RESERVES (TJUNTJUNTJARA COMMUNITY) BILL 2018

Second Reading

Resumed from 17 October.

MR K.M. O'DONNELL (Kalgoorlie) [3.19 pm]: My contribution to the second reading debate of the Reserves (Tjuntjuntjara Community) Bill 2018 has been disjointed and broken. It is my first experience of this as normally I get to finish my speech straight off. I wish to finish up.

On my last visit to Tjuntjuntjara I went through the community and stopped and talked to various residents, and I had meetings with them. If you are having a meeting in the city, you go to Dome or somewhere and have coffee or sit in an air-conditioned office. In Tjuntjun and other remote communities throughout the state, there is a nice piece of red dirt to sit on. That is where you conduct business; you sit down with them. It is a sign of respect. If members go to a meeting at a remote, I recommend that they do not wear beige pants because the dirt will stain their pants, especially when they are in a vehicle or plane coming home!

Whilst I was in Tjuntjun, one of the administrators said, "You might remember Damian", and I said, "Yes, I do." He was there working on the TVs. I had not seen him since before he was sentenced and I was a bit hesitant; I did not know how he would receive me. We turned and started to walk towards him and he saw me and stopped what he was doing, came over and we shook hands, smiled and had a chat. I take my hat off to him: he forgave me for what I did to him and he accepted what the community did to him under tribal punishment. He got burnt twice—white man's punishment and Aboriginal cultural punishment—but he has moved on and now he is accepted by the community and there are no issues, no ifs and no buts. He works in the community and he looks so much better now than he did when he used to come in and out of Kalgoorlie. I think he has got his life together out there.

I want to make a comment about the school at Tjuntjun; it is outstanding. When I first started going out to remotes, there was just one building and I dare say there are others like that. At Tjuntjun there are several buildings, and they have linked them in a cultural way so that when you walk out of a building it is like going through a museum, from one building to the next. They have paintings and wood set up, the branches and everything, so people can sit around. They have made it culturally sensitive and aware. I take my hat off to them for doing that.

I do not wish to go on and on, but the way Tjuntjun is set up is, in my opinion, a model for other communities, and we have similar communities in the north west that do very well. The ones that are dysfunctional or are not travelling so well should come and have a look at what they have at Tjuntjun. They have a psychiatrist there. Most psychiatrists are well-dressed; this one was dressed in ripped jeans and a T-shirt, but he works in there with the community. People just have to adjust; when they come from the city to a remote, it is a different world.

I just hope the people of Tjuntjun continue to grow and prosper, and this bill will lead them in that direction. I commend this bill. Thank you very much.

MR S.A. MILLMAN (Mount Lawley) [3.23 pm]: I rise to make a brief contribution to the second reading debate of the Reserves (Tjuntjuntjara Community) Bill 2018. It gives me great pleasure to follow on from the member for Kalgoorlie, with his real-life lived experience, which makes for a worthwhile contribution to this debate.

One of the great things about being a member of Parliament is that we get to represent our community in this place—this building and this chamber. I have always believed that democracy is about reciprocity; we represent our communities here, but we also have an obligation to represent this place back to our communities. One of the most striking features of the Parliament of Western Australia is the Aboriginal People's Gallery and the Aboriginal People's Room. In the context of this debate, I want to highlight how impressed I am by those particular parts of the Parliament of Western Australia.

In the late 1990s, as a result of my acquaintance with Bishop Philip Huggins, an Anglican bishop in Perth, I was fortunate enough to be included in a friendship tour that he had organised for Noongar people from the south west and Perth areas to Warburton, out in the Ngaanyatjarraku lands in the middle of Western Australia. As a result of my longstanding friendship with Bishop Philip's son, my good friend Tim Huggins, I was able to be part of that friendship tour.

When I arrived in Parliament after the election last year I was walking around the building and had the wonderful glass panels on the walls above the Aboriginal People's Room explained to me. I was incredibly moved by the synchronicity that had occurred because 20 years earlier I had visited the community of Warburton and had seen the women there preparing glass panels, and it was great to arrive in Parliament house 20 years later and see that artwork reflected and represented and taking such a prominent position. I just want to share with the people of Mount Lawley how wonderful this Parliament is. I know that we as politicians come in for a lot of criticism but we endeavour, as can be seen from the member for Kalgoorlie's contribution, to do the best we can in the interests of our communities.

I want to speak briefly about the glass panels. The great thing about them is that they tell various stories of the communities in Warburton. They represent different parts of the lives and experiences that the people there have

gone through. For those of us who do not come from an Aboriginal background, they are a constant reminder of the fantastic cultural and artistic contributions that Aboriginal people make to Western Australia.

Another reason I am very pleased to contribute to debate on this bill today is that Tim Huggins celebrated his birthday yesterday; Tim and I got to experience that journey 20 years ago, so happy birthday to Tim. That trip inspired my commitment to pursue justice on behalf of Aboriginal people. During my time at university I studied native title law and Aboriginal people and the law. I was always interested in what sorts of contributions we, as legal practitioners and as a society more generally, might be able to make to redress some of the injustices that Aboriginal people have suffered.

