

Chairman; Mr John Quigley; Mr Christian Porter; Mr Eric Ripper; Mr Paul Papalia; Mr Bill Johnston; Mr Frank Alban

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**Division 27: Attorney General (Office of Native Title) —**

Mr M.W. Sutherland, Chairman.

Mr C.C. Porter, Attorney General.

Mr P.F. Conran, Director General, Department of the Premier and Cabinet.

Ms A. McAllister, Policy Officer, Department of the Premier and Cabinet.

Mr D. Creedon, Chief of Staff, Office of the Attorney General.

**The CHAIRMAN:** This estimates committee will be reported by Hansard staff. The daily proof *Hansard* will be published at 9.00 am tomorrow.

The estimates committee's consideration of the estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. This is the prime focus of the committee. While there is scope for members to examine many matters, questions need to be clearly related to a page number, item, program, or amount within the volumes. For example, members are free to pursue performance indicators that are included in the *Budget Statements* while there remains a clear link between the questions and the estimates.

It is the intention of the Chair to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point.

The minister may agree to provide supplementary information to the committee rather than asking that the question be put on notice for the next sitting week. I ask the minister to clearly indicate what supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the minister's cooperation in ensuring that it is delivered to the committee clerk by Friday, 10 June 2011, so that members may read it before the report and third reading stages. If the supplementary information cannot be provided within that time, written advice is required of the day by which the information will be made available. Details in relation to supplementary information have been provided to both members and advisers, and accordingly I ask the minister to cooperate with those requirements. I caution members that if a minister asks that a matter be put on notice, it is up to the member to lodge the question on notice with the Clerk's office. Only supplementary information that the minister agrees to provide will be sought by Friday, 10 June 2011.

It will greatly assist Hansard if, when referring to the program statements volumes or the consolidated account estimates, members give the page number, items, program and amount in preface to their question.

I now ask the minister to introduce his advisers to the committee.

[Witnesses introduced.]

**The CHAIRMAN:** The first question is from the member for Mindarie.

**Mr J.R. QUIGLEY:** I would like to take the Attorney General back to this day, 12 months ago, and *Hansard* E108 to E125, Assembly Estimates Committee B, 1 June 2010. I refer to the first dot point on page 333 of budget paper No 2, which states, "The Department continues to develop policies to implement legislation ...". The Attorney was asked about the prostitution legislation on this very same point last year. He said the following three things: firstly, on the third page of that *Hansard* extract, he said that the government had met its 100-day election promise simply by repealing Labor's bill, which had only failed to be proclaimed. Secondly, further down the page, he promised to introduce a green bill by the end of 2010. Is it not true that the minister has sold the Western Australian public a three-card trick? He has failed to address prostitution in the 100 days, as promised in his election promise, other than failing to proclaim Labor's bill. The Attorney General has failed in his promise to this chamber that he would introduce a green bill on prostitution by the end of 2010. The Attorney General has also failed to make any provision in the budget papers for the funding of the Director of Liquor Licensing, who is going to have to license all of the women who work in this industry, and failed to provide any funding for the police, who the Attorney General says will be the principal enforcement agency. Three years into this term, has not the Attorney General totally failed the people on prostitution law reform?

**Mr C.C. PORTER:** I thank the member for his question and that very low-key start to an eight-hour day. The election promise was that the Labor legislation, which had passed through the house but had yet to be proclaimed, would be repealed. We have met that promise by ensuring that that legislation is not being proclaimed and will never become law of this state.

**Mr J.R. QUIGLEY:** But not repealed.

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**Mr C.C. PORTER:** The same effect is occasioned by the actions of this government, which is to ensure that it is not proclaimed. I can assure the member for Mindarie that when the legislation, which will be the subject of a green bill, comes into the other place there will be a repeal. In the interim there is no proclamation of that legislation, and it will not become law. The view of the government is that that election promise has been well and truly kept. The member is right to say that my view was that we would have had a green bill by the end of last year. That of course was not an election promise but was my view as to the timing of the matter. That has not occurred. I can inform the member that very shortly he will be getting his green bill, and I will be very interested at the member's response with respect to that green bill.

