

**ADDRESS-IN-REPLY**

*Motion*

Resumed from 14 August.

**HON NORMAN MOORE** (Mining and Pastoral - Leader of the Opposition) [12.17 pm]: I am the lead speaker on this motion and I propose to take as much time as is necessary to get my message across; however, I assure members that I will not take five hours to do it.

Hon Frank Hough: It will be a quality speech.

Hon NORMAN MOORE: I thank the member. I congratulate His Excellency the Governor on the outstanding way in which he is carrying out his duties in Western Australia. I thought that the previous Governor was exceptional and that whoever followed him would find it a very difficult task. However, the current Governor is an exceptional person. He has brought great dignity and wisdom to the role. I congratulate him and his wife for the way they are carrying out their vice-regal positions. I also congratulate Hon Sue Ellery on her speech. Although I did not agree with everything she said, she delivered it very well. On the opening day, it is important for the mover of the Address-in-Reply to make a speech that captures the attention of members, and I thought her speech did that.

I was disappointed with the opening of Parliament ceremony. Some people might think that I have been here for too long, that I am an arch-conservative and do not want to see anything changed or that I have a preference for pomp and ceremony. The opening of Parliament should be an occasion of pomp and ceremony. People in Western Australia should be able to either watch on television or come to Parliament and see important things happening in an important place.

Hon Kim Chance: I agree, but it should happen only once every four years.

Hon NORMAN MOORE: If the Leader of the House wants to do that, that is fine. I have promoted Bills passed in this House that were designed to modify the effect of prorogation on committees and legislation that the former Labor Government did not agree to. I did not proceed with that, but somebody must decide whether we prorogue Parliament every year or once every term of Parliament. All members must consider that issue. Nevertheless, currently Parliament is officially opened every year. I understand that a change to that would require a change to the Constitution. The Government would not necessarily have a problem getting that referendum passed if it wanted to do that.

Hon Kim Chance: Only WA and Victoria do it this way. The other States are different.

Hon NORMAN MOORE: Whatever. At the moment we have an official opening every year. That occasion should be marked with some pomp and ceremony. We used to have the armed forces out the front, the Supreme Court judges in the Chamber, the Governor in his military attire, if he was a military person, accompanied by the chiefs of the various armed forces, and members of the consular corps. We even had our wives or husbands on the floor of the Chamber on the opening day. It was an occasion for dressing up, if that is what people wanted to do. It was then followed by a splendid afternoon tea. I understand that afternoon tea is no longer appropriate, having listened to the member for Pilbara making a speech yesterday and saying how quaint it is for this House to stop for afternoon tea. I think it is one of the better things we do. The crazy thing about the other place is that members keep talking while everybody is outside having afternoon tea. What does that mean for the poor member on his feet who is trying to get a message across to his colleagues? At least we stop for 15 minutes so that people can be here when someone is making a speech.

I was disappointed at this year's opening. I thought it was very low-key. It was a matter of going through the motions with no intention of making it anything special. The Chief Justice sat up there next to the Governor, who was wearing a suit. There were no Supreme Court judges and no wives. No invitations were sent for people to attend. Members could invite people, but there were no special seats for anybody. We were told about it in a note from the Clerk saying that Parliament would be prorogued on a certain date, but, rather than wait until it happened, he was letting us know when the House would resume. The way in which we went about the opening was pretty pathetic - I am not referring to the Clerk's letter. I hope the Government will lift its game next time around and make the opening an occasion when people can come to Parliament and see something which is a bit different. The regret of this was that the only comment about the opening of Parliament was on page 48 of yesterday's *The West Australian* beneath an article criticising the Legislative Council for not passing some Bills. That is how insignificant the opening of Parliament was on this occasion. I hope the Government will do something about that.

I listened to the Governor's speech with great interest, as I always do. He made reference to the North West Shelf gas deal and the contracts that have been signed between Woodside Energy Ltd and China. That is a very important decision made by China for Western Australia. As all the gas is in my electorate, I am very pleased

that it will have a very important and beneficial impact on Karratha and the Shire of Roebourne. Even more importantly than that, it will have a significant impact on the population of Western Australia and Australia by virtue of the export earnings it will generate for this country and the royalties that will be paid to the State of the Western Australia - most of which, I know, goes off to the Commonwealth. I notice a motion on the Notice Paper moved by the Government to criticise the way in which the Grants Commission deals with royalties. I agree with that. I have always said that the Commonwealth gets the large share of most things that happen by way of economic development, even though most of the work is done by the State. This particular deal was commenced in large part by Hon Richard Court, as the then Premier of Western Australia, supported and ably assisted by Hon Colin Barnett, the then Minister for Resources Development. They did the hard yards at the beginning to get Western Australia into the game, and then the Prime Minister was very active. I am pleased to say that the current Government, through Premier Gallop and Minister Brown, also carried on the work. The bipartisan way of doing business was important. What was most important was the way in which the political players - the Premier and the Prime Minister - were able to talk to the Chinese Government, because the Chinese take far more notice of politicians than they do of businesspeople. It is important in these sorts of negotiations for the political process to be unified and to be working for one common cause. That is what happened on this occasion, and I congratulate everybody involved in winning that contract. I congratulate Woodside on putting forward a proposal that will be of significant benefit to Western Australia.

On a note of warning, there are some overestimates being bandied around about the number of jobs that will be created by this deal and the effect that it will have on Karratha. People have to be careful. I have watched that town since it was built. I went there when it first started in the early seventies.

Hon Kim Chance: I helped build it. I built the first 50 houses and the high school.

Hon NORMAN MOORE: Is the Leader of the House a New Zealander?

Hon Kim Chance: No, but I worked with a lot of New Zealanders.

Hon NORMAN MOORE: The member must have been the only person there who was not! The building contractors in Karratha in those days were from New Zealand and they were prepared to work 24 hours a day, seven days a week building houses. It was like a production line. They did a magnificent job and I made some very good friends among the people building those houses.

Hon Kim Chance: I was a subcontractor for Jaxon Watson.

Hon NORMAN MOORE: I was at the school when it was opened, so we were in Karratha at the same time.

Hon Kim Chance: That is the school that I built.

Hon NORMAN MOORE: The leader should not have told me that, because that was the worst building ever built in Karratha.

Hon Kim Chance: It was badly designed, not constructed.

Hon NORMAN MOORE: It had no airconditioning because the Government of the day would not provide it. All the kids used to go to sleep at lunchtime and stay asleep until they had to go home after school. It was a crazy situation.

Karratha has grown over time. However, we must be a little wary that the riches for Karratha that keep being talked about have not been delivered. Some time ago the Minister for Housing went on about people in Karratha charging excessive rents for their properties because there was a boom coming. The fact is that for the previous several years those people got virtually no rent, such that they would use the good times to overcome the problems of the bad times. We have to be a bit sensitive and sensible about the development of Karratha. Its population will not increase from 7 000 or 8 000 to 20 000 overnight. We need to be sensible about that. However, it is a great project for Western Australia and we should all be proud of those who negotiated it.

The Governor went through the legislative program of the Government and we will debate those Bills in due course, so it is probably not appropriate to talk about any of them now. However, something that really sticks in my craw is the Government's decision to introduce the Acts Amendment (Student Guilds and Associations) Bill 2002. Members might be aware of my long-time interest in this issue. I have had private member's Bills passed on three occasions in this Chamber and then rejected by the previous Labor Government; then, as Minister for Education in 1994, I brought in a Bill that provided for voluntary membership of guilds. I do not see it as voluntary student unionism. I have never called it that, although that is what it is called in the general debate. I have always argued that it is a question of whether guild membership should be compulsory when membership of anything should not be compulsory. No-one should be forced to join an association if they do not want to.