It was a great privilege after I graduated from the University of Western Australia and started working to act as a native title lawyer on behalf of the Yindjibarndi Aboriginal Corporation. This Aboriginal corporation would be well known to a couple of members in this place. The traditional lands of the Yindjibarndi people are in the Pilbara and they stretch from Millstream around the Karijini National Park, and, together with the Ngarluma people, they stretch all the way down to the coast. One of the reasons I stand to speak in support of this legislation is that I recognise the importance of connection to country for Aboriginal people and the positive effect that this legislation will have in enhancing that connection to country for the people of Tjuntjuntjara.

I want to pay my respects to Michael Woodley, the CEO of the Yindjibarndi Aboriginal Corporation, for the work he does on behalf of his community in the face of some incredible trials and tribulations. I want to also thank the Minister for Aboriginal Affairs. He knows all too well some of the struggles faced by the Yindjibarndi Aboriginal Corporation and some of the endeavours and efforts they put in in order to achieve justice and fairness for their people in a way that enables them to maintain their traditional connection to country.

Speaking of the Minister for Aboriginal Affairs, I was very pleased to ask him a question during question time yesterday about the historic registration with the National Native Title Tribunal of the South West Native Title Settlement. A friend of mine, Jai Wilson, has dedicated many years to working on that native title settlement and he was very pleased to see it registered with the National Native Title Tribunal yesterday. That does not spell the end of the discussion that the government must have with Noongar and Aboriginal people throughout the south west. I believe it marks the start of that discussion, but now that that discussion can take place in a much more respectful context, I think that it will provide the foundation for a real and lasting resolution of native title issues, and so it casts us into a fantastic situation.

With those introductory comments, let me draw members' attention to the specifics aspects of the bill that we are debating in the chamber this afternoon, and acknowledge the contribution of members opposite who have indicated their support for this legislation. Before I entered this place, during the course of the campaign leading up to the March 2017 election, an organisation that was very active throughout Western Australia, particularly in my community of Mt Lawley, called Create Ranger Parks, put on a stall one day at Hyde Park. An artist was helping members of the community contribute to a community-oriented work of art in order to support, encourage and promote the campaign that was being run. This giant dot painting was designed by Indigenous artist Neta Knapp and proudly completed by over 200 Mt Lawley residents in support of the campaign to create ranger parks. Create Ranger Parks is a community-based initiative to create a major network of new national parks managed by Indigenous rangers for all Western Australians to enjoy. That is by way of introducing the organisation, Create Ranger Parks. As part of the McGowan Labor government, and bearing in mind the efforts of the people in my local community to promote this issue of creating ranger parks, I was particularly pleased to see such a significant contribution made by the government, in the short time within which it has been in office, in order to promote and resource Indigenous ranger programs, which is an object and endeavour entirely consistent with the motivation, philosophy and ideas behind the Create Ranger Parks initiative. That brings me to the bill. This bill will enable the Tjuntjuntjara people to have greater certainty over the tenure of the land that forms such a significant part of their traditional lands.

The ACTING SPEAKER: Members to my left, please keep the conversation down a bit, I would like to hear the member for Mount Lawley.

Mr S.A. MILLMAN: These are the traditional lands with which they have had such a longstanding connection. I refer members to the explanatory memorandum. It states —

> … the Tjuntjuntjara community has steadily grown, whilst maintaining a focus on traditional cultural cycles of desert life. People from across the western desert regions with traditional attachment to the Spinifex Lands, have returned to live at Tjuntjuntjara. Despite isolation and remoteness, the Spinifex People's resilience and determination to live in country and provide strong local governance, makes this a unique community.

A number of initiatives that the state government has implemented in order to support and encourage these people include $23.8 million in capital to boost community housing and infrastructure, simultaneously engaging Aboriginal businesses and supporting Aboriginal jobs. There is the $770 000 funding for the Pila Nguru Aboriginal Corporation,

as part of the government's Aboriginal ranger program. That $770 000 funding will allow for four female rangers to be employed under "Minyma Uninypa—the Seed Women" project. That is exactly what the Create Ranger Parks initiative and the McGowan Labor government's Indigenous ranger program is all about. As well as promoting opportunity, encouraging connection to culture and country, and encouraging innovation and entrepreneurialism, all that is done in a context in which the land tenure, the entitlement to exercise, use and enjoy the land, was under question. This is in a nature reserve. This legislation clarifies precisely how that land tenure works and it reserves this particular portion of land for the specific use of this community. It is a great initiative because it provides the certainty that this community needs to discharge its functions in order to preserve its cultural connection to country and promote its way of life. That really provides hope and opportunity for the people of Tjuntjuntjara.