The third part of the member's question was that there is no provision in the budget with respect to possible cost impacts on the Department of Racing, Gaming and Liquor. The member would obviously be aware that the type of system that we are advocating, and it will be the subject of the green bill, is quite similar to the system that exists in Queensland. It is a system that requires a separate department as an adjunct of the state's racing and gaming department to administer licences for brothels and for lawful and licensed prostitution. That agency of government is not quite but near to self-funding because of the licensing fees that come in. Certainly there is some small cost impact in the first year or two in that case in Queensland in the nature of government grants to that agency. But in effect over the longer in mid-term, that system becomes self-funding. There will be a cost impact and that will be dealt with when the legislation has come out in a green bill, has been the subject of public discussion and then is returned to Parliament.

**Mr J.R. QUIGLEY:** Is it not a fact that as a result of the government's inaction in this area, the Attorney General has left prostitution totally unregulated and without any effective laws in this community for the last three years?

**Mr C.C. PORTER:** I would hazard that that was for the last 14 years, including the last eight years under the previous government.

**Mr J.R. QUIGLEY:** We had a bill that had passed through the house.

**Mr C.C. PORTER:** Let me make some comment about the existing situation and the situation that would have occurred had we allowed the proclamation of the bill that the member passed through this place. The first is the present situation. There has been no policy of containment since 1990 when that was formally repealed by the then police commissioner. At the moment the case is that section 190 of the Criminal Code makes it unlawful for any person who is an owner-operator or manager of a brothel to earn their living off prostitution. The effect of that section of the Criminal Code is, for all intents and purposes, to make prostitution unlawful anywhere in Western Australia in terms of brothels.

**Mr E.S. RIPPER:** You just do not enforce it.

**Mr C.C. PORTER:** The enforcement situation, which has been the same now for in excess of 10 years is that the police —

**Mr E.S. RIPPER:** But on the Attorney General's watch, he has not had it enforced.

**Mr C.C. PORTER:** Leader of the Opposition, the situation is precisely the same now as it was during his time in government.

**Mr E.S. RIPPER:** Sure, but the Attorney General promised it would be different, and he does not enforce the law, so he does nothing; it is unregulated.

**Mr P. PAPALIA:** The Attorney General big-noted himself when he came in and said he was going to sort it out immediately—it was his highest priority.

**Mr C.C. PORTER:** I am happy to answer the question that was asked. I do not know whether those interjections are terribly helpful.

Currently, police generally do not investigate complaints about brothels unless they have some reasonable suspicion that there is illegal activity ancillary to the prostitution, such as illegal activity in drugs or under-age prostitution, any indication that there is sexual servitude, or that workers in a brothel have been the subject of human trafficking, in which case the police investigate brothels.

If members are putting to me by way of interjections that that is not a satisfactory situation, they have my wholehearted agreement, which is why we are bringing in a bill. But let me make this point: the same situation existed for eight years under the previous Labor government. The legislation that it passed through Parliament and that we refused to proclaim would have made that situation significantly worse and not at all better, because in suburban Western Australia it would have been *prima facie* lawful—that is, section 190 would not have applied—to operate a brothel of up to two people without any licensing.

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[9.10 am]

**Mr J.R. QUIGLEY:** That is the same as now.

**Mr C.C. PORTER:** No.

**Mr J.R. QUIGLEY:** They are operating next to residences right now. The Attorney General has done nothing for three years.

**Mr C.C. PORTER:** Had the member's legislation been proclaimed, prostitution in suburban Western Australia would have been prima facie lawful —

**Mr J.R. QUIGLEY:** It is de facto lawful now.

**Mr C.C. PORTER:** — rather than the current situation, which is that it is unlawful albeit, as the member points out and we accept, irregularly and unsatisfactorily investigated.

**Mr E.S. RIPPER:** Never investigated.

**Mr C.C. PORTER:** The legislation that the member would have passed through this place would have ensured that it was never investigated, because it would not have been an offence.

**Mr J.R. QUIGLEY:** But 847 Beaufort Street is operating and there is no-one shutting it down. There is a block of flats next door.