Hon Louise Pratt: They will not be forced.

Hon NORMAN MOORE: I know. Without debating the Bill, the Government will make everybody pay and they can either join or not join. If they have to pay, they might as well join. That concept was brought in by Peter Jones, who was Minister for Education in the late seventies, as being a way of overcoming the problem of compulsory membership. He said that we would have a compulsory fee, and students could tick in the box when they enrolled whether they wanted to be a member of the guild. However, the money would go to the guild. What we are getting now from Alan Carpenter, the present Minister for Education, is identical to that.

Hon Barbara Scott: No ticket, no start at university.

Hon NORMAN MOORE: It is the same sort of thing.

This proposal is the Labor Party's GST - Gallop's student tax. Every student in Western Australia will be taxed by the Labor Party if they want to attend a tertiary institution in Western Australia. That is Labor's GST, Mr Travers. Government members can go out with guns blazing and tell those students in tertiary institutions that they will now start paying \$140 a year, because that is what the Government has decided they will pay. It is akin to a government tax, and I assure the Government that it will wear it. The reason that not all university students join a student guild is that they do not want to; the guilds do not do anything for them and do not provide what they need, so why should they join? The universities now want to take the easy way out by taxing the students and are trying to get the Government to bring in the necessary legislation. I will be opposing that legislation vigorously in this Chamber, because it is another tax on people who can least afford it. It is amazing that the Government thinks students can afford to pay a fee of \$140 whether they want to or not.

Hon Robyn McSweeney: It will be more like \$400.

Hon NORMAN MOORE: They are talking about \$140 now. The average fee in Australia is \$280.

Hon Simon O'Brien: What will happen to students who cannot pay? Will they be kicked out of university?

Hon NORMAN MOORE: The rule used to be that students cannot graduate if they have not paid the fee. I suspect it will be the same this time. The Opposition will be scrutinising and reviewing the Government's legislative program, and I look toward to that happening as the House progresses through this session.

I want to spend some time this afternoon talking about native title, because it is my simple judgment that we have now reached the stage in the development of native title at which it should be abolished.

Hon Tom Stephens interjected.

Hon NORMAN MOORE: The Minister for the Kimberley, Pilbara and Gascoyne laughs. I hope he will spend at least a moment or two contemplating what I am saying and contemplating why I have reached the conclusion that I have reached.

Hon Tom Stephens: It does not matter why you think it. You may think the moon should not come out tonight, but that will not stop the moon from coming out tonight. It exists.

Hon NORMAN MOORE: That is exactly right. It is competent for Parliaments and Governments to make laws that affect all of us and that reflect the views of the community. Native title has become an absolute nightmare for Western Australia. The development of the Burrup Peninsula is an example of the impasse that has developed in Western Australia as a result of native title. About \$6 billion worth of investment is lining up for the Burrup Peninsula.

Hon Ken Travers: Your leader in the other place does not want \$6 billion worth of development on the Burrup.

Hon NORMAN MOORE: Whether it is \$1 billion or \$26 billion, I do not care. I think it is about \$6 billion.

Hon Tom Stephens: You are in conflict with the Leader of the Opposition in the other place.

Hon NORMAN MOORE: That will not be the first time or the last time. Whatever the amount of development is, it is development that we need and should have. We started that development when in government. The current Leader of the Opposition, Colin Barnett, did a vast amount of work, together with the then Premier, Richard Court, to attract these investment opportunities to the Burrup and Western Australia. We worked out how the land use processes should apply on the Burrup and which projects should go where. We put in place the Maitland industrial estate so that future development would have somewhere to go. A huge amount of work was done in the Pilbara to try to get it from being simply a place in which we dig up the iron ore and ship it overseas and pump out the gas and turn it into liquid and ship it overseas. Ever since Sir Charles Court was actively involved in developing the Pilbara in the 1960s and 1970s, we have always wanted some downstream processing, but we have never had it in the dimensions that we deserve. The former Premier, Richard Court, was very aggressive about some of the companies that have been operating in the Pilbara, particularly the iron ore companies, and claimed that they were not doing their utmost to get some downstream processing in that part of the world.

Hon Ken Travers: Be fair and acknowledge that other Premiers apart from Richard Court have taken that approach.

Hon NORMAN MOORE: I think it is fair to say that ever since we developed the Pilbara in the 1960s, everybody has supported its development. I am talking on the parliamentary secretary's behalf now, because the parliamentary secretary and his minister have come up against a big brick wall. That big brick wall is called native title. Three groups in the Roebourne area in the Pilbara are laying claim to native title over the Burrup Peninsula.

The DEPUTY PRESIDENT (Hon George Cash): Order! There is too much audible conversation in the Chamber. If members need to discuss anything with fellow members, they should please leave the Chamber.

Hon NORMAN MOORE: The Government's response, as far as we can ascertain, because it will not answer any questions in this place about it, is to work out a deal in which it will pay these three native title claimants \$27 million worth of goodies. The latest rumour is that the figure is now about \$40 million worth of goodies. The Government does not want to wait for the native title process to be concluded so that we will know who the native title holders are. One of the reasons for the discord between these three Aboriginal groups is that one of the groups believes it is the native title holder and the others are not, and it does not want to have to share the goodies with those other two groups. However, this Government is offering these native title claimants - not native title holders, but claimants who have not had their claims assessed and determined - at least \$27 million of taxpayers' money.

Hon John Fischer: I thought you said it was \$40 million.

Hon NORMAN MOORE: I said I think it is now more like \$40 million. It started off at about \$27 million. The negotiations are continuing. Part of those negotiations is not just the \$27 million or \$40 million but a determination that the claimants be given ownership of the northern Burrup on freehold title and that they can then lease that back to the rest of Western Australia; and we do not know at what lease rate. The notion that three native title claimant groups will be given freehold title to the non-industrial areas of the Burrup Peninsula, and that they can then lease that back to everybody else so that it can be used for conservation and recreation purposes, is giving everyone whom I have come across in the Pilbara and everyone else who is taking an interest in this matter an absolute pain in the neck. It demonstrates what is wrong with the native title processes that we have to go through. These people are not native title holders. If they had been determined to be native title holders, perhaps we could ask what does that mean, and what are they entitled to. However, nobody knows that. We do not even know what native title means in practical terms. We have had several decisions about native title, and I will talk about that in a moment, but we do not even know what it means. However, this Government wants to give these three groups freehold title to one area of the Burrup that everybody in the Shire of Roebourne wants reserved for conservation and recreation and that we reserved for that purpose when in government. That is a demonstration of what is wrong with native title in this instance.

Let us look at how this \$27 million will be expended. I have often said that *The West Australian* does not always get it right, but I refer to an article published on 23 May 2002 headed "\$27m Native Title Offer - Deal opens way for \$6b projects". The article states -

The State Government has put together a native title deal worth up to \$27.5 million to clear the way for the full-scale industrial development of the Burrup Peninsula, in the Pilbara.

The article states also -

*The West Australian* understands the package on offer includes freehold title over almost the entire northern half of the peninsula, \$7 million of infrastructure help, an upfront payment of \$1.5 million and ownership of 5 per cent of lots in Karratha's residential and commercial land when they are released for sale.

The deal is believed to be worth between \$12 million and \$27.5 million, depending on how much land is developed.

That was back in May. I understand things have moved on since May and the Government's negotiator, who happens to come from Queensland - I do not know why the Government had to get someone from Queensland to do its negotiations - is apparently trying very hard to convince the native title claimants that they should accept what the Government is offering. In that context, it is interesting that we found out about the Government's plans only when the negotiator inadvertently told the Shire of Roebourne that the freehold deal was on the table. Members can imagine the shire's reaction when it was told that the area of the Burrup Peninsula that it wanted kept for recreational and conservation purposes would be given to native title claimants. On 29 May, the Shire of Roebourne wrote a nice little letter to Dr Gallop, which stated -

We were only made aware of this fact on the 17th May 2002, through our first meeting with the lead negotiator Mr Chris Athanasiou.