Much of what I have said is on a positive basis, and I am grateful that there is a bipartisan consensus on this particular bill. Whilst we have that bipartisan consensus, now is the time for us to build on that and call to account federal government policies that unfortunately do not seek to promote those values and objectives that are so important to us in Western Australia. I asked yesterday in a different debate what the Liberal Party stood for. I was interested to read this morning in *The Guardian*, an article titled, "Remote work-for-the-dole scheme a 'national disgrace', former Fraser minister says". These comments were put forward by an illustrious, credible, worthwhile former member of the Liberal Party, former federal Deputy Leader of the Liberal Party, Fred Chaney, an eminent Western Australian. The article states —

> … launched a scathing attack on the government's controversial remote work for the dole scheme, calling it a "national disgrace" that is causing real suffering in remote Aboriginal communities.
>
> Chaney, —

As I said, an eminent Western Australian —

> who was also minister for social security, told Guardian Australia the Community Development Program … was a "scandalous failure of policy" based on "a denial of the facts".
>
> Chaney's comments came as the Senate voted on Tuesday to demand the Indigenous affairs minister, Nigel Scullion, release a long-withheld review of the CDP scheme.
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> …
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> Chaney said there was a "total carelessness shown for the hardship inflicted on remote Aboriginal people and the damage being done by this denial of the facts.
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> "In my view, this policy is a national disgrace. It is a reversion to the attitudes of the past.
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> "It's another assimilationist, bureaucratic, irrelevant approach that will inflict more hardship, hunger and dysfunction on Aboriginal people.
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> "It's not community building, it's the reverse. The more I see of it, the more I think we are reverting to the habits of the 1940s and 1950s."

As I conclude my comments, I implore all members of the chamber to take on board the comments of no lesser person than Hon Fred Chaney. Is this not when we talk in a bipartisan way about what we can do for the Aboriginal people of Western Australia? Is this not the time for everyone in this chamber to advocate for a change in federal government policy to do away with these discriminatory policies that no-one supports and that former Fraser minister Mr Chaney says are a national disgrace? On that note, unfortunately, I conclude my comments.

MS J.M. FREEMAN (Mirrabooka) [3.37 pm]: I rise to speak to the very important Reserves (Tjuntjuntjara Community) Bill 2018. Firstly, I would like to thank the advisers. Unexpectedly, I was the only person who turned up to the briefing. There were a cast of many in the room, because this is such complex and interesting legislation that combines so many departments that have worked so assiduously over many years to bring it about.

Mrs L.M. Harvey: Five or six Liberal members went.

Ms J.M. FREEMAN: Member, I am sure there was some sort of traffic jam or something that happened that stopped our members, because many people are interested in this issue. I am glad there were five members. Are there five members speaking on the bill?

Mrs L.M. Harvey: We have had a couple of members speak on it.

Ms J.M. FREEMAN: The member for Kalgoorlie made a great contribution and I am pleased that five members were interested in this bill because it is pretty remarkable legislation.

I walked past and noticed the ministerial advisers looking very nervous, but I got a very engaging, informative and interesting briefing that reminded me of my history of having worked in Aboriginal housing. When I was in my mid-20s I worked for—the member for Churchlands will be interested in this—the then Minister for Housing, Hon Jim McGinty. Along with the principal policy officer, I used to answer the numerous telephone calls about

housing that came into the office. That can be a rather challenging and at times soul-destroying position, so he suggested that I got on top of Aboriginal housing. At that time the Department of Housing had a separate area for Aboriginal housing. I had the opportunity to go to many remote communities, but I never went to Warburton, which I feel a bit sad about now. I did get to just north of Balgo, which is pretty much out there. I went to Love Springs and other areas that have remote and community housing. I concur with the member for Kalgoorlie that travelling in those parts of the world and meeting with Aboriginal communities in remote and regional areas is a privilege and a challenge for a city girl. I am pretty much a city girl; I am out there in admitting that. Regional members on the Labor side—of whom there are more—and opposition side often say that members of this house do not have an understanding of remote and regional areas, but I have spent periods of time up there although I grew up and have lived all my life in the city. I reply to that by saying that they sometimes do not get some of the intricacies of the seat of Mirrabooka and surrounding areas. Anyway, I digress.

I return to the particularly important Reserves (Tjuntjuntjara Community) Bill 2018. After that very good briefing, I understood that the purpose of this bill is to secure a head lease in perpetuity, meaning the community will have its country back. It will not have total ownership, but control over their country. I understand the land will become lot 9. Being a city girl, a lot is something that we can walk around. It may be a big lot, like that of the member for Swan Hills, and it might take a little while.

Ms J.J. Shaw: I have nine acres.

Ms J.M. FREEMAN: But in the area of Mirrabooka we get excited if it takes an hour to walk around a lot. I imagine that this particular lot would probably take some weeks to walk around. Someone might want to take that challenge on with a camel and do a desert walk, but it is a very large area.

What really interested me was that we started talking about having an easement corridor into lot 9 on deposited plan 220992 —

Ms J.J. Shaw interjected.

