LAND ADMINISTRATION (SOUTH WEST NATIVE TITLE SETTLEMENT) BILL 2015

Second Reading

Resumed from 25 November 2015.

MR B.S. WYATT (Victoria Park) [3.44 pm]: I want to clarify the legislation we are now dealing with. Perhaps the Clerk could again advise. It is the Land Administration (South West Native Title Settlement) Bill 2015. I want to clarify with the house that I know it falls outside the South West Aboriginal Land and Sea Council settlement.

[Quorum formed.]

MR P.C. TINLEY (Willagee) [3.45 pm]: It is a great pleasure to make a contribution as the lead speaker for the opposition on the Land Administration (South West Native Title Settlement) Bill 2015 or the land admin bill, as it has come to be known. This is absolutely essential legislation to engage the Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2015 because the Noongar recognition bill cannot be enacted until the land administration bill has been enacted. In fact, the whole architecture of the operative parts of this grand endeavour is that nothing is done until it is all done. There are many, many parts to this and, as I have discovered, each and every one can present all sorts of challenges and have already done so. I thank the government for the briefing received at relatively short notice last week and for indulging me and allowing me to make my second reading contribution to this bill slightly out of schedule whilst the recognition bill is still on foot in this place.

When we talk about this land administration bill, it is important that we see it as the cutting edge, if you like, of a long, long history of Australia’s approach to native title and recognition and some tangible acts, I suppose, of what can only be called ceding back some of the European-settled sovereignty, or the sovereignty of Australia, to the original custodians of the land—the first Australians as I like to call them—who occupied these lands, particularly in the south west of Western Australia, for as long as 50 000 years.

The real start to all this legislative process that gets us to the very forward edge of the entire approach to the recognition of Indigenous ownership is the Native Title Act. It is the real start to this. The Native Title Act was introduced, of course, under the Keating government over 20 years ago now. We would all agree that it was landmark legislation. Also, it caused a great deal of nervousness, uncertainty and controversy in the community, and that required strong leadership across the nation from all levels to ensure it did not break down the understood and accepted practices of property law in every state of Australia. I suppose this will probably be the harshest test of the Native Title Act, because we might ask how effective the act has been since then. For the last 200 years, many Indigenous Australians and their ancestors have been marked by nothing more than dispossession and cultural dislocation. It has been a long march for Indigenous people and Indigenous rights. Twenty-two years ago a landmark law sought to begin redressing some of these past misdeeds and allowing us the opportunity to envisage a future of a greater Australia, and a greater Western Australia in our case as a result of this bill, as a single nation with a singular purpose in the multiple ethnic stories.

The Native Title Act, which came into effect in 1994, introduced an entirely new concept of land ownership under Australian law. Introduced in response to the Mabo ruling of the High Court in 1992, the act established native title as a form of ownership to which some Indigenous Australians were entitled—some. Glen Kelly, who is well known to many members in the chamber, is a Noongar man and past chief executive officer of the South West Aboriginal Land and Sea Council. He has said that the Native Title Act has both helped and hindered his work in fighting for Noongar traditional lands. In a statement in 2014, he said—

“This might be fairly strange from me being the CEO of a Native Title representative body but we’re very critical of the content of the Native Title Act, Native Title law and Native Title rights themselves.”

The Western Australian government has offered the Noongar people a landmark deal in this case, worth an estimated $1.3 billion, to settle a native title claim, which includes freehold access and the creation of unallocated crown land as reserves in Perth and the south west estate. The key point, which is the operative bit, is that it will be full and final settlement to these people—the first Australians of the Noongar nation—for the extinguishment of native title. I want to be very clear that when we characterise this agreement, it is fundamentally different in scale, structure and construction from any other native title agreement that has been achieved. The extinguishment forever of the native title rights of the first Australians should never, ever be taken lightly. The settlement has been well recorded in terms of the transfer of land and money, but it is not just land and money. The combination and application of that land and money is actually a proper future for Noongar people in Western Australia, and will allow them to have full participation in the society that we now have, called Australia. Mr Kelly went on to say—

… the claim wouldn’t have been possible without the Native Title Act.
But he says legislation has still been divisive within Indigenous communities because it’s often misunderstood.