It went on to express its anger about the matter. The shire has every right to be angry because it has recreational and conservation responsibilities to the Roebourne community. It was an absolute shock to accidentally find out about the negotiations. The Aboriginal population of the shire of Roebourne is 1 426. However, the native title claim is worth millions of dollars. Members do not have to be Einstein to know that a lot of money has already been paid to Aboriginal native title claimants and that it has gone down the gurgler. A recent incident in the north eastern goldfields provides a classic example. A native title group that received hundreds of thousands of dollars in a trust account used the money for its own purposes. Members may recall a June 2001 headline in the *North West Telegraph*, which reads -

\$60m native title agreement.

The article stated -

Native title agreements for Mining Area C are expected to cost BHP Iron Ore \$60 million over the 20-year life of the mine.

The \$3 million annual compensation will be paid to the claimant groups' trust funds and are in addition to provisions for Aboriginal employment and protection of culture and heritage.

Sixty million dollars had to be paid before area C could go ahead. Marandoo cost \$40 million and Woodside had to pay \$60 million for Burrup. We are talking about large sums of money that have been provided to small groups of people who, in the cases to which I have referred, have never had their native title claims proved. The Burrup impasse - that is what it is - has the potential to stop \$6 billion worth of development. The Government, via the minister and the head of the department, has told us that there is a window of opportunity that must be seized before it closes. However, such information has not effected a conclusion. Members can understand the plight of the Wong-Goo-Tt-Oo people, who believe that they are the rightful native title holders and that the other group are imposters. The native title process allows this type of scenario to hold up developments.

I recently met a man in Kununurra who told me that he had a freehold block of farmland, the boundary of which is 100 metres from the river. The land between the boundary of his land and the river is vacant crown land, and, as such, subject to a native title claim. The man wanted to install a pipe between his property and the river so that he could pump water to irrigate his crops. However, he is not allowed to do this. Other people in the town want to carry out subdivisions; however, there is no land available in Kununurra! There is no water in Kununurra! Ironically, Kununurra receives its water from bores and yet everybody keeps talking about pumping water from the Ord Dam to Perth. They cannot get water in Kununurra; every second house in that town has a dead garden, because it operates under the same water pricing policy that Dr Gallop has in mind for the metropolitan area.

Hon Tom Stephens: Is that the one you brought in?

Hon NORMAN MOORE: Yes. It has been in forever. Western Australia's remote areas have always had a different water supply pricing policy from that of the metropolitan area. The minister knows that as well as I do.

There are countless examples of what is wrong with native title. I will go through the history of native title to reiterate why it should be totally abolished. Even though total abolition of native title requires a change in both Commonwealth and State law, we must find a way to make it happen. I opposed land rights in the 1980s when the Burke Government introduced its land rights legislation, which was modelled on the Northern Territory laws. I regret to say that the Fraser Government introduced the Northern Territory model. Over half of the land in the Northern Territory has been given to Aboriginal organisations as a result of native title claims, and over the past 30 years there have been virtually no positive effects. The royalties that have flowed from the mining operations in the Northern Territory have gone down the gurgler. Brian Burke's Government introduced similar legislation but this House rejected it. Thank goodness for that. The High Court of Australia then handed down its verdict about an island which became known as the Mabo decision. In response to the High Court decision, the Keating Government decided to legislate on the native title issue for the Australian mainland. Fundamentally, the Keating legislation was amended by Howard's 10-point plan. People like me who did not support the concept of native title had to accept the High Court's decision that it existed in Australia. We decided to see what it would actually mean. However, Keating then introduced his legislation. He showed us that he could be devious and duplicitous when he stated that pastoral leases, along with freehold, extinguished native title. Native title would only exist on land that was vacant crown land. That was our understanding until he introduced his legislation. The legislation did not clarify the pastoral lease situation but served to make it more complex. There were different types of pastoral leases in Australia. Western Australian pastoral leases allowed Aboriginal access; Queensland pastoral leases did not. The great irony of that is that because of the historical situation, Aboriginal access to Western Australian pastoral leases is now easier than it is in Queensland. Keating gave an assurance

that pastoral leases would extinguish native title and everybody thought native title claims were relevant only to vacant crown land. Keating's legislation left the matter unresolved until the Wik decision came down, the thrust of which stated that pastoral rights and native title could coexist - whatever that means.

I was nice to Hon Sue Ellery, so I would appreciate her not yawning too loudly.

Hon Sue Ellery: I'm sorry.

Hon NORMAN MOORE: Otherwise I will yawn.

Then, two more decisions were handed down within about two weeks of one another - Justice Lee's decision in the Miriuwung-Gajerrong case in the Kimberley and Justice Olney's decision in the Yorta Yorta case in Victoria. When the Lee decision was handed down, Hon Tom Stephens was sitting where I now sit. He said that it was the best decision ever made in the history of the land rights or native title process. Justice Lee of the Federal Court of Australia said that Aboriginal native title existed over large areas of the Kimberley and that the native title holders had not only access but also ownership of the resources on the land and control over access to it. The decision meant that the Aborigines concerned could stop anyone going into very large areas of the Kimberley. Justice Lee also granted native title to an island that Aborigines had visited on only one occasion during the Second World War when they went across on a barge. Justice Lee extended the boundaries in a way that no-one contemplated. He created a separate State. In Western Australia, the Crown owns the minerals on behalf of all citizens, but Justice Lee gave those resources to the Aboriginal native title holders. Hon Tom Stephens was over the moon; he had been asking for that for years.

A week later, Justice Howard Olney, also of the Federal Court of Australia and a former member of this House, handed down the decision in the Yorta Yorta case and determined that native title did not exist in respect of that claim. He said that the claimants could not demonstrate continuing use of the land. That set Hon Tom Stephens back a peg or two.

Within two weeks, two almost opposite decisions were handed down by two Federal Court judges. The State Government of Western Australia obviously appealed the Lee decision and the Full Court of the Federal Court said that it was rubbish and that it did not apply; that is, the claimants did not own the land or the minerals, nor did they have control over access. Importantly, the court also determined that native title had been extinguished on enclosed or improved pastoral leases and mining leases. That was then the law of Australia. As the Minister for Mines at the time, I made a decision on the basis that the law was that the Government could grant mining leases over enclosed or improved pastoral leases or former mining leases. The Labor Party said that I should not do that because someone might appeal. If we were to wait for someone to appeal a decision or for legislation to be introduced and did not do anything until that happened, we would never do anything. That is what we did. For a period following the decision of the Full Court of the Federal Court on the appeal against the Lee judgment, that was the law of Australia; that is, native title had been extinguished on enclosed or improved pastoral leases and mining leases and the claimants did not have ownership of the minerals.

Of course, the taxpayers of Australia, through the land councils and the Aboriginal Legal Service, appealed the Federal Court decision and off we went to the High Court, again at taxpayers' expense. The Court Government made a very strong submission in respect of that appeal. It argued vigorously that the decision of the Full Court of the Federal Court in respect of pastoral leases, particularly, should be upheld. Regrettably, Governments change, and the Gallop Government watered down the State's position. The legislation became like a blancmange - that is, it had no substance, backbone and so on.

We now have the most recent High Court decision. For the life of me, I cannot find out what it means. It states that Aboriginal people do not own the minerals, but that has always been the case. Everyone knew that, except Justice Lee. The newspapers and some cartoonists have said that this is a great victory for the avaricious mining industry, which will now walk all over Aborigines because they do not own the minerals. That is how it has always been and always will be.