Ms J.M. FREEMAN: It was not for the camels, member for Swan Hills—for access, in fact! It will provide a road so that people can access this lot. The easement corridor will be 20 metres wide—10 metres either side of the centre line of the existing track—and extend 19.3 kilometres from the Tjuntjuntjara Community to the westernmost boundary of the nature reserve. As a city girl I had some, I suppose, delight in that, because I think of easements as where we put our sewerage and electricity.

From my perspective it was really worthwhile to put some of these really large concepts around this bill and the Tjuntjuntjara Community lands into some context that made some sense for me as a city dweller. I sometimes think we do not do that. We do not make it easy for people who live in city areas to get that some of these things we do around planning are consistent throughout. We have a sort of idea that it is so completely different that it is outside our understanding, and therefore we see that as different and in some ways we do not take it into account in our day-to-day thinking. I was very pleased to get a greater understanding of it, and that this bill will deliver land and community to people who live there. It is about the people who live there.

When asked whether I would like to speak on this bill, I thought I would as I was the only attendee at the briefing. The advisers would have been very upset if I had not spoken because it would seem that they had wasted their time. I thought I had better get to my feet and make some sort of hopefully sensible contribution to the debate.

Ms J.J. Shaw interjected.

Ms J.M. FREEMAN: Thank you very much, member for Swan Hills!

I did a bit of reading about the Spinifex people. Again, one of the great things about being a member of Parliament is that we often get the opportunity to expand our knowledge and horizons. As the member for Mirrabooka, with the diverse community I represent, I have ongoing challenges all the time that expand my knowledge of the Western Australian community. It was really interesting to know a bit more. Like the member for Mount Lawley, I know about the Warburton mob because of the slumped glass panels from the Ngaanyatjarra lands that are in the Aboriginal People's Room. When I have the opportunity, I take people up to see that glass. I understand—I am willing to be corrected—that the Warburton mob drew its stories into the sand, and the glass was then put on top of that. I stand to be corrected if that is not the case. I am also of the understanding that the glass provides an enduring presence of one of the more horrific things that happened to the Warburton people, being the death of Mr Ward, and that his totem is in that glass. Again, I have not had that in any way confirmed—I heard it from someone else—but it does make it an enormously significant piece of work that we can take people to see and talk about. We will now be able to talk about the Reserves (Tjuntjuntjara Community) Bill 2018, the head lease in perpetuity and the land title. That will give greater context to the story, and the people I bring into Parliament House will have some appreciation of the vastness of Western Australia and the community we represent in Parliament, the issues we have to deal with and the commitment that we have to communities such as these in giving them determination over their lands and the issues around land title.

It is an amazing piece, so I often take people up there to look at that glass and to reflect on its beauty. I understand that the top part of the glass is the women's work and the doors are the men's work.

Ms J.J. Shaw: Women always do the best work!

Ms J.M. FREEMAN: Pardon?

Ms J.J. Shaw: Women always do the top work!

Ms J.M. FREEMAN: Every time I look at it, I reflect that it was done by a people. If, indeed, Mr Ward's totem or some sort of signature sign is in that artwork, we also have to reflect on the tragedy that somebody can be put in the back of a van and two people can drive down and not check on that person—all for the lack of a justice of the peace in Warburton. What does that mean about our general humanity? Let us hope and do whatever contemplation we can, including prayer, that something like that never occurs again.

From my reading on the Spinifex families of the Tjuntjuntjara, I understand that they go back at least 600 generations. I am proud to say that I am a seventh generation Australian. I get a bit excited about it. When I look at something like that, I think that their bones and their every fibre is of this country.

A book called *Pila Nguru: The Spinifex People* by Scott Cane published by the Fremantle Arts Centre Press is based on the Indigenous land title claim. It states that the non-Indigenous incursion into the homelands began in the 1910s. Pastoral leases were granted, but no activities were undertaken, which seems to be a good thing, considering that it seems like pretty dry and difficult country. It is good that it did not get trampled by lots of cattle. I am sure that it has been trampled by lots of camels since that time. Here is another interesting sidelight on camels! Do not get me started on camels, because there are probably a few camel traders in the history of my family. In the 1930s, missionaries came and in 1952 came the atomic testing at Maralinga, which is 300 kilometres to the east of the Spinifex homelands. It caused people to leave their country and, I assume, great illness. I read that there was some compensation at stages.

Some members of the Labor caucus were lucky enough to get a 3D presentation a couple of years ago, made in opposition to uranium mining. A virtual reality presentation took us into the lands where they were talking about mining uranium and showed some footage of the Maralinga blasts. They are horrific enough when watching them in just 2D, but seeing them in 3D, you wonder about man's inhumanity to man. I very advisedly did not say human or person.

Most people were moved from the Spinifex homelands to the missions at Cundeelee and Warburton, although some custodians stayed in the desert to maintain responsibilities. They returned to country in the 1980s. I have to say that I have not read the book, but I have heard people talking about the book. They said that it was important not to disempower the Spinifex people with romantic ideas of ancient culture.

[Member's time extended.]

Ms J.M. FREEMAN: I have more!