“It’s a white fella legal construct and what it is actually designed to do, in my view, is not to enliven traditional law and custom but to control traditional law and custom.”

They were harsh words in relation to the Native Title Act, but under the Native Title Act claims can only be made over certain parts of Australia, such as unallocated crown land and vacant crown land. The key distinction here is obviously the transfer of freehold land and the maintenance of the single best part of the Native Title Act, which is customary access to a huge body of land across Western Australia. The toughest requirement is that claimants have to be able to prove a continuity of traditional laws and customs since European settlement on the land being claimed. That often involves lengthy historical research as well as gaining evidence from living parties. Even when claims are successful, native title does not necessarily give the Indigenous parties exclusive rights to the land. In many cases they have the right to live in the area or use it for some ceremonial and traditional practices, including hunting. So far across the nation there have been 213 successful native title determinations, with 54 struck down. Some have come at the end of long and painful court cases. Increasingly, the National Native Title Tribunal has promoted what are known as consent determinations, which involve the claimants and any other affected parties all agreeing to a negotiated settlement. This is usually a much faster and less expensive process, but at present there are more than 420 claims outstanding. In many cases, the elders who launch the claims have not lived to see them completed, and many of the benefits of native title have not flowed through to the communities that need them the most. However, there have been some key milestones in the Native Title Act since it was introduced, from the Wik decision in 1996 to the claim of the Bandjalang people on the New South Wales north coast, which took 17 years to resolve. Clearly, there are limitations to the Native Title Act. Of course, more famously for those who watch these affairs with any interest was the failed 1998 claim of the Yorta Yorta people of central Victoria and southern New South Wales. The Federal Court ruled that the Yorta Yorta’s traditions and customs had been washed away by what the judgement termed “the tide of history”. An entire language group in that case, an entire Indigenous history, was extinguished like so many others have been around the country.

Professor Jon Altman from the Australian National University is an expert in the native title and land rights area. He says that claims have been complicated by opposition from the federal and state governments, probably fuelled by uncertainty, a desire to control, and distrust, I suppose, between various subnational governments and the Indigenous people who are the traditional owners of the land. Professor Altman was quoted in a 2014 article as saying that the resources sector has been an opponent of the land rights movement. I do not think this has necessarily been the case in recent years. In fact, some of the biggest advocates of Indigenous inclusion, both economically and through social opportunity and access to land, have been the Western Australian resources sector and modern mining companies. The article quoted Professor Altman as saying —

“When you look back to the 1960s, mining occurred on Aboriginal reserves, on Aboriginal land without any consultation or negotiation with Aboriginal people.”

Recognition of Native Title does not, by itself, give any exclusive rights to land—for example, through ownership of mineral resources.

But in practice, traditional owners commonly have the right to negotiate with resources companies over exploration or can enter into a land use agreement to settle on financial payments for the right to prospect—though this varies from state to state.

Professor Altman went on to say —

...the Native Title Act has helped realign relations between the resources sector and Indigenous groups.

“So what we’ve seen, through what I refer to as a land title revolution that’s come on the back of land rights in the 1970s and 80s and then Native Title in the 90s and into the 21st Century, has fundamentally reset the relationship. But I think again we need to emphasise that relationship is far from equal. There’s still an asymmetry there that needs to be rectified.”

I keep coming back to the point that this bill comes at the end of a long battle for recognition and a legal framework to allow Indigenous people to get full access to the social and economic benefits of the land. The resources sector itself has admitted that it has taken some time to adjust. In that 2014 article, the Minerals Council of Australia stated —

...the Native Title Act and the Native Title system is one of the most complex legislative environments in which we work. It’s clearly taken a long time for us to get the system to a point where industry understands what the expectations are from a regulatory sense, but also in terms of the partnerships in the community in which it operates.”
My preamble to reading those quotes from Professor Altman was that, in my experience or from my investigations, the responsible resources companies operating in Western Australia take very seriously their social obligations to the people on whose land they are operating.