This decision has reaffirmed the Wik decision, which states that rights can coexist on pastoral leases. It also states that native title rights and the miners' rights can coexist on a mining lease. For the life of me, I do not know what that means. I have been trying to find out whether the mining tenements that I granted as Minister for Mines following the Federal Court decision are valid. They were granted under the law of the land at the time, which the High Court may have changed, but I cannot establish that. I can find one lawyer who says they are invalid and another who says they are valid. I suspect that the Crown Solicitor's Office is trying to determine what it thinks, and I am not privy to that. If the Crown Solicitor determines that the tenements are invalid, it is the Government's responsibility to do what we did in the past; that is, to validate them in legislation. We validated many things that happened following the Mabo decision and the effect on the relationship between that legislation and the racial discrimination legislation.

What has happened? Instead of handing down a decision that made it absolutely clear to everyone what native title meant, the High Court has caused more confusion. No-one yet knows what native title is in practice. As members of this House know, and as you, Mr Deputy President (Hon George Cash) know, having handled legislation in this House, the Court Government introduced a Bill designed to define native title. It did not refer to land ownership in the European sense; it referred to land usage and stated that native title meant the land could be used in the same way that traditional Aboriginal people had always used it. It did not state that they had inalienable freehold title, leasehold title or whatever to the land. That legislation was thrown out by the High Court and members of this Government gloat about that. That is a shame, because it was the best attempt by anyone in Australia to identify, define and clarify the meaning of native title. People knew where they stood.

The High Court has handed down another decision that has muddied the waters. It has sent certain questions back to the Federal Court for further consideration. It is an absolute mess. I do not for one minute believe that the notion of native title has been in any way beneficial to the Aboriginal people of Australia. I do not think one individual Aboriginal has benefited from this process, other than a couple who have extracted large sums of money from mining companies not for the benefit of their people but, in some cases, for personal benefit. Native title has been granted in only one or two cases in Australia, but we still do not know what it means and the courts will not tell us. If the court will not tell us, it is time the Parliaments of Australia decided to repeal this impractical, biased and probably racist legislation that gave us native title. I have always argued, even back in the days of land rights, that there should be one law for all Australians. We should all have the same access to land. The laws in respect of land ownership should apply equally to everyone.

Another issue is even more concerning; that is, the effect this is having on Aboriginal communities. As I said earlier, three groups in the Pilbara are at each other's throats. There are 11 groups in conflict about the Wongatha claim in the north eastern goldfields, which involves the Murrin Murrin operation. This situation is causing significant and serious dissension and dislocation within many Western Australian Aboriginal communities.

*Sitting suspended from 1.00 to 2.00 pm*

Hon NORMAN MOORE: Before lunch I indicated that native title in Western Australia is causing significant disruption within and between Aboriginal communities and is not assisting the progress of those communities. I gave an example of the Burrup situation in which three groups are at each other's throats. In the Wongatha claim in the north eastern goldfields, 11 or 12 groups are claiming native title over a particular area. The situation is compounded by mining companies in many cases paying large sums of money to native title claimants so that they can proceed with their developments. I gave the example of recent evidence of at least one family that used funds from a trust account for its own purposes.

I am seeking to mount an argument that we must get rid of what has become a serious blight on the Australian landscape. Native title has done nothing for anybody that I can find, other than lawyers. Lawyers have done a very nice trade in all of the issues surrounding native title. Every decision on native title made by a court is appealed. Lawyers are involved every time a company wants to do a deal with a claimant. We have now reached the ridiculous situation in which there are no benefits to the mining industry, the resource sector, the housing sector, the land development sector or to economic development, yet no tangible or obvious benefits to the Aboriginal community. One would hope after all this time - it is now more than 10 years since we went down this path - that we might have had some certainty and resolution of native title; the fact is we have not. The latest High Court decision has only further confused the issues surrounding the doctrine of native title.

I mentioned a couple of examples in the crazy situation we have reached in which very large sums of money were paid by mining companies to get their projects off the ground, such as the \$60 million for area C by BHP Billiton. What that says is that a major, multinational company, or a national company, with vast sums of money can do a deal and get a project off the ground, and provided it pays enough, it will get what it wants. Of course, that means that every small mining or exploration company in the community or anybody in land development who cannot get enough money to pay the demanded price simply does not go any place. Ironically, there is a scenario now in which big companies are getting their own way and smaller companies are getting nowhere.

This nation can no longer afford native title in any way I can think of. It certainly cannot afford it in the context of the demands that are made on those who wish to invest in our community to create jobs, wealth and the taxation that keeps Governments going and doing the things they do. After we get rid of native title, we should start doing something meaningful, constructive and useful for disadvantaged people in the community.

A report referring to Aboriginal communities was tabled in the House today. Although I have not read it, I heard the prepared statement by the Leader of the House. Obviously, the report contains issues of great concern. There are issues of great concern in the Aboriginal community - not everywhere but in many parts of it. There are areas of great concern in the broader community - not everywhere but in many parts of it. Many disadvantaged people in Australia suffer from all sorts of economic deprivation. All sorts of people in the

community suffer from a poor education, a poor family life, unemployment, poor housing and poor health services. Everybody knows about those issues that are prevalent in our community today. Those issues have not improved in my time in this place; in fact, I suspect they are worse in some areas, yet with Aboriginal people the focus is on land and native title. The energy and money expended on native title claims and negotiations could be spent on education, health, housing, training, infrastructure and all the other features that are vitally important if a society is to have a future.

[Quorum formed.]

Hon NORMAN MOORE: The federal Government has invested billions of dollars in an indigenous land fund to purchase land for Aboriginal groups. I understand it was set aside to purchase land for Aboriginal communities that did not succeed in a native title claim. There is ample evidence that it is being used for all sorts of matters other than that, yet it is a very large amount of money that could be used to deal with the issues exposed by native title. There is no reason that the nation of Australia cannot buy land for disadvantaged groups, including Aboriginal groups, if that will help them to become economically viable. I do not have a problem with that, provided the land is bought on the freehold market, in the same way that everybody else can buy it, for a competitive price - unlike the examples given to the House by Hon Mark Nevill when he was in this place - and that it is made available as a resource to assist disadvantaged communities. That is an appropriate course of action for Governments to take, and it is one way in which Aboriginal communities can be relocated to certain land, if that is considered appropriate in the context of those communities.

The problem with native title is that the process is complicated, expensive, time consuming, restrictive and obstructive, and at the end it delivers something that nobody understands. If the indigenous land fund buys a freehold farm for an Aboriginal community, the community gets a freehold title over that farm and can operate it. The farm is bought, the deal is done, the title is amended and the community can move onto that land and start operating it. With native title, a claim is lodged by some people. Other people lodge a claim over the same land, and it goes on and on. There are negotiations with people who want to use that land for other purposes. It is an ongoing set of circumstances in which the courts and lawyers are involved ad nauseam, at great expense to everybody - the taxpayers, the Aboriginal groups and the companies that want to be involved. At the end of all that - in many cases years later - the result is something that nobody understands. Nobody knows what native title is. What does it mean in practical circumstances? Then, to try to achieve a deal, Governments such as the current Western Australian Government offer freehold title over an area of land. That is straight-out bribery. I am not sure who is bribing whom in this case, but that is what it is. The notion of providing freehold title to be leased back to the general community abhors me; it is just appalling.

As a community, we must stop getting ourselves into some sort of intellectual bind over the notion of native title and of the splendid native of past days. We should ask what are the problems and what is being done to solve those problems confronting the Aboriginal community, which, as I said a moment ago, are highlighted by that report into violence. Our energies should be addressing that area. At the moment they are not. I am not blaming this Government, the previous Government or any other Government. It is a fact of life that while we have said to the Aboriginal communities that land is now the important issue, we have ignored some of the other aspects that I believe are more important.