**Mr C.C. PORTER:** Indeed, as I have noted to the member, the green bill will be available —

**Mr J.R. QUIGLEY:** When?

**Mr C.C. PORTER:** Very shortly.

**Mr J.R. QUIGLEY:** That is what the Attorney General said last year.

**Mr C.C. PORTER:** No, that is not what I said last year. If the member wants to put to me what I said last year —

**Mr J.R. QUIGLEY:** The Attorney General said it would be in by December.

**Mr C.C. PORTER:** I understand that, and it has taken longer than that, but the legislation will be available very shortly and members opposite will no doubt, as a caucus, have to decide whether they will support that legislation, or whether —

**Mr E.S. RIPPER:** Your party room will have to decide that. That will be an interesting debate.

**Mr C.C. PORTER:** It will be interesting. They will have to decide whether they will support that legislation or whether they will maintain the position that the best way to regulate prostitution in Western Australia is to make it lawful, unlicensed and uninvestigatable in suburban Western Australia.

**Mr J.R. QUIGLEY:** Are you going to have these laws through the Parliament this term?

**The CHAIRMAN:** Be quiet for a minute, please!

**Mr C.C. PORTER:** There was a question also from the member for Mindarie.

**The CHAIRMAN:** If the Attorney General has not finished, he can carry on.

**Mr J.R. QUIGLEY:** The question was: is it a fact that the Attorney General is going to have these prostitution reform laws passed through this Parliament in this term of government?

**Mr C.C. PORTER:** Unlike during the two terms of the previous Labor government, I believe that the legislation will pass through Parliament, but of course much depends on the position of the Labor caucus.

**Mr W.J. JOHNSTON:** I want to know from the Attorney General whether the Secrets brothel that operates directly opposite Westfield Carousel shopping centre will be permitted under the proposal that the Attorney General has discussed.

**Mr C.C. PORTER:** I am sorry, the secret brothel?

**Mr W.J. JOHNSTON:** Secrets. It is the name of the brothel. I raised it with the Minister for Police in the chamber and he has done nothing about it. Given the policy position the Attorney General is suggesting and referred to in the dot point in the budget, I am wondering whether Secrets brothel on Albany Highway, opposite Carousel shopping centre, would become illegal.

**Mr C.C. PORTER:** I am not an expert on the zoning of land in and around Carousel shopping centre.

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**Mr W.J. JOHNSTON:** I am asking the question. If the Attorney General is going to arrogantly dismiss the question, I will rephrase it for him so that he can properly answer questions asked of him. The question I am asking him is: in the Attorney General's proposal, are brothels permitted opposite shopping centres? It is not a complex question. I know the Attorney General is a complex man, but he should be able to give a simple answer.

**Mr C.C. PORTER:** I am very happy to answer the member's questions.

**Mr W.J. JOHNSTON:** Then start doing it.

**Mr C.C. PORTER:** Some might say that the arrogance is not allowing me to get a sentence out.

**The CHAIRMAN:** Members!

**Mr W.J. JOHNSTON:** Mr Chairman, I would ask you to get the Attorney General to answer questions.

**The CHAIRMAN:** The member for Cannington is asking a hypothetical question of the Attorney General.

**Mr W.J. JOHNSTON:** I am not asking a hypothetical question.

**The CHAIRMAN:** Do not argue with me, please!

**Mr W.J. JOHNSTON:** Mr Chairman, it is not a hypothetical question; it is an actual question about an actual issue that is in the budget.

**Mr C.C. PORTER:** I have not had the chance to answer, Mr Chairman.

**The CHAIRMAN:** If the Attorney General wishes to answer the question, answer the question.

**Mr C.C. PORTER:** I do very much wish to answer the question. I was saying that I am not an expert on the zoning of land in and around that shopping centre. However, let us presume that the land is either zoned for residential purposes or allows residential, so that it is a mixed residential area. If that is so, we might find what we found during the process of developing this legislation; that is, a range of land is zoned mixed use so that it is not primarily residential land but it allows residential premises in and about the area. If it is land that is zoned mixed use inclusive of residential, the legislative regime that we are proposing and that the member will shortly see in a green bill will make it impossible for a brothel to exist in that area.

**Mr W.J. JOHNSTON:** I am sorry; is the Attorney General saying that there is no grandfathering provision such as he has mentioned?

**Mr C.C. PORTER:** That is not what the member asked.

**Mr W.J. JOHNSTON:** That is exactly what I asked. I asked: would the Secrets brothel that operates directly across from Carousel shopping centre be permitted under the legislation?

