Legislative Assembly

Wednesday, 17 November 1993

THE SPEAKER (Mr Clarko) took the Chair at 2.00 pm, and read prayers.

[Questions without notice taken.]

MATTER OF PUBLIC IMPORTANCE - POLICE FORCE FUNDING CONSTRAINTS

THE SPEAKER (Mr Clarko): Today within the prescribed time I received a letter from the Deputy Leader of the Opposition seeking to debate as a matter of public importance funding constraints on the Police Force.

If sufficient members agree to this motion, I will allow it.

[At least five members rose in their places.]

The SPEAKER: In accordance with the sessional order, half an hour will be allocated to each side of the House for the purpose of this debate.

MR TAYLOR (Kalgoorlie - Deputy Leader of the Opposition) [2.36 pm]: I move -

That this House -

(a) calls on the Government to abandon the McCarrey Commission inspired funding constraints on the Police Force, in particular those which affect rural communities;

(b) expresses its disappointment at the failure of the National Party to translate its past rhetoric into action by using its Cabinet influence to ensure that the police presence is not reduced or removed entirely from Nannup, New Norcia, Dwellingup, Gascoyne Junction, Broomehill, Dumbleyung, Bencubbin, Trayning, Yalgoo, Wickepin and Innaloo; and

(c) reminds the Government of its commitment to 800 new police, none of which has materialised, and demands that adequate resources be provided to all one and two man stations.

Mr House interjected.

Mr TAYLOR: It was the shadow Minister for Police who put it together. It just so happened that I put my name at the bottom.

The SPEAKER: Order! I ask the Deputy Leader of the Opposition to direct his remarks somewhat more to the Chair. That often has an effect in regard to the degree of interjections.

Mr TAYLOR: Mr Speaker, I was looking forward to the interjections from the Minister for Primary Industry, because he will get an honourable mention later in this speech. It was announced yesterday that the one man regional police stations at Nannup, Trayning, Bencubbin, Dumbleyung, Broomehill and Dwellingup will not get their temporary replacements during the time that those police officers go on leave. However, to our surprise, we read in this morning's *The West Australian* that it is not just those stations that are apparently under threat but also the police stations at New Norcia, Gascoyne Junction, Yalgoo, Wickepin and Innaloo. In addition to that, about 11 one man police stations and 33 two man police stations in country and metropolitan Western Australia are clearly under threat.

As a former Minister for Police, I am aware that these one and two man police stations play an important role in our community. When I was Minister for Police, it was proposed that some of these stations be closed. It was pointed out at that time that in many cases the police officers at those stations did not have a large workload; they did not have a high arrest rate and did not put a lot of people in the lockup; and they were in towns that appeared to be quite law abiding. Therefore, there was no need for the police officers to undertake the work that they were doing in those stations. Clearly, the reason for that is not necessarily that the towns are always law abiding, but more importantly that the officers involved are in touch with their communities, understand what is going on, coach the local basketball or football team, are involved in a range of community activities, and accordingly get the results. The results show clearly that those communities are, more often than not, very law abiding.

It cannot therefore be used, as was tried some time ago, as an opportunity to withdraw police officers. It is incorrect for the Minister for Police to suggest during question time that the reason for withdrawing the police officers - or at least the temporary closure of police stations - related to the previous 10 years of the Labor Government; it is totally untrue. One need only look to the McCarrey report to note that over the course of the Labor Government in Western Australia, police numbers rose considerably. Police numbers went from one of the worst per capita ratios in this nation to one of the best. It continues to be the best ratio of police to population through all States of Australia, excluding the Northern Territory. That is the record of the Labor Government over the past 10 years. The Minister for Police cannot refer to that record and use it as an excuse to take the action he is now part of.

This matter has been addressed by Parliament in the past. I refer to the role of the member for Stirling in November 1992. He said -

> Another problem in rural areas is that of relief for police who are on leave or attending courses. Generally, every police station which has an allocation of six policemen is always one short all year due to leave entitlements and update courses. That problem must be addressed.

During the course of the election campaign the now coalition Government decided that it would address the problem. It decided it would bring down a law and order policy, as it was called. A law and order policy paper by the National Party of Australia stated that it will -

> Ensure that the police regions outside the metropolitan area have a full roster of officers;
>
> Guarantee that all one-officer police stations in the country will remain open unless an alternative which is acceptable to the local community has been put in place.

I ask the Minister for Police whether an acceptable alternative has been put in place - that is, an alternative to the one man stations that will not be manned when an officer takes leave. Clearly, an alternative has not been put in place. As I understand it, and as the shadow Minister for Police will point out, rather than an acceptable alternative being put in place, the communities are seething with anger. These communities believed during the course of the election campaign that this could never happen. They believed that it would be the ugly Labor Government which would bring about the closure of the one man police stations; that only under a Labor Government would these things happen, and that only under a coalition Government would it not happen. The communities must have had some support for the view, given that on 6 February - after the appointment of Ministers in the coalition Government - a National Party Minister would be in charge of police. They expected that a National Party Minister would be looking after them. But during the course of the election campaign also the Deputy Leader of the National Party made a statement in Bunbury on 28 January. A newsreader stated -

> Mr House says the majority of country police stations are consistently understaffed because there aren't enough numbers to cover rostered leave.

Where does the Minister stand now? In January he said there were not enough police numbers to cover rostered leave, and that there was a need for a strong and visible police presence in the south of the State. He is now in a position to explain to the electorate - particularly the National Party electorates - that the opposite will occur.

Mr House: The opposite will not occur. We are addressing the issues. They are under control.

Mr TAYLOR: How?

Mr House: I will speak later.

Mr TAYLOR: Perhaps the Minister can tell us that the Government will take on 800 extra recruits. Where are these extra recruits?

Mr Catania: It is a net increase.

Mr TAYLOR: Where does that number of police officers appear in the Budget this year? The only reference in this year's Budget, as the shadow Minister for Police will point out, are the promises the Opposition made to replace some police officers with civilian personnel. During the course of the election campaign, the Premier stated -

> And, yes, we believe that there should be more police made available in these country areas, so that they can deliver the level of service that people in the metropolitan areas expect. And I think we're asking far too much of some of these police people in some of these country areas.

It is asking too much of them to stay on during the course of leave so that the area they look after can have a police presence. We are asking that. We should turn to the solution suggested by the previous shadow Minister for Police, Mr Cash. He stated in *The Wheatbelt Mercury* on 20 January 1993 that -

> Police spouses will no longer be the unpaid lackeys of the Western Australian law and order system if the Coalition wins Government.

That is, the coalition Government would find a role for spouses of police officers at country police stations, and pay them. That promise has disappeared into thin air. Perhaps the Minister for Police can send police officers on leave and ask the spouses to stay home and be paid to take their place at police stations. That is another promise made by the coalition Government during the election campaign that has vanished into thin air.

On 15 December, Mr Cash, when talking to Sarah Knight of the Australian Broadcasting Corporation, said -

> We've got nearly 4,200 police officers in Western Australia and it seems to me that every police officer that I speak to, in particular in country WA, has a story of despair -

They have a story of despair, but the despair now is that of people in country communities who know very well that they will not have the support and protection of police officers. It is fine for the Minister for Police to talk about a greater allocation of police resources to areas other than staffing, but people want to see police officers working in their communities. We cannot replace police numbers with more resources - as the Minister puts it. There must be sufficient police numbers to be able to replace officers who go on leave.

Throughout the election campaign this hypocritical coalition Government had certain things to say. On 27 January 1993 an article in *The Karratha Guardian* reported the Leader of the National Party as follows -

> In the country, the Coalition policy would:
>
> Ensure that the police regions outside the metropolitan area have a full roster of officers.
>
> Guarantee that all one-officer police stations in the country will remain open unless an alternative which is acceptable to the local community has been put in place.

Has that alternative been put in place? Similar statements were made in Karratha and Albany on the issue. The people of Albany thought that the National Party would be true to its word. Geraldton has problems, and the same statements were made there. Mr Cash said -

> The Coalition also guarantees that all one-officer country stations would remain open unless a community-accepted alternative is found.

Is the member for Geraldton happy with that statement? Is he happy that when officers go on leave they are not replaced? The member is all for law and order in Geraldton. How does the member for Geraldton feel about people in country towns where police officers will not be replaced when they go on leave?

Mr Bloffwitch: These areas have the same staffing levels as they had over the past 10 years. Nothing has changed this year, but we will see some changes.

Mr TAYLOR: I am talking about the one and two man stations.

Mr Bloffwitch: There have been one man stations for years.

Mr TAYLOR: The member is the person who preaches about law and order. He has copped it in the party room. He has allowed this to happen. The member has allowed a Police budget to go through which does not provide sufficient resources for manpower.

Mr Bloffwitch: What did you do?

Mr TAYLOR: We increased the budget significantly year after year. We put on 1 000 extra police officers over the course of four years.

Mr Strickland: You were 130 short.

Mr TAYLOR: We took the per capita ratio of the police from the worst in Australia to the best in Australia. The Government's first Budget for police has failed. It contains no provision for a cadet intake or the training of the additional 800 recruits.

Mrs Edwardes: You have it wrong there.

Mr TAYLOR: What provision did the Minister make in this year's Budget for a cadet intake?

Mr Wiese: There will be 44 cadets going in in December.

Mr TAYLOR: That was provided for in this year's Budget?

Mr Wiese: Yes.

Mr TAYLOR: In that case, I accept that I am wrong.

When the Premier said during the course of the Budget debate that the police would be better off than ever, the Police Union said that there was not enough focus on the issue of manpower and the number of police on the streets. The Government has not brought about the changes in this area that it promised when it was in Opposition. Before the election, the Leader of the National Party let the Premier and the then Opposition spokesman for police go around country Western Australia promising that what has happened would not happen and that there would be an improvement, and people believed them. It is not good enough. The Minister's responsibility is to make it clear to the Premier and Treasurer that more resources and funding must be made available to prevent these cutbacks. Like Oliver Twist, he should go back and ask for more. If he does not do that, the electorates of the member for Geraldton and others will not have sufficient police manpower to tackle the issue of law and order.

MR CATANIA (Balcatta) [2.52 pm]: I support the motion moved by the Deputy Leader of the Opposition. On a number of occasions, I have outlined the problems that the McCarrey report has created. In future, it will be used by the Government to the detriment of the Police Force. The report stated that additional police were not required, that the management was below standard and that consultants should be engaged to demonstrate how to run the Police Force. The Minister obviously agrees with that report.

In yesterday's *The West Australian*, the Minister announced that certain stations would be affected by the decision not to have temporary replacements while officers were on leave. Today's *The West Australian* contains an article about cutbacks that loom for the Police Force which reads -

> Mr Wiese said yesterday that he was uncomfortable with the decision but it was a departmental matter for Mr Bull.

How many times has the House heard that statement? Whenever a problem arises, the

Minister claims that it is a departmental matter that should be answered by the Commissioner of Police. The Minister never answers the question. I have sympathy for the Minister for Police. He has been put in the electric chair by the coalition Government to take the flak while the decisions are made by his Liberal colleagues in Cabinet. They make the decisions on where the funds will be allocated and whether the police will receive funding. The security of Western Australia is in the hands of the police, but their funding is dictated by the Police Minister's Cabinet colleagues who are taking away the resources that should be devoted to the police. Members of the National Party should be ashamed of themselves for sitting in this Chamber and accepting the nonsense that their coalition partners are throwing at them. How can they face their electorates? They promised before the election that there would be no funding cuts. Prior to the election, this deceitful Government promised the people of Western Australia a net gain of 800 police officers. It said that it would ensure that police regions outside the metropolitan area would have full rosters of police officers. The Government's policy on law and order guaranteed that manpower would be kept at adequate levels.

If the Speaker would allow me - I am sure that he will not - I would call Government members liars and cheats. As he would not allow me to do that, I will not.

The SPEAKER: Order! I would not try that device more than once.

Mr CATANIA: I will look at what was said during the election about one of the stations that will be affected by the cuts. In a letter to his electorate, the member for Scarborough stated that he would like to talk plainly with his electors about a couple of key issues, one of which was law and order. He stated that in the Scarborough electorate he would insist that manning levels at Innaloo Police Station be increased from one officer to at least seven officers. But what do we find now - the one officer will be taken away. These are the types of promises that the Government made before the election to reassure poor, defenceless people such as the aged and people in isolated country areas to whom security is of utmost importance. Government members, led by the Leader of the National Party, are kowtowing to their Liberal Party colleagues, who are taking money from the Police budget. It is disgraceful.

The Deputy Leader of the Opposition referred to various comments made by the Deputy Leader of the National Party reassuring the people that, when in Government, his party would deal with the problem. It is a well kept secret. It is similar to statements that we heard in Queensland some years ago - "It will be all right. Don't you worry about it, mate."

The Police Department was to be the winner in the Budget. A press release from the Premier stated -

> The Coalition's first Budget has placed a strong emphasis on law and order with a substantial real increase in police funding.

The Minister for Police, Mr Wiese, stated that the Government had taken a number of steps, one of which was to increase funding to the police. When I questioned the Minister for Police during the Estimates Committee, I was told that recurrent spending had increased by $17.1m. I was told that that increase was for wages and other variables that arose during the year in any department. However, I have found that one-up allocations for the new car fleet totalled $8m of that $17m. The bottom line is that there was a $1m or a one per cent increase. If the deflationary factor or growth factor of 3.7 per cent was taken into account, there was a decrease in the Police budget of 2.7 per cent. They are the lies that are being peddled.

