

Division 46: Attorney General (Native Title Unit) —

Mr I.M. Britza, Chairman.

Dr K.D. Hames, Minister for Health representing the Attorney General.

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

Mr J. Catlin, Executive Director, Native Title Unit, Department of the Premier and Cabinet.

Mr J. Lee, Principal Policy Adviser, 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.

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 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. Questions must be clearly related to a page number, item program or amount in the current division. It will greatly assist Hansard if members can give these details in preface to their question.

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. 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, 30 August 2013. 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.

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

[Witnesses introduced.]

The CHAIRMAN: Member for Victoria Park.

Mr B.S. WYATT: I refer to the fourth dot point on page 75 regarding the government's aim to complete all agreements to settle all native title claims in the south west. The budget papers state —

Government will proceed with the expectation that the six principle Noongar claim groups will ratify agreements by 31 December 2013, with implementation of the overall agreement to commence on 1 July 2014.

Do the 2014–15 forward estimates contain the payment in each year of the \$50 million?

Dr K.D. HAMES: I will hand that to Mr Catlin.

Mr J. Catlin: It is on page 172 of budget paper No 3, where there is an allocation of \$84.7 million against 2014–15, \$87.4 million in the next year and \$82.8 million in the following year. There are allocations across the forward four years.

Mr J.E. McGRATH: I have one question on native title. What is the status of the commonwealth government's longstanding commitment to the states and territories on sharing the cost of native title compensation and native title agreements?

Mr J. Catlin: The status is that this government in the previous term and the previous governments going right back to 1997 and 1998 had been attempting to bind the commonwealth to commitments that originally Prime Minister Keating made and then later Prime Minister Howard made. A commonwealth–state financial agreement was drafted and never ratified, and then it was revised in 2008. The commonwealth came back to the states in 2008 and said that it wanted to expedite that agreement. In 2009, the commonwealth did a complete about-face and decided that it did not want to ratify the agreement, and it has basically been in avoidance mode ever since. The pre-election budget statement carried a strange allusion to sharing native title costs for large agreements, and the full amount of policy advice that the commonwealth provides is that it will be on a case-by-case basis. The Premier and the Attorneys General in the past four years have written to the commonwealth regularly on this matter and sought clarification of what a “case-by-case basis” means and have never received a reply. We are still in a limbo state in getting the commonwealth to commit to things.

Mr B.S. WYATT: I refer again to page 75, which states that the department is committed to expediting the resolution of native title claims, with the number of native title determinations set to accelerate in the next four years. Why is the government expecting the acceleration of native title determinations in the next four years, and which particular determinations is it expecting to bring on?

Mr J. Catlin: Next Wednesday should be the eleventh determination in Western Australia this year, which compares very well with the previous four years in which there were 10, and the previous four years in which there were 10. The state has been tracking at about two and a half determinations of native title claims per year for the past decade. We have had a significant increase this year, and we are predicting somewhere between another and up to, say, 20-plus in the next three and a half years in this term of government. If we add to that the south west, if the south west claims are resolved, that would deal with 10 claims in its own right. The reason that it has reached a sort of peak at the moment is that a lot of those claims have been in the system for a very long time—some of them up to 14 or 15 years. Normally, for those that have been settled, there has been four or five years' work getting them to that point. As the member is probably aware, the native title system is fairly fickle, and a lot of things can get in the way of a resolution. We think we can identify about another 15 to 20 that should be resolved in the next two years.

Mr B.S. WYATT: That is outside the Noongar claim.

Mr J. Catlin: Yes; but I would not want to list those at the moment, if that is appropriate—I can provide that advice to the member off the record. It would prejudice some of our current discussion.

Mr B.S. WYATT: I look forward to that advice. One of the concerns that has been relayed to me by a number of different representative bodies is the government's approach to assessing connection reports and a successful negotiation with the state. Is that still the policy of the government?

Mr J. Catlin: This is a regular discussion with the representative bodies. The state applies standards of assessing connection evidence that are consistent with that in every other jurisdiction in Australia and with the case law. This state is not any more stringent or less stringent, as far as I understand, than any other jurisdiction. The question about Indigenous land use agreements is misleading. In Western Australia, we are in negotiation on about 10 claims that have already been settled, and we are discussing a more sophisticated approach to land use long term. We are probably the leaders in Australia in that category of working with prescribed body corporates and looking at planning the next 50 to 100 years regarding land use with them and putting resources behind that. But that process is not interfering with the mediation process or resolving claims. In fact, the last six to 12 months have shown that the claims are being settled anyway. It is not as though this state has found a new detour in that process.