The Native Title Act has been amended several times, including in 1998 when the Howard government made a significant amendment in response to the High Court’s Wik decision, which found that native title could co-exist on certain pastoral leases. Again, that was a period of great uncertainty for leaseholders, Indigenous people and the Australian community generally. The report of the Australian Law Reform Commission inquiry into native title that was handed down last year was very instructive. One of its key concerns was the long time that it took to solve a claim. It also looked at the difficulty of claimants having to prove continuity of traditional laws and customs. Professor Lee Godden, who headed the commission’s native title inquiry, made the following statement —

“There have been calls for amendments to the Native Title Act for some time and indeed we’ve seen a process of significant amendments to the Act over time, so it’s timely to look at how it’s working 20 years on.”

Glen Kelly, former CEO of the South West Aboriginal Land and Sea Council, said of the commission’s task that he hoped it could find a way to make future native title determinations faster and more beneficial for Indigenous Australians. He said —

“The only people who have uncertainty in Native Title are the Native Title claimants. We also know now that the content of Native Title is very poor. It’s the right to do things on land which someone else now owns and from our point of view, from this rep body’s point of view we don’t think that’s acceptable.”

I just wanted to give that potted history right back to the Native Title Act 1993, because it is really important for us to understand that, despite us in this place sometimes thinking that there is a glacial movement, particularly with legislative treatments of problems in our society, we are adding to a grand heritage of recognition going back to the Mabo decision, which was 20-plus years ago now, and those original High Court directions to the federal government that it responded to. In many ways there is a very good news story here about how this is just a part of the continuity of a long history—or a short history relative to the Indigenous owners.

We come now to the south west native title settlement. It is important to get on the record the origins of this settlement, which have culminated in this legislation. Following the Mabo decision in 1992, the commonwealth Native Title Act 1993 was passed, which required Aboriginal people to provide evidence and proof of their connection to country and for them to be represented by Native Title Representative Bodies. It prompted and promoted Indigenous people to congregate around their language groups and nations. The Aboriginal Legal Service began administering the claims of the Noongar people of south west Australia before being replaced by the Noongar Land Council in 1995. Despite this representative body, 78 representative claims were made on behalf of respective Noongar people over land in south west Australia. It was recognised among those involved that at that time the Native Title Representative Bodies could not handle all claims and a situation would develop in which some claims would be pursued and others abandoned. Most claims were withdrawn by 1998 and replaced by six communal claims for the Ballardong, Gnaala Karla Boojah, South West Boojarah, Wagyl Kaip and Southern Noongar, Whadjuk and Yued regions. In 2002, the South West Aboriginal Land and Sea Council replaced the Noongar Land Council in the current form, as we know it today.

I suppose it is worth making the point here that had that not happened, had there not been the will from the Indigenous owners of the land and the government and certainly from the strong leadership with the Noongar people to actually bring that to a single council, government would have found it hard to negotiate across all of those groups. It needed to have a single council to talk to, noting that it was not a 100 per cent inclusive organisation; it was the majority of the Noongar people collected and represented. It is fundamentally important and the SWALSC itself, in Noongar custom and Noongar history, is quite alien to their customs, particularly when we talk about the family unit, language groups and the mobs. Again, it is just another imposition I suppose, forced on Noongar people to come to the table as a white fella. That is just the structured systemic basis of the system.

The Western Australian government’s proposal for mediation was in 2003. In February 2003, the WA government presented a mediation plan for the purposes of settling that whole claim. It would be fair to say it was based upon avoiding protracted Federal Court cases. At the time, former member for Belmont and the then Deputy Premier, Eric Ripper, acknowledged the difficulty experienced by Indigenous people in meeting, as he said, the “onerous requirements of federal native title laws” as I have talked about and stated —

“For this reason, the Government is willing to explore avenues outside the native title process to recognise the aspirations of indigenous people.”
However, the then Deputy Premier expressed a significant desire for structured negotiation as opposed to entering what he called “endless talks with no results”, stating that such negotiation would be “an injustice in itself” and stated —

“It diverts resources from more prospective negotiations, and denies the rights of those parties, including indigenous parties, who contest the merits of the claim.”

