in favour of the motion, as he is reported in the newspaper as expressing these views publicly.

A number of issues here are very important. I am sad that the media of Western Australia have decided that this is not a major issue now. It is not just an issue for the mining areas of Western Australia; it is a major issue for the whole State, because, as I said, the mining industry is fundamental to the State's economy. It is time for the Labor Party to get real and to recognise that something must be done very soon about this issue, because it is just going on and on, to the point that people are taking their money elsewhere.

I will comment quickly on the Miriuwung-Gajerrong decision. On the basis of the appeal decision, we have an opportunity to grant some titles. However, that is being appealed. Therefore, in the event that for some reason or other the High Court of Australia overturns the Miriuwung-Gajerrong appeal decision and we go back to what Justice Lee gave us, this State should close the door, turn off the lights and go home, because Justice Lee's decision meant that we would hand over to Aboriginal people mineral rights, access and all sorts of rights that are not available to anybody else in Western Australia. We should pray that the High Court does not take us back to that decision but leaves in place a reasonable decision regarding access to land and minerals and the capacity of people to get titles to land that is under pastoral leasehold and over which native title may have been extinguished.

I hope that all members will support this motion. It will send a clear message to our federal colleagues who voted against Western Australia's interests that that is not acceptable to this House, to the Parliament of Western Australia or to the people of Western Australia.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [8.38 pm]: I had turned around to Hon Mark Nevill and said that I was happy to speak after him, but he chose not to speak at that time. I was just extending a courtesy to Hon Mark Nevill.

Hon Mark Nevill: Yes, I bet you were.

Hon TOM STEPHENS: The problem with the solution advocated by the Court Government regarding the handling of native title issues is that it has always been a phoney solution. The Labor Party has been persuaded to the view that there are advantages in a state-based regime. It has supported a Western Australian state-based regime. The arguments played out in this Parliament - it seems as though it was a long time ago now, but it was not that long ago - were based on ensuring that system was "proofed" against the disallowance that took effect last week. The Labor amendments were aimed at guaranteeing that a state-based regime would survive the Senate's deliberations. In the end, our advice was rejected and a path was pursued with the catchcry of, "Wait

and see; this will survive Senate scrutiny." This Government was proved wrong. It could not produce legislation that would pass through the Senate disallowance process.

We must consider the history of this issue in the face of all of that. The Government introduced legislation and entered into litigation, which, over eight years, have not succeeded in addressing the issues of native title. The legislation was defeated in the High Court and in the Senate, with legal challenges to the way these issues have been played out. The ill-fated legislation of 1994 was struck down by the High Court and most recently this State's legislation has been defeated in the Senate.

Hon Mark Nevill: Why?

Hon Greg Smith interjected.

The PRESIDENT: Order! Let us get some rules straight. Three members have completed their remarks and the Leader of the Opposition has just begun to speak. Not one interjection has occurred to date. If that is the way the House intends the debate to run, that is the way I intend to manage it. Everyone will have an opportunity to speak; there will be no interjections and we can move on to whatever else we want to debate.

Hon TOM STEPHENS: The resolution of native title issues in Western Australia will be complex. I predict that they will fall to an incoming administration. They will not be easy to resolve due to a range of realities with which we are faced, such as tough national legislation that is not ideal and failure of Governments to adequately resource agencies with responsibility for processing applications for the use of land - for instance, the inadequate resourcing of the Department of Minerals and Energy. Legal uncertainty is being created with the granting of titles in advance of final determination of the native title questions. With the Miriuwung-Gajerrong decision under appeal and with the reading of the subsequent decisions of judges involved in that full Federal Court decision, the calculations indicate that the appeal process is likely to produce a very different result from that which has so far been the outcome of the Miriuwung-Gajerrong case. We are forcing industry - developers and miners - to pay for the cost of the uncertainty that has flowed from this administrative adventure. It is effectively indemnifying the Government against later compensation claims.

Acts of inconsistency by the current Government have occurred in dealing with native title issues. It has been prepared to strike agreements in some parts of Western Australia, such as the Murchison and the Western Desert, but has refused to discuss issues in other regions or localities of the State.

Point of Order

Hon MARK NEVILL: The member is reading a speech, which is against standing orders.

The PRESIDENT: Order! I will be the judge of that. I have been following what the member has been saying, but I will now follow it more closely. The Leader of the Opposition knows the rules.

Hon TOM STEPHENS: I am not reading a speech, but I am drawing on my notes.

Hon Mark Nevill: I dare you to table the speech so that we can see how it compares with the *Hansard*.

The PRESIDENT: Order! We have had a reasonable run without any interjections. The Leader of the Opposition, as is any other member, is entitled to comment on this issue. Hon Mark Nevill will get his opportunity in a moment. In the meantime, the Leader of the Opposition has the call. Other matters need to be dealt with tonight, and I want to progress this debate.

Debate Resumed

Hon TOM STEPHENS: The handling of this issue requires cool heads, calm minds and commonsense. Passions run high on the part of people who have not applied commonsense to the way these issues can be resolved. They have ignored the obvious and efficient paths that have been explored in other jurisdictions, such as Queensland, which had a substantial problem. Its backlog dated from 1994. It has to some extent tackled the issue, producing increased certainty and efficiencies. Queensland has been able to achieve a statewide agreement on exploration and small-scale mining operations, which should be a model for Western Australia of how a Government can proceed with goodwill. The Labor Opposition believes that new laws such as those disallowed by the Senate will not adequately tackle even the backlog. That this issue is being debated in this House today is a testimony to people's assessment of politics, rather than the sound administration of native title issues in the State. Many priority issues need tackling, and can be tackled, by this Government. Those issues are manifold. Native title is an important issue; yet, this motion does not even tackle it. Instead, it has been an opportunity for those who have already spoken or interjected to vent some spleen and rail against a decision that was always predicted. People railing against that predictable decision is taking up the time of the House. At the same time, the community in this State has, on the basis of polling, concerns about health, education, and the need to tackle issues like fuel pricing. People will become increasingly concerned about the economy. The