Withdrawal of Remark

The SPEAKER: Order! I call on the member to withdraw that remark.

Mr CATANIA: I knew you would not allow me, Mr Speaker, -

The SPEAKER: Order! Withdraw.

Mr CATANIA: I withdraw.

The SPEAKER: I ask the member not to repeat that remark. He used it earlier.

Mr CATANIA: I will not repeat it, Mr Speaker.

Debate Resumed

Mr CATANIA: What was said was far different from what was actually the case. It was obvious during the Estimates hearings that there would be a funding crisis in the Police Force. It was obvious that in a short time - it did not take very long - the Police Force would need extra funding. At last the chickens have come home to roost. The Police Force is underfunded. At least the Minister for Police is honest. He is going to begin correcting the problem in the country and work himself through to the metropolitan area. He has had to do that because his coalition partners have taken the money from him. Resources have been taken from various areas of the Police Force. The victims of crime unit has been taken over by the new Ministry of Justice and that has involved a decrease in resources to the Police Force. The Department of Transport has taken over heavy haulage inspection which has also involved a decrease in resources to police in country areas. The policing of country roads and criminals in country areas will be a thing of the past under this Government. The former shadow Minister for Police stated that a new police headquarters would be constructed and extra police officers would be located in places like Lancelin and the goldfields. However, nine months later not only are we not getting the extra police officers, but also they are being taken away from the stations. It is a sad day for Western Australia. This Government was elected on a platform of increased law and order. However, now it has dropped those people in the community who voted for it believing that their security would be assured. The conservative Government has said that it no longer cares about the security of the community, and that it no longer cares about the poor and the elderly who should be entitled to live their lives in peace, secure in the knowledge that they are being protected by a well-resourced Police Force. This Government does not care about isolated people in country areas. All it is concerned with is making sure that the portfolios controlled by the Liberal Party in the coalition are well-resourced at the expense of one of the most important departments in this State. The Government of this State misled the people of Western Australia in its election campaign. It told the voters of Western Australia to elect it on a platform of better management. After nine months, the Government has fallen far short of that.

This latest attack on the Police Force is shameful. The members of the coalition, especially the National Party members, should be ashamed of themselves. They should be red-faced as they drive back to their electorates because they have let down their constituents.

MR LEAHY (Northern Rivers) [3.06 pm]: I support this motion and I want to raise a few points which I thought had been covered by interjection by the Minister for Police yesterday. However, in looking at this morning's newspaper, I noticed that among the police stations to be affected are Gascoyne Junction, Yalgoo and Denham at Shark Bay. By interjection yesterday the Minister said that any station 15 minutes away from another major station would be relieved when officers took holidays or long service leave. Apparently that advice is different from that given to *The West Australian* newspaper by acting commander John Curtis, the officer in charge of country operations, who said yesterday that WA's 11 one-man stations and 33 two-man police stations, 39 of which are in the country, would be affected. Obviously, one of the statements is misleading - one is wrong. People in the towns of Yalgoo, Denham and Gascoyne Junction will be affected.

I tell members what sort of effect that will have. Gascoyne Junction is located approximately 160 km by dirt road from Carnarvon and approximately 400 to 500 km from Meekatharra, again by dirt road. The single police officer in that town services an area of tens of thousands of square kilometres and does a patrol run to the stations of thousands of kilometres at a time. He also services the Aboriginal community at Barunga at Mt James, which is about 200 km from his base. He services that whole area. However, now we have been told that for a six to 12 week period each year, that community can go without a police officer. In fact, those people will also have to go without their only Government representative in that area. He does police work, traffic licensing and firearm licensing and is the only Government contact for people on stations.

Mr Omodei: They do not go out and back in one day.

Mr LEAHY: They do not go out in one day; they do a weekly run and stay at different stations along the way.

Mr Bloffwitch: How many one-man stations are there in your area?

Mr LEAHY: I have two one-man stations. Those police officers live in the towns; they are not 200 km away. It is all right for the member when he has a police station with a number of police officers in the middle of his town. I am talking about remote areas of this State which are serviced by only one police officer. Shark Bay has a two-man police station. It was increased to two men and a proper police station was provided by the former Government. That area is invaded by thousands of people at a time from the south of the State. If a police officer has to take leave during one of those periods, he will not be replaced. One police officer will have to deal with 2 000 people, no problems!

Mr Wiese: Is Denham a two-man station?

Mr LEAHY: Yes, but under the Minister's policy it will on occasions be reduced to a one-man station even though the number was increased some years ago to reflect the increase in population. That town has a permanent population of 600 or 700 people, well above the proportion of police to citizens of anywhere else in this State, which is around one police officer to 400 citizens.

Mr Bloffwitch: Are you saying that they never send anyone up there?

Mr LEAHY: I am telling the member that the new policy is -

Mr Bloffwitch: They have been sending them up there for years.

Mr LEAHY: Just listen. The member can speak when I am finished. They have been sent up there but that will no longer be the case.

Mr Bloffwitch: Rubbish!

Mr LEAHY: Okay, the Minister can respond and say that they are. The policy says that they are not. At a meeting at Cue the other day the Minister assured the shire clerk from Yalgoo that the Yalgoo Police Station would not close. The people in that region and I are very suspicious about that because for six to 10 weeks this police station will be unmanned and when they are unmanned for that period the Commissioner of Police can say, "Look, it was okay for six or 10 weeks. The people did not need a police officer. We will close it down. We don't need one at Gascoyne Junction, we do not need one at Yalgoo and we do not need a two-man police station at Denham." That is what all of the people are concerned about because they have fought long and hard for the services they have. People in remote areas live with many disadvantages, as the Minister knows. They do not get the services that are provided in the metropolitan area, nor the services provided in the south west. For the Minister or the Police Commissioner to think they can take away a service as fundamentally important as a police officer from these towns is amazing, especially when it comes from a member of the National Party representing country areas. I support the motion.

MR WIESE (Wagin - Minister for Police) [3.10 pm]: I will spell out for the member for Northern Rivers, the rest of the members of the Opposition and the Parliament that no one-man police stations will close in the period we are talking about. That is the fact.

Mr Catania: Are you sure about that?

Mr Taylor: The police have announced that it will happen.

Mr WIESE: I sat with the Commissioner of Police for an hour this morning and we discussed this whole matter. I have received the strongest possible assurance from the commissioner in relation to two things: First, that Yalgoo and Gascoyne Junction will be relieved. As I said yesterday, and as I will continue to say, those two stations will be relieved. Secondly, when one of the officers of a two-man police station goes on leave, that officer will also be relieved. Two-man police stations will continue to be relieved as they have in the past. In other words, the guts of what this matter of public importance is all about is a total and absolute nonsense.

Mr Taylor: Why not run through the list of stations named in this morning's newspaper?

Mr WIESE: This motion by the Opposition is not correct and I have received that assurance again from the Commissioner of Police.

Mr Taylor: What about one-man police stations?

Mr Catania: I would check your information if I were you Minister.

Mr WIESE: I am sure the member for Balcatta will go to his sources in the Police Department and seek to obtain the information. I will be interested to see what stories he comes back with to the House.

I will deal with the situation with those eight one-man police stations we are talking about. I reiterate as strongly as I can that none of those one-man police stations will be closed. The situation that will exist throughout Western Australia in those eight one-man police stations is that the officer will not be relieved during that eight week leave period, or whatever period it is that the officer is on leave, but over that period those communities and police stations will continue to receive a police service from the adjacent police stations.

The other option was that we would take an officer from an existing police station to relieve in the one-man place station, thus weakening the police station from which that officer was taken, and at the same time costing the Police Department a substantial amount of extra money. It costs $95 a day in allowances to put an officer into a relieving position. At the same time it costs substantial overtime when the officers at the station from which the officer has been removed must perform extra overtime to provide for the service.

Those communities will receive a police service. They will receive a steady rate of patrols. Extra patrols will be put into those police stations on a regular basis. They will also receive an extra servicing in relation to the traffic patrols into that townsite and general district from which the officer who mans the one-man police station has gone on leave.

Mr D.L. Smith: That is robbing Peter to pay Paul.

Mr WIESE: It is not. Those traffic policemen are already going through the areas, as they do at the moment, and they will continue to do so - in fact, at a more frequent rate to compensate for the officer who has not been relieved. So an extra police presence will be provided into the roads around the region and the townsites. I assure the House, as I did yesterday, that the police station will be open for regular police services on a half-day or one-day basis depending on the demand in the area. The reality is that the police stations from which the officer has gone on leave will continue to receive a service, and the areas adjacent to those townsites will continue to receive a service. Those one-man police station towns will get a far better service than a great number of other communities throughout Western Australia that do not have a police station at all. Those one-man police station towns are receiving better service than some of the other parts of Western Australia. For example, Darkan has about 500 people; it does not have a police service; Capel, about which many members in this House would be aware, does not have a police station; and probably the worst example would be Australind with a population of 5 000; it does not have a police station. We can sheet that home to the Opposition which, during the years it spent in Government, failed to provide a service to those communities. These eight townsites will continue to receive a service. They will not be losing their police service.

Mr Taylor: How do you explain the comments made by your colleagues prior to the election on 6 February that this would never happen and now it has happened?

Mr WIESE: I will reiterate, once again, for the Deputy Leader of the Opposition that the one-man police stations will not be closing. That is it - simple and straightforward. They will continue to retain a police service.

Mr Taylor: A service! Now explain the nature of the police service they will retain.

The SPEAKER: Order!

Mr Catania: You said you would go through the towns.

The SPEAKER: Order! Member for Balcatta.

Mr WIESE: I will spell out to this House and to the people of Western Australia what I faced when I came into the position of Minister for Police eight months ago.

Mr Taylor interjected.

The SPEAKER: Order!

Mr D.L. Smith interjected.

The SPEAKER: Order! Member for Mitchell, I formally call you to order.

Mr WIESE: I came into a Police Force which had slipped in available resources and finances for providing resources from 30 per cent of available funds to provide resources five years ago to a situation where only 17 per cent of the Police budget was available to provide those police stations with resources. That is an absolute condemnation of the years of the previous Government.

Mr Catania interjected.

The SPEAKER: Order! Member for Balcatta.

Mr House interjected.

The SPEAKER: Order! Minister for Primary Industry, come to order.

Mr WIESE: I will point out the sorts of conditions in which some of those police officers were working when I became Minister for Police and during the term of the previous Government. Scarborough police station, a station built for four police officers, is a classic example. When I visited the station 23 police officers were working in that station in abysmal conditions. The rooms were so small and the accommodation so tight that for one person to move out of the room three others had to stand up and move out of the room also so that the person could walk past. That is absolutely abominable and appalling. The police station in Brentwood is not much better.

Mr Catania interjected.

The SPEAKER: Order! I advise the member for Balcatta that if he continues to interject I will take action against him. I also call on the Deputy Leader of the Opposition to reduce dramatically the quantity of his interjections. It is not appropriate for a person to be interjecting in such a way.

Mr WIESE: The situation at Fremantle must be highlighted owing to the events that took place there about 12 months ago. All those conditions exist because the previous Government did absolutely nothing about them. One of the members opposite by way of interjection asked what we as a Government, and I as the Minister, were doing about it. I refer firstly to Fremantle. The Government has considered the situation there and has made a Budget allocation of over $500 000 to rectify the conditions under which the officers work at that station. The Government has carried out a total review of police accommodation throughout Western Australia. As a result of that review we are now looking to address the conditions in those police stations throughout the State. We will be endeavouring to tackle that situation in the coming year's Budget.

I tell you, Mr Speaker, and the whole of Western Australia that what has been done over the past 10 years cannot be undone by this Government in one or two years. It will take many years to undo the neglect of the past 10 years. However, at least we have started to tackle the situation. I will speak briefly about what the Government has done in this Budget. The Opposition pooh-poohed the fact that recurrent expenditure increased by

$17.1m. The facts are that the recurrent expenditure did increase by $17.1m. The Government has allocated an extra $3.7m to provide and pay for 100 additional police officers and 70 public servants. That has happened. The majority of those people are already working and are patrolling the streets of Western Australia. The last of those 100 officers will be graduating from the academy in December.

I also refer to what the Government has done in providing some of the equipment that has been neglected for the past five to 10 years. The Government has made a special allocation of $1m to provide essential equipment to some of those police stations. I am talking about providing personal computers, pagers, hand held radios and photocopiers; giving them some of the forensic equipment that they have not had for years; and providing some of them with facsimile machines. Fancy our police officers having to walk to the nearest Government departmental building in the town to send a fax! That is the sort of situation members on this side of the House faced when we came into Government. That is the sort of action that the Government has already taken within the constraints of the Budget with which we have had to work to provide those facilities to our police stations. We have started to do something, whereas the previous Government did absolutely nothing.

One other measure for which the Government has provided funding, which I believe will have an enormous beneficial effect for the Police Force over the coming 12 months to two years, is the allocation of nearly $1m to allow for the provision of essential hardware for the Sun Spark computer which the Police Department has taken over from the royal commission.

Mr Catania: It was provided by the previous Government.

Mr WIESE: A fat lot of good the computer was without the hardware to make the damn thing go! That is the sort of ridiculous thing the former Government provided; it provided a computer but no hardware for it. The computer sat there for 12 months unable to be used. The Government has provided the hardware and that computer will be used by the CIB section of the Police Force in combating the escalating crime that is facing the community. This Government can stand on its record and be proud of what it has done in the short period it has been in office. I have absolute confidence that during its full term this Government will continue to provide much better resources and additional manpower to the Police Force. The Government will continue to endeavour to meet that commitment. I am proud of the Government's record; it will improve on it in the coming years.