Back then there was ambition and having talked to Eric recently, I got the sense that there was a genuine willingness to try to come to some conclusion for all the Noongar people, not that that was envisaged. I have not actually talked to Eric about these particular bills or the settlement in detail, but when they started that in 2003, I was not quite sure that we would end up with such a comprehensive and detailed, and as I will get to a little later, complex set of arrangements.

Native title and litigation have gone almost hand in hand and certainly it has occupied the Full Bench of the Federal Court and other courts. There had been informal support for a single Noongar claim since 1997, as I can find in my research. Such a claim began to gain support among Noongar people during community meetings in 2002 and culminated in the lodgement of the single Noongar claim with the Federal Court in 2003 through the existing six claims. In September 2006, the Federal Court in Bennell v State of Western Australia, quite a famous case, ruled in favour of Noongar native title over the Perth metropolitan area. Members will remember they were observing at the time it caused mass panic within the city—I would not say mass panic, mild panic—amongst many people because of the uncertainty about land ownership. All sorts of wild things were said about the extinguishment of freehold and/or leasehold title, and a whole range of wild accusations. One of the toughest decisions that had to be made by then Minister for Indigenous Affairs; Deputy Premier, Eric Ripper, was whether to appeal that decision, and he did. His reasoning for it was to ensure consistency with the High Court decisions and to clarify the applicable law. The rights and wrongs of that, I do not know and I would not want to speculate on. Others were here at the time; they could probably scrutinise that sort of decision in this place, far more than I had time to do for the preparation for this. But I will say this: from the readings I have done I sense that it created a sense of urgency and intensity around this whole single Noongar claim as to maybe promote us to the point where we are now—a little bit faster, a little bit more earnestly than it might ordinarily have happened. Of course, we all know that matter was referred back to the Full Bench of the Federal Court. At that same time, the SWALSC notes that the original decision importantly recognised the existence of a single Noongar community in South Western Australia and included the Perth metropolitan area so they were on the map in very much a legal sense.

The Court of Appeal, of course, agreed despite its decision to refer the matter back to the single judge for renewed consideration. Nevertheless, before the decision was handed down, the Western Australian government single-handedly negotiated with claimant groups and remained committed, as it said in its statement at the time, to recognising the important relationship that exists between Noongar people and their traditional lands. From this negotiation the WA government, around March 2008—the anniversary is coming up—signed a memorandum of understanding with the South West Aboriginal Land and Sea Council to progress native title negotiations on a single Noongar claim. The MOU recognised that negotiation of native title agreements is complex involving the interest of many parties, and it affirmed the government’s commitment to resolving claims through agreement wherever possible, which is an important distinction, and indicate the underlying good faith between the parties. At this time it was suggested that both the WA government and SWALSC could not afford the time spent on protracted court battles at the expiration of each party.

Since the current Liberal–National government has been in office, there was a time when this matter sort of bumped along. It is worth recognising former Attorney General Christian Porter who, from my estimation—I will stand corrected by the contribution of other members—took some personal effort to push the system along to assist it to get to the point where we are now. It took nearly six years of negotiation before the WA government, in June last year, ended up with six Indigenous land use agreements for the Noongar people, who represent the six areas that we all know and which I have already mentioned. These agreements provided a single comprehensive package of benefits in return for the surrender of any native title rights and interests and validations of the act that have been done invalidly on those lands. Again, it makes the clear distinction that this is full and final compensation forever for the extinguishment of native title on all lands in the Noongar nation. This has not been without opposition. In fact, several issues are on foot as we speak about this. A challenge was launched last year in the High Court of Australia by native title claimant Margaret Culbong—I think several other parties have joined the High Court appeal. She was of the view that the consultation process was flawed and those opposed to the deal were not given the opportunity to object within the whole process. She said it was manipulated by the staff and the people who belonged to the South West Aboriginal Land and Sea Council because they had already signed off on the deal with the government and they just took it out to the people for it to be sanctioned or authorised and she said that that was not on. On 17 February this year, the High Court referred the matter back to the Full Bench of the Federal Court of Australia for its direction on each matter presented. I introduced that matter because in these sorts of situations—I am sure it would happen in customary
practices as well—we are just not going to get everyone to agree. When you put a bunch of humans together, regardless of the circumstances, and ask them to come to a singular decision, there will be those who will not agree under any circumstance for various reasons. Of course, the good faith on both sides of this negotiation is to ensure we have the least amount of disaffected parties as possible. That would be a very good outcome. It will not be perfect because humans are involved.