Government and the Parliament must rise to those challenges and do the things they can do in the face of those challenges, rather than rail against the sun having come up as predicted and the moon rising as a consequence of the natural cycles of life. The handling of native title issues follows a natural cycle. I tried to point out to other members through the select committee process and its subsequent reports - I was joined in the signing of the first report by a number of colleagues - that a pattern to this can be discerned by studying other jurisdictions around the globe. There is no need to try to reinvent the wheel. Essentially, the challenge for the community is to strike agreements that tackle these questions, rather than proceed down the path of argument and litigation, or the legislative path of trying to extinguish, trample or diminish rights. Queensland is very much attracted to and moving down that path under the leadership of the Beattie Government. Direct consultation has taken place for over 18 months, facilitating the resolution of this issue. None of that is occurring effectively within our state boundaries. What is occurring is simply compounding the problems rather than producing sustainable results.

The claims that have been made in this debate so far reveal a range of interesting attitudes to the legislative processes, to the role of our Constitution and federation, and to the role that Aboriginal people have played in their efforts to secure native title rights. Anyone with a sense of history about the way this debate is progressing will picture a time when people will look back on this debate with some amazement at the views that have been expressed. The role of the Senate has changed. It has been constructed to have a new role, which it has obtained and secured for itself by virtue of the interplay of national legislation and High Court decisions.

As to the question of what is good for the State, I hope that no-one on either side who has engaged in this debate has pursued anything other than that which they believe to be in the best interests of the State. At times it seems the accusation that somehow or other Western Australian senators have done the State a disservice by not pursuing state interests flies in the face of those same senators' assessment of what is in the best interests of the State and their attempts to advance this issue with real certainty and with a real opportunity of bringing these issues to resolution, so we are not all bogged down in endless litigation and argument.

I am convinced that those who keep pointing Western Australia back towards agreement as opposed to argument cannot accurately be described as not pursuing the State's interests, but rather they have a different perception from that of those opposite. To return the compliment of some level of insult, it appears to me that those opposite who continue to pursue the issue are more about playing politics than serving the State's interests. The State's interest is in obtaining finality, certainty, resolution and agreement. That will not be achieved down the paths that some have been pursuing over the past eight years; the opposite is the reality.

All of the predictions that we have made to the Government have come to pass. We have heard descriptions of the loss of economic and exploration activity and there is some measure of truth in that. There has also been a loss of economic opportunity and that is to be regretted. Those of us who are committed to the advancement of this State and who disagree with this motion do so on the basis that those opportunities for economic activity that are not now open to the State can be obtained through a different path. There is a need for a workable native title process, and that cannot be achieved through endless argument.

Members could prolong this debate with passion and vigour and by repeating old and tired arguments, and we could also sling insults at each other. However, in the end, this Parliament has been well served by some advice on these matters that was provided to it by the hard work of the first select committee on native title. At the end of this process, when the election is over, whichever party wins will be obliged to move away from the paths that have been futilely pursued and to move in new and fresh directions. If the coalition were lucky enough to win government at the next state election, I am confident it would go down a different path which, I predict, would be the path of agreement and resolution. The coalition would strike agreements that it has not previously been prepared to do.

Again, the experience in British Columbia is illustrative. We saw how the western Province of British Columbia belligerently pursued a policy with its conservative Premiers, Bennet senior and junior. For eight years this Government has futilely and unsuccessfully pursued a resolution of these issues. In the end, that futile pursuit of the confrontationist, aggressive, legislative and argumentative approach has thrown no light on the path to the future. In the failure of people to step back from the disasters they have inflicted on the State so far, there is a need for people to take hold of themselves and to consider that everything they have predicted has come to pass. Everything they said would happen has happened. Everything they said would be a failure has been a failure. At the end of that process, surely it is time to simply step back and admit that another path was charted in the select committee's report. On the basis of international experience, that report stated there were alternative directions in which to go. The process of striking agreements will be demanding on an incoming Government. The select committee had the opportunity to consider how consumptive of resources even the path of agreement was. It was able to examine how demanding the process of striking agreements is. That process cannot begin until there is a commitment to go down that path.

I hope that the upcoming state election produces a Government committed to the resolution of these issues with goodwill and balance. We need a Government that is committed to achieving equity and fairness, while at the same time creating opportunities for economic growth from which all Western Australians can benefit. Aboriginals are most in need of that economic activity; they are more in need of jobs and progress in their lives and communities than the rest of us. More than anyone else mentioned in this debate, their interests will be served by finding the key to unlock the door to the challenges ahead. That key comes with a commitment to preventing any more argument. We must be committed to achieving a resolution and striking agreements through goodwill.

HON MARK NEVILL (Mining and Pastoral) [9.01 pm]: It is very interesting when we have a debate in this House with no interjections. It means either that no-one is interested in the debate or that the Labor Party has told its members to shut up. It decides that there will be no interjections and there will be only one speaker. It battens down the hatches and plays a minimalist role. That has happened tonight. The speech we have just heard did not explain why the Senate rejected this Parliament's legislation last week in a one-hour debate. That is what Hon Tom Stephens calls the "senate processes".

When we had the debate on this issue in 1998 I was gagged by the ALP Caucus - there was to be only one speaker. That was organised by Hon Tom Stephens and Hon Geoff Gallop. The same occurred tonight. Have other members of the Labor Party been gagged, are they not interested in this issue, or do they not recognise issues facing those beyond the Darling scarp? I do not know the answer. I am sure that members of the Labor Party who have been speaking out about native title - such as Hon Tom Stephens and Eric Ripper - will take a back seat in the election campaign.