MRS EDWARDES (Kingsley - Attorney General) [3.26 pm]: I oppose the motion. This Court Government has been in Government for nine months; whereas under the Burke, Dowding and Lawrence Governments -

Mr Taylor interjected.

Mrs EDWARDES: The member for Kalgoorlie was formerly a Minister for Police, but he has come out with empty rhetoric, belting the law and order drum. Nobody will listen to members opposite because this Government has a real commitment and a dedication to action to deal with those issues. We were faced with a litany of inaction over 10 years when the former Government did absolutely nothing. The Minister for Police has answered questions on those matters. I will tell members opposite about the issues. The Police Force was totally run down during 10 years of neglect: The support services were totally depleted; there was no strategic plan or coordination across the Justice portfolios; and there was a failure to address the real community concerns. It was an indictment of total mismanagement. I will tell members opposite about the aspects with which this Government is dealing. Four or five months ago an historic meeting was held between the Attorney General, the Minister for Police, the Commissioner of Police and the director general of the department together with all the senior officers to discuss how we could better coordinate.

An Opposition member interjected.

Mrs EDWARDES: I return to the victims' support service. The Government is not depleting it; the police officer is still there.

Mr Catania interjected.

The SPEAKER: Order! Reluctantly I must formally call to order the member for Balcatta. I gave him many warnings.

Mrs EDWARDES: The issues that were raised in the McCarrey report were some of the issues with which we dealt at that historic meeting. For 10 years members opposite have been trying to deal with the issues of the execution of default warrants, confiscation of profits, proceeds of crime, and non-police duties. Members opposite talked about them; they prepared reports but they sat in the top drawer like most of the other reports. They never saw the light of day. This Government is taking action.

Mr Ripper interjected.

Mrs EDWARDES: Yes, but the Government has taken action, and that is the important factor. Members on this side of the House do not only talk about it and receive reports; we introduce changes and make sure that they occur. We are already looking at the means of addressing the problem of debt collection. That will be part of a package of legislation to come before the Parliament in March next year. The Government already has in place procedures to amend the confiscation and proceeds from crime. Those amendments will be introduced into the Parliament next year. A committee is reviewing the duties police undertake at the law courts and lockups and their involvement in heavy haulage monitoring, prison escorts and patrols at sporting events. The committee comprises representatives from the Police Department and the Ministry of Justice and the findings of that committee will not be empty rhetoric and its report will not be put in the bottom drawer. This Government will take action to implement its recommendations.

This Government is absolutely committed to providing a safer society in this State. Through a whole range of strategies, including amendments to the sentencing, young offenders, bail, child welfare and serious repeat offenders legislation, this Government will ensure a safer community for Western Australians. Unlike the Opposition, this Government is aware that it has a responsibility in the way it spends taxpayers' money. It will ensure that in this very important area of crime prevention and detection the taxpayers' money is properly spent and that the outcome will be improved efficiency and productivity.

This Government will not sit down and talk about these things; it will make a commitment and carry them out and by doing so it will ensure that Western Australia is a safe community. The McCarrey report did not talk about reducing expenditure to the Police Force; it proposed changes to management practice and infrastructure which will result in productivity and placement improvement. The Minister for Police has already referred to these issues including a new communications system. The Court Government will ensure that Western Australia is a safer place in which to live.

MR BLOFFWITCH (Geraldton) [3.32 pm]: Mr Speaker -

Mr Catania: What will you do in Geraldton?

Mr BLOFFWITCH: If members of the Opposition will remain silent I will tell them what is happening in Geraldton now and what did not happen in the past 10 years. I was amused to read a speech by the former Premier, Dr Carmen Lawrence, in which she referred to law and order. She said, when the Liberal Party was in Opposition, that -

> I have been in this House since 1986, and the member for Pilbara was right when he said that every time members opposite want to create a bit of fear and alarm in the community, they thump the law and order drum. That is particularly true in Geraldton. We know it worked before and that members opposite nearly got a candidate up in that election campaign.

Further on she said -

> We know there have been problems in Geraldton, and they have been addressed in a systematic and careful way.

If that is the case, why have there been record levels of crime in Geraldton? Why have I, together with a community committee and with the aid of the Minister for Police, been involved in setting up a Yamaji patrol unit to take care of the Aboriginal people who are found drunk on the beach and in the streets and who generally are abusing tourists and creating havoc in the town of Geraldton? What this Government has done is something the previous Government did not do. It has taken some action and has set up a committee. Between 120 and 130 incidents have been handled by the Yamaji patrol.

Mr Catania: You have done nothing.

Mr BLOFFWITCH: I suggest to the member for Balcatta that he listen to what I am saying. The Yamaji patrol unit is headed by Hilda Kickett who is well known in the area, and she has put together a group of 30 people to undertake these patrols day and night.

Mr Catania: On a voluntary basis.

Mr BLOFFWITCH: Yes, on a purely voluntary basis and I hope that this House will applaud people like Hilda Kickett who have the motivation to set up these community groups. She is an example not only to the Aboriginal community, but also to everyone in the community. The Opposition has been vocal about having a greater police presence in Geraldton, but even if 50 more policemen were transferred there it would not solve the problem. The answer to the problem is that the community must take some responsibility.

Mr Catania: We have already said that.

Mr BLOFFWITCH: The Opposition has not said a thing. Members opposite have not mentioned the good work that is being done by local people in the Geraldton area. All they have done is make false reports about one-man police stations at Yalgoo and Gascoyne Junction. The chief inspector has assured me that not one of the one-man police stations will be left unmanned.

Several members interjected.

Mr BLOFFWITCH: The same applies to the two-man police stations throughout every region in this State, including the mid-west region. If more police officers are required it becomes a budgetary matter. The Minister for Police said that the Government is taking steps to ensure that these services are provided. I have a great deal more confidence in this Government and this Minister for Police than I had in the previous Government and its antics. After all, one has only to read what the former Premier said in this House on 27 March 1991 - I have already referred to her comments - to know that the problems in Geraldton were supposed to have been addressed in a systematic and careful way.

Mr Catania: Do you know what the people of Geraldton think about you?

Mr BLOFFWITCH: I know.

Mr Catania: Your wife wrote to us asking us to do something about the problems in Geraldton.

Several members interjected.

Mr BLOFFWITCH: My wife is a prominent business person in Geraldton and she and 34 other prominent business people in that town decided to take action after their cars had been broken into and their radios stolen and the windows of their premises had been smashed.

Mr Catania: Because you would not do anything she wrote to us.

Mr BLOFFWITCH: She, along with 34 other people, wrote to every member of Parliament. I am sure that all members agree that there is a great concern in the community about law and order.

Several members interjected.

Mr BLOFFWITCH: Members opposite, by interjecting, are doing exactly what their leader did; that is, using scare tactics. We do not need that; we need some commonsense and logic to help solve the problem. I have already mentioned the efforts of the Yamaji patrols and what can be achieved from community policing. I will be requesting more money from the Minister for Police for community groups to follow the example set by the Yamaji group. Perhaps the police will then be able to deal with more serious crime rather than the petty incidents that they are being dragged off to. I applaud the Minister's efforts to provide 100 additional public servants. We have all seen the stupidity of a police officer typing with one finger on a manual typewriter. With $1m of additional resources, with word processing and equipment, this Government is bringing more police back onto the streets.

Mr Catania interjected.

The DEPUTY SPEAKER: Order! The member for Balcatta will come to order.

Mr BLOFFWITCH: We listened to the rhetoric of the people on the other side for 10 years, yet in this day and age they still did not even supply facsimile machines to the majority of the police stations which were also usually provided with only a one line telephone system, no Commander system and no multilisting system.

[The member's time expired.]

Division

Question put and a division taken with the following result -

Ayes (21)

Mr M. Barnett	Mrs Henderson	Mr Ripper
Mr Bridge	Mr Hill	Mr D.L. Smith
Mr Catania	Mr Kobelke	Mr Taylor
Mr Cunningham	Dr Lawrence	Mr Thomas
Dr Edwards	Mr Marlborough	Ms Warnock
Dr Gallop	Mr McGinty	Dr Watson
Mrs Hallahan	Mr Riebeling	Mr Leahy *(Teller)*

Noes (26)

Mr C.J. Barnett	Mr Johnson	Mr Prince
Mr Blaikie	Mr Lewis	Mr Shave
Mr Board	Mr Marshall	Mr W. Smith
Mr Bradshaw	Mr McNee	Mr Trenorden
Dr Constable	Mr Minson	Mr Tubby
Mr Day	Mr Nicholls	Mrs van de Klashorst
Mrs Edwardes	Mr Omodei	Mr Wiese
Dr Hames	Mr Osborne	Mr Bloffwitch *(Teller)*
Mr House	Mr Pendal	

Question thus negatived.

SPECIAL INVESTIGATION (COAL CONTRACT) BILL

Introduction and First Reading

Bill introduced, on motion by Mrs Edwardes (Attorney General), and read a first time.

LAND (TITLES AND TRADITIONAL USAGE) BILL

Second Reading

Debate resumed from 16 November.

DR CONSTABLE (Floreat) [3.45 pm]: The first point I want to make about this very important piece of legislation is that I see land administration as being fairly and squarely a matter for the State. It has been a State responsibility within the Constitution, and it should remain there. The Federal Government's view that it should control land administration is not one that we should go along with.

Mr D.L. Smith: How can you trust the State in relation to legislation about Aboriginals?

Dr CONSTABLE: The behaviour of the Prime Minister has been long on rhetoric and grandstanding and very divisive to this country. Not one person who has contacted me in my electorate about this matter has had a kind word to say about the behaviour of the Prime Minister.

Mr D.L. Smith: You must be speaking to the wrong people.

Dr CONSTABLE: I am reflecting on views that have been given to me in my electorate. This matter started out without consultation and it created public confusion.

Mr D.L. Smith: How much consultation has there been with the public on this legislation? None whatsoever.

Dr CONSTABLE: I will come to that later. The Federal Government had no consultation with all of the groups concerned. That led to a great deal of confusion for many people and even more uncertainty in the minds of all of the people who are involved about the High Court decision on Mabo. The Prime Minister's behaviour raised expectations of Aboriginal Australians about this matter perhaps further than should have been the case.

The most important test of the legislation that is under scrutiny here is to ask: Is it faithful to the general thrust of the High Court's Mabo decision? Before we can answer that question, we must look at the essence of the decision of the High Court. As I see it, there are five major points that should be kept in mind: Firstly, the common law in this country now recognises a form of native title. Secondly, the High Court did not precisely define the nature of native title. As I understand it, native title is to be determined according to the customs of a particular group of Aboriginal people who might be seeking title or usage of a certain piece of land -

Mr Bridge: It is their association with or preoccupation of that land.

Dr CONSTABLE: If the member gives me time, I will come to that point, too. Thirdly, my understanding of the decision is that native title can be extinguished under certain circumstances. That would be done by a grant of other estates in the land which reveal a plain intention to extinguish the title; that is, because of existing title, native title can be extinguished. The fourth point relates to the general characteristics of native title which are a right to possession, to occupation and to use and enjoyment of the land.

Mr D.L. Smith: It must stand as a title in right and attach to that title. This legislation gives only rights, but no title.

Dr CONSTABLE: Native title is not the same as freehold title.

Mr D.L. Smith: It certainly is not.

Dr CONSTABLE: There has been much discussion and comment about ownership of the land. That point has been confused in a lot of discussion and a lot of what has been written about this. Therefore, native title cannot be transferred to a group not entitled to that land. It can be extinguished by other land grants; for example, the grant of any interest in Crown land such as mining, pastoral or tourist activity leases.

Mr Bridge: Are you saying in category terms it is inferior?

Dr CONSTABLE: I am not saying that; I am saying it is different but not inferior. Native title is not really about ownership but occupation and use of land.

Mr D.L. Smith: It is a title. It is recognised by common law as different from what we call freehold title. However, it is still a title. When one extinguishes a title, the rights of that title are also extinguished. All this gives is a right which is severely restricted.

Dr CONSTABLE: The member for Mitchell has had his chance.

We must recognise that traditional use of land by mainland Aborigines is more personal than proprietary.

Mr D.L. Smith: That is the opposite of what the High Court said.

Dr CONSTABLE: In the context of the High Court decision, this legislation is true to that decision in that sense. The legislation recognises the traditional rights and use of land based on customs.

Mr D.L. Smith interjected.

The DEPUTY SPEAKER: Order! The member has taken a couple of interjections, but she has clearly indicated to the member for Mitchell that she now wants to continue her speech without interjection.

Dr CONSTABLE: This legislation recognises the traditional rights and use of land based on custom, and that the right is not a proprietary right in the land.

The legislation also addresses compensation. I was pleased to see the provision in this regard covered compensation payable by the Crown for the extinguishment or impairment of right for traditional usage of land. It is commendable that the compensation goes beyond the payment of money. Flexibility will be available in the type of compensation paid. It may be title to land or the right of traditional usage on land. It may also involve services, facilities or be some form of economic payment or special cultural or social opportunities. The flexibility is commendable. It is also commendable that the compensation goes beyond the normal compensation made to people when land is resumed. An extra 20 per cent of compensation may be awarded for the loss of land under this legislation. I hope that the spiritual and cultural connection of Aboriginal people to their traditional lands will be treated sympathetically when compensation is required to be paid; it should not be devalued by any decision-maker in making such determinations.