**Mr C.C. PORTER:** And my answer is no. The member is now asking whether or not there are transitional provisions.

**Mr W.J. JOHNSTON:** No.

**Mr C.C. PORTER:** If the member asks a specific question, I can give a specific answer.

**Mr W.J. JOHNSTON:** I did ask a very specific question: so there is no grandfathering arrangement?

**Mr C.C. PORTER:** No, I am getting to that. There are transitional provisions so that brothels that are presently operating —

**Mr W.J. JOHNSTON:** Like Secrets.

**Mr C.C. PORTER:** I can answer the member's question and I am answering his question. Brothels that presently operate and are known to operate will be allowed to continue to operate for a short but set period whilst they apply for a licence under the new regime. However, in the case of a brothel that presently operates in an area that is mixed residential—with some very limited exceptions—it will not be able to stay there; it will have to make application, first of all, through general local government planning procedures. But in an area that is non-residential, inclusive of mixed use residential with only some very minor limitations to that, it will also have to go through the process of making an application to the Department of Racing, Gaming and Liquor to have its licence. The point is that, yes, there will be transitional provisions, but brothels that presently operate in areas that are residential or mixed residential will, on all but very few occasions, have to move, in effect, and then have to be properly licensed.

**Mr F.A. ALBAN:** I refer to the bottom of page 333 of the *Budget Statements* and to the reference to people smugglers in the last dot point. I remember the issue of people smugglers being raised in the Parliament

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previously. Has there been any progress in negotiating a longer term solution, as mentioned in the budget papers?

**Mr C.C. PORTER:** There has been. As the member will recall, the situation that we brought attention to was that some internal investigations into the number of people smugglers that we were required to domicile in Western Australia showed that it was in excess of 90 per cent of the total number around Australia. We have had a range of meetings and an exchange of letters with the former federal Minister Brendan O'Connor on this issue. In effect, I can say to the member that the situation has now significantly improved, although it is nowhere near as good as it should be. However, as at May 2011, having come down from a figure that I recall was well in excess of 90 per cent, Western Australia now has 93 people smugglers serving sentences and 83 crew on remand, which is representative of about 48 per cent of the total population; Victoria has 5.51 per cent; Queensland has 21.7 per cent; Northern Territory has 9.6 per cent; and New South Wales has 14 per cent. Indeed, part of the arrangements that we reached with Minister O'Connor was that there would be transparent quarterly reporting of the figures so that we knew what was going. The figures show that significant assistance to the national problem has been given by Queensland. There has also been some assistance from New South Wales. We are certainly hoping for a greater level of assistance from Victoria in these circumstances, which has only 5.51 per cent. However, the number for WA has come from the 90s to 48. It is continuing to decrease, and that is a significant improvement on where we were previously.

**Mr E.S. RIPPER:** My question goes to the Office of Native Title, which is actually dealt with in the Department of the Premier and Cabinet section of the *Budget Statements*, but we were advised to ask questions here. I refer to the third dot point on page 77 of the budget papers, which refers to native title policy and negotiations. How many consent determinations have been concluded since this government came to power; how many cabinet approvals have been given to accept connection reports and commence negotiations on consent determinations since the government came to power; and what is the government's target for concluding consent negotiations and seeing determinations recognised for this financial year?

[9.20 am]

**Mr C.C. PORTER:** I am not sure whether I would say that we have a firm target of X number of consent determinations a year.

**Mr E.S. RIPPER:** Perhaps the Attorney could give me an expectation then.

**Mr C.C. PORTER:** My recollection is that when I looked at this last and looked at the record of the previous government, on average about three consent determinations occurred a year. My view is that that figure probably represents, outside of a major increase in resourcing of the Office of Native Title, about the number that we might expect a year. The Leader of the Opposition asked how many consent determinations there have been in total. I am happy to give that information as supplementary information because I do not want to guess at it. My recollection is that we have had roughly three per year. It may be that Mr Conran can give an exact figure.

**Mr E.S. RIPPER:** Will the Attorney General give me as supplementary information a list of the consent determinations that have been concluded since the government was elected?

**Mr C.C. PORTER:** I am more than happy to do that.

**Mr E.S. RIPPER:** Will the Attorney General also give me a list of those claims for which cabinet has recognised consent and given approval for negotiations towards that consent determination?