[2.10 pm]

Mr B.S. WYATT: In respect of my question being misleading: is the question misleading; or the advice I have had about leaking of connection reports to the successful negotiation of state agreements not correct?

Mr J. Catlin: I beg your pardon. I did not mean to imply the member was misleading. The advice the member is getting has been run before and it cannot be demonstrated that that is happening.

Mr B.S. WYATT: So it is not the case?

Mr J. Catlin: It is not the case at all, no.

Mr B.S. WYATT: The minister would be aware of the concern raised last year or early this year about the government entering into a state agreement act with Buru Energy and Mitsubishi without consultation with native title holders. Is it indeed the case there was no consultation or, in your view, was that an unfair critique?

Mr J. Catlin: It is an unfair critique. I was present when that matter was raised with the Premier in November last year by one of the rep bodies. The state agreement is not a future act, in that there is no statutory requirement to consult with the native title claim group. But the Premier explained at that time there are matters of commercial confidentiality attached to most agreement acts that would not be exposed in any community consultation. He also did not refuse to engage with native title claimants and native title holders in future, but there are limits on what can be done in terms of exposing the detail of an agreement in advance. No agreement act is exempt from the Native Title (State Provisions) Act, but it does not, of itself, cause a future new act.

Mr R.S. LOVE: I refer to the fourth dot point on page 75 of budget paper No 2, which reads —

The Government will aim to complete an agreement to settle all Native Title claims in the South West in 2013–14.

If that proceeds as planned, will there be cost savings to the government in the future?

Mr J. Catlin: Over time, definitely. The resolution of the claims and the removal of the south west from under the jurisdiction of the native title act means that virtually any land user—government or otherwise—in the south west is relieved of an administrative burden. Incrementally there will be significant savings built up over time. Allied to that is the adoption of a more efficient uniform cultural heritage management scheme across the south west, which should make cultural heritage management a lot more efficient and predictable in its costing time

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Chairman; Mr Ben Wyatt; Dr Kim Hames; Mr John McGrath; Mr Shane Love

frames, and a lot of the other things that add probably more cost than the future act system in the south west. We already have evidence of that in some of the work that is being done. In terms of not having the potential for litigation, the state is clearly a winner in that it is not then facing potentially five or 10 years of litigation around claims, any potential appeals and then further on probably compensation claims. Purely in terms of statutory improvement and the improvements to the approval system, the state is advantaged and, hopefully, Noongar people are as well. The other far less quantifiable cost saving will come from social improvement in the Noongar community over time, and that hopefully will fall out of a range of other innovations that come with the settlement.

Mr B.S. WYATT: I refer the minister again to page 75, and to the sixth dot point. The question relates to pastoral leases. Maybe Mr Catlin can give me some advice. As the minister knows, the rollover or renewal of pastoral leases is fast approaching. I know that the amendments make provision for pastoral lease amendments through the native title act. What is the government's view, if there are significant condition changes to those pastoral leases, as the government seems to be pursuing, on the impact that will have on native title, particularly around perhaps the right to negotiate?

Mr J. Catlin: Obviously this falls to the Minister for Lands.

Mr B.S. WYATT: I thought, as it relates to native title, Mr Catlin may have some views on it.

Mr J. Catlin: I do. Any pastoral lease can be rolled over and renewed for the same period and terms without any impact on the native title act. If we amend the terms or conditions that apply to the pastoral lease that then invokes the right to negotiate, because potentially that will have a new impact on native title rights. The conversion of a pastoral lease, which is say 50 years to a perpetual lease or 100 years, hypothetically has an impact on native title rights. It has not been fully tested, but that would be our understanding of the process. That is the advice we and the Department of Lands have operated under for some time.

Mr B.S. WYATT: On those conditions, it has been reported that the government is considering changing pastoral leases. Does Mr Catlin have any views on that based on what he has seen with respect to native title? The only conditions I have seen are reported in the paper.

Mr J. Catlin: I have not seen settled amendments to the act.

Mr B.S. WYATT: Is that in relation to leases?

Mr J. Catlin: There has been a lot of discussion that goes back over a very long period, as the member knows, that would see changes to the system, but I have not seen any finalised proposed amendments.

[2.20 pm]