Ms J.J. Shaw: I'm enjoying it!

Ms J.M. FREEMAN: I thank the member for Swan Hills.

We should not disempower the Spinifex people with a romantic idea of an ancient culture without ensuring that they have self-determination over the country to which they have a connection through belief and kinship systems. We romanticise what that is about, but this has been a long-term struggle for their land. Gaining what is rightfully theirs and having self-determination over their land has been a long-term issue.

One thing I often think about is the concept that Aboriginal people are nomadic. Oh, my goodness! These people used to have week-long ceremonies to welcome people to country. If people went to another country, they would welcome them. Nothing is nomadic about being able to establish where your country is. In fact, if any nomads are in the room, it is us. We came from other countries and are the nomadic people who colonised other parts. These people stayed in their country. They had cycles of movements based on the seasons, traditions and cultural practices. It is an important aspect of culture to gain a better understanding of.

In delivering the native title order on 28 November 2000, Chief Justice Black of the Federal Court referred to "the Spinifex plains of the Great Victoria Desert between the Nullarbor Plain and the foothills of the Warburton Ranges" and their "geo-cultural identification", saying that they were one with the country they are claiming. He stated that it —

> … reveals the Spinifex People as a society of great complexity and antiquity; it … reveals a people of … resourcefulness who have survived for countless generations in an environment in which few others could survive.

It is incredibly important that we reflect on this, but we also need to reflect on the refusal of the federal government to continue the national partnership agreement on remote housing. When I was involved in Aboriginal housing, it was a cornerstone of the wellbeing of remote Aboriginal communities. I was there when major housing was being built through national funding, with the state government having to come in to establish the services that went with it. Housing is a major issue for these vulnerable Western Australians, and they are faced with many issues that they need our services for. When we debated the Public Health Bill, the previous government excluded Crown land from the public health provisions of the bill. It knew of the absolute need for services and health in the community.

The rate of rheumatic fever was recently raised with me at a public health forum. Rheumatic fever is a preventable disease—I understand that it is like getting influenza or a virus around the heart—yet we have Aboriginal people in remote communities with rheumatic fever. While the federal government refuses to fund remote Aboriginal housing, we are hamstrung in addressing what should be a preventable disease and is a terrible blight on our community as a whole.

A major study from Mission Australia found that 30 per cent of young First Nation people surveyed were concerned about personal safety and discrimination. It is concerning that the Mission Australia survey, which compared the experiences of 1 265 First Nation young people with more than 20 000 young people, found that one in 10 Indigenous young people indicated that their happiness with life as a whole was zero out of 10, compared with one in 50 non-Indigenous Australians. No happiness is not a good sign. The survey also found that —

> 74 per cent of Indigenous young people rated family relationships as extremely or very important to them
>
> … but almost twice the proportion of Indigenous young people rated their family's ability to get along as poor

The survey has some positive findings. We hope that moves, such as this legislation, to ensure that people have determination of their own lands are further reflected in our services. In closing, I return to a very important report that I was involved in with the Education and Health Standing Committee titled "Learnings from the message stick: The report of the Inquiry into Aboriginal youth suicide in remote areas". We have to recognise that Aboriginal suicide rates are still critical and unacceptable. The report's executive summary states that Aboriginal children and young people represent 28 per cent of all recorded suicide deaths of children and young people despite comprising only three per cent of Australia's population. The chairman's forward refers to the World Indigenous Suicide Prevention Conference and states —

> … Indigenous health expert Sir Mason Durie spoke of the determinants of suicide as the '6 Ds'. While most of us are aware of the role that Disadvantage, Destructive environments and Disorders play, the effects of Dispossession, Desertion and becoming Dispirited are particularly relevant when considering how to respond to the unique nature of Aboriginal youth suicide.

I hope this bill will go some way to ensure that this community is no longer dispossessed of its land.

DR A.D. BUTI (Armadale) [4.02 pm]: I would like to start my contribution to the debate on the Reserves (Tjuntjuntjara Community) Bill 2018 by recounting something Djiniyini Gondarra said —

> The land is my mother. Like a human mother, the land gives us protection, enjoyment and provides our needs—economic, social and religious.
>
> We have a human relationships with the land.
>
> Mother, daughter, son.
>
> When the land is taken from us or destroyed, we feel hurt because we belong to the land and we are part of it.

She talks about the importance of the connection between Indigenous people and the land. Any bill that comes to this house that deals with land and Aboriginal people has to be taken incredibly seriously because it will have great significance for Indigenous people.