The Senate debate last week was brought on a day before we in this place were due to debate a motion calling on Western Australian senators to support this State's legislation. That was orchestrated by the Western Australian Labor Party. The Senate debate was brought on last week and the legislation was pre-emptorily rejected so that members in this place would not be required to debate this motion. A motion was moved in the Senate last week when Senator Harradine was not present. One could call this a "dingo disallowance". The Labor Party did not want Senator Harradine asking questions. Senator Bolkus and Senator Murray put their heads together and worked out how to ram the disallowance through with minimum effort before this motion was debated in the State Parliament.

Three members of the Government spoke before Hon Tom Stephens rose to speak on this motion. He is usually the first to jump to his feet. He is allowed to ask three or four questions during question time and I often miss out because he is so eager to jump to his feet. Tonight he almost begged me to speak before him so that he could have the last say in this debate. That is the measure of his defensiveness.

Hon Tom Stephens talks about negotiation and mediation -

The PRESIDENT: Order! The member must refer to others in this place by their appropriate title. He should be referring to the "Leader of the Opposition".

Hon MARK NEVILL: The Leader of the Opposition and the Labor Party have no idea. By interjection I asked the leader how the Bardi-Jawi claim fits into his views about a Canadian claim process. He did not take up my interjection. The Leader of the Opposition always goes the other way when there is a debate on Aboriginal affairs. We recently had a debate on Aboriginal education and he absented himself from the Chamber. He will never give his views. In six or seven years have we ever seen a policy paper on Aboriginal affairs from this opposition spokesman on Aboriginal affairs? No. He is not prepared to prosecute and argue the views that he holds publicly. A member of this House who cannot get up and argue his case should not be here, whoever he is. At times I might not agree with some members, but I do like to hear them prosecute an argument and put their case. That is what killed me in the Labor Party; unless a person held the view of the leader he had no say - he must join the queue and vote when he is told to vote.

Debate is healthy. The idea that division is death is nonsense. The Leader of the Opposition says there has been no negotiation and no mediation. The Government on at least four occasions has offered to mediate the Bardi-Jawi claim, the Wandjina claim, the Karajarri claim and quite a few others. The Kimberley Land Council rejected outright any mediation, and that was after there had been discussions. The council went straight to the Federal Court; it did not want to negotiate; it did not want to mediate. What happened? When those cases were heard in the Federal Court, the Kimberley Land Council had not even done the rudimentary genealogies. The genealogy for the Rubibi group was done by Peter Yu's mother, Madge Yu, and the people of Broome saw that when it went to court. Peter Yu's family, the Dolby family, was spliced onto the Yawuru clan. The people in the Yawuru clan have never claimed that clan to be Yawuru. Pat Dodson describes himself as a senior Yawuru law man, but he has not been initiated. No initiations have taken place in the Yawuru clan since the 1940s. Pat

Dodson's grandfather was Paddy Djiagween. I knew Paddy Djiagween. He came from the Pilbara or the goldfields, and he never claimed to be a Yawuru person. All this material appeared on the genealogies. In the past week people started adjusting the genealogies because they did not show the proper geneologoes of the people in the area. They kept them secret.

I want to see a good land council operating, but in the case of the Kimberley Land Council it is the Government that has been prepared to mediate and negotiate. Despite that, this tissue of lies is put forward that somehow the Government does not want to do that. I have been advising the Bardi-Jawi people and many others to negotiate directly with the Government and to use the Spinifex agreement as the basis for an agreement. However, I have told them that, before they sign the agreement, they should get two or three good lawyers - Michael O'Donnell, who worked for the Kimberley Land Council, Greg McIntyre or a couple of other people - to go through it and sort it out. They will get their determination, but the problem is that the land council has no further role when these people get a determination. The land council has a vested interest in determinations not being reached, because once a determination is reached a prescribed body corporate is set up. One could feel all warm and fuzzy about the Kimberley Land Council and these sorts of people, but they are incompetent. They have received $30m over the past seven years and they have not even completed the basic genealogies. In the Balgo area, all the people from Balgo were excluded from the Tjurabalan claim. The anthropologists who did that should be struck off the roll. This has gone on throughout the Kimberley. They should talk to the Miriuwung Gajerrong people. That was not a Kimberley Land Council claim; it was an Aboriginal Legal Service claim. They should talk to the Bunaba people. They have more enemies in the Kimberley, yet these are the people from whom the ALP takes advice.

The native title working group does not consult with the other land councils. They tell me privately that they are never consulted. The native title working group will receive ringing support from the Goldfields Land Council and muted support from the Yamatji Land Council, but it never consults with anyone. It speaks on behalf of the native title holders of Western Australia, but it does not have meetings; there are no minutes of meetings. It is a rort! It cannot even run its own show in the Kimberley.

What is particularly galling about this debate is that the Labor Party has never given any clear reasons for its belief that the Native Title (State Provisions) Act is deficient. Geoff Gallop said on Geraldton radio that he cannot see any reason that the Senate should not disallow the state legislation. Why? No reasons. Megan Anwyl said in Kalgoorlie that the state legislation is flawed. I put out a press release asking them to tell us what are the flaws, and we will fix it up. They will not tell us.

This Labor Opposition has no interest in solving the native title problem. The problem is that no member of the Labor Party knows anything about it, including the Leader of the Opposition, who has the most deficient knowledge of the Native Title Act of any person I know. Hon Eric Ripper has the best handle on native title legislation in the Labor Party, and that is not all that flash. The Labor Party takes its instructions from the Leader of the Opposition's cousin in Canberra, Mike McGaw. The Attorney General's native title unit in Canberra was leaking all the time to the Labor Party while I was in the Labor Party. Everything the coalition did in government was leaked. That might be fun and games, but I do not particularly like dealing in leaked documents. I think we should just play it straight and not be fraudulent in the way we behave. If people do not like what we say, that is fine. We all give a bit and we all take a bit, and that is good; at least we know what people think. We have this little game in here in which people hide and try to give one impression publicly and another one privately. It is all about political perception. How about a bit of political honesty?