The Bill also goes further than one might have expected in recognising the rights of Aboriginal people who have long since lost their traditional attachment to the land due to development. This is a commendable aspect which took some people by surprise. I understand that this might affect Aboriginal groups in the south west regions of this State.

Mr Bridge: There is no way that it can be delivered.

Dr CONSTABLE: We will see whether it will be delivered; the promise is certainly there. Clause 41 of the Bill allows the responsible Minister to grant land to people who have long since lost the land they once used in a traditional sense. The compensation will be paid to advance their interests.

Clause 37 indicates that the responsible Minister has the power regarding compensation. As I said a moment ago, the Minister can award compensation in a number of ways, not only in money. However, the legislation falls short in that a group of people may want to appeal against a Minister's decision to the Supreme Court, but the court can award compensation only in monetary terms. That might stop some Aboriginal groups from appealing against a Minister's decision because the compensation will be restricted.

Although I am reasonably comfortable in accepting the conceptual basis of the Bill, I have strong reservations about certain aspects - a major reservation is the amount of power vested in the Minister for Mines. I have a general objection to any one Minister or person having the amount of power this Bill bestows on the Minister for Mines. This Bill will make amendments to the Mining Act, and the Minister will have enormous powers in deciding whether Aboriginal groups will have access to land. I will be watching closely to see how this aspect will work in practice. I am greatly concerned that any Minister should have such broad power, particularly when dealing with such important rights as those which Aboriginal groups will be given in this Bill.

It is possible that the situation will arise in which ministerial discretion or bias will impact on a decision which will not be in the best interests of the people. That introduces a possibility of some uncertainty, unpredictability and certainly inconsistency - particularly with changes in Governments - in the process; consistency is very important in making decisions in this area.

In tandem with the implementation of this legislation, we must take into account two broad issues: First, the need to create certainty in the community for not only Aboriginal groups, but also industries such as mining and tourism. This is the aspect of the legislation which has caused a great deal of discussion in the community. Second, Aboriginal advancement in our community must take account of other areas such as health and education. It is difficult to tell whether this Bill will create the certainty we want, but my assessment is that the certainty the community is looking for is more likely to be created in the State legislation than the Federal legislation.

I turn now to the matter of Aboriginal advancement in other areas of need. The Bill before the House reminds me a little of the legislation we passed in February 1992 relating to serious and repeat offenders. In debate on that legislation most people said that it related to one aspect of the problem. It was said that we must look at a range of matters to do with juvenile offenders to ensure that they do not re-offend, and to ensure that they had the best opportunities. The same argument applies with this legislation as it deals with one aspect of the lives of Aboriginal people. Many other aspects must be considered such as health, education, unemployment - for Aborigines living in towns, the city and near the city - the difficulties faced by young Aboriginal people, and alcohol and drug abuse. These issues must be addressed if we are to provide an opportunity for equal outcomes in the community for Aboriginal people. Those issues are not addressed by this Bill, but they must be seen in tandem with this Bill.

For example, recently I asked a question on notice to the Minister for Health. It was a fairly simple question relating to the number of children who have died or suffered a disability as a result of contracting Hemophilus Influenzae type B - HIB - in recent years. The answer was shocking; not because of the number of cases of children who contracted that disease, but as a result of the disparity in figures between Aboriginal and non-Aboriginal children in this State. Sixty-one per cent of Aboriginal children who contracted HIB either died or were left with a permanent disability. In non-Aboriginal children it was 13 per cent. These are the divisions and inequalities in our community with which we must deal. Although Governments over the years have attempted to do so we do not seem to be making much ground.

Mr Bridge interjected.

Dr CONSTABLE: I do not see that native title will make those things better.

Mr Bridge: They will make people feel as though they have been recognised.

Dr CONSTABLE: I am saying we must recognise people in all these areas. We are not doing a good job, particularly in health, education and employment of young people and in the areas of alcohol and drug abuse. In the spirit of the High Court decision this legislation addresses traditional usage. I do not think that holding a title will create a panacea for the things so many people hope it will.

Mr Bridge: It is based on pride.

Dr CONSTABLE: Pride is partly the basis, but there is perhaps much more.

These are real divisions in our community. The differences in outcomes in health and education must be addressed just as urgently. The money spent in those areas does not seem to be meeting its mark. We are not getting it right. I will certainly be watching closely for the reports of the social justice task force the Government has set up. Its task will be an extremely urgent one.

I began my brief comments by saying I believed that land administration should remain the province of the State. I have listened to many of the previous speakers who have contributed to this debate and their rhetoric has not convinced me that this legislation will be overshadowed by the Federal legislation. I support this legislation, but with reservations which I have already outlined. As I said before, I am especially concerned about the power the legislation gives Ministers. In some ways the legislation is only a beginning; it leaves many unresolved questions. What will a particular group of Aboriginal people have to prove to show a traditional connection to the land? How strong must that connection be? What amounts to abandonment or surrender of rights of traditional usage? How is a group entitled to traditional rights defined? How is a fair compensation value determined if compensation is required? I hope these questions will be determined free from the bias and sensationalism that has surrounded the Mabo debate so far. The recognition that Australia was not terra nullius at the time of European colonisation has been greeted by many as a major step forward for Aboriginal

Australians. It will be a very hollow victory if we do not make a concerted effort to tackle what many people see as some of the other challenges facing this country - the quality of outcomes for Aboriginal people in health, education, employment and many other areas which other people in this country enjoy.

MR PRINCE (Albany) [4.04 pm]: The few remarks I will make about this Bill in the second reading debate are, to a certain extent, disjointed because they address a number of issues that have arisen in the debate today. From time to time, prior to today, a number of speakers here and elsewhere have criticised the way in which the court came to its conclusion and the way in which it has reasoned. I agree, with, I think it was the member for Nollamara, who said last evening that the criticism of a court decision or of the process by which a court comes to a conclusion is perfectly acceptable and is to be encouraged when that criticism is by reasoned debate and an analysis of the rationale given to a particular decision when it is not a straight declaration of some order, but also contains what lawyers call obiter dicta - namely, opinion - by a court. Criticism is out of order when it is characterised by expressions such as, "Well, where is the individual coming from?" That tends to imply very strongly that a judge, in any court - it is even more objectionable in the High Court - has allowed personal influence, personal views and other matters otherwise not relevant to the case before the court, to influence strongly the actual form and nature of a decision. I have no problem, neither would any lawyer, with criticism which is objective, balanced and reasoned, even if it may be trenchant and robust, of a decision of any court. It is acceptable and is to be encouraged. However, criticism of the individuals and their motives for making a decision is not acceptable and should not be made.

I am aware of course that at the time the Mabo No 2 decision was handed down last year the High Court handed down another decision which was also of importance, although, I strongly urge, not as important as the Mabo decision; that was the decision concerning the electronic broadcasting of political propaganda. That decision was interesting because it was also a common law decision made by the High Court which asserted there was a right of free speech in this country which could not be limited by Parliament - in that case the Federal Parliament - even though it had lawfully enacted a law to prevent electronic broadcasting. I seem to recall that some of the criticism made of that decision by politicians, particularly in Canberra, was of the kind I have categorised as being unacceptable; in fact it was to the effect that the High Court judges should perhaps be subject to some sort of political process of appointment as is the case in the United States. Other comments were made about how dare they and what right did they have and so forth. Those comments were not helpful in that situation and are not in this. As I have already expressed, as a lawyer I lean strongly towards the view that criticism of any legal decision should be objective, reasoned, rational and based on the decision, not on the individuals concerned with it.

The other matter I wish to mention is the question of terra nullius in this legal concept. A paper written by Professor Richard Bartlett of the University of Western Australia Law School was presented on 7 October to a seminar conducted by the Law Society headed "Mabo Rationale and Response". Professor Bartlett has written a number of papers dealing with the subject of native title since, I think, Mabo No 1 was handed down in 1988 - certainly since Mabo No 2 was handed down last year. His observations are always well worth reading. I was fortunate enough to attend the seminar and hear him speak to it. He began this paper by quoting from the former Chief Justice of the High Court, Mr Justice Gibbs, who said that there was a matter which puzzled him a little. The former Chief Justice's concern about the impact on public understanding of an aspect of the reasoning of the court in Mabo No 2 was a concern that Professor Bartlett shared, but several matters puzzled the professor. In this paper and in the seminar conducted around it, he went on to say -

> There is no question the result was right, even the Liberal Party of Western Australia en banc recognizes that. But the reasoning contains elements which do not assist in the public debate of the process of settlement of native title.

He states further on -

> The High Court did not invent native title. But the suggestion that the High Court dramatically and fundamentally changed the law of Australia makes much more difficult public acceptance of the decision, and a confusion as to the rationale of native title, effective resolution of the issues surrounding native title.

Professor Bartlett suggested that in an area of public controversy, the High Court, the law and the country would have been much better served by an expression of reasoning that accurately placed the decision in its common law context. I quote Professor Bartlett as follows -

> The High Court in Mabo failed to do this and consequently failed to communicate critical elements of the rationale of native title.

The professor went on to say that the concept of terra nullius in the reasoning of the High Court and the decisions it came to were irrelevant. He referred again to Chief Justice Gibbs also being puzzled by the obsession of the High Court with the concept of terra nullius, and also of course the media which hailed the decision as a rejection of that concept. The professor went on to say at page 3 of the paper -

> But terra nullius is a concept of International Law which contemplates a territory inhabited by a people who did not have a recognized social or political organization. Sovereignty over terra nullius was established by effective occupation by a sovereign state. It is the principle of International Law under which the British assumed sovereignty over Australia. Terra nullius is not a concept of the common law, and it had never been referred to in any case prior to Mabo as justifying a denial of native title. More fundamentally the High Court did not, in any event, reject the concept of terra nullius in any sense of denying Australian sovereignty.

The real question before the court, and the question the court decided, was whether native title was part of the common law of a settled territory, such as Australia. In the paper from which I have quoted, to a certain extent Professor Bartlett goes on to criticise particularly Mr Justice Brennan, but also Mr Justice Toohey and Justice Mary Gaudron, in the reasoning they have adopted. He referred particularly to Mr Justice Brennan's view of common law that the indigenous inhabitants of a settled colony were regarded as so low in the scale of social organisation, that they and their occupancy of colonial land were ignored in considering title to land of a settled colony. This statement by Mr Justice Brennan in the High Court is not a correct statement of common law or of the Privy Council decision, upon which Justice Brennan relied, which is known as Re Southern Rhodesia, [1919], Appeal Cases at page 211.

Professor Bartlett points out that in three Australian cases, known by the names of Brown, Williams and Rutledge, it had been recognised that upon settlement title was vested in the Crown. None of the cases concerned the rights of Aboriginal people. However, almost immediately the case of Brown was handed down it was construed by the Supreme Court in New Zealand, where of course native title had been recognised for a long time as a result of treaties and conquests, as being consistent with native title at common law. The High Court did not reject the trilogy of Australian cases. I quote again Professor Bartlett who said -

> It affirmed that upon settlement title vested in the Crown; such radical title was a "postulate of the doctrine of tenure and concomitant of sovereignty".

Professor Bartlett was quoting from Justices Brennan, Deane, Gaudron and Toohey. Professor Bartlett goes on to say that it was upon Mr Justice Brennan's perception of the state of common law that that judge suggested there was a need to override the existing authorities, but the supposed existing authority was illusory. Justices Deane and Gaudron asserted that they were merely declaring rather than changing the common law, but did observe that they were reopening the validity of fundamental propositions endorsed by long established authority. Professor Bartlett suggests that the rhetoric with respect to the rejection of terra nullius, the erroneous reasoning of Justice Brennan with respect to the Rhodesia case, and the overstated significance accorded to obiter dicta in the Australian cases by Deane and Gaudron, opened the High Court to public attack on the ground of making law and inventing the concept of native title.

It is considered that Justices Brennan, Deane and Gaudron exaggerated the extent to which the court was engaged in such a role in Mabo, and as a result obscured the rationale of the concept of native title. Professor Bartlett said at page 6 of his paper -

> What determined the result in Mabo, and what constitutes the rationale of native title, are the dictates of the jurisprudence in every other part of the common law world.

The professor went on to point out that six members of the High Court which found in favour of the existence of the concept, relied on one or both of two bases. The first was the need apparently to recognise the land rights of indigenous inhabitants of settled territories to the same degree as those in territories acquired by conquest or cession. Such recognition was said to be demanded, first, by the requirements of justice and equality before the law and, secondly, the pragmatic compromise of the jurisprudence from the United States, Canada and New Zealand, which was first expounded - and has been referred to many times in this debate - by Chief Justice Marshall in the Supreme Court of the United States in the case of Johnson v McIntosh in the early 1840s. Professor Bartlett in his paper - which I commend to members of the House who are prepared to read it - goes on to analyse at much greater length the nature of the decision and the respective then proposals to deal with the question by legislation.

I come back to a reasoned, rational and decent analysis of part of the decision, and most particularly that part relating to terra nullius. A professor of law, with whom I do not necessarily agree on all matters, has said quite clearly, as a result of reasoned and rational analysis, that the concept of terra nullius did not have anything to do with the decision of the court in determining whether in common law native title could be said to exist in Australia. That has, to a large extent, coloured wrongly and badly the debate on this issue in the public mind. The nature of the title that was found by the court to exist for the people of the Murray Islands was clearly understood, because there was a great deal of anthropological evidence and observation by mariners, sailors and other people who had visited the islands from the middle of the last century, as to the extent and nature of the organisation of the Polynesian people who lived there. That included the cultivation of gardens, the use of the land and the allocation of the land between one family and another, changes and so forth. In other words, the history of it was well known. Indeed, it is difficult to see that the High Court could have come to any other decision with respect to the Murray Islands, having had the case finally put before it in a sensible form after some 10 years of litigation. Whether the reasoning for that decision is applicable to the mainland of Australia is a matter for debate, and perhaps division. One would hope it is not emotive division but is on a matter of reasoning and different perceptions of the nature of the people.