It is probably worthwhile to put this legislation into some sort of context with other jurisdictions or comparable Indigenous settlements; Indigenous land use agreements probably being the operative thing here. I will speak a little more about ILUAs a little later. These types of Indigenous land use agreements have been around for a while. In fact, there are about 1,093 such agreements nationally or registered with the National Native Title Tribunal. They are obviously very popular because they provide an agreement for Indigenous people of a particular area to come to terms by consent rather than by any sort of competitive process. I have some very good examples of ILUAs. In 2007, New South Wales created one that involved 112,000 hectares of national parks and state forests, which concerned employment opportunities, freehold land and co-management of national parks. In 2010, the Northern Territory enabled the Katherine West Health Board Aboriginal Corporation to provide additional housing for health workers in various places around the territory. The Northern Territory manager for the National Native Title Tribunal stated at the time that the large number of ILUAs registered in the Northern Territory reflects that these arrangements are continuing to benefit Indigenous people, government and other land users around the territory. In 2013, the five-hundredth agreement was registered in Queensland. Internationally, Canada has been onto this process since 1973 but with a slightly different arrangement because of the nature of the occupation and activity and the sheer numbers of Canadian Aborigines, as they are called. These settlements have provided over 26 signed agreements in Canada, 18 of which have included provisions for self-government, which I thought was courageous, interesting and worth further research.

Dr A.D. Buti: In Canada, of course, they have a treaty arrangement and Aboriginals were always recognised as the first people, so it was a different scenario. In a way this bill is similar. Obviously it is not a treaty, but it is a recognition that Aboriginal people were the first inhabitants of Western Australia and that is why it is also very significant.

Mr P.C. Tinley: I thank the member for Armadale for that interjection. What makes it significant is the fact that it is in word and deed. It is not just lip service or a welcome to the country and Indigenous flags flying out the front of Parliament House; it is a substantive contribution. In Canada, Aboriginals have ownership of over 600,000 square kilometres of land, almost the size of one of its entire provinces. The settlements have provided capital transfers of over $3.2 billion and they have protected traditional ways of life and so on.

The recognition bill was fundamentally important. We have heard many members on their feet making contributions about it and how they relate to it, but its fundamental ambition, as has been said, is to recognise the Noongar people as the traditional owners of the land as well as their living, cultural, spiritual, familial and social relationships. It is very much the intangible that we are trying to codify here, and that makes it very difficult. By inference it acknowledges the fact that it even exists. It acknowledges a 50,000-year history. For those members who are interested in this and committed to a future Western Australia that is far more courageous than maybe it has been before about its position in the world and the region, having access to that 50,000 years of history, even as a white fella, is, I think, really helpful for me and for any of us. It is available to provide a connection to the first peoples and the land that we share with them and will only make us a lot stronger.

It is a little hard to work out the number of Noongar people. The 2001 census identified about 21,000 and various estimates of up to 28,000 or more have been identified as south west Indigenous or Noongar by the virtue of that identification.

We come to this administrative bill through my little potted history of our experience with it.