Obviously, the part that Aboriginal land has played in Australia's legal, social and political systems is very complex. At times, it has had a very, very sad history. The High Court Mabo decision put paid to the legal fiction of terra nullius—no man's land—because, as we know, Indigenous people were here when European people came to Australia; there was already an Indigenous culture with an incredibly close connection to the land. We had the famous 4–3 High Court Mabo decision. Western Australia's first High Court judge, Sir Ronald Wilson, was involved in Mabo No 1, which led to Mabo No 2, which is the case that recognised common law native title. Mabo No 1 dealt with Queensland legislation that the Indigenous plaintiffs argued was in violation of the federal discrimination act. That was a 4–3 decision and Sir Ronald Wilson was one of the dissenting judges. If that decision had been flipped by one, Mabo No 2 and the recognition of common law title of Indigenous land may

never have come to pass or may have been severely curtailed or delayed. We then had the 6–1 Mabo No 2 decision of the High Court, with Justice Dawson of Victoria in dissent. Interestingly, Justices Dawson and Wilson were both Solicitors-General of their respective states and very strong on state rights. Reading Sir Ronald Wilson's judgement in Mabo No 1, we can see that he was concerned about the encroachment of federal power into traditionally state areas. I think that was a driving force behind him defeating the plaintiffs' case in Mabo No 1. Later on, when Sir Ronald Wilson retired, he became the Human Rights Commissioner and was one of the lead commissioners in the stolen generation inquiry. He has stated that he thinks Mabo No 2 was the right decision and he championed Mabo No 2, but until the day that he died he maintained that his decision in Mabo No 1 was the correct decision according to his interpretation of the law.

After Mabo No 2 and the common law recognition of native title, there was great demand for the federal Parliament to legislate to give some certainty over pastoral lands and so forth, and that is why we have the Native Title Act. Paul Keating was the Prime Minister and there was a marathon session in the Senate under the stewardship of Hon Gareth Evans, who carried the bill through the upper house. The Liberal–National opposition opposed the legislation and the Greens and Australian Democrats—remember there was once a party called the Australian Democrats—helped pass the bill. Two WA Greens senators wanted the legislation to go further, which created some complications. They may have actually opposed the legislation in that form and it might have been the Democrats who had the deciding vote, if I remember, but that may not be completely correct. The WA government decided that it was opposed to the Native Title Act and legislated its own Native Title (State Provisions) Act, which provided a lesser form of land title for Indigenous people. That legislation was challenged in the High Court. Then Premier Richard Court, who is now ambassador to Japan and back visiting his home state of WA, led the charge on that legislation, but it was defeated 7–nil in the High Court. Even Justice Dawson, who had the minority judgement in Mabo No 2, decided that the recognition of common law rights under native title was the law of Australia and that federal legislation enforced that common law right.

The Native Title Act provided a lesser form of rights than probably the common law recognition of native title. It was a 7–nil decision and a major embarrassment to the Western Australian Liberal–National government. I think there was a headline "7–nil" on the front of *The West Australian*. I remember when Alan Carpenter, who later became Premier of WA, was the anchor of the WA-based *The 7.30 Report* and he was trying to ask Richard Court some questions after the decision had come down 7–nil and millions of dollars had been spent on legal fees, and Richard Court would not answer a question. He was following him into the bush to try to get an answer. Not long after that, I went to work at the Aboriginal Legal Service. I know that this case cost a lot of money because the Aboriginal Legal Service was representing the plaintiffs in the challenge to the WA act, and the costs in legal fees that were awarded to the Aboriginal Legal Service was a very large sum of money. It was a waste of taxpayers' money because the Western Australian government was captive at that stage to the pastoralists and the mining industries. It brought in this act that clearly would always be in violation of the federal act.

We then had the Wik decision, which was largely about native title rights because the Mabo decision did not decide the issue about pastoral leases. The whole issue about the common law recognition of native title was that there has to be a continuing connection to the land. There was an argument that a pastoral lease would disrupt that continuing connection to the land. Wik said that a pastoral lease does not necessarily remove native title rights. If we remember, at the time John Howard was the Prime Minister and Tim Fischer mentioned that we needed to get some conservatives with a capital C on the High Court. As a result of the Wik decision, John Howard enacted the 10-point plan and brought in legislation that, basically, further removed or weakened native title rights. As a result, there were major protests. On stage at the 1997 Reconciliation Convention in Melbourne—this was a convention for reconciliation—was Pat Dodson, who is often considered to be the father of reconciliation and is now a senator in the federal Parliament, John Howard and a couple of other people. John Howard got up to speak and a number of people in the audience turned their back on John Howard in protest of the 10-point plan. I personally would not have done that, turned my back on someone speaking, but that was therefore a silent protest and John Howard got very excited by that and started going for it and frothing at the mouth. I thought: this is supposed to be a convention about reconciliation, but there is not much reconciliation taking place. We had further diminution of the native title rights that were first recognised under the Mabo No 2 decision in the High Court back in 1992.

Then if we move forward, we had the Single Noongar Claim native title case in Western Australia. The Treasurer and the Minister for Aboriginal Affairs yesterday talked about the settlement that was voted on. I pay compliments also to the previous government. It commenced under the former Attorney General Christian Porter back in his time, trying to start the process of trying to reach an agreement to put into some agreement the decision of the native title Single Noongar Claim, which was a historic decision. That was reached or, basically, voted on and there will always be some people in the community who do not agree with the agreement that has been reached, but I think it is a very, very forward moving agreement. As I said, I used to work at the Aboriginal Legal Service and my major responsibility while I was there was to look after the stolen generation project.