**Mr C.C. PORTER:** I will agree to do that, but I would like to reserve the position if there is cabinet confidentiality in any matters. The Leader of the Opposition looks quizzical, but it may be that a cabinet decision for negotiations towards consent determination has occurred but on certain grounds that are sensitive to the negotiations. It is not impossible that the information could be subject to cabinet confidentiality. I reserve our position on the basis of cabinet confidentiality, which we do not need to in any event, but otherwise I am very happy to give that information over.

The point of the question that the Leader of the Opposition asked goes to a question that the member for Rockingham asked in question time—I think I am being fair to the tenor of the question that he asked—about whether there was a delay or withholding of consent determination in the Uunguu and Dambimangari claims as a method of forcing the hand of the native title holders of James Price Point. I found that question outrageous. It is not something that this government would ever do. The question gave me cause to look at precisely the issue the Leader of the Opposition has raised: how is this government's track record on consent determinations given a historical comparative? It is about the same. I recall tracking about three consent determinations a year. The consent determinations for Uunguu and Dambimangari came in late last year, and my parliamentary secretary, Hon Michael Mischin, was on site for the determination.

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**Mr E.S. RIPPER:** I can remember, as the minister giving approval for those negotiations, that we accepted the connection, and the Liberal–National government finally got around to delivering the determination.

**Mr C.C. PORTER:** As the Leader of the Opposition points out, it was a joint effort. There were quite complicated issues with the 12-mile limit around the islands in Uunguu and Dambimangari. In any event, we are tracking at about three consent determinations a year, which I think is roughly the historical average. However, in addition to those three consent determinations a year, we have had significant success with the final dealing with extinguishment, and Yawuru is one case in point. In my view, we have made significant steps in the Single Noongar claim. I would say we are at par with the former government in consent determinations, but a lot of other matters are being dealt with by the Office of Native Title, and, in my view, they are progressing very well.

**Mr E.S. RIPPER:** I will have further questions on native title, but perhaps we can come back to those.

*[Supplementary Information No B19.]*

**Mr P. PAPALIA:** I refer to budget paper No 2, volume 1, page 333, titled “Outcomes, Services and Key Performance Information” and the reference to “an efficient, accessible court and tribunal system”. Can the minister confirm whether he was aware that since April 2009 and his appointment of Justice Narelle Johnson as the chairperson of the Prisoner Review Board, 13 staff have been compelled to seek placements elsewhere because of claims of abusive treatment and workplace bullying and allegations of nepotism in that office at the hands of the chair, Justice Narelle Johnson, and her registrar?

**Mr C.C. PORTER:** My understanding was that questions on the Office of Native Title would flow first. I know that this division is ONT and the Department of the Attorney General. I am happy to answer a question such as that, but it appears to me that the Director General of the Department of the Attorney General should be present and the necessary advisers should be invited to come to the floor.

**The CHAIRMAN:** We will hold that question over.

**Mr E.S. RIPPER:** It was also my understanding that we would go to native title issues.

**The CHAIRMAN:** The Leader of the Opposition brought that up, so we will stick to native title.

**Mr E.S. RIPPER:** I can see Mr Conran there. Has the government continued with its policy of requiring an access Indigenous land use agreement to be agreed before a consent determination is finalised? The context is land councils coming to the opposition with evidence of a government policy that an access ILUA is required in specific terms before the consent determination can be concluded. I would like to know whether that is the government’s policy and whether the government has had any feedback, shall we say, from the Federal Court of Australia on application of that policy. Has the government modified its policy since that feedback?

**Mr C.C. PORTER:** At the commencement of the Leader of the Opposition’s question he asked whether the government is maintaining a policy. He then asserts what that policy is, and then at the end of his question he asks us whether it is our policy.

**Mr E.S. RIPPER:** I am covering all the bases to give the Attorney General an opportunity to provide a comprehensive answer.