I find that we are trying to shoehorn all these ambitions into a single piece of legislation with a few moving parts, not least of which are six Indigenous land use agreements around the Noongar nation that will ensure that we are getting a collective view of it. The six ILUAs will form six Noongar regional corporations that will allow them access to freehold. As with any piece of legislation, it is fundamentally important that we as representatives of our communities understand the detail so that, hopefully, we can foresee any unintended consequences. I have just received an update on the ILUA time line. As I said in opening my remarks, everything has to be in place before anything is in place, and every part is as important as the whole. The ILUA registration process has taken some time. About 25 objectors have lodged 107 valid objections with the Native Title Tribunal, and it will take several months to work through those to understand how they will play through. As I mentioned, High Court applications are involved. The government cannot move forward in relation to the completion of the contract or arrangements envisioned in the Land Administration (South West Native Title Settlement) Bill 2015 until all six ILUAs and regional corporations are in place. That cannot happen until all objections have been worked through.

The estimate from the department is that it is unlikely to be resolved before deep into this year. I think patience
will be required, but, hopefully, it can be completed by the end of this year. It is my assessment that that will take a lot of goodwill and a fair bit of effort.

I have a few concerns about this bill and I will move through a bit of the detail of it. I flag with the Premier my desire to examine, during consideration in detail, both annexures J and O to the six ILUAs that will form the basis for the operation of those regional corporations. I flag that with the Premier, and I presume there will be no problem with that because the bill refers to those annexures. I have been incentivised by the manager of opposition business. I flag some issues on the land base strategy, which is annexure J.

**Dr A.D. Buti:** You can probably deal with that in consideration!

**Mr W.J. Johnston:** Take your time to put your opinion on the record.

**Mr P.C. Tinley:** I am; my opinion is very, very important!

For members not familiar with the detail, the transfer of 20,000 hectares of freehold is no small undertaking. The Department of Lands has five years to identify and transfer, with some allowable variations, and it has to be done in consultation with a range of organisations, not the least of which are other government agencies. I am holding up the Noongar land base strategy managed reserves implementation process and unmanaged reserves flow diagram —

**Mrs M.H. Roberts:** Why don’t you lay it on the table for the remainder of the day’s sitting?

**Mr P.C. Tinley:** When I have finished reading it, I will!

The diagram refers to unallocated crown land. The diagram has identification, selection, assessment, finalisation and allocation bands with all sorts of variations that pertain to land that has been identified and how it might flow. It concerns me that, as with every arrangement, goodwill and earnest effort will be required from everybody. One peak body will run the priority land meetings for this whole process. I am happy to be corrected, but from the briefing I ascertained that priority land meetings are very important. Looking at the flow diagram, all arrows and lines end there. I understand the meetings are made up of the Department of Lands, a professional trustee company and one other that escapes me at the moment. So if a decision is ever to be made about the suitability of the land, its application or any other part of the process it will still be made by, potentially, three white guys. I might sound disingenuous or a bit critical, but paternalism creeps right through this process. I do not think anything could be said that would remove that potential for paternalism. All that will be relied on is the goodwill of the government and that the absolute essence of the legislative ambition is stuck to; that is, to give due regard to Noongar people. There will be lots of hypotheticals, particularly in relation to the freehold piece because it will give the greatest economic flexibility to benefit from the whole arrangement. If, for example, there was any unallocated crown land or other freehold land identified that was held by the government on Rottnest Island for example, there may be long-held traditional reasons to want some of that land so that might be under licence, but it is also economically probably quite fertile so there would be, I imagine, a great ambition for that to be included.

I also note that the assessments of other agencies can be equally, I suppose, troublesome if applied without the full intent of bill. The first of them in the flow diagram is a Department of Mines and Petroleum assessment of any land. The annexure states that after DMP assessment and consideration of the comments provided to the state agencies and local government, a recommendation is made. I am particularly interested in the circumstances around which DMP or any other government department can object to or prevent land being allocated, either by licence or in a freehold nature, into the Noongar land estate.