[Member's time extended.]

Dr A.D. BUTI: I worked on the stolen generation project and, as people would know, a number of Aboriginal people were removed from their homes, their country and their lands. Their connection to the land was cut or disrupted by the state intervention. It is an injustice that their claim to native title was severely jeopardised due to state action. They could have been on their country and as children removed to the city. For instance, many from up north and down south ended up at Sister Kate's, Wandering Mission, Roelands Mission or Moore River and spent many years there where they lost connection to their land, their culture and their family for a state intervention under the Aborigines Act 1905 and its various amendments. The 1963 act was the one that removed the ability of the state to use its guardianship powers to remove Aboriginal children without needing to go to the courts to obtain a court order.

I want to refer this house to a book called *The Trouble with Tradition: Native Title and Cultural Change* by Professor Simon Young, published by Federation Press. Simon used to be a colleague of mine at the University of Western Australia. This is one of the best books ever written on native title or customary law. It is a comparative study between Australia, New Zealand, Canada and the US. I want to read part of the introduction, which is not written by Professor Simon Young but by Ambelin Kwaymullina, who is the daughter of Sally Morgan. I want to read this. She refers to creation stories in country, and writes —

> Long before the British ever dreamed of these shores, Aboriginal peoples told the stories of the Dreaming. They spoke, sung and danced the tales of how the Dreaming Ancestors made all life, and gave all life the Law. Aboriginal peoples needed no books to tell these stories. They could walk the paths the Ancestors had walked; touch the marks the Ancestors had made where they hunted, fought, rested; and see the Ancestors themselves, who had gone into the world and become part of it, The stories, like the peoples themselves, were of country, and in country. And these tales told that there is no part of this land that is random, inert or meaningless:

Then she quotes from another piece of writing that she wrote —

> Imagine a pattern. This pattern is stable, but not fixed. Think of it in as many dimensions as you like—but it has more than three. The pattern has many threads of many colours, and every thread is connected to, and therefore has a relationship with, all of the others. The individual threads are every shape of life. Some—like those recognised to be human, kangaroo, paperbark tree—are known to western science as 'alive'; others, like rock, would be called 'non-living'. But rock is there, just the same. Human is there, too, though it is neither the most nor the least important thread—it is one among many, equal with the others. The pattern made by the whole is in each thread, and all the threads together make the whole. Stand close to the pattern and you can focus on a single thread; stand a little further back and you can see how that thread connects to others; stand further back still and you can see it all—and it is only once you see it all that you can recognise the pattern of the whole in every individual thread. The whole is more than its parts, and the whole is in all its parts. This is the pattern that the Ancestors made. It is life, creation, spirit, and it exists in country.

That is the end of that subsequent writing. I go back to what she has written in this introduction to Simon Young's book. She wrote —

> Indigenous creation stories tell of a world of interdependent relationships. This is a world where context shapes meaning; where the whole is always more than the sum of its living parts; and where time, which exists in space, is as susceptible to action and change as any other part of country. So, in this land, progress is not to be found in the passage of linear years; in a point of view that seeks to understand an inter-connected world by standing apart from those connections; or in the radical alteration of a landscape to meet the desires of one shape of life at the expense of others. Rather, the advancement—or decline—of human life is measured by how well humans sustain *all* life. Creation does not exist in an isolated or static state, and it must be renewed, if it is to go on. That is why there is Law, to tell of how to fulfil the reciprocal responsibilities that a world *of* relationships gives rise to:
>
> > The continent now called Australia is made up of a multitude of Aboriginal countries, each with its own Law. Common to all these systems is the idea that law sustains and maintains well-being, and not just the well-being of people, but of all life. This world was created in balance, and it is the law which maintains that balance, which tells Indigenous peoples how to live in the world, so that there is always a world to live in.
>
> For thousands of years, Aboriginal nations spoke the tales of creation that told of a living world, and followed the Laws which sustained that life. But then another story came—and it was not a story of creation. It came on the wind, across the seas, in the ships that brought thee strangers to this continent.

> Aboriginal peoples had no word for this story that opposed country, creation, life. But the strangers called it *terra nullius.*

[Quorum formed.]