I do not know what must be done to abolish native title. However, we are dealing with the law of the land, and it is competent for Parliaments to change the laws under which we operate. It is not beyond the realm of possibility for this notion of native title to be removed. It is not beyond the capacity of the Australian Parliaments to create a situation in Australia in which the laws that apply to Aboriginal people are the same as those that apply to everybody else; and they are laws on a whole range of matters, including the laws that apply to land.

Over the past 10 years or so in the native title debate, we have been subjected to all sorts of propositions that have been put forward by various people to try to convince the Australian community that native title is somehow a good thing. It is not all that hard when the vast majority of Australians live on their own freehold block of land and do not have to worry about native title because it does not affect them. However, the notion that freehold title has extinguished native title but leasehold title has not is a nonsense. If native title exists, it should exist over any bit of land. To say that it does not exist when there is freehold title, it partly exists when there is leasehold title and it can exist when there is vacant crown land is an absolute nonsense. It is a political "solution" to an insoluble problem that is created by the notion that somehow Aboriginal people were dispossessed of their land by the conquering Europeans and we should provide compensation for that.

When I examined the land rights argument back in the 1980s, I spent some time reading about terra nullius and came to understand what it means. In the debate on native title, it has been said that terra nullius is a nonsense; everybody knows that Aboriginal people were living on the mainland of Australia when the Europeans arrived. People were assuming and arguing that terra nullius meant there were no people. It did not mean that and still

does not. It means that there was no recognisable form of government on that area of land. The notion of invasion in international law is that one country invades another country that has a Government, and if an invasion takes place and one Government replaces another one or takes its land, there is a process of compensation under international law. The notion of terra nullius is that there is no Government in a country, but it does not mean there are no people. If somebody can explain to me how the invading Europeans could recognise the Government of Australia in 1788, I would love to know how they could do so, because there was no recognised system of government for that landmass. Of course, Aboriginal communities and tribes were scattered across the nation, but the notion of terra nullius is not that no people were there; it is that there was no recognised Government.

Hon Kim Chance: It is an interesting point. Had a treaty similar to the Treaty of Waitangi, for example, ever been signed, would that have created a different situation?

Hon NORMAN MOORE: With whom would the treaty be signed? Australia and New Zealand are quite different. If Governor Phillip had signed a treaty with the Aboriginal people who lived around Port Jackson, that would have had no effect on the Aboriginal people who live in the central desert of Western Australia. The people are totally different and probably never even run into each other. There was no national Government; and that is the notion. I am trying to say that people have simply said that the doctrine of terra nullius that was endorsed by a number of decisions means that there were no people here. That is not what it means. Court decisions that confirmed that terra nullius existed were made on the basis that there was no recognised Government of this nation.

Hon Robin Chapple: I have an interjection.

Hon NORMAN MOORE: The member can make his own speech if he likes.

Hon Robin Chapple: There are 152 nations in Australia.

Hon NORMAN MOORE: Therefore, is the member saying that we should have 152 treaties?

Hon Dee Margetts: Why not?

Hon Robin Chapple: Is Europe one nation or a number of nations? It is exactly the same thing.

Hon NORMAN MOORE: We are talking about an invasion of the Australian landmass, which was supposed to have started in 1788 by Governor Phillip. Is the member saying that we should do a deal with 150 nations? The notion at that time was that this country was not invaded. That is what terra nullius is all about. I am not saying that that is absolutely right or wrong, but that is what the courts ruled. Justice Blackburn came to that decision. With the spin that people put on this, it has been argued that the idea that no native title was available because of terra nullius was because no people were here. That was not the situation.

The argument has now been put that we should have a treaty. In any office of the Aboriginal and Torres Strait Islander Commission in Western Australia are signs stating "We want a treaty", or something like that. They are all being paid for by the taxpayers of Australia. With whom should the treaty be and for what purpose - so that we can have two or 150 separate nations? How many should there be on this landmass? I have a strong view - maybe I am a bit odd - that the people living on this landmass, of whom about 1.5 per cent are indigenous people, should all live under the same laws and conditions, and have the same opportunities and responsibilities and the same chance to live a life that is meaningful and satisfactory from their own perspective. We should do that on the basis that we all have the same opportunities and the same laws under which to operate. That may be a naive view, but it is the view held by about 99 per cent of the people in the Australian community. They have had a gutful of the Aboriginal industry and the waste of vast sums of money spent on lawyers and court challenges. Vast amounts of money have been wasted on all sorts of propaganda. People are appalled at the desperately poor living conditions of many Aboriginal people. Conditions have got worse, not better, since I took an interest in this subject some 40 years ago. It is an absolute disgrace. The notion that we should send Aboriginal people to remote communities because that is where they came from and that we should build houses and facilities is unreasonable. We should not tell them to settle there. What are they going to do there? They no longer live a traditional lifestyle; many Aboriginal people would starve to death if they were not provided with food. There is nothing for people to do in these communities. There are no jobs or opportunities. If people have nothing to do, they end up doing non-productive things. We all know about petrol sniffing and the serious consequences of that. We all know that a person cannot buy petrol between Ayers Rock and Laverton because people will not stock petrol. People have to use avgas in their cars.

We all know about the Swan Valley Nyungah Community. We all know about the countless communities that have serious problems. We know of school teachers who have had rifles fired at them. We all know of schools that have been closed because the safety of staff could not be guaranteed. The hospital at Balgo was closed because the safety of nurses could not be guaranteed. The communities are dysfunctional and do not provide

proper support and services for Aboriginal people. We have got to do something about this. Instead of wasting all our time, energy and intellect arguing about native title and the nuances of terra nullius and all that sort of rubbish, we should get rid of all that on the basis that we are all equal citizens of Australia. If land has to be bought, we should use money from the indigenous land fund if it must be a solution to the problem. We should then get down to the real nitty-gritty of the problem. I have made this speech about seven times since I entered Parliament. I have seen things only get worse. I keep seeing the Aboriginal industry, white lawyers and some well-educated Aboriginal people cream off the top while the people at the bottom still live in absolute squalor. This is happening in a First World country. We have got to get our priorities right. In my view, the priority is to get rid of native title; get it off the statute books once and for all. In Australia, we must put in place laws that apply equally to all. We must put some serious hard yakka and money into assisting the disadvantaged in the community, be they Aboriginal or not. It should not be beyond the wit of men to do something about this.

I have been desperately concerned about what is happening in this country on this issue ever since the notion of land rights was introduced into Western Australia by the Burke Government. At the time, I took a big interest in the issue and I still take a big interest in it. From the Burke legislation of 1984 through Mabo, Wik and High Court decisions, all I have seen is a system that does not work. There is no certainty for anybody, nor are there any benefits. All we have is dysfunctional communities and people arguing with each other about who are the native title holders. It is desperately unhealthy and it is time it was fixed. I support the motion.