**Mr C.C. PORTER:** Indeed he is.

**Mr E.S. RIPPER:** I hope that the Attorney General deals with every point that I have raised.

**Mr C.C. PORTER:** The decision in *Brown (on behalf of the Ngarla People) v State of Western Australia* [2007] FCA 1025, with which the Leader of the Opposition would be familiar—I do not have that decision in front of me—quite properly says that a consent determination cannot be withheld when evidence exists that it should be granted on the basis that an ILUA be signed. The Federal Court of Australia has indicated that someone cannot lawfully go to native title claimants and suggest to them that he will delay or not give a consent determination until the native claimants sign an ILUA when he has information that allows him to make a decision that consent should be given. That is clearly unlawful. Obviously, the government policy on native title is not to do anything that offends that rule established in *Brown*. However, in my view, and in government policy, a view still exists that the swift and relatively quick resolution of ILUAs and signing of ILUAs is important. Nothing in *Brown* suggests that someone cannot negotiate for the resolution of an ILUA before a consent determination is given. The answer to the Leader of the Opposition’s question is a relatively simple one. As minister, if I am presented with evidence through the Office of Native Title that the consent should be given that native title exists, as soon as I am aware of that, that goes for my consideration and then to cabinet, and the issue of ILUAs is parallel and not at all related to that. However, this government—I think quite properly—has engaged in a process of trying

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to ensure that Indigenous land use agreements are signed at the earliest possible stage. I do not know whether that answers the Leader of the Opposition's question to his satisfaction.

[9.30 am]

**Mr E.S. RIPPER:** It answers it in part. I am also interested to know whether the government has a standard template access ILUA upon which it insists, or whether there is a genuine negotiation on the ILUA and a boutique solution for each claim.

**Mr C.C. PORTER:** We are in the very final stages of developing that precedent ILUA that the member has described. In my view, one of the difficulties has been the lack of a clear template. Obviously, that template is going to be changed and amended by negotiation in different circumstances, but part of the move of the Office of Native Title into the Department of the Premier and Cabinet has been to allow that greater degree of consistency on issues such as this and with respect to ILUAs. In fact, very recently a draft template ILUA was put to me; I am in the process of considering that.

**Mr E.S. RIPPER:** Has there been a process of negotiation or consultation with stakeholders on the nature of this template ILUA?

**Mr C.C. PORTER:** Not yet, but there will be. But the first stage is for ministerial and cabinet approval of that draft template.

**Mr E.S. RIPPER:** So it will remain a draft, even though cabinet approval has been given for negotiation, and then there will be a consultation; is that how it will work?

**Mr C.C. PORTER:** That is my understanding of the process we are going to engage in. If the member likes, cabinet will approve the draft, which will go to negotiation with native title parties.

**Mr E.S. RIPPER:** The Attorney General has made comments that lead me to ask a further question. It appears that the Attorney General will retain ministerial responsibility for native title matters, despite the administrative shift of the Office of Native Title.

**Mr C.C. PORTER:** As the Leader of the Opposition would be aware, the Office of Native Title is well travelled.

**Mr E.S. RIPPER:** It is a nomad.

**Mr C.C. PORTER:** Indeed. I was supportive of the move to DPC. I am a fulsome supporter of native title; I would like to see, during whatever time in government we have, as many consent determinations finalised as possible. I would like to see the south west negotiations finalised; I would like to see a range of matters with respect to extinguishment of compensation finalised. My sense of ONT was that, although it was doing a good job with the resources it had, there possibly was not the level of consistent policy understanding on the part of native title claimants of the government's position. Whether all native title claimants liked or disliked the position, it seemed to me that there was an extreme value in certainty and consistency. I was a supporter of the move to DPC, where the policy and consistency aspects have, I think, been significantly buttressed. I am still the minister in charge and responsible, and the office still has direct-line reporting to me; all cabinet submissions come up through me and to cabinet. So the location has changed, but the lines of ministerial responsibility remain the same.

**Mr E.S. RIPPER:** I have further questions on this.

**Mr P. PAPALIA:** I am wondering whether we are going to get the Department of the Attorney General advisers in so that we can ask other questions. We were not aware of this apparent arrangement that the Chairman has referred to.

**Mr W.J. JOHNSTON:** I am a member of the committee, and I was not advised that that was the way it would be arranged.

**The CHAIRMAN:** The Leader of the Opposition seems to know about it. I do not know how he knows about it.

**Mr W.J. JOHNSTON:** No, I am aware that we can ask questions about native title; I was not told we were not allowed to ask questions about the other matters.