I was privileged about two months ago, as a member of the Synod of the Anglican Diocese of Bunbury, to listen to Sir Ronald Wilson address that synod on the subject of the Mabo case. Of course, Sir Ronald is a former High Court Justice and was a member of the court when the Mabo No 1 decision was made. Sir Ronald Wilson made a number of remarks that were of interest to me, and were very informative. One of those he emphasised, which had occurred to me before but which he amplified and explained, was that we are not dealing with a title that is in any way comparable to, or can be illustrated by reference to, the system of title we understand, whether it be freehold, leasehold or any other form existing under either the Land Act or the Transfer of Land Act or in any way derived from the Crown. We are dealing with something the lawyers call a usufructuary title, which is more correctly described as a right for the use of. The term "title" certainly engenders a thought process that brings into play concepts which are not in the concept of a usufructuary right or title. Sir Ronald also, somewhat wryly perhaps, but with a certain degree of authority, said - as I have heard other judges say - one of the great advantages of being a High Court judge is that when one says the law is something, that is what the law is.

There is nobody to whom a litigant can appeal. As far as I am concerned it is the case that the Mabo No 2 decision is law and must be dealt with on that basis. The Government has addressed the situation with the legislation now before the House. However, one of the problems that has been overlooked, to a certain extent, in the debate so far in this House but not entirely outside, is the real problem the Mabo No 2 decision has created from the point of view of the reasonable use of land. In any society land is one of the essential assets of value, as are obviously life and intellectual property as well. Land is one of the core, basic forms of wealth which a society can use to live on and live off, to care for and exploit as it deems appropriate. The uncertainty that surrounds the nature of the Mabo No 2 concept of usufructuary right is whether any particular group of Aboriginal people has that right over any particular area of land. The Utemorrah case is a case in point, where to my knowledge we are up to the ninth statement of claim. I might be wrong, but I think there are five overlapping claims with some of the Aboriginal people being involved as plaintiffs on one side and defendants on the other. It is extremely confusing for the people who are involved and the legal representation they must have is extraordinarily expensive. The delay engendered by such a complex matter is in many respects equally as much a wrong against the people of the State as the uncertainty of the situation. These long delays naturally have a bad effect on those who otherwise would have wished to develop the land, whether it be for tourism, mining or any other purpose. For that reason and, equally importantly in my view, the need to satisfy the reasonable concerns of the Aboriginal people, some certainty should be brought into this matter.

The uncertainty is not going to be solved by this legislation because of the Commonwealth legislation and the inevitable conflict which exists and the necessity to have that litigated in the High Court. I refer to the editorial in *The Australian Financial Review* of yesterday, 16 November -

Dr Watson interjected.

Mr PRINCE: I am saying that the uncertainty caused by legislation from this Parliament and the legislation from the Federal Parliament and the inevitability of litigation in the High Court does not help, but at least it will bring the uncertainty to an end. We should bear in mind that Mabo took 10 years and the factual situation was relatively simple and relatively easily established. There was not a great deal of debate about that, even though the law was somewhat complex and took a great deal of argument. If one looks at the Mabo No 2 style claims, and the Utemorrah case is one example, the factual situation is not clear, and a great deal of work must be done in order to satisfy the burden of proof. I suspect that Mr Justice Owen must be one of the most patient judges to deal with it. It is more likely than not that to be dealt with properly that case alone will take five years, and it could well be longer. It is that form of delay and uncertainty which is - I do not want to use an emotive word - not fair on the litigant, not fair on the State and not fair on people who may or may not want to develop an area for other purposes. From an economic point of view those people will say, "That is ridiculous," and go away. This is what mining organisations such as CRA recently said that they would do. Although this legislation brings some certainty, the fact is that the Federal legislation does not help.

Dr Watson: Wouldn't it help if Western Australia adopted a uniform national approach?

Mr PRINCE: No, it would not. The best solution would have been complementary legislation, because that would have been by agreement and the result would have been certain.

Dr Watson: You suggest that can do it?

Mr PRINCE: The only State in the Commonwealth really affected by this is Western Australia. There is practically no effect in New South Wales, Victoria, Tasmania or Queensland. There is some in South Australia, and the Northern Territory has already been dealt with in a different way.

Dr Watson: That denies the history of dispossession. There are too many people who can establish their traditional land rights.

Mr PRINCE: I hear what the member says. I am trying to make the point at the moment about the delay and uncertainty. Uncertainty is the true evil in this. The editorial from yesterday's *Financial Review* states in part -

> The consequences of that uncertainty will be most felt in Western Australia, which is the State most open to native title claims.
>
> Many of the concerns expressed by the Western Australian Government are both deeply held and well founded.
>
> Mr Court's Bill offers native title holders less valuable rights than those proposed under the Federal Bill. However, the Western Australian Bill is certainly not irresponsible or racist.
>
> It is consistent with the Mabo judgment (many would say it is more consistent with the Mabo judgment than is Mr Keating's Bill).

I would say in parenthesis that I am one of them. The editorial continues -

> It therefore provides an excellent basis for negotiation between the two Governments, and an opportunity for the Federal Government to remove the weaknesses from its proposed legislation.
>
> Mr Keating's mistake was to ignore the objections of the most affected State Government and to raise the expectations of the Aboriginal community.
>
> That is an error that can still be corrected when the Government puts its own legislation through the Federal Parliament.

Notwithstanding what has happened, the Federal legislation, a copy of which I have and which runs to some 238 clauses, sets up a system of courts and tribunals that is - I adopt the word of the shadow Attorney General in the Federal Liberal Party, Darryl Williams, QC - diabolical. I attempted to read the Federal legislation which, as I say, is 238 clauses long. It is not only complicated but also difficult to read. For example, I found the explanatory memorandum that runs to 10 pages not easy to understand, and I have some idea of the subject matter. When we come to look at the process for dealing in land where the native title is known and the claimant registered or the process of dealing in land where the native title is not known, I have two schematic versions of what is proposed in the Federal legislation. I think you will agree, Mr Deputy Speaker, they look like little more than spaghetti junctions. They are extremely complicated. I would ask that these two schematics be incorporated in *Hansard.*

[The material in appendix A was incorporated by leave of the House.]

[See page 7324.]

Mr PRINCE: The complexity of the Federal legislation is such that it will be a bonanza for those few lawyers prepared to take on these matters. I make that remark conscious of the seminar of the Law Society of Western Australia that I attended on 17 October which was addressed by a senior Crown Law officer involved on behalf of the State in defending the Mabo style claims in Utemorrah and elsewhere. At the beginning of a very interesting paper dealing with the management of a claim - the sort of thing that really should not be published other than to lawyers, and they perhaps should not quote from it - the solicitor said that if one, as a practitioner, was ever approached and asked to be involved in a Mabo style piece of litigation, the first answer should be no. If a lawyer were silly enough to take it on, at the end of the day the answer should also be no because it will be exhausting, totally consuming, intellectually suppressing and really not the sort of thing that will, in any way, be stimulating to a lawyer. Some lawyers will make a bonanza out of that mess, but many will avoid it like the plague, and quite rightly so.

The legislation before the House is a clever piece of drafting and I commend the draftsman and the other people involved in the instructions for the drafting. The Bill takes the concept of native title in the same way as it was determined by Mabo No 2 and, in a sense, translates that into the statutory right of traditional usage. For the benefit of those members who have not had the chance to work it out, one of the most important things about that is the right of traditional usage is defined by the definitions of "native title" and "right of traditional usage" in clauses 3 and 7(1)(b) of the Bill. It takes the concept of native title and, in effect, removes the element of that usufructuary right - that is, exclusivity - and gives it the force of statutory protection. More importantly, if Aboriginal persons can establish the criteria, those clauses ensure that all of them have that right. They do not have to go to a court, tribunal or anywhere else to prove that they have it or have a court or tribunal declare that they have it; it is there as a matter of statutory right.

Some of the comments which have been made about how one determines what are the definitions have been interesting. It is a difficult area to cover, but if one attempts to define one will almost certainly exclude someone, and that would not be right. If one can deal with it by reference to the definition, insofar as it is a definition, in Mabo No 2, then that is the most appropriate way to proceed and it can be dealt with case by case. Having then established that a traditional right of usage is the essence of the usufructuary right - native title - which Mabo No 2 defines, the Bill obviously provides for compensation if there is an affection or an extinguishment of that traditional right of usage. Compensation may be in one or more of a number of forms which will, I trust, benefit the Aboriginal people greatly. I also note that compensation can be held in trust. It is not intended to be of a protective nature, but merely a matter of convenience should that be the appropriate form in which it can be held. It also gives the Aboriginal community some control over that which they may have obtained by way of compensation for their traditional rights - some ability to be able, if they wish, to translate and to trade. They cannot do that with native title, as contemplated by Mabo No 2, because that, of its essence, has its roots in the past, is transitory in the present and is held for the future. If the traditional right of usage becomes the subject of compensation and compensation is, for example, of the nature of freehold property or cash it may benefit the group it is intended to benefit not only now, but also for future generations.

The potential for advancement of Aborigines in my part of the world - the south west and the south coast - and, I am informed, in the goldfields and the Murchison, is something I applaud. I understand that, otherwise the people who live in those areas would be highly unlikely ever to have been able to obtain a benefit from either the Federal legislation or the Mabo No 2 principles. Giving a benefit in kind to Aboriginal people which recognises their traditions, even though they may have lost the necessary traditional connection to establish a Mabo No 2 benefit, is to their advancement in Australian society and the result of that can be not only a benefit to them, but also to society as a whole.

On balance, and looking at the Bill and the background in which it has been written, it is an excellent piece of legislation and I support it.

DR EDWARDS (Maylands) [4.35 pm]: The Mabo decision simply recognises that our continent once belonged to many Aboriginal peoples and that each part of this continent was occupied by different groups and each group believed they had rights to it. Over the last two centuries most of these people have lost this land. It has been taken from them, piece by piece, and without compensation. Throughout those 200 years some groups have managed to maintain their connection with the land, although it has been in areas which are remote and economically uninviting. Maybe the connection has been retained because not many white people have wanted to go to those areas. Simple justice requires that the law respect their rights in a manner which is no less than the law respects the rights of all the other Australians who have rights over land which they can inherit. These are the basic propositions of the Mabo No 2 decision. Like all simple legal propositions it can be difficult to interpret, particularly for those borderline cases. Obviously, the main uncertainties for the people involved are in deciding whether a group has maintained its connection with a particular piece of land or whether it is irretrievable, either because of dispersal or through a decision that the land has been granted as a mining or pastoral tenement.

Mabo No 2 interacts with Mabo No 1, as a number of members have already pointed out. Mabo No 1 was the decision in 1985 which the Bjelke-Petersen Government could not defeat by passing an Act to extinguish any native title that might exist. The attempt floundered, as this legislation may do, because of the Racial Discrimination Act which was passed in 1975 to fulfil an international covenant, to which Australia is a signatory, that countries would not deny the human rights of any group in their country on the basis of race or ethnicity. Obviously, this relies on their recognised human right; that is, the right not to be arbitrarily deprived of one's property.

Now that native title has been revisited through Mabo No 2, we have to acknowledge that the arbitrary expropriation of native title which has been practised in this country since 1788 has been unlawful since 1975. All of us as members of Parliament and Australians have sought to protect the human rights of people in other countries. We should not be screaming when we have to do the same thing in our backyard.

The principles of Mabo are in many ways quite modest and almost minimalist. They are based on historical truth - I will deal with that in greater detail later - and also on moral justice. They cannot be rebutted by some of the arguments which have been put in the last few months; for example, the argument put by the Leader of the Federal National Party, Tim Fischer, that because Aborigines did not have wheeled carts they could not have had a system of land tenure. Arguments which have been put by other people are that Aboriginal people fought with each other or, even worse, they were colonised by the British and not by some other more dreadful foreigners who may have come later. These arguments are all irrelevant. They are about as relevant as saying that when the British colonised this country they had not developed motor vehicles. So what? They are about as relevant as saying that when the British colonised this country they were sending their women and children, from seven years of age, to work in mines and factories for 13 hours a day at a time when Britain was still involved in the slave trade. The message is that all societies, probably at all times throughout history, have room for improvement.

In speaking against this Bill the Opposition is attempting to seek justice. Justice is not a prize for being the most powerful, the most technically advanced or even the most self righteous. Rather, justice is given to the less advantaged by the powerful, if they are genuinely concerned, recognising that the powerful have often built their advantage at the expense of those who are less well off. Justice then is what we are seeking and justice is, unfortunately, what will be denied to Aboriginal people by this Bill.

I turn now to what has happened over the past 200 years of acceptance of the concept of terra nullius. The member for Nollamara pointed out yesterday that Western Australia was settled on the pretext that it was unoccupied. That led to the legal fiction that where a place was settled by the British, British Statute and common law could be superimposed upon that place. On the other hand, had Western Australia been conquered, British law would have recognised and made room for the fact that the indigenous people had laws of their own. Settlement was based on the concept that the State was terra nullius, or nobody's land. Fortunately, it was not all like that, because some of the early settlers recognised early in the piece that Aboriginal society was more complex than people sometimes thought. John Eyre, the famous explorer, noted in 1845 that -

> Particular districts are not merely the property of particular tribes; particular sections . . . are recognised . . . as the property of individual members.