**HON JIM SCOTT** (South Metropolitan) [2.25 pm]: Before I address the main issues of the motion I will comment on remarks made by Hon George Cash. As you know, Mr Deputy President (Hon George Cash), he is a very erudite speaker! In speaking on electricity reform, I was concerned about something he left out of the equation. In these days of water shortages, it is something that is becoming more apparent to us all. He referred to the ability to deliver a cheap electricity supply to the State. I have concerns about his approach of looking only at one side of electricity reform and not looking at efficiency and use. Quite often, the effect of reducing the price of middies of beer to half price during happy hours at hotels is that people drink more. The same thing happens with electricity. We will see a huge waste of electricity - a very important resource - through price reduction. The management of demand for electricity is something lacking in all proposed reforms. That is what we should look at reforming in this State. Reducing demand will reduce prices. The eastern States reformed their electricity industries and saw an immediate drop in the price of electricity. However, because companies were competing to get larger shares of the market, not enough money was available to put in appropriate infrastructure. Increased use of electricity was not for industry, but for airconditioning. As a result, prices started to go up in order to provide more infrastructure. A lot of electricity was wasted in the eastern States. Australia has massive problems trying to observe its greenhouse responsibilities, even though it has not signed any agreements. The federal Government has been holding on to the greenhouse statistics; it has not been brave enough to make them public until it can do more work on them. In my first term in this House I talked about job creation. The management of demand of electricity provides four times as many jobs for each dollar spent as does the production of electricity itself. That is the area we should reform.

I will speak now on an area that concerns many people. We have seen a lot of changes in the insurance industry recently. Many members debated the reforms to workers compensation and have seen huge restrictions placed on injured workers accessing the legal system. At the time, I opposed all the reforms. Nevertheless, they went through, albeit with some amendments. The aim of the reforms was to save the imperilled insurance companies and the insurance industry. We have now seen the margin between premiums and payouts jump from \$28 million in surplus, from the year before those reforms were introduced in 1993, to \$500 million in the previous financial year. From the latest figures, which have not been released, I understand that figure will go over \$1 billion. However, the insurance companies are now focusing on a new area to get tort law reform or the restriction of people's right to common law, which is how I would prefer it to be known because that is mostly what it is about. According to the insurance industry, tort law reform is based on the need to restrict exorbitant claims made by people. We have all heard the stories on radio, even on the Australian Broadcasting Corporation's station, about the incredible payouts given to people for the most stupid things. An example was given of a couple having an argument in which one threw orange juice at the other in a cafe and then slipped over on it and was awarded a huge payout.

Hon Paddy Embry: Not even a banana skin.

Hon JIM SCOTT: No, it was not even a banana skin. However, when the facts on this story were checked out, it turned out to be information that was taken from an Internet site and was not true. It was part of the propaganda that we were given at the time. I heard a few radio stations running with that story and one wonders how it got put into that domain. There was a real wind-up about the trouble caused by avaricious people getting injured and going to the courts to rip off poor old negligent people who had done the wrong thing. As we know, one can get money from those people only if it can be proved that there was, at least, some reasonable level of negligence. In order to save the world, it is now being considered how we can stop people who have been

injured from claiming damages when someone has been negligent. Otherwise, no-one will be able to afford the premiums or the insurance companies will go out of business! I find that hard to believe. I did a considerable amount of reading in the recent break. The same campaigns on tort law reform are being run in the United States. These campaigns have been running in series through the different areas of insurance available, from workers compensation and public liability to medical indemnity, and they have blamed the victims. They have threatened such chaotic outcomes and dire predictions for industry and business that legislators from around the world have quickly moved to take away people's rights and to help these poor insurance companies keep on top of the problem! However, studies have been carried out such as the one that I have with me today called "Premium Deceit - The Failure of "Tort Reform" to Cut Insurance Prices", by J. Robert Hunter and Joanne Doroshow. It was released in the United States for a group called Citizens for Corporate Accountability and Individual Rights. The study states -

From the mid-1980s until today, the nation's largest businesses have been advancing a legislative agenda to limit their ability for causing injuries. One of the principle arguments on which they rely is that laws that make it more difficult for injured people to go to court (i.e., "tort reform") will reduce insurance rates. This report analyzes these claims and concludes they are invalid.

This major study was based on simple premises. It reads -

The hypothesis we tested was simple: If tort law limits succeed in reducing insurance costs for consumers of insurance, that should be evident in the trends of insurance costs. As tort law limits get more severe, the trends in rates and underlying loss costs should be less.

We tested this hypothesis for the lines of insurance subject to general tort reform and to product liability and medical malpractice separately, since states often enact separate tort law restrictions to be applied just in those areas.

We found that the trends in rates/loss costs do not support the hypothesis that "tort reform" has succeeded in holding down insurance costs or rates. Despite what "tort reform" proponents promised lawmakers, tort law limits enacted since the liability insurance crisis of the mid-1980s have not lowered insurance rates in the ensuing years. States with little or no tort law restrictions have experienced the same level of insurance rates as those states that enacted severe restrictions on victim's rights.

This document also runs through the sorts of campaigns that were waged in the United States. It refers to a period in the 1980s but there have been a number of cycles following that period. It also considers the real reasons behind the huge cost hikes. It states -

... what ultimately proved to be the true cause of the "liability insurance crisis" of the mid-1980s was not the legal system at all. Study after study that examined the property/casualty insurance industry found that the "insurance crisis" was actually a self-inflicted phenomenon caused by the mismanaged underwriting practices of the industry itself.

The insurance industry's profits and underwriting practices are cyclical, often characterized by sharp ups and downs. In fact, these underwriting practices and the insurance cycle caused a similar, less severe "insurance crisis" in the mid-1970s. During years of high interest rates and/or excellent insurer profits, insurance companies engage in fierce competition for premium dollars to invest for maximum return. Insurers lower prices and ensure very poor risks just to get premium dollars. In the mid-1980s, the cycle's effects were exacerbated by a particularly exaggerated underwriting response to the high interest rates of the early 1980s, characterised by such risky underwriting as insuring the MGM Grand Hotel months *after it burned down in a fire*.

By 1985 when interest rates had dropped and investment income had decreased accordingly, the industry responded by sharply increasing premiums and reducing availability of coverage creating a "liability insurance crisis."

As *Business Week* magazine explained a January, 1987 editorial:

Even while the industry was blaming its troubles on the tort system, many experts pointed out that its problems were largely self-made. In previous years the industry had slashed prices competitively to the point that it incurred enormous losses. That, rather than excessive jury awards, explained most of the industry's financial difficulties.

There are insurance companies in Australia in difficulty and as the inquiry into the HIH Insurance collapse continues, we find that it was not caused by huge amounts of claims but by poor investments and takeovers that were carried out incompetently by that company, which then put a lot of pressure on other insurers around the country. The question is, do we in this place continue hitting victims to protect those very large insurance companies and their poor business practices? That is what the response from Legislatures around Australia has

been so far, and from all that I have been hearing, coming out of the various meetings between state and federal ministers, that is what will continue to happen. I understand that many sporting clubs and volunteers are extremely concerned about premiums being boosted massively by these same insurance companies, and threats are being made not to insure certain areas at all. This document goes through a series of occasions on which the same thing has been said in the United States. It is a rip-off campaign that not only takes money out of people's pockets, but also takes away people's rights. As we continue to erode people's access to common law, we are taking away a human right that is recognised by international conventions to which Australia has subscribed. It is strange that the people who are being targeted first to have that right removed are the most vulnerable - those who are injured. The reality is that when people are denied access to the law when they have suffered injury or loss through the negligence of others, the situation does not simply go away. When people cannot get compensation for the injury they have suffered, they must still live. They need houses and food for themselves and their families. Often they will no longer have jobs through being incapacitated. They must often sell their houses. I know of cases in which people have had to remove their children from private schools. The children's education will suffer, because it is becoming more expensive for them to go to university. A whole process is set in train, which not only has a huge impact on that family, but also means that the social system must pick up the cost. We as taxpayers must pick up the cost that the insurance companies and negligent employers are not paying. That is not right, and it is time that a much closer look was taken at these insurance companies. They have got away - to use my own name in vain - scot-free.