**The CHAIRMAN:** I have looked at the program and I have just been listening to what the Leader of the Opposition said, so obviously there has been a crossed wire somewhere. How do you want to proceed? Do you want to bring in a further adviser, or what do you want to do, Attorney General?

**Mr E.S. RIPPER:** Since I am going to be the only member of the opposition asking questions on native title issues, perhaps we can proceed on that basis.

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**The CHAIRMAN:** We will get that out of the way.

**Mr P. PAPALIA:** Keep the dorothy dixers down!

**Mr E.S. RIPPER:** My colleagues will certainly allow that, and then I will disappear and they can get on with savaging the Attorney General on other issues.

**The CHAIRMAN:** I have not heard any dorothy dixers on native title yet.

**Mr P. PAPALIA:** That is good.

**The CHAIRMAN:** Thank you, Leader of the Opposition; now we have some agreement.

**Mr E.S. RIPPER:** I refer to those negotiations on the south west claims that the Attorney General has just mentioned. Could the Attorney General outline the nature of the settlement that the government contemplates arising out of these negotiations? What elements will there be in the settlement? I expect that the Attorney General will not be able to nominate quantum because that might compromise negotiations, but could he outline the nature of the settlements that he expects from these south west claims?

**Mr C.C. PORTER:** I certainly cannot nominate quantum, because we have not done those calculations yet. Perhaps the best way to answer that, Leader of the Opposition, is that the type of settlement that we are envisaging will, in some respects, look similar to the Yawuru settlement, so there will be both a monetary component and a land component. We are in the process of finalising cabinet submissions with respect to the precise detail of what would form the basis of our starting point in negotiation with the Single Noongar claimants, which is obviously subject to cabinet confidentiality, but it will be a blended form of compensation that would be considered in the south west, not dissimilar to the Yawuru settlement. I also add that, obviously, whatever quantum is involved in this matter will be significant.

**Mr E.S. RIPPER:** Would it be extreme to say that in the end this will involve hundreds of millions of dollars of government commitment?

**Mr C.C. PORTER:** It will be significant. Perhaps I can answer that question this way: the Leader of the Opposition talked about a government commitment. The Leader of the Opposition, no doubt, had access to the all the correspondence that flowed between Premier Richard Court and Prime Minister Keating, and Premier Richard Court and Prime Minister Howard, and, in effect, that exchange of letters, in my view, fell something short of an intergovernmental agreement, obviously, but indicated a clear agreement, almost contractual in nature, that the commonwealth government would contribute 75 per cent to the cost of all extinguishment for past and future acts. This agreement was reached at about the time the Wik decision's 10-point plan came into being. My view is that we as a state agreed to give our fulsome cooperation to the native title system on the promised basis and expectation that 75 per cent of moneys for the costs of extinguishment would flow from the federal government. When we settled the Yawuru claim, I think the overall value of that package was about \$220 million; sadly, not a cent has thus far come from the commonwealth. Two years ago I attended a native title ministers meeting in Adelaide and the commonwealth Attorney-General spoke first, and of course the prime issue on the agenda was the 75 per cent payment of extinguishment fees, if I can put it that way. He noted for the meeting that, notwithstanding any letters or promises or agreements that had been reached, commonwealth policy had changed and it had changed to the extent that it now considered that it had no obligation to pay whatsoever, but would only consider the potential for assistance to the states for extinguishment on a "case-by-case basis". This news was not greeted sympathetically by any of the state native title ministers present. Since that time there has been an exchange of correspondence between the Premier and the present Prime Minister to try to clarify that situation. I would suggest that the significant roadblock to progressing the south west claim is getting some kind of indication on a case-by-case basis—if that is the new policy—that the commonwealth government is going to contribute some percentage of the reasonable cost of extinguishment. I would like to have the commonwealth involved in the process of negotiations, so that it is satisfied that the cost of extinguishment is reasonable. But if the Leader of the Opposition is right, and it is going to be significant —

**Mr E.S. RIPPER:** Hundreds of millions of dollars.

**Mr C.C. PORTER:** — that is not, in my view, a cost that Western Australia, which will be dealing with these claims for many years to come—particularly with the south west, which is going to be a very large one—can afford to bear alone. It will be significant. I would consider that the commonwealth will try to not make any commitment at all, as it did with Yawuru, until the time of resolution, after which time the imperative for input of funds to extinguishment has gone. I would say that the single biggest roadblock to our progress of this matter now is getting some form of agreement from the commonwealth that it is going to kick in and pay moneys towards whatever the reasonable cost of extinguishment is.