Dr Roth noted around the turn of the century that -

> Each family in the tribe had its own territorial division . . . each person knew what there actually was on his own possessions.

The member for Victoria Park pointed out yesterday that while the people in the colony of Western Australia were busy getting on with their activities, there was great concern in the United Kingdom about the welfare of Aboriginal people. In fact, in 1904, that matter hit the London *Times*. In 1905, the increasing public concern led to the appointment of Dr Roth to conduct a royal commission into the administration of Aboriginal affairs in Western Australia. That royal commission revealed some of the dreadful conditions in which Aboriginal people were living and that there was not a lot of respect for Aboriginal life. Henry Princep, the chief protector of Aboriginal people, gave evidence to that royal commission that the age of six was a suitable age for an Aboriginal child to commence an apprenticeship. As a result of that royal commission, the Aborigines Act 1905 was enacted. That Act has led to many of the problems that have been experienced in this State during this century. The basis of that Act was that the chief protector became the legal guardian of all Aboriginal and half-caste children under the age of 16. It provided the basis for removing Aboriginal people from their homes and confining them to reserves, and set up areas from which Aboriginal people could be excluded. It set up also a system whereby Aboriginal people could be employed only if they had a permit. Unfortunately, that Act was about subjection and confinement, carried out in the name of protection. That Act formed the basis of policy in this State up until the 1960s, even though it had been repealed earlier.

I have an interest in this area because as a child I grew up among Aboriginal people; I knew them at school and I knew their families. In the last few days, I have taken the time to read some of the history of my family to see the interaction that the Edwards family has had with Aboriginal people. That history is well documented in a book that was published about the first Edwards, Thomas Edwards of Beverley, who settled here five generations ago. His first job was as a policeman, and the family story goes that when he arrested a well to do resident for assaulting an Aboriginal person, he was initially reprimanded severely by his superiors. Fortunately, after he gave his defence and explained that he was carrying out the law as it applied to all people and not just to selected groups, he received a reprieve. When he left the Police Force, the people in the town in the Avon Valley where he was based gave him a gift, but the family who had been involved in the trouble refused to contribute to that gift.

That book makes it clear that in Western Australia in the 1860s, conditions for Aboriginal people were dreadful. It has only been slowly in this century that conditions have improved. In my lifetime, I have seen Aboriginal people in well to do farming areas live in basic sheds and later be transferred to reserves. It was a great shock to me that before I had even reached the age of 30, one of my school colleagues, whom I had sat next to, became a statistic as a death in custody. I guess one is not really rocked until someone whom one knows is the statistic that one reads about. The subsequent Royal Commission into Aboriginal Deaths in Custody and many other reports have identified that the dispossession of Aboriginal people, particularly from their land, is one of the major causes that contributes to the state in which they find themselves.

Unfortunately, Aboriginal people are still less well off; and the member for Floreat referred to that earlier when she spoke about Hemophilus Influenzae B infection among Aboriginal people. That was revealed also in Western Australia in the 1991 Census. Aboriginal adults live 20 years less than we do, their children are two or three times more likely to die as infants, and the whole group will have poorer health and a higher incidence of injury and illness. Aboriginal people are less likely to receive a secondary education and, as a result, have lower incomes, employment and qualifications. They are also less likely than the average Western Australian to own a car or a house. In fact, they are more likely to have housing that is improvised; that is, either a shed or a lean to. Therefore, we are talking about a group of original inhabitants of this country who are now living in third world conditions.

Mr Bradshaw: How will the Mabo decision help those people?

Dr EDWARDS: In August of this year, the member for Kalgoorlie told us about the number of itinerant Aboriginal people in Kalgoorlie who have died in the last two years from various causes. That comment led to a significant editorial in *The West Australian* of Friday, 6 August, which concludes -

> Raising Aboriginal aspirations and sense of self-worth and providing them with an economic base and a future they can believe in are vital steps. But ultimately any solution to the problems of a people for whom the land is an inseparable part of life and spiritual belief must include access to traditional lands.

That leads me to the issue of native title. The High Court recognised native title and

Aboriginal custom and tradition as a source of Australian common law. That is an important decision, because it ties in extremely well with what that editorial states. It also ties in with my experience of working with and having known Aboriginal people.

The High Court accepted that native title existed where two fundamental but difficult conditions were met. First, that the connection with the land had been maintained unbroken through the years; and, secondly, that title had not been overturned by any action of a Government to use the land or sell it to someone else. As other people have pointed out, and as others have argued is a problem for Western Australia, it is only in the so-called vacant Crown land and remote areas where traditional Aboriginal life has continued that it is likely that legal native title exists. Nevertheless, many questions are raised such as who holds native title over land, and where; what rights does native title give to Aboriginal people; and what rules should govern dealings in native title? This Bill really answers these questions only in a very ruthless manner; it sets out compulsory and wholesale extinguishment of native title. It replaces native title with statutory title - a title that is conferred only at the pleasure of the Government and can be lost on the whim of a Minister. Finally, it imposes a land management regime which provides only flimsy protection for Aboriginal people, far less than other landholders enjoy currently. The tone of the Bill struck me as paternalistic. It takes away Aboriginal rights and gives power to State Ministers. The Minister is empowered to provide Aborigines with grants of title, leasehold and freehold etc, but "to advance their interests". The grants are made as a matter of "grace and favour". These titles will not be granted as a right, and that is the problem.

The Bill is about carrying on business as usual in Western Australia, despite the Mabo judgment. It could be said that the aim is to reinforce what goes on now; it reinforces the existing order of non-Aboriginal title against some sort of perceived threat of native title. It tries to capture any native title within Western Australian Statute but it then relegates it to a second class status. It is unlikely that this Bill will promote either a secure or just environment for Aboriginal people or for people throughout the State.

I turn now to consider in depth the power given to Ministers in the Bill. It is set out well in some diagrams that have been circulated with the Bill. For instance, for the procedure of granting a mining lease, a diagram of the steps taken is provided. The Aboriginal Affairs Planning Authority is notified and there is also public notification, but when Aboriginal objections are received there is then consultation, with recommendations from the Minister for Aboriginal Affairs. For other non-Aboriginal objections there is a Warden's Court recommendation; so there is a difference in the processes. Similarly, in the land granting procedure, Aboriginal objections are received; there is consultation, and the Minister for Aboriginal Affairs recommends but the Minister for Lands decides. Again, compensation claim procedures are similar, although there is recourse to the Supreme Court within three years. At least that shows some avenue of appeal. However, for granting exploration and prospecting licences again there are procedures for consultation and recommendations from the Minister for Aboriginal Affairs, with the Minister for Mines in that case making decisions.

Native title at common law in other countries - for instance, Canada, the United States and New Zealand - has been the basis for reconciliation between the indigenous and non-indigenous people and resource and economic development. Native title obviously is a compromise that hopefully will allow all members of society to work together for the future and for their common good. Unfortunately though, that will not happen under this Bill. I am in some agreement with the member for Albany in that I believe there will be more uncertainty. As he said, no doubt there will be a High Court challenge and while that proceeds the uncertainty will continue for everyone. It will create resource insecurity and uncertainty. As Professor Bartlett said, no other jurisdiction in the common law world has ever deliberately brought about the degree of resource insecurity that this Bill presents; land and resource management, the proper responsibility of the State, has been poorly served by the legislation.

It is sad that in the year of indigenous people, when we are adopting the slogan of a new partnership, and on a day when protests are being made both in Perth and around

Australia about the most recent Aboriginal death in custody, we are discussing a Bill such as this that turns the clock back almost towards the descriptions I gave earlier. I oppose the Bill.

MR HILL (Helena) [4.57 pm]: During the debate we have heard eloquent speeches from both sides of the House. I must compliment all members, particularly Opposition members, for their research and for the manner in which they delivered their speeches. I congratulate them particularly for the thorough way they have addressed the issue because it is one of considerable importance to all Western Australians and Australians.

We have heard excellent legal arguments put by the member for Fremantle, and the counter view by the member for Albany. Both speeches were extremely well delivered, eloquent and well researched. However, some flaws exist in the argument presented by the member for Albany. I question his definition of terra nullius. The member for Albany appeared to support the argument that unless Aboriginal people or any other community is organised into some type of law-making structure, terra nullius applies and the land is not deemed to be owned or occupied by anyone. That seemed to be the general thrust of the argument by the member for Albany. It was a very well thought out and researched speech -

Mr Prince: Terra nullius is not a concept of common law and so it is not relevant to the decision made. The High Court made its decision on principles of common law to do with settled territories. Terra nullius is irrelevant.

Mr HILL: I will address that point later by referring to the judgment of the High Court and quoting from it. The member for Albany might express a point of view of one judge - one legal opinion - but it certainly is not a widely held view in the legal profession. An argument against that put by the member for Albany was eloquently presented by the legally qualified members on this side of the Chamber.

When one considers the Bill and looks at the latest initiative that has been taken by the Government on the legislation - the introduction of a range of amendments - one can only come to the conclusion that this is a political exercise. One wonders what position the Government might have taken if the Fraser Government, for example, had confronted its responsibilities in this area 20 years ago. What would the response have been if a Liberal Government had introduced legislation similar to the Federal Government's legislation to respond to the High Court judgment on Mabo? The arguments presented by the coalition in this State may well have been similar, but perhaps not quite as virulent.

The Premier has seized upon the opportunity that this issue has given him to raise his ratings in the community. I take my hat off to him. He has done it very well in terms of his political position. It is always popular for Governments in Western Australia, and perhaps in Queensland to a lesser extent, to beat the drum of State rights. It was the modus operandi of the previous Court Government and the subsequent Liberal-National Party Government led by former Premier Ray O'Connor to beat the drum of State rights. The Mabo drum has been beaten frequently on the same basis. It is popular in Western Australia to have a lash at the Federal Government from time to time. Even members on this side of the House, when in Government, participated in that sort of activity from time to time. I am not saying that it was not deserved - I am sure it was - but sometimes that occurs for purely political reasons. It is popular to bash the Feds, particularly on issues with which the people of Western Australia are sympathetic such as preserving State rights and racial issues.

Some time ago, this State Government abrogated its responsibility to deal with this issue on a national basis. It has led to an inconsistency of views within the Liberal and National Parties across Australia and to considerable confusion within the community. It has led to economic uncertainty and a very unsettling investment climate. A number of companies with which I have been associated over the years in my various portfolios, particularly in the mining sector, have said to me in recent times, "There is so much uncertainty here that it seems to us that it is easier to look at those parts of the world that we previously regarded as being too risky in terms of sovereign risk. They are becoming increasingly attractive." That uncertainty is being fuelled by the Liberal-National Party

Government in this State for purely political reasons. As happens from time to time, the Premier has raised this issue and beaten the Mabo drum whenever the Government has got into any sort of difficulty.

To illustrate how this issue has become a political issue and has been hastily brought into the House for purely political reasons, one has only to look at the latest action on the part of the Government. Today, in an unprecedented manoeuvre, the Government has introduced 20 pages of amendments to the legislation, some of which may well be very sensible amendments. It makes the point that the legislation was hastily conceived -

Mr Thomas: Ill-conceived.

Mr HILL: - ill-conceived, badly drafted and rushed into the Parliament for political reasons. It is full of holes. One can only wonder how many other amendments are being drafted at this very time. I suggest that the Premier will try to say that this is a response to the Federal Government's legislation introduced yesterday. His response will be to bash the Feds again and try to blame somebody else for this Government's incompetence in handling this matter.

Mr Strickland: Do you think he should just lie down and let Keating walk all over him?

Mr HILL: I am not suggesting that for a moment. I look forward to the member's contribution to this debate.

The Labor Governments of Brian Burke, Peter Dowding and, particularly, Carmen Lawrence, were very strong on the issue of preserving State rights. That has been recognised by the Minister for Health in another place in appointing the former Minister for Health Keith Wilson to his staff temporarily because of his high profile on health issues and the way in which he looked after Western Australia's interests in taking health matters to the Federal Government.

Recently, the Premier has said that the Federal Government is planning to ram through legislation to pre-empt State Government legislation. One can hardly say that, after months and months of careful consideration and consultation, the Federal Government is acting precipitately or trying to rush through the legislation. I predict that either debate on this Bill will be guillotined or members will be gagged. It has happened before. It is hypocritical of the Government to talk about the Federal Government's plan to ram through legislation. It could hardly be the case when the Federal Government does not have a majority in the Senate, as this Government has in both Houses of Parliament.

In changing the focus of debate and confusing the public debate, the Government has created a great deal of division within the community. It has created an atmosphere in which people are not certain about the issues. From talking to young Aboriginal people in schools, I am aware that they are feeling the impact of the debate. A great deal of racist comment and debate has taken place because of the State Government's legislation introduced as a result of the High Court decision.

The High Court held in Mabo that any legislation that had the effect of extinguishing traditional native title would have to be consistent with the provisions of the Racial Discrimination Act 1975. I refer to a discussion paper prepared by the Attorney General's Department in Canberra. The paper does not take any position one way or the other but simply points out the arguments of the High Court and deals with those arguments in a legal manner. The article refers to section 10 of the Racial Discrimination Act and states that it -

> . . . is designed to implement into domestic law the provisions of Article 5 of the Convention on the Elimination of all Forms of Racial Discrimination . . .