The Queensland legislation is a bit of a disaster. I think Peter Beattie and his Government are a pack of fools. He has accepted the right to negotiate over the alternative provision areas, which is covered in section 43A of the Native Title Act. That is fine, but by doing that, he has to do a couple of things. First, he has to fund the Native Title Commission in Queensland. Secondly, by running with a state commission with a right to negotiate on alternative provision areas, he misses out completely on the expedited procedures for exploration licences, and now he has to go through the right to negotiate process every time there is a renewal of mining leases. What the hell is the advantage to Queensland of doing that? It would have been better off with the commonwealth system. That is how stupid that Government is.

The Leader of the Opposition has the gall to say that the Queensland Government has negotiated a statewide native title agreement. It has done no such thing. It is in such a mess that it has to ring up Western Australia to find out what it can do. The Leader of the Opposition put it forward as though it was the Messiah. It is confused. Queensland does not have a statewide agreement. It may be aiming for that. The Goldfields Land Council came to see me and said we should have a statewide agreement. I said, "If you can get some heads of agreement for a statewide agreement, where you can get together people in the desert, who are small estate groups and are very jealous about their area, and urban Aboriginals, I will support it." They never came back to

me. Pat Dodson said the same thing. I said, "I do not think you can do it. If you can, show me what you are trying to do, and I will help you work on it, if I can, to make it a reality"; but he never came back to me. It is all talk. There is never anything tangible. There was nothing tangible in the Leader of the Opposition's speech tonight.

There have been seven years of the Native Title Act, and there have been only a couple of determinations, including two in Western Australia. One of those was the Nganawongka-Wadjari and Ngarli claim just south of Newman. That claim was handled by the Aboriginal Legal Service. The judge virtually said the claim was very weak. The claimants went away. The appeal decision came in Miriuwung-Gajerrong. The claimants realised that they might end up with nothing, so they came to an agreement, I think probably without the help of lawyers. They now have a good agreement, which gives access to all areas, protection of their sites, usufructuary rights and even some entree into mining developments. Before we badmouth the mining industry, it should be recognised that it is the only industry which supplies real jobs to hundreds of Aboriginal people, who it trains. That is far more than the Government does.

The Leader of the Opposition represents the people who have controlled Aboriginal affairs for the past 30 years. Those people have been an abject failure. On every objective criterion for Aboriginal people, this State has gone backwards - education, health, longevity and representation in the criminal justice system. Those same people criticised the missions and the Catholic Church, saying that the church had done terrible deeds. The Catholic Church in the Kimberley of 30 years ago has nothing for which to apologise. Those people worked 16 to 18 hours a day - they worked their guts out. Yet these people say that the Catholic Church destroyed Aboriginal culture. If the Catholic Church had not been there in the early days, the Aborigines would have been shot or would have died of disease.

I read the other day about Philip Playford and a few people in the 1960s - Gerry Long and a party - who picked up between 15 and 20 people near Kiwirrkurra at Pollock Hills. Most of those people had yaws and three or four died soon after they arrived in Papunya - obviously they were exposed to viruses and the like. However, they were in an appalling condition at that time. There is an idyllic view of the Aboriginal race in its natural setting, but it was pretty tough. My experience of the church in the Kimberley is that it did a lot of good for Aboriginal people.

Hon Tom Stephens told this House a few years ago that Bella and Barbara Lynott, who were looked after by Bob Button, were members of the stolen generation and were forcibly removed to Beagle Bay. They were not. Their father sent her and her sister to Beagle Bay in 1909 to be educated because there were no schools on the stations. A lot of the part-Aboriginal kids were sent to these places. Some were taken against their parents' wishes - there is no doubt about that - and that is appalling. However, there is now a view that if a person signs the sorry book and walks over the bridge, that will fix all the problems. It will not. We must deal with reality. Until a few of the people in politics, who are supposed to have a bit of clout, start focusing on reality, Aboriginal people will continue to go down the gurgler, because the politicians are not doing anything.

I dealt with the state-based regime. It is fairyland stuff. Negotiations must be held with the different groups. The Government has negotiated an agreement with the Spinifex group, in which I played a peripheral part. I tried to get it through before I supported the Government's legislation in this House, but a few little problems could not be resolved. Now that the Spinifex claim is through, the Kiwirrkurra and a lot of other central desert claims will go through because they are similar, strong claims. A number of other claims are fairly close to being determined. The Government will determine a lot of Aboriginal claims if it deals directly with the claimants, rather than through groups such as the Kimberley Land Council. My judgment is reserved on the Yamatji Land and Sea Council. It has shown signs of some promise but it has employed a lot of people whose ability to resolve issues does not fill me with confidence.

I have an open mind about the Yamatji Land and Sea Council and I hope it is successful. However, many other land councils talk to me and they do not agree with many of the comments made by the Western Australian Aboriginal Native Title Working Group. Some people believe it speaks on behalf of everyone; sadly, it does not.

I dealt with the perfunctory Senate scrutiny that Hon Tom Stephens mentioned and with the furphy that the State is preoccupied with legal challenges. It is true that the State initiated some legal challenges that are probably in the interests of the State. However, the land councils, particularly the Kimberley Land Council, initiated much of the Federal Court litigation. It is in trouble now as it has four cases running and wanted to adjourn the Leregon claim for two years. I guarantee that if I were let loose on the Leregon claim, I would have the genealogy worked out in three months and I would have a damned good agreement ready to sign with the State as good as anyone else will get. However, for years anthropologists have roamed around the Kimberley at $700

a day not producing anything. They have not even got the basic genealogies for Broome. What is Hon Helen Hodgson laughing at? She can interject.