I remember that, during the debate on the workers compensation legislation in this place, Hon Peter Foss promised that when further examination of this issue took place - the Guthrie report has been released, which I presume is a follow-on from what the previous Government intended to do anyway - the insurance companies would be considered. We had looked at the lawyers, the medical practitioners and the rehabilitation sector, but we had not looked at the competencies of the insurance companies. They have escaped entirely the scrutiny that has been put into other areas. During the hearings of the Standing Committee on Legislation, when that legislation was considered, the spokesman for the Chamber of Commerce and Industry of Western Australia, Brendan McCarthy, said that the real cause of the crisis was not lawyers, injured workers or doctors, but the incompetent management of claims by the insurance industry and the cartel arrangement that the industry has put in place. Companies have worked together to fix prices.

Hon Peter Foss: That proves it, then. It must be an international conspiracy.

Hon JIM SCOTT: At least one person is saying that. Brendan McCarthy went on to say that, despite this being the real cause of the problem, the people who should be punished are the injured workers.

Hon Ray Halligan: What did he mean by "punished"?

Hon JIM SCOTT: He did not use the word "punished"; I am using it.

The DEPUTY PRESIDENT (Hon George Cash): Members! One at a time please - even I cannot hear the interjections.

Hon JIM SCOTT: We note now that, despite the huge jump in the profitability of the industry, there is still a desire for more money from businesses for public liability and from doctors for medical indemnity. Life is being made hard in all these areas. Some of the things that were being said in the United States when the same campaign was being run included -

But to the public and to lawmakers, insurers told a different story. In fact, coming out of their bottom year of 1984, insurance companies began a "massive effort to market the idea that there is something wrong with the civil justice system." The goal, in the words of one of the industry's leading spokespersons, GEICO's chairman, John J. Byrne, was "to withdraw [from the market] and let the pressure for reform build in the courts and in the State legislatures." Evidence gathered by over a dozen state attorneys general for an antitrust class action filed in 1988, and settled in 1995, found that a number of insurance companies actually conspired to create this insurance crisis by restricting coverage to commercial customers and raising prices, creating an atmosphere intended to coax states into enacting "tort reform."

Hon Peter Foss should note the use of the word "conspired". The companies actually paid out on the court case mentioned. The situation described is exactly what has been going on here right now.

Hon Ray Halligan: Did they also conspire in what happened on 11 September last year?

Hon JIM SCOTT: They did not do that, but I do not know how much money FAI, or any of the companies doing medical indemnity, had in that. Australia's exposure was largely through HIH, which collapsed for reasons that had nothing to do with that event.

Hon Peter Foss: Do you know how much risk actually stays in Australia?

Hon JIM SCOTT: Yes, I know about the reinsurance process. That is dealt with in this document.

Hon Peter Foss: Have you read the report of the select committee? This House has done a report on that.

Hon JIM SCOTT: I have not read that report, but I would like to have a look at it.

This executive summary reads -

State legislatures, regulators, and voters in ballot initiative states, were all told by business and insurance lobbyists (and their PR firms) that the way to bring down insurance rates was to make it more difficult for injured consumers to sue in court. For example,

- . At a 1986 meeting of National Association of Insurance Commissioners, Iowa's commissioner, William D. Hager, remarked, "The insurance industry has argued for some time that insurance rates and availability are predicated upon the high costs associated with the expanding tort system. It should clearly follow, therefore, that insurance rates will decrease and the availability improve with the advent of legislative reforms of the tort system."
- . Iowa's Attorney General Tom Miller asserted in 1986, "reforms are needed to reduce tort liability in the state and consequently cut spiralling insurance rates."
- . A spokesman for the Texas Medical Association promised in 1986, "If significant tort reform is passed next year, there will be an immediate stabilization of premiums."
- . In its March, 1987 newsletter, the Association for California Tort Reform, announced, "[D]oes significant reform mean lower insurance premiums? Yes!"
- . Ralph Gaines, Jr., a spokesman for the Alabama Civil Justice Reform Committee, said in 1987, "rigorous and meaningful tort reform will go a long way to reduce rates in insurance premiums."
- . In New York in 1986, just months after state lawmakers responded once to the "insurance crisis" by enacting major "tort reforms," Minority Leader Clarence D. Rappleyea (R-Norwich) called for even more changes - complete elimination of joint and several liability and a \$250,000 cap on "non-economic damages - saying these measures were still needed "to ease the liability insurance crisis."

There are a raft of these statements. It also reads -

However, notwithstanding this well-orchestrated public relations and lobbying campaign, there was a "virtual absence of empirical evidence that tort reform [would] indeed lower liability insurance rates or expand the insurance's availability," . . .

- . In 1986, lobbyist Peter G. Strauss of the Alliance of American Insurers, testified that "liability insurance rates would go down" if the New Jersey legislature enacted a cap on damages, repealed the collateral source rule and eliminated joint and several liability. However, "he said he could not say how much rates would drop." And, under questioning from New Jersey Senate President John F. Russo (D-Ocean County), "he said that he knew of no state where rates had declined as a result of such 'caps' or other revisions in the civil justice system."

The executive summary is full of such examples that occurred when claims were made, yet when the findings were tested, it was found that premiums did not go down; in fact, compared with States that did not enact heavy tort reform, there is very little difference.

Hon Peter Foss: There is a very good reason for that. Unfortunately, nobody has his premium determined only by his own State. It is required to be enshrined in state law because all States must do it before there are good results.

Hon JIM SCOTT: That is right. Reinsurers are not required to be examined either. This document mentions examples of massive increases in reinsurance premiums without any need for reinsurers to be examined.

Hon Peter Foss: I do not know how it can say that. All the major reinsurers are overseas. We do not have access to their figures.

Hon JIM SCOTT: This, of course, is a United States document. Some of them would have been overseas, but not all of them.

Hon Peter Foss: The main reinsurance is done in Europe.

Hon JIM SCOTT: In fact, I think the document quotes Lloyds.

Hon Peter Foss: The main reinsurers are from Munich, Germany and Zurich, Switzerland.

Hon JIM SCOTT: The comment made about that is that there is very little ability to test whether the additional reinsurance premium is valid. The point is that in situations in which tort reforms were not carried out, premium rises were at the lower end of the scale compared with some of the most strict tort reforms in the reduction of people's rights.

Another aspect that needs to be looked at - as I said, Brendan McCarthy commented on this - is the efficiency with which insurance companies manage claims. A plaintiff lawyer who works in the area has pointed out to me that it is rare for an insurance company to simply hand over money and admit that a case is clearly one of liability. He said that he can hardly remember such a case.

Hon Peter Foss: He must be very young or have a very short memory.

Hon JIM SCOTT: He is not very young and does not have a short memory; he is very experienced.

Hon Adele Farina: When insurance companies hand over money, they do not normally admit liability.

Hon Peter Foss: I was an insurance lawyer for years. We frequently did it.

Hon Adele Farina: You must be an exception to the rule.

Hon Peter Foss: I always am. I did it if we were liable but not if we were not liable. I was not a sucker.

Hon JIM SCOTT: I know of a few cases in which people have been put through the mill and been caused incredible distress when trying to obtain legitimate payouts.

We must look at where the current system is falling down. I will give an appalling example of an injustice.

Hon Peter Foss: Is it an example of appalling injustice or an appalling example of injustice?

Hon JIM SCOTT: It is an example of appalling injustice.

Hon Peter Foss: I will let you know whether I think it is an appalling example of injustice.

Hon JIM SCOTT: In this example I will call the fellow Bob. He comes from an ethnic group.

Hon Murray Criddle: Is he Bob the Builder?