[9.40 am]



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**Mr E.S. RIPPER:** Short of that, what is the government's current timetable for the conclusion of these negotiations, and at what stage will the government start to recognise the liabilities in its budget papers?

**Mr C.C. PORTER:** We obviously will have to recognise those liabilities at a point during the process of negotiation, but we are well in advance of that point. I accept what the Leader of the Opposition says. I am not sure when the Yawuru negotiations first appeared in the budget, but the previous government was well advanced on those negotiations. I am not sure whether those moneys appeared in the previous government's out years, but I take the point that, at some stage, those moneys appear as a liability in the budget. We are not there yet with the Single Noongar claim. If the Leader of the Opposition is asking me whether, if we go down the path of the negotiation, which we are committed to, a significant cost will ultimately attach to the extinguishment after the negotiations, he is quite correct; it will. In my view, that cost must be substantially defrayed by the commonwealth, but even the residual will be significant. When will that cost appear in the budget? We are well in advance of that position. There are complications with that, particularly with the idea of land swaps as occurred with Yawuru and how they appear usually as the diminution of a capital asset, which comes off the bottom line in the budget out years, but we are well in advance of that situation.

**Mr E.S. RIPPER:** Can the Attorney General answer my first question, which was: when does he expect to conclude these negotiations?

**Mr C.C. PORTER:** The Leader of the Opposition knows very well that, with native title negotiations, that is a question of "how long is a piece of string?"

**Mr E.S. RIPPER:** How long is the Attorney General's current estimation of this piece of string?

**Mr C.C. PORTER:** We have been in government for in excess of two years. We have made the fundamental decision to negotiate —

**Mr E.S. RIPPER:** As we did.

**Mr C.C. PORTER:** Indeed, and that is not always an easy decision to make. We are now at the stage at which the basic starting point negotiating parameters will go to cabinet shortly. Negotiations will flow shortly after that. Whether those negotiations will be for six months or 18 months or in excess of that, I really would not want to hazard a guess at this stage. I would suggest that, based on Yawuru, those negotiations will be lengthy. Mr Conran informs me of an Office of Native Title target that, even hearing it whispered, sounds optimistic. Mr Conran talks about a target of 12 months, but I think that is optimistic.

**Mr E.S. RIPPER:** I would be inclined to agree with the Attorney General on that matter, but it is good to have a target.

Is joint management of national parks in the South West one of the elements that the government will consider in the settlement? Will a comprehensive heritage protocol also be part of the settlement, because these matters often interact?

**Mr C.C. PORTER:** Nothing is part of the basic starting parameters for a settlement negotiation until it is approved by cabinet, but my view as Attorney General is that both of those should be put to and considered by cabinet.

**Mr E.S. RIPPER:** The other big area of the state where court determinations or concept determinations are unlikely is the area of the former Wongatha claim. Is there any process of negotiation still in place for the area covered by the former Wongatha claim? The previous government had in place a process to jointly work on evidence for native title on a claim-by-claim basis in the Wongatha area. What is the current government's approach to that?

**Mr C.C. PORTER:** I am informed that there has been activity on the Wongatha claim, but it is not one of the high priorities of the government in terms of the resources of the ONT at the moment.

**Mr E.S. RIPPER:** So what are the government's priorities in native title for the forthcoming year?

**Mr C.C. PORTER:** The Single Noongar claim for the South West.

**Mr E.S. RIPPER:** That is the number one priority?

**Mr C.C. PORTER:** Indeed, it is.

**Mr E.S. RIPPER:** And beyond that?

**Mr C.C. PORTER:** As the Leader of the Opposition will be aware, there is a range of consent determinations that sit almost in a line for consideration at various stages of the process of gathering evidence to assess the veracity of the claim for connection with the land. That process continues. But, in terms of large and significant

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items, that is the most significant item and it will draw down a lot of ONT's resources over the next 12 to 18 months. It will probably be followed by the Kimberley.

**The CHAIRMAN:** If there are no further questions on the Office of Native Title, I ask the Attorney General to bring in his other advisers.