Dr A.D. BUTI: What Ambelin Kwaymullina is trying to say in this foreword to Simon Young's book is that Aboriginal people have a great connection to their land. Their spirituality, their life, is very connected to the land. The connection does not change over time but their use of that land changes over time. But in the way we have interpreted jurisprudence on native title and the way we have legislated is that we seek to freeze their culture and seek to say that they cannot use their land if it is contrary to the traditional cultural use of that land. No other land ownership has that restriction. Obviously, there are restrictions on development, we cannot develop here et cetera. But we do not place the restriction we place on the way Indigenous people are able to use their land if they want to retain their native title status. In that respect, I will read the last part of Ambelin's introduction to the book, headed "New Stories in Country". She wrote —

> The 'trouble with tradition is that, it tells the *terra nullius* story, and *terra nullius* is a tale with only one ending. It must always dispossess, for it has no other resolution and no other purpose. From Indigenous peoples, the 'tradition approach takes land, defining native title in such a way that the holistic reality of Indigenous connection to country will never be recognised, and constraining not just Aboriginal rights but Aboriginal identity by reference to a Western construction of our culture. From those of the West, the approach takes away any prospect of forming a relationship with Indigenous peoples and country other than that formed and informed by *terra nullius*, the opportunity of making a connection, equal-to-equal, that is the basis not only of a just relationship but of a humane one. And from us all, it takes the hope of forming new and sustaining connections with each other, and with the land—the chance, not just to live together in country, but to heal together in it.
>
> Dr Young has undertaken a comprehensive analysis of the 'traditional and customs' focus that dominates the recognition of native title in Australian law —but the importance of his work extends far beyond the legal sphere. In showing how the 'tradition' approach is not supported by the weight of legal principle and is out of step with overseas precedent, he opens the way for a reconsideration of how Indigenous rights to land are, and should be, recognised. And in proposing a different approach to native title, he suggests a framework for the forging of a new relationship, one where the prejudice inherent in *terra nullius* need no longer be solidified into law. This book will help to create a future in which the next generation of Australians will have the chance to tell new stories in country—stories of hope; of understanding; and of connection to each and the earth.

Dr Young then goes on and compares Australian jurisprudence with that in New Zealand, Canada and the US. There is no doubt that Australian jurisprudence is the stricter, more restrictive interpretation of what we consider to be tradition. By that jurisprudential definition and interpretation we have of tradition, it is a restrictive chain around the neck and the self-determination of Indigenous people in how they can use their lands. That brings up the whole issue of whether Indigenous people should be able to sell land they have native title to. That is a very difficult question and we will not go into that discussion in the few minutes I have left. Arguably, we could say, "Yes; why should they not be able to sell their native title land like we can sell non–native title land?" The counter to that, obviously, is that incredible pressures may be put on by mining companies, pastoralists et cetera for Indigenous people to sell that native title land. That, of course, may therefore reduce or cut that connection that is so important to that land. It is a very, very vexed question.

With regard to the whole legal interpretation of native title, a decision I did not mention is the Yorta Yorta decision, which was of native title in Victoria, where the Indigenous plaintiffs lost. In that case, the judge decided that he preferred the evidence of the diaries of a white grazier over the oral traditions and oral language that had been passed down from generation to generation. Not only has the Australian jurisprudence in native title been very restrictive regarding the interpretation of tradition, but also, to a large degree, regarding what evidence it will accept has had a bias against the way Indigenous people record their evidence, which is obviously more oral than it is written. A classic case in a non-native title area, a stolen generation case, were the Cubillo and Kruger cases, in which the plaintiff lost for a number of reasons. One of the reasons was that the court held that the Cubillo—I am not sure whether it was the mother of Cubillo or Kruger—had consented to the removal of their child.

That was deemed to be consent because a thumbprint of the mother was stamped on the form that provided consent. Even though the mother was illiterate and could not read, and even though there was subsequent evidence that she did not approve of the removal of her child, the courts determined that because her thumbprint was on the form, that provided evidence that she had consented to the removal. That shows the inherent bias of our legal system in the way in which we interpret cases involving Indigenous people.

A more recent case—it is 10 years old—is the Trevorrow case in South Australia. That is the only successful stolen generation case in Australia. In that case, Justice Gray of the Supreme Court of South Australia was more flexible

in his acceptance of evidence from the plaintiff, although I have to say there was very good documentary evidence to support the plaintiff's case that he had been removed from his parents without their consent.

I want to say to members, in the concluding few minutes of my contribution, that they would be well aware that this state government has been fighting a battle with the federal government about funding for remote Indigenous communities. This bill deals with the transfer of land to Indigenous people. I started my contribution by mentioning the connection with and importance of land to Indigenous people. Many Indigenous people want to live on country. As a result, many Indigenous people in our state live in remote communities. This state did for a time get significant federal government funding for our remote Indigenous communities. However, the federal government is showing little interest in trying to support, sustain and maintain those Indigenous communities. I am sad to say that the National Party, which talks about being the party of the regions, has been very quiet in this Parliament on this issue. It has been left to the Premier, the Minister for Aboriginal Affairs and the Minister for Housing to try to negotiate in this area. The Minister for Health has also become important in this area. That is because for Indigenous people, the connection between their country and their health is very important. The letter that the Deputy Premier and Minister for Health, Hon Roger Cook, wrote recently to the federal Minister for Health, Mr Greg Hunt, outlines the important link between Indigenous health and life expectancy and connection to land, and, therefore, the sustainability of remote Indigenous communities. We can only wish that the federal government will see that its responsibility does not stop at Wentworth and it also has a responsibility to the Indigenous people of Western Australia.

Debate adjourned, on motion by **Mr D.R. Michael**.