Hon Helen Hodgson: You may be looking for a job after the election and perhaps you are offering your services.

Hon MARK NEVILL: I may well be. I will accept the judgment of the people without any recriminations because the public is reasonably intelligent and usually gets it right. If the public gets rid of me, I will cop that. There are many other things I could do, though maybe not as well.

Hon Tom Stephens mentioned the Queensland agreements and how that State is following a judicial path. I have dealt with that matter; I do not believe that statewide agreements are possible. I would be surprised if the Queensland Government ever gets one that is of any real substance.

Mr President, I have covered most of the issues. However, the one challenge that the Australian Labor Party has failed to deliver an answer to is what it finds so offensive about the Native Title (State Provisions) Bill that it must be knocked out. What are the flaws in the Bill?

A number of my letters to the editor of the *Kalgoorlie Miner* were published and I asked a few questions of the member for Kalgoorlie in the other place such as why the ALP validated and extinguished native title on tens of thousands of acres of farmers' conditional purchase land in the south west of the State, yet did not validate some leasehold titles in the goldfields where some people have lived for 80 or 90 years. I never got one answer. She made a fairly abusive call to me one Sunday morning when I was in Perth, having a go at me for attacking her. I said that I had asked her questions; she said that she had answered every question I had ever asked. I said that she had not answered one question that I had asked; she asked me to put them in a letter, send them to her and she would answer them. I did so and, to underline the point, I included photocopies of the articles from the *Kalgoorlie Miner* in which I had enumerated all the questions. I received a very terse reply saying that I had a cheek sending her illegible photocopies. Her office would have cut out those articles from the *Kalgoorlie Miner* and she would have had the originals.

I then went through all the articles, prepared a letter with about 12 to 15 questions and sent it to her. It was just before Christmas last year. She rang me and told me that she would answer them in the new year. I read in the *Kalgoorlie Miner* that she was going to Argentina for a month's holiday. I never received an answer to the questions. I still have copies of all the letters. Some of the questions related to other issues affecting native title. She has never been able to tell me what were the flaws in the state legislation so that they could be fixed. If that question cannot be answered, who is doing the politicking?

I think the Native Title (State Provisions) Bill is fairly balanced. I was the person who got rid of the registration and mediation of claims provisions in the Bill. I got rid of the whole lot. Some of the more ridiculous matters in the Bill were removed. I put a number of protections in the Bill. I thought it was a good Bill. The Labor Party talks only in generalisations. One can never get it to state things precisely. I put the challenge to the Leader of the Opposition: Write me a letter tomorrow stating the deficiencies of the Native Title (State Provisions) Bill. I will table the letter in the House. It will be interesting to see what I receive. What are the flaws in the Native Title (State Provisions) Bill? If he cannot do that, he is not being serious. People of his ilk have controlled Aboriginal affairs for 30 years and things have gone backwards. The reason there has not been a policy paper from the Leader of the Opposition - the opposition spokesman on Aboriginal affairs - for seven years is that he is absolutely bereft of ideas. He might get some if he goes to my web site and downloads some of the things I have been suggesting over the years.

At one stage during tonight's proceedings there were only two Australian Labor Party members in the Chamber.

The PRESIDENT: Order! The member knows that the state of the Chamber is not something that one comments on, as members enter and leave the Chamber from time to time on parliamentary business.

Hon MARK NEVILL: I accept that. I did not know that there was such a herd mentality in this place! I have no doubt that Hon Helen Hodgson and Hon Giz Watson hold the issue of Aboriginal affairs very highly on their personal and political agendas. We are not going to agree on how we can fix things. We should be prepared to argue our case. The failure of the Labor Party is that it has not argued its case. When people read carefully the speech made by Hon Tom Stephens tonight they will see that he did not argue the case as to why the Native Title (State Provisions) Bill should be rejected. Queensland had a state provisions Bill. There needs to be a framework in which to work. For people to say that they are trying to get a legislative fix is nonsense. There needs to be a legislative framework. I look forward to receiving a letter tomorrow from the Leader of the Opposition and to tabling the letter before the end of the current parliamentary session. I want to see whether the ALP is genuine in its view on the legislation and that there is some serious thought behind what it is doing.

HON HELEN HODGSON (North Metropolitan) [9.28 pm]: It will come as no surprise to members of the Chamber that the Australian Democrats will not support this motion. Since the legislation was passed, the

Australian Democrats have predicted that the ultimate fate of the Western Australian scheme would be its disallowance in the Senate. The price that Prime Minister John Howard paid for the passage of his 10-point plan was the issue of disallowance by the Senate. It was part of the deal that was concluded with Senator Harradine at the time. Constitutionally, it is an issue that the Bill contains this mechanism. The Federal Government agreed to have the mechanism in place in order to get its 10-point plan passed.

To go back to the very fundamental point of this debate, I note that the original speaker referred to constitutional issues, and the way the Senate was formed and should perform. Constitutionally, the Federal Parliament has responsibility for making laws in respect of Aboriginal people, and the State Parliament has power to make laws in respect of land and resources. This constitutional tension has brought us to the situation in which the Senate is examining and passing judgment on legislation passed in Western Australia. That is what was contemplated when the Wik 10-point plan was passed in 1997. The power of the Commonwealth to make laws in regard to Aboriginal people has been exercised in this instance. The Australian Democrats have always been opposed to a state-based regime, and that has always been firmly on the record. There are many reasons for this opposition, which have been canvassed in this place time and again. Primarily we do not believe that the regime put in place under the 1997 Wik amendments, which has resulted in the watering down of rights for Aboriginal people, is justified. We do not believe that the federal legislation is unworkable, and we have already heard reference to determinations that have been made. In the last six months, two have been finalised by the State Government. If the system were so unworkable, these determinations would not be occurring. Last week the annual report of the National Native Title Tribunal was released. Pages 99 and 100 deal with the outcomes of objection applications between 1 July 1999 and 30 June 2000. In that time 833 applications were lodged and finalised, and 103 applications lodged in an earlier period were finalised. Of those, 473 were withdrawn, 235 had a consent determination, and most of the others were dismissed under various provisions. A comment on page 100 reads -

> Of the 833 objection applications lodged and resolved during the reporting period, 84 per cent were cleared for grant within 24 weeks.