That article was ratified by over 135 countries and by the Australian Government on 30 September 1975 following the enactment of the Racial Discrimination Act on 11 June 1975. That Act was necessary to ensure that Australia complied domestically with many of its international obligations under the provisions of the convention ratified by Australia in 1975.

Mr Taylor: That could have been ratified at a national level only if it received support at a State level. Western Australia obviously supported that ratification.

Mr HILL: That is right. A Labor or conservative Government, although it was more likely to have been a State Liberal Government at that time, would have urged the States to ratify it. Therefore, there has been a reversal of Liberal Party philosophy from that 1975 position to this redneck philosophy that really goes back to the white Australia policy of the 1950s and 1960s. Among other things, the article provides -

> ... everyone has the right without distinction on the basis of race, colour, or national or ethnic origin, to equality before the law notably in the enjoyment of the following rights:
>
> ... to own property, alone as well as in association with others.

The views of the majority of the court in Mabo No 1, referred to by Mr Justice Brennan, were expressed in the leading joint judgment of Justices Brennan, Toohey and Gaudron as follows -

> In practical terms, this means that if traditional native title was not extinguished before the Racial Discrimination Act came into force, a State law which seeks to extinguish it now will fail. It will fail because s 10(1) of the Racial Discrimination Act clothes the holders of traditional native title who are of the native group with the same immunity from legislative interference with their enjoyment of their human right to own and inherit property as it clothes other persons in the community.

It goes on -

> A State law which, by purporting to extinguish native title, -

As this Bill does -

> - would limit that immunity in the case of the native group cannot prevail over s 10(1) of the Racial Discrimination Act which restores the immunity to the extent enjoyed by the general community.

It is clear that this Bill will be challenged in the High Court; it is inevitable. That means it will cost Western Australian taxpayers a considerable amount of money with the State Government trying to defend its position before the courts. It has already cost the taxpayers of Western Australia a considerable amount of money through the political advertising that has taken place.

[Quorum formed.]

Mr HILL: I thank my colleague, the member for Kalgoorlie, for providing me with an audience. That challenge will be based inevitably on the Racial Discrimination Act and the judgment that the High Court judges have made in relation to Mabo. Those judges will have to make yet another determination on this matter. I predict that it will be a long, drawn-out affair. However, it will not be long before the Federal Government takes the matter back to the High Court for determination. The fact that this Government has had to resort to advertising on television and distributing at enormous expense to taxpayers throughout the State a pamphlet, incidentally in the Liberal Party's colours of blue and white - no-one can tell me that it is not a political exercise - is an indication of its lack of confidence in the community's support for its position. It is no more than a political stunt. As I said initially, the legislation has been brought into this place hastily by the Government. It is ill-conceived legislation and it will be challenged in the High Court. We received today 20 pages of amendments.

Mr Taylor: How many?

Mr HILL: Twenty pages of amendments were given to us this afternoon.

Mr Taylor: What does the Attorney General think about that? That is no way to bring to this House major amendments to a critical piece of legislation. There are at least 20 pages of amendments.

Mr HILL: My colleague, the member for Kalgoorlie, is quite right in pointing the finger at the Attorney General because she is equally responsible for this legislation as the first law officer of the State. She deserves to be criticised by this Parliament and by the community.

In closing, I want to refer to one section of the High Court judgment which I think is of particular interest. In its judgment on the issue of terra nullius - I come back to the comments made by the member for Albany about whether it has any basis for consideration in Australia - the High Court said -

> It is one thing for our contemporary law to accept that the laws of England, so far as applicable, became the laws of New South Wales and of the other Australian colonies. It is another thing for our contemporary law to accept that, when the common law of England became the common law of the several colonies, the theory which was advanced to support the introduction of the common law of England accords with our present knowledge and appreciation of the facts. When it was sought to apply Lord Watson's assumption in *Cooper v Stuart* that the colony of New South Wales was "without settled inhabitants or settled law" to Aboriginal society in the Northern Territory, the assumption proved false.
>
> "The evidence shows a subtle and elaborate system highly adapted to the country in which the people led their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence. If ever a system could be called 'a government of laws, and not of men', it is that shown in the evidence before me."

The judges went on -

> The facts as we know them today do not fit the "absence of law" or "barbarian" theory underpinning the colonial reception of the common law of England. That being so, there is no warrant for applying in these times rules of the English common law which were the product of that theory.
>
> It would be a curious doctrine to propound today that, when the benefit of the common law was first extended to Her Majesty's indigenous subjects in the Antipodes, its first fruits were to strip them of their right to occupy their ancestral lands. Yet the supposedly barbarian nature of indigenous people provided the common law of England with the justification for denying them their traditional rights and interests in land . . .

This is saying there was an ordered community, that the Aboriginal people had demonstrated a long interest in and occupation of the land and that they had a structure in the community that could demonstrate that they were capable of being law makers in a sense. That is the issue that the member for Albany was raising before and disputing. The judgment continues -

> As the indigenous inhabitants of a settled colony were regarded as "low in the scale of social organisation", they and their occupancy of colonial land were ignored in considering the title to land in a settled colony. Ignoring those rights and interests, the Crown's sovereignty over a territory which had been acquired under the enlarged notion of terra nullius was equated with Crown ownership of the lands therein, because, as Stephen CJ said, there was "no other proprietor of such lands". Thus, a Select Committee on Aborigines reported in 1837 to the House of Commons that the state of Australian Aborigines was "barbarous" and "so entirely destitute . . . of the rudest forms of civil polity, that their claims, whether as sovereigns or proprietors of the soil, have been utterly disregarded". The theory that the indigenous inhabitants of a "settled" colony had no proprietary interest in the land thus depended on a discriminatory denigration of indigenous inhabitants, their social organisation and customs. As the basis of the theory is false in fact and unacceptable in our society, there is a choice of legal principle to be made in the present case.

The legal principle that the High Court judges enforced was that terra nullius was void, that the land was occupied, that the people who occupied the land for in excess of 40 000 years were a community, that they had a structured society and that they were in a sense making laws to apply to that land. This High Court judgment is of national importance. It is also of international importance. It has been enforced internationally. There are ample cases, and they have been spoken about at length by my colleagues, to demonstrate that this legislation will be examined not just Australia wide but also internationally because what the Federal Government is doing is enforcing a principle which this State Government is trying to throw out the window. It is a principle which recognises that Aboriginal people have rights and a principle which gives them some hope for the future. This Opposition condemns the Government not just for the fact that it brought this legislation into this place but also for the hasty way in which it has done it and for the fact that today it has brought forward 20 pages of amendments clearly showing that the Government is inept and that the legislation has been rushed into Parliament purely for political purposes. This is unprecedented and all members of the Government should collectively hang their heads in shame.

MR MARLBOROUGH (Peel) [5.24 pm]: At a time when political point scoring could have been set aside for what is arguably the most important matter that has been before any Parliament in the history of this nation, we have seen in the past 24 hours political point scoring being put first rather than being set aside. At a time when this State could have been marching in step with the rest of the nation - that is the reality of the Federal legislation - it has been out of step. For what reason? We are told by the Premier it is to give the State a firm footing, to set in place standards that will improve development, and to put in place stable legislation that is required for this State to prosper. What is being put forward by the Premier in this legislation is the opposite to what he is saying. The difficulty for the State with the Premier's attitude, which is to blame the Federal Government for everything, can be seen not simply in the spoken word of the Premier, but also in the written word. If we turn to the pamphlet that was released yesterday to the Western Australian community we see the problem with which this State is faced. This Premier has abrogated his responsibilities. He has been given the opportunity to put the State's position first under the Federal legislation, but he has abrogated it. He has put in place a set of circumstances which will result in an appeal to the High Court, everybody is aware of that. At the end of the High Court procedure, the legislation will be kicked out. It may take six or eight months to go through that process, but at the end of that process those people for whom the Premier argues he is trying to provide, will miss out altogether because there will be no guidelines in this State. The High Court will have kicked out the legislation. On the opening page of a leaflet titled "A fair solution to Mabo for all Western Australians" under the heading "What is Mabo?" the Premier states -

> The High Court's findings on the MABO cases have the potential to bring about major changes to our land management laws. The WA Government has strongly argued that this was beyond the scope of the High Court and that changes to land laws should be made by elected Governments.

That is the crux of the problem in Western Australia today. Even as late as the past 48 hours, this State Government, when taking the opportunity of informing the public of Western Australia, continues to ignore the right of the High Court to make such a decision. The Federal Government has said that the High Court has made that decision and as a nation we should be trying to put in place legislation which will make that High Court decision work.

It is difficult legislation. It is the first time it has been attempted in the history of Australia. It is the first time that a court or a Government has made such a decision. All Australians could have been united to give Aboriginal people native title. The rest of Australia with all of their problems and concerns within their State boundaries can find that it is opportune, right and proper to set aside parochial issues and put in place national legislation. This could never have been handled at a State level. It is inappropriate to handle the implications of the High Court decision at a State level. If the debate we have seen in this House were duplicated elsewhere in Australia, we would have differences within this nation greater than those of the nations of the European Community when they make major decisions. That is the tragedy of Australia today when we are faced with important issues. The decisions we make to grow and prosper as a nation will be measured not only internally but internationally. I am strongly of the opinion that the stand by the Western Australian Government in the long term will cause immense international difficulties right on our doorstep. I will give members an example of my concerns. The Prime Minister of Malaysia, Dr Mahathir, believes strongly that as a growing nation in the Far East, Australia has too powerful a role in the politics of the regions.

Mr Osborne interjected.

Mr MARLBOROUGH: The member for Bunbury may well be right; I do not know about that. However, I do know that the same man is in charge of a country that lived through a process in the 1940s and 1950s where the rights of the native people of Malaya, as it was known then, were curtailed by British occupation. I have first hand knowledge of that because I lived there for three years. My father was a member of the SAS in Malaya when that campaign was on. Prime Minister Mahathir, having lived through that period, knows what it is like for indigenous people of a country to have their rights taken away from them. My observation is that Dr Mahathir intends making himself a reputation on the international stage. I suggest to members that, being the sort of man he has demonstrated he is so far, he will not hesitate when it suits him to point the finger at Western Australia as a State that is incapable of properly looking after its Aboriginal people when it comes to decisions of the High Court and the right decisions that this nation should be making.

Mr Prince: Wouldn't you agree that what the native Malaysians have done is to disfranchise the Chinese?

Mr MARLBOROUGH: Malaysia has its own problems among its population. Even though those problems may exist, it will not stop the present Prime Minister of Malaysia looking closely at the way in which we as a nation consider our indigenous people. This issue will not simply stop at the borders of Western Australia; it will go beyond this State.

In the Prime Minister's second reading speech yesterday he made quite clear the Federal Government's willingness to accommodate the needs of not only Western Australia - that is, recognising its traditional role of looking after land and land titles - but also any State. The only specific point he went on to make in his second reading speech was that the High Court had made a decision over native title, and that decision had to stay in place. However, where States could demonstrate a willingness to accept the High Court decision of native title, all those other matters that are traditionally the responsibility of States should be allowed to continue. The Premier has been running around the State, and is now interstate, saying that the Federal legislation takes away those rights from Western Australia. Let us consider what was said in the Federal Parliament yesterday. It may assist members to see what the Federal Government was trying to do with a difficult set of circumstances. The Prime Minister said yesterday -

> In regard to decisions on land use, where we have recognised State and Territory processes the Commonwealth will step back. State bodies, not the Commonwealth tribunal, will decide whether grants should proceed.
>
> Such States and Territories will also be able to over-ride tribunal decisions in the State interest.
>
> States and Territories who wish to see a national system with proper recognition of their land management responsibilities, and with fairness for Aboriginal and Torres Strait Islander people, will find it in this Bill. We will be happy to cooperate with them.
>
> But we cannot accept West Australian style legislation involving:
>
> > compulsory, wholesale extinguishment of native title . . .

I have always thought that it is in the best interests of not only this nation but also Aboriginal people for all of us to work together on this issue. We cannot begin to work together and build the firm foundation that is necessary to take the next step forward for this nation without doing that. It is not a small step, but a major step by any nation's measure. For it to happen properly we must all work together. Although difficulties do exist, given the total picture of the High Court's decision and the fairness and equity that surrounds its position on the traditional people of this nation, I have never been one of those people who believe that the divisions in society are so great that we cannot go forward. I am waiting for the time that this State legislation is before the High Court and I am hoping it is kicked out so that at least we can then get into step with the rest of the nation. The tragedy of the situation is that instead of establishing certainty, as the Premier suggests it will do, it will put in place a massive amount of uncertainty. That uncertainty goes to a major industrial area - the mining industry - which is close to my heart because it employs much of my constituency. The bottom line of the mining industry is this: I am not aware of an international mining company that has not demonstrated its ability to negotiate with the native people of any land anywhere in the world.