Hon JIM SCOTT: He is Bob the electrician. He worked for an electrical company that did work for a large mining company in this State. While he was carrying out his work, he was gassed. He ended up with extreme disabilities. He has brain damage and extreme chromosome damage, and he suffers from fits. It would be impossible to employ him now because he continually shudders and loses control of his body. Every time I see him, he is worse. His employer did not do anything wrong. His lawyers chose to sue the mining company, not through the workers compensation system but through general tort law.

He won the first case and there was then an appeal. It was not an appeal about whether the mining company was negligent and caused this man's permanent injury and, I would say, premature death. I am not a doctor, and never have been, but I say that from looking at his condition. The company has not said that it did not cause the problem. It has said that it was the principal employer and, therefore, he should have sued under workers compensation legislation. The mining company has said that rather than the electrical company, which employed him and paid his wages, superannuation and all the rest of it, being his employer, the mining company was his employer and he should therefore not have sued it under general tort law. It said that he should sue under the workers compensation legislation.

Hon Ray Halligan: You said he was not employed by the mining company.

Hon JIM SCOTT: That is right. The Supreme Court agreed that he was not employed by his employer but by the mining company.

Hon Peter Foss: The problem I have is that what you have said does not make sense legally. I am not saying that some strange legal point was not involved, but that I do not think you understand it.

Hon JIM SCOTT: I have a copy of the case downstairs if Hon Peter Foss would like to look at it.

Hon Peter Foss: That might be more helpful.

Hon JIM SCOTT: Whether Hon Peter Foss wants to be derisive about it -

Hon Peter Foss: I just want to understand it. What you just said was nonsense. I am sure that there is some underlying truth to what you say, but I am having trouble finding it. Perhaps if you gave me a copy of the case I could make more sense of it than you have done.

Hon JIM SCOTT: There were two similar cases. This fellow won his case. Another fellow, who was in a similar situation, lost his case. The Supreme Court lumped together the cases because they dealt with the same issue; that is, who was the employer. The Supreme Court found that the mining company with which the

electrical company had a contract was the principal employer, and that the employee should sue under a different system.

Hon Peter Foss: Was he seeking workers compensation instead of damages?

Hon JIM SCOTT: That is right. However, the court said that the time the man had in which to make that claim had expired. This man has been permanently damaged. He now has a \$50 000 bill to cover the costs of the other side in that case because he lost. He will have to sell his house. He cannot get a job. It is an absolute disgrace.

Hon Peter Foss: It sounds like one. Did he get a suitor's fund certificate?

Hon JIM SCOTT: I am not aware of that. Consideration has been given to appealing to the High Court.

Hon Peter Foss: That might not be a bad idea.

Hon JIM SCOTT: It is appalling that this type of situation can occur. It is clear how this person was severely damaged, but because of a technicality he has had to pay a \$50 000 legal bill. He has lost his house. He is out on the streets without a job or any recompense whatsoever. That is a disgrace. That situation needs to be changed.

Hon Ray Halligan: I wonder about his lawyers. They are supposed to know the law.

Hon JIM SCOTT: They won the first case.

Hon Ray Halligan: They cannot make the determination but they could ask about the options. They know the statute of limitations.

Hon JIM SCOTT: I have been given the definition of "principal employer" and now wonder whether the judges of the Supreme Court know what it is.

Hon Ray Halligan: I agree - it sounds odd.

Hon JIM SCOTT: That may be so, but the point is that this person could not sue his original employer because it was not at fault.

Hon Ray Halligan: Hang on, he was employed and paid by a company that had a contract with a mining organisation. The contract had nothing to do with the injured worker, who was employed by the electrical company. The electrical company paid his wages and directed him; it was a master-servant relationship. The electrical company told the worker to go onto a mining site. He worked under the direction of that electrical company; it told him what had to be done under the contract. He was injured in the course of his employment, yet the electrical company is not responsible. That does not make sense.

Hon JIM SCOTT: That is what I think. That is why it needs to be looked at.

Hon Ray Halligan: By whom? The lawyers should appeal against this decision.

Hon JIM SCOTT: They are, but appealing to the High Court costs a lot of money. This person might not want to go through that process again. He has been through two cases already - he won the first and lost the second - and it has cost him \$50 000 as well as a lot of his wellbeing, I should imagine. It is not always easy. This Parliament needs to consider the law involved and make these matters clear. Perhaps we need to look at this sort of instance and say that when someone chooses a certain path, the other path should not be closed until after that first case has been heard.

Hon Ray Halligan: From what you have said, it appears that the second path - the one the Supreme Court wanted to go down - should not have been open to him in the first place. We need to find out why the Supreme Court went down that path before we can determine what needs to be done.

Hon JIM SCOTT: That is right. From my reading of the case, the Supreme Court went down that path because it felt the same as Hon Ray Halligan; that is, the principal employer was the electrical company. However, that company was not responsible for the escape of the gas.

Hon Ray Halligan: That is what I am asking. Why did this person's lawyers start suing the mining company?

Hon JIM SCOTT: A negligence claim must be made against an employer to access the common law.

Hon Ray Halligan: I am again talking about the competence of the lawyers in this case. Why accept that the electrical company had no responsibility for the injured worker and go down the other path of suing the mining company? It does not make sense to me.

Hon JIM SCOTT: I think they went down that path because the electrical company had nothing to do with the escape of the gas.

Hon Ray Halligan: That is exactly what you would do to protect yourself.

Hon JIM SCOTT: They probably should have done, but it does not help this man. He is not a lawyer. He has limited understanding of English and is not always able to make the distinction between who is and is not a good lawyer. If I were to see a lawyer, I would not know whether he was competent. There is a range of competency. It is a serious issue.

It is time that we took a good look at insurance companies and made their internal documentation systems more transparent. That industry should have an open system that should not only show any outgoings and so on but also be audited for efficiency. It is like a huge bureaucracy. The industry is like a closed shop. The Auditor General cannot check whether those companies have messed up claims, have not helped people get back to work quickly, or have misused the courts or any of those sorts of things.

Hon Adele Farina interjected.

Hon JIM SCOTT: That may occur with some parts. The Auditor General can check whether the losses of a government department were due to investments or the running of that department. It is a bit hard to see those factors in the insurance system. HHH Insurance Ltd did not seem to have an understanding of the position of FAI Insurance. There is a clear need for much better systems of accountability. I will explain to my Greens (WA) colleagues that we should not support any legislation that takes away people's rights without opening up the accountability of insurance companies. Our communities are being ripped apart by this issue.

Medical staff are frightened about performing operations in hospitals and people do not want to help someone who appears injured on the side of the road. I recently heard about a committee that met to discuss ways in which the situation could be improved. However, although the group only ever came together to talk, it decided to disband as a result of its own rising public liability insurance costs. That is ridiculous! We cannot keep going down this path. We must get to the bottom of the issue. If the insurance industry cannot do its job properly, the federal and State Governments must consider taking over the whole area of insurance.

Queensland has the least amount of tort law which restricts people's rights to common law. However, in the area of public liability, the premiums in that State cost half as much as they do in WA. Queensland is the only State that has full common law access and yet it has the lowest premiums and the cheapest system. That must say something. Maybe we should look at measures other than those that restrict people's rights. We must grapple with this issue without looking to restrict people's rights. Otherwise, where would we stop? Should insurance companies receive money but not give it out? We need a better regulatory system.

I impress upon my colleagues the fact that we should not further curtail the rights of people until the Government deals with the fundamental problem behind the rise in insurance premiums and the consequential crisis in the insurance industry. We must have a fully transparent and accountable system. The insurance industry is inefficient because it has been allowed to get fat by frightening people and restricting their rights. This issue is important. I hope the Government is listening to what I am saying. I expect some type of insurance legislation will be introduced before Parliament; however, I will need a lot of convincing before I agree to curtail people's rights.

Debate adjourned, on motion by Hon Bruce Donaldson.