Is this an unworkable regime, where there is only a 24-week delay in dealing with the objection application process? I know this is only one step in the whole process, but if people came to these processes in good faith, and made sure that the administrative processes within state government departments and within land councils matched up, because everyone was working together to achieve the same end, workability would be greatly improved. I do not accept the arguments that it is the system that is at fault. A lot of other factors are involved, many of which relate to people and the way they operate within the system. The Goldfields Land Council Aboriginal Corporation has entered into four regional agreements with mining companies, five specific tenement agreements and mining lease operations for productive mining and has facilitated more than 500 exploration and prospecting licences. That is a sign of things being done. They might not be happening as fast as some people in this House would like, but when people come to the legislation with the intent of finding ways of working together, of reaching agreement, it is possible, and we do not need a state-based regime to do that.

A question has been put to me to which I do not know the answer. Under the commonwealth legislation and the state-based native title Act, there are two different regimes: One is the regime under section 43, which is the right to negotiate procedures by areas not covered by part 2, and the other is under section 43A of the federal legislation, a consultation procedure for alternative provision areas. Those two areas had to be subject to separate determinations before the Senate. It is my understanding that only the section 43A regime was brought to the Senate. In fact, the more contentious of the two regimes was brought before the Senate, and the section 43 regime, which is less contentious, was not on the table at the time. The reason I find this a curious approach by this State Government is that section 43A regimes have not been approved in any State of Australia to my knowledge. I believe the New South Wales regime is still under discussion, but both the Northern Territory and the Queensland section 43A regimes were disallowed by the Senate. It seems to me that by bringing forward the regime without its accompanying section 43 regime, there was a clear provocation. It was almost inviting the Senate to disallow it, because it was putting forward the worst part of the package, and that was the only thing on the table at the time. I find that difficult to understand. I am not at all surprised that the Senate took exactly the same course of action with the Western Australian section 43A regime as it did with the other States' regimes.

Comments were made earlier about senators and whether they vote with their State or with their party. All our senators have a conscience vote that they are entitled to exercise. Every one of our senators voted in accordance with his or her conscience on this matter. I know that because I have spoken to all of them at different times over the past two years. They are united in that they all believe that these consultation regimes are eroding the rights of indigenous people to a point we cannot sustain. That applies to our Western Australian and Queensland senators - all of our senators. They were united and voted together on the issue because they all believe in it strongly. It is not a case of a herd mentality or of following party dictum in this instance. All of our senators believe that the disallowance of this regime is in the best interests of Western Australians and Australians as a

whole. The reason for that is that things are happening internationally; Australia is now coming under intense scrutiny for the way in which it deals with its indigenous people and the way in which their rights are recognised and either implemented or denigrated.

I can think of two reports that have come forward recently. The report of the Committee on the Elimination of Racial Discrimination looked at the native title legislation and said that it was insupportable, not appropriate and racist. It found that it is racist legislation. Therefore, the Federal Government should not have passed the legislation in the first place and anything supporting it also should not be passed. If that is challenged internationally, Australia runs the very real risk of having the whole native title legislation at both federal and state levels brought into further disrepute.

A more recent publication is an Oxfam International report on the rights of indigenous Australians that contains a lengthy chapter on native title land rights and heritage protection. The board of Oxfam International made a number of recommendations relating to native title. Among other things, it says that the Commonwealth Government has not yet implemented the social justice package that was an integral part of the original native title legislation in 1993. The report states that Australia cannot hold its head high in the world while its Constitution permits racially discriminatory laws. All of this international scrutiny is one reason that we should not allow this sort of legislation to be passed. While we are coming under fire internationally for racist legislation and for eroding the rights of our indigenous people, it is not in the best interests of either Western Australians or Australians as a whole to support legislation that will bring us into further international disrepute. I argue strongly that the senators who voted last Thursday to disallow Western Australia's section 43A regime under the federal Native Title Act did so in the interests of the State. To that extent we should not criticise them for their actions.

The Australian Democrats have made it clear throughout the lengthy passage of this legislation, from the time it was first introduced in the Western Australian Parliament to the time it was disallowed last Thursday, that we do not agree with the legislation. We do not agree with a further watering down of the rights of indigenous Australians. The Senate acted properly last week in passing the disallowance motion. It acted in the interests of not only indigenous Australians but also all Western Australians, and the Australian Democrats will not support the motion tonight.

HON GIZ WATSON (North Metropolitan) [9.42 pm]: The Greens (WA) will not support this motion. I do not want to speak for long on this issue, because a lot has been said tonight which is not necessary to repeat. I want to bring some facts and figures into this argument. One of the things that is obvious to many people who are concerned with the rights of indigenous people is that government members apparently believe that if they repeat often enough that native title is unworkable in this State, sooner or later people will believe them. I notice that any time members opposite - particularly the Premier - mention the issue of native title, they always preface their comments by saying that it is unworkable. It is a simple formula that is meant primarily to attack the Labor Party for its position on native title and to try to convince the general public that the current regime of assessing native title applications is not working in this State. The issue that continually is brought to my attention is that the Government and its instrumentalities are showing a lack of good faith and political will in negotiating the process of native title in this State. I particularly draw attention to the fact that within the Department of Minerals and Energy only a minimal amount of resourcing is applied to processing native title claims.