The other aspect of it is that some land is more economically valuable, obviously, than other areas, and there is an equity issue. There will be six regional corporations or Indigenous land groups, and the flow over five years of land into the control of those organisations concerns me a bit. If one organisation is more active and more able to present land for consideration or inclusion quicker, it could have a beneficial effect.

**Mr C.J. Barnett:** I think it goes into the overriding trust.

**Mr P.C. Tinley:** That is correct, yes; the Noongar Boodja Trust. It does, but it is still land that has a geographic allocation. If we go into consideration in detail I would be interested in hearing the Premier’s thoughts on the intention there was to be a geographic allocation of land that might seem biased towards one particular group or the other.

**Ms J. Farrer** interjected.

**Mr P.C. Tinley:** The member for Kimberley made an interjection about language groups, which would also require customary access under licence to the unmanaged reserves, for example. It is particularly valuable to them in the customary sense and if the allocation had been exceeded at the expense of one over the other, that would be inherently unfair.
I will be particularly interested in annexure O, which is the land licensing arrangements, which talks about the licensor being the minister and the dispute processes. I am a little bit mystified. All this is doing is amending the Land Administration Act to allow this to take effect. There are appeals to the Governor still extant, but in the contractual negotiation process—I will not go into any detail on that here—how are disputes resolved in relation particularly to the allocation of land or between particular groups? There are a range of things to do there. The other aspect here is the changed nature of the licence area. I refer to paragraph 2.3 of annexure O, which states that the minister has—

the right to take Land under Parts 9 and 10 of the LAA—

The Land Administration Act—

or any other Law;

That is not in dispute, because this is subject to all the laws of Western Australia. It is not outside any of those laws, except where the act is superior to any objection. My question in relation to this is: with regard to any land or licence that is taken away, is there an obligation to replace it with like-for-like, and what is the process for that?

Paragraph 4.1 sets out express limitations. It talks about access to the land and the fact that people cannot camp in any one place under licence for more than 14 continuous days, and then go away and come back. Paragraph 4.1 (e) reads, in part—

return a Camping Unit to Land in the vicinity of Land in the Licence Area on which it was previously placed …

A definition of “vicinity” will be something we can talk about here because of multiple access.

This is a land-based strategy, and the fundamental thing I also want to tease out is: where is the water-based strategy? How are coastal waters going to be treated? I know that there are traditional fishing rights; are they going to be extended under this? They are under native title. Are they going to be extended out into the waters; and, if so, how far? With regard to access to inland waterways, are they able to be subject to special licence? I imagine they would be, obviously through the same process. Noongar people have a large dispersion around the coastal areas and the intersection between the coast and the land, all the traditional activities and, let us face it, the potential economic benefit of freehold land that could be made available to them, are going to be fundamentally important. I will be very keen to see any of the issues in relation to the intersection between the coastal waters.

Another issue of interest to me is that when it goes into the Noongar Boodja Trust, I note that there is an independent professional trustee who will be required to oversee the operations of the trust in accordance with the relevant regulations and legislation. There are only a few in Australia at that level. They are tendering now; I think the tender process is almost complete, but that is no small decision. Significant fees will flow to the professional tender company. There are limits to the upper levels of its fees by percentage of the total value of the assets held, but obviously as those assets grow, it is going to be a particularly lucrative thing because it covers 12 years. I am not quite sure what will happen at the expiration of the 12-year term. I got the sense in the briefing that there are various options at this point—either their own professional trustee, or going through a different process in relation to control and ownership of the trust.

There is a significant amount of detail in the Land Administration (South West Native Title Settlement) Bill 2015, as I said at the start of my contribution. It is at the cutting edge of recognition of Indigenous people, the Noongar nation, in the south west of Western Australia. If this is to be successful it will be very ambitious and particularly difficult to apply it to other regions like the Kimberley and Pilbara, but it would be a fantastic outcome if we found that we could come to a full and final settlement and, by virtue of that, under any other name, a treaty, in effect, with all Indigenous people in Western Australia.

Debate adjourned, on motion by Mr C.J. Barnett (Premier).

House adjourned at 4.35 pm