I will raise some statistics that I obtained this morning from the National Native Title Tribunal. They were updated on 9 November, so they are pretty recent facts and figures on processing native title claims in this State. The fact sheet indicates that since 1998, seven out of 10 exploration and other low impact applications for tenements have been cleared for grant without the need for native title negotiation, and that 4 487 mining exploration tenement applications are currently subject to negotiations in Western Australia. The fact sheet reads -

> The National Native Title Tribunal only becomes involves in these matters when it is asked to mediate or arbitrate about the grant of a tenement. Of the mineral tenements subject to negotiation:
>
> 50 are before the NNTT in future act mediation;
>
> 15 are before the NNTT for a future act arbitration; and
>
> 4 422 remain with the WA Government for processing.

Those matters are delayed by the lack of resources provided by the Government to process those claims. Under the heading of "Native title claimant applications - current statistics", the fact sheet reads -

> The number of active native title applications in Western Australia has reduced by 59% since the Native Title Act amendment came into force on 30 September 1998;

The geographic area that the Government tries to beat up as the major bottleneck in native title claims is the goldfields. The information I received this morning regarding the goldfields indicates that native title applications in the goldfields dropped from 90 in September 1998 to 18 currently. Enormous work has been done in the past couple of years. It is extraordinary, considering the amount of negotiation needed to sort out and amalgamate claimant groups to reduce the number of applications. I do not suggest it is all sorted out in the goldfields - far from it. However, an enormous amount of work has been done, particularly in the area of consolidated claims and reducing the number of applications in that area. Only five future act applications have been made this year.

Fundamentally, I challenge this constant mantra of the unworkability of native title. It does not stack up when one considers some facts and figures on claims. What causes some claims to not be processed? Debate has ensued about negotiating in good faith. I know Hon Mark Nevill spoke about people who do not turn up for meetings and referred to complaints on both sides about an unwillingness to engage. My experience in conflict resolution and negotiation in areas other than native title indicates that once good faith is attacked and broken, it is hard to re-establish. That is why the Greens (WA) argue that the approach to native title should be to restore true negotiations and to respect the parties to the negotiations. An enormous number of Aboriginal people have become incredibly cynical and disheartened by the stonewalling of this Government; that is, it proceeds down every avenue available in either legislating away their rights or undertaking court challenges when Aboriginal people have wins, such as that with the Miriuwung-Gajerrong case. It is not surprising that a lack of enthusiasm to engage is evident in some of these processes. People are exhausted by them.

Another aspect at play that I and others have previously raised is that the issue of what is causing a downturn in the mining industry in this State is multifaceted, not the least of which is the number of exemptions being granted on exploration tenements, which amount to millions of dollars in this State. Whereas it is politically convenient to blame the downturn in prospecting and other aspects of the mining industry on the unworkability of native title, the exemptions that have been granted to companies that are not required to invest the money that they would have otherwise invested under the Mining Act play a major role.

The Greens (WA) did not support the legislation when it passed through this place. Therefore, we are delighted that the Senate has done the right thing and rejected the it. The fundamental reason that we objected to the state legislation was the proposed substitution of the right to negotiate with a consultation process. Those of us who have been involved in community and grassroots politics are well aware of what consultation can mean when dealing with government and bureaucracies. It usually means that they will tell us what they intend to do, ask for feedback and then ignore it. Therefore, we reiterate our support for the maintenance of the right to negotiate as one of the few remnants of rights that have been recognised and won by indigenous people in this country. The history of native title in Australia is a sad and sorry affair, from the original Mabo decision to the current situation in which those hard-won rights have been whittled away in numerous jurisdictions.

In conclusion, the Greens (WA) will not support this motion. We applaud the Senate for upholding the rights and aspirations of indigenous people in this State. Indeed, I agree with Hon Helen Hodgson's comment that, in doing so, the Senate has upheld the decency and dignity of all Australians.

HON TOM HELM (Mining and Pastoral) [9.53 pm]: I too rise to ask the House not to support this motion. I do not think there is much point in going through the statistics that have led me to feel this way. However, it is appropriate to remind the House of where we are as a nation in recognising the injustice that was done over 200 years ago when Australia was declared terra nullius. Some people in this Chamber, and not only those on the other side of the House, should understand that we cannot go back to the way things were. We cannot go back to treating Aboriginal people as if they were flora or fauna, as was the case in this State a few years ago. We cannot go back to the time before the referendum through which the people of Australia determined that the Federal Government should have responsibility for Aboriginal affairs. We cannot go back to ignoring the aspirations of the first Australians. I am saddened that indigenous people have not advanced as much as they should have in the areas of health, education or even civil liberties. I am sorry for all the things that have happened to indigenous people in the past. However, I am determined to do what I can to ensure that the events of the past are put behind us and that Aboriginal people, who deserve more respect than they are shown, are given every opportunity to say how their country is to be exploited.

I ask the House to consider the relationship between Aboriginal people in the Pilbara and the Kimberley and mining companies such as Broken Hill Proprietary Co Ltd, for which I do not have much time now, and Hamersley Iron Pty Ltd, for which I have not had much time for a long period. People such as Hon Greg Smith trot out cliches such as "unworkability", which is a distasteful term. I can imagine a hillbilly using that word, rather than an honourable member of this place.

Native title works by acknowledging the rights of indigenous people, not by enforcing their rights. The acknowledgment of their rights in legislation persuades mining companies, not just the major companies, to talk to Aboriginal people and to reach a resolution in an amicable way.

Hon Mark Nevill used another cliche when he referred to "the Aboriginal industry". I wish I knew a cliche that was as descriptive as those two; albeit untrue ones. However, if there is an Aboriginal industry it is only because the Premier of this State, supported by his Cabinet, tries to implement programs that are contrary to programs that I believe - I must believe it - the majority of Australian people want to implement.

We blew it 200 years ago; we made a mistake. Let us see what we can do to put things right. I spend a fair amount of time with Aboriginal people, some of whom are articulate and some of whom are leaders. I have not heard them say anything about not wanting mining or development to proceed. I have heard them say that they are in favour of development, given certain circumstances - mostly the provision of jobs or development within the community. I have heard the Premier say that he will not abide by the federal law; but that he will introduce a law in Western Australia and when it is defeated in the Senate, he will spend $60m taking it to the High Court so that some eminent judges can vote 7:0 against it.

Hon Greg Smith: Have you ever tried to help a claimant group through the process?

Hon TOM HELM: Yes.

Hon Greg Smith: Were you successful?

Hon TOM HELM: It depends what is meant by success. If it means that both sides achieved what they wanted; we were not successful. I have not heard of any claims that resulted in both sides achieving what they wanted, but I have seen negotiations reach successful conclusions. The Rubibi claim in Broome is an example, although some confusion surrounds it now, largely due to the actions of the State Government.

Hon Greg Smith: It has fallen to bits.

Hon TOM HELM: It is not as good as it was, but it was close to a resolution. It blew apart because there was no goodwill between the State Government and members of the clans in the area. It was inevitable that it would happen. In my experience, these matters should be progressed by staying away from a legal framework. It is not us who must work in the Pilbara, the Murchison, the goldfields or the Kimberley; it is the resource developer and the local Aboriginal people. They are the only ones who can resolve the issue. However, sometimes changes can be made only through legislation. As such, federal native title legislation may be the way to go. The Native Title Tribunal also has a role to play, when it is asked or when we need it. We must get away from the desire to go back to what we used to be. We must get away from any thought that Mabo did not take place or that terra nullis is a fact, because it is not. In doing that, we must talk to people and accept their rights and ability to speak for and on behalf of themselves. Members will be aware that the definition of representative groups has been altered over the past year, causing a great deal of turmoil.

In a former life, I tried to encourage people like Peter Yu from the Kimberley Land Council and Brian Wyatt from the Goldfields Land Council to join the Labor Party so that there would be an authoritative Aboriginal voice on this side of the Chamber.

Hon Mark Nevill: They've both been members.

Hon TOM HELM: Okay.

Hon Mark Nevill: Brian Wyatt was the endorsed candidate for the lower north in 1983.

Hon TOM HELM: Not when he was a member of the Goldfields Land Council. He worked for the Aboriginal Affairs Department with Cedric Wyatt. He did not work for the Goldfields Land Council then.

Those people may have wanted to join the Labor Party, but were reluctant to because they want to stay apolitical.

Hon Mark Nevill: Peter Yu's a direct member.

Hon TOM HELM: Is he? The member knows what I mean. He would not agree to join the Labor Party when I asked him. Maybe he changed his mind. People like Peter Yu and Brian Wyatt are slowly losing their patience and their ability to see things in an even-handed way; yet progress will be made only if they can demonstrate even-handedness. It will not be made if arguments move from the negotiating table and into the courts, where lawyers will start speaking for those people who believe they have a case to put.

The other disturbing aspect is the timing of this motion and the person who moved it. One wonders whether the Government thought it was time to play the race card. A state election is inevitable in the next three or four months, and this Government is definitely on the nose. It thought it could stir up a story about Aboriginal people preventing this State from developing as it should, or getting in the way of resource development. It is getting

harder and harder for the Government to keep playing this card, but it looks as though the timing is as we would expect; that is, if the Government can blame the blackfellas for the ills of this State in the run-up to an election, it will.

Hon Mark Nevill: I will argue my case in front of any Aboriginal group.

Hon TOM HELM: It is a pity Hon Mark Nevill will not do it very well.

The Government is attempting to suck us into a racial discussion as a result of a statement made by one of its members in this place. We do not want that to happen. It would be far better if we were to talk about justice and righting longstanding wrongs. We must talk about how we can progress these native title issues without passing legislation that will not help us one little bit. People reluctant to sit around the table will maintain that attitude, no matter who they may be. The evidence has been available long enough to show that explorers and resource developers did not have to pay any regard to the original owners of this land. However, now they must, and I believe they are coming to terms with that. The Government is doing a disservice to this State by showing that it will support those who do not wish to sit around a negotiating table.

If Aboriginal people are always to be kicked, they will not present themselves at a negotiating table again and again. All it will take is the goodwill that more and more Australian people are showing by such things as the march across Sydney Harbour Bridge and the march on 3 December. Those are physical demonstrations of how people feel about the way in which we treat indigenous people.

I am saddened by the direction the Government is taking. We must try to make it understand that it will not win the next election. We all know that. However, between now and the time of the election, its attitude will make it harder and harder to resolve matters that need to be resolved if we are all to move ahead.

Question put and a division taken with the following result -

Ayes (15)

Hon Dexter Davies	Hon Ray Halligan	Hon Mark Nevill	Hon Greg Smith
Hon B.K. Donaldson	Hon Barry House	Hon M.D. Nixon	Hon W.N. Stretch
Hon Max Evans	Hon Murray Montgomery	Hon Simon O'Brien	Hon Muriel Patterson *(Teller)*
Hon Peter Foss	Hon N.F. Moore	Hon B.M. Scott	

Noes (14)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Tom Helm	Hon Christine Sharp	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Tom Stephens	Hon E.R.J. Dermer *(Teller)*
Hon G.T. Giffard	Hon Norm Kelly		

Pairs

Hon M.J. Criddle	Hon Bob Thomas
Hon Derrick Tomlinson	Hon J.A. Scott

Question thus passed.