I will tell members a story. I was proud as the local member for Peel two years ago to find that BP Oil, a company with which I worked closely, had received in Brazil in 1990 or 1991 the gold plate award, an international accolade, for being the finest environmental multinational in the world. BP was proud of that. BP was able to win that award, not simply because it looked at the air pollutants it emitted or stopped pollutants that may have been going into the rivers, but through its ability to look at its major resource; namely people, particularly people who live in third world countries. It was BP's ability to go worldwide and negotiate with the Chilean Indians in South America about their rights to mine and to drill for oil; its ability to go into Columbia and do the same thing with the native people there; and its ability to negotiate with the Mexican Government and Mexican people and do the right thing in that country. All of those factors were part of the reason BP was able to achieve the world's highest accolade in 1991. That award gained headlines in the local Press; unfortunately it is not the sort of issue that gains headlines in the daily Press. It is not beyond the capacity of the multinational companies to negotiate an equitable and proper way forward with native people. It is true that their preferred position would be to deal with the area they have always dealt with; that is, the States. There is no argument about that. I am suggesting that the Prime Minister also understands that the High Court Mabo decision has caused some problems with the States, some of which have greater concerns than others, particularly in the mining industry, in carrying out their traditional role of being in control of land title; and, in allowing for the future growth of the State, the right of mining and exploration companies to gain access to land. In the second reading speech - I do not know of a better record than Federal *Hansard* - the Prime Minister said, "Look; it is difficult but here is your opportunity; it has always been there." How can people in Western Australia be convinced that the Premier of this State has taken advantage of that opportunity when they read the comments of the same Premier in the pamphlet entitled "A fair solution to Mabo for all Western Australians." that was put into all letterboxes? It states -

> The High Court's findings on the MABO cases have the potential to bring about major changes to our land management laws. The WA Government has strongly argued that this was beyond the scope of the High Court . . .

That is just unbelievable. Tragically, it will create not only uncertainty but also some division. I am not of the opinion that there is a major division in the community; however, there is a great deal of uncertainty. I am not of the opinion that the State Government's legislation is racist; I just know it is flawed. In attempting to hang on to its parochial rights and on the basis of its saying no to the High Court decision, how can the Government be correct? If the foundation stone has not been put in place, how will the rest of the building stand up? If we pull out the cornerstone from a building, the rest of the building will not last for long. That is what everybody is saying. Division has been caused more within the Liberal Party than anywhere else in this nation. It has been interesting in the past week to sit in this Chamber and hear interjections from people like the member for Bunbury, who interjected a fortnight ago that Bronwyn Bishop would be the next leader.

Mr Osborne: I did not.

Mr MARLBOROUGH: The member did say that.

Mr Osborne interjected.

Mr MARLBOROUGH: The member interjected and he made it quite clear whom he is supporting.

Mr Osborne: The truth is no friend of yours if that is what you are saying.

Mr MARLBOROUGH: The reality is that we are seeing division within the Liberal Party.

Mr Catania: There is very little difference between Bronwyn Bishop and John Hewson.

Mr Osborne: No matter; truth is a small thing.

The ACTING SPEAKER (Mr Johnson): Order!

Mr MARLBOROUGH: The only difference between those two is that Bronwyn Bishop would have her hand up Ian McLachlan's back manipulating him. The largest division is not within the general community. The greatest division today is within the Liberal Party. The traditional Liberals, as we knew them, are quickly disappearing from the Liberal Party. There may be two on the other side of the House. In Western Australia we have mainly those in the far right of the Liberal Party. In the Federal scene we are seeing attacks on Dr Hewson about the Mabo issue from those from the far right of the Liberal Party, the Ian McLachlans and the Bronwyn Bishops of this world. Mr Reith has taken the opportunity today to jump back onto the leadership bandwagon. Mr Reith opened the door of the Federal Opposition caucus for the Premier by suggesting that the Federal legislation will assist the State legislation to go forward.

The member for Albany put forward his views on clause 7 and other clauses in the Land (Titles and Traditional Usage) Bill. I am not a lawyer, and I do not profess to be one. As I said to the member for Albany some time ago, I do not have to be a lawyer to know what is right and what is wrong or to know what is honest and what is not. The same applies this time around. To ensure that members are not just listening to a legal philistine, I will tell members what other lawyers think about this State Government's decision. Today I received a two page media statement from the Secretary-General of the Australian Section of the International Commission of Jurists which, in part, states -

> The Secretary-General of the International Commission of Jurists, Mr David Bitel, has spoken out against the Western Australian Government's Land (Titles and Traditional Usage) Bill which is designed to extinguish native title. The Bill has been described by the WA Government as its response to the High Court's Mabo decision. The Bill was tabled in the Western Australian Parliament on Thursday, 4 November 1993.
>
> Mr Bitel said that the Bill appeared to breach these international obligations. "It extinguishes native title wherever it may have existed in Western Australia and purports to substitute statutory 'rights of traditional usage' which are virtually worthless. This is so because the substitute title is subordinate to all other interests and the holders have no protections at law."
>
> Mr Bitel pointed out that the Bill also provides the ability for WA government ministers to terminate the statutory "rights of traditional usage", which the Bill proposed to grant, at any time.

That is my understanding of the Bill, and that is why I believe it is flawed. That is why it will not provide the stability to the mining industry or any other industry as has been suggested by the Premier. What do industries, such as the mining industry, which have to rely on massive investment, really want - it may well be that their preferred position is not to have native title; I do not know whether that is the case; but that would appear to be the position, given some of the statements from industry spokesmen which have appeared in the media - when faced with the fact that native title will not be removed and that it will exist in at least seven-eighths of the nation after the passing of the Federal legislation? Those industries want stability and certainty. They require a process to be put in place that will give them a strong foundation upon which to make their decisions and to build. Once given that basis, those industries will demonstrate to everybody their ability to negotiate in any given set of circumstances. I believe in their ability to negotiate fairly and properly. This is not a fight about our view on the Premier's Bill or our view against that of the mining industry. As I said earlier, my opposition is to the Bill. It just does not provide what has been suggested by the Premier. I will quickly deal with two aspects of the Bill that concern me. Clause 7, mentioned earlier by a number of speakers, states -

> (1) On the commencement of, and by operation of, this section -
>
> (a) any native title to land that existed immediately before that commencement is extinguished; and
>
> (b) the members of an Aboriginal group who held native title to land immediately before that commencement become entitled to exercise rights of traditional usage in relation to that land under and subject to this Act.

We not only have a Premier who speaks in code but also a Bill which, as it presently stands, has to be read in code. The Bill replaces the words "native title" with the words "traditional usage". But when we look within the Bill at the definition of how traditional usage would apply, we start to see the absolute extinguishing of that traditional usage. However, we will have the opportunity to debate this more fully in Committee. Clause 17 headed "Laws of general application not affected by rights of traditional usage" states -

> (1) In this section "**general laws**" means written laws or other laws as in force from time to time that apply generally to land or members of the public.

My understanding of that is that most general laws and public laws of which I am aware in this State do not give me the right to go onto a piece of land to pick native flowers, to kill native fauna, to damage flora, to fish in certain areas, to build, to forage or to camp.

When we look within the Bill the words indicating traditional usage start to disappear into thin air. The Bill has no substance at all. We will discuss these aspects fully during Committee. Clause 26 refers to rights which may be extinguished or suspended without notice, and this may be done for such period as is specified within the notice. Clause 26 is the one to which the Secretary-General of the Australian Section of the International Commission of Jurists referred as follows -

> ... the Bill also provides the ability for WA government ministers to terminate the statutory "rights of traditional usage", which the Bill proposes to grant, at any time.

The words within the legislation do not measure up. The whole State will be disadvantaged by this legislation.

In conclusion, it is right and proper for any Government to determine its legislation. The Premier said two or three months ago that he intended to introduce Mabo legislation, and that is his right. However, one must seriously question the timing of this legislation. As I said earlier, this is not racist legislation, but the timing of the legislation is not about the future benefits to this State, but about getting Wanneroo Inc off the front pages. This is evident by the speed with which the legislation has been pushed into the Parliament, and by the fact that 20 pages of amendments were seen today. Unlike the member for Helena, I do not believe that the Premier will be able to blame the Federal Government for these changes.

Mr Minson: Somehow I did not think you would.

Mr MARLBOROUGH: Why would I? The clauses that are being amended are substantial. The Petroleum Pipelines Act is amended through five pages of amendments. The Public Works Act involves amendments, as does the Pearling Act. Those amendments demonstrate that this Bill was rushed into Parliament so quickly that the Government did not even talk to its legitimate agencies. The Government did not confer with its agencies, and we are now in catch up time. In introducing this legislation, the Government had in mind not the State's future but the short term aim of taking Wanneroo Inc from the front pages of *The West Australian*. That tactic will not work. The people of Western Australia will make a judgment on that issue.

MR LEAHY (Northern Rivers) [5.55 pm]: I oppose this Bill for the reasons my colleagues have argued eloquently. We have heard an impassioned speech by the member for Kimberley, and a clinical analysis of the legislation by the members for Fremantle and Mitchell. We also heard speeches from former Ministers for Aboriginal Affairs in the Leader of the Opposition and the member for Kenwick. They referred to the effect this Bill will have on Aboriginal people, or rather its lack of positive effect. It is difficult to follow those members as many areas I would like to cover have already been referred to. We have also heard a number of speakers from the other side of the Chamber. As the Opposition Whip I must spend a lot of time in the Chamber, and it was clear that members opposite do not have their heart in this legislation. I agree with the member for Peel that this legislation is a ploy to take other issues out of the headlines.

This legislation, as we all know, is as a result of suffering in this country for 200 years the lie and fallacy of terra nullius; namely, that nobody occupied this country before white settlement. The member for Albany tried to cover this issue in many ways. I do not agree with his interpretation of history, and I do not care whether terra nullius was common law - it was wrong. People lived in this country before white people arrived. We invaded this country and ignored the rights of another race which still inhabits this country. For 150 years we even refused to acknowledge the existence of that race as we did not allow them to be citizens in this country. We all stand in shame for that.

We are now trying to address that shame and the guilt of our forefathers; for although we did not do such things, we should be trying to put them right. However, this Government is not trying to put things right, as it is trying to do exactly the same things our forefathers did in taking land from Aboriginal people. In the past it was done by slaughter; this Government will do it by stealth, which is just as bad. We may not have blood in the deserts and country areas, but people will feel just as badly about the efforts of this Government in taking land from them.

The Bill before the House and the associated Federal Bill are very different. The Federal legislation has been arrived at through consultation and, in general, agreement by Aboriginal people. That cannot be said of the State legislation, which has agreement from no major Aboriginal groups. I represent a vast number of Aboriginal people in my electorate, and I have not heard from one Aboriginal person who supports this legislation. Not one has said, "Kevin, go down and support the legislation." I doubt whether any member opposite has heard an Aboriginal person support the legislation.

The High Court decision attempted to set right the wrongs of the past. It has recognised that people have been in Australia for 30 000 or 40 000 years, and these people continue to inhabit the land. They have done so through 200 years of white settlement, and the court decided that these people should have title to land. That title should have been recognised 200 years ago. The High Court said, "For goodness sake, recognise it", but the Government is refusing to do so. The Aboriginal people of this State, and Australia generally, deserve that recognition.

If by some oversight a white settler in this State in 1829 did not gain proper title to his land, members opposite would be screaming that that person should have his land. This legislation seeks to take away title from people who have lived in harmony in this country for 40 000 years. The people who will be affected by the Mabo decision have lived on the same piece of land, taking good care of it, for the past 200 years. No mass land claim will be involved. There is no chance of pastoral leases being taken through the Federal legislation. Such matters have been taken care of by indicating that pastoral leases have extinguished native title, which cannot be re-ignited when the pastoral lease comes up for renewal.

Sitting suspended from 6.00 to 7.30 pm

Mr LEAHY: We have an opportunity now in Australia to move towards reconciliation with Aboriginal people and remove what has been a scar on our history for more than 200 hundred years; that is, the doctrine of terra nullius. As other people have said, that doctrine was an absolute lie and fallacy in stating that there was no race of people in Australia prior to the English settlement of this country. This Bill does not do that. It is an attempt to, once again, take away from Aboriginal people their right to land, a right that has been established over 30 000 to 40 000 years.

I compare this Bill with the legislation before the Federal Parliament - the legislation with which the Premier of this State takes great umbrage - the Native Title Bill. The Federal Bill has been developed over a number of months, not without much heated discussion and not without controversy. I will not say that it is 100 per cent right, it is not. However, we must be involved in the discussions on that legislation. The amendments to that legislation should come about after long consultation with the Premier of this State. There is no doubt that the Mabo decision has the capacity to impact on Western Australia and economic development, especially in the mining area. However, we cannot just bury our heads in the sand and say we will introduce legislation that will deprive Aboriginal people of their traditional rights - access to land and their proprietary right to land - and substitute for that a very weak form of land usage. It is a subordinate form of land usage which will be extinguished again if anybody else wants access to the land. The Aboriginal people will have no right of veto or ability to negotiate with mining companies; that will not exist. If anybody else wants access to the land or if any other form of title is brought in after this Bill, that group of people will have precedence over the Aboriginal people. I cannot abide by that and I do not think any fair thinking Australian can. We Western Australians are the ones on a limb. By implication we have been dragged into this situation. Many people in Western Australia do not agree with the Government. However, Western Australians are now being portrayed nationwide, and probably worldwide, as a race of rednecks, but we are not. There are only a few rednecks in this State. They are not the ones who should be determining how we deal with Mabo. The fair thinking Western Australians should be deciding that. The people on the Government side should take a good look at this legislation. I know that the majority of people on the Government side are fair thinking Western Australians. I cannot believe -

Mr Omodei: Which ones are they?

Mr LEAHY: Anyone who votes for this legislation could not be a fair thinking Western Australian. Nobody could agree with extinguishing Aboriginal rights, or that, given 30 000 to 40 000 years of connection with their land, and an ongoing relationship with it for the past 200 years during white settlement, title should not now be recognised by white Western Australians.

Mr Bloffwitch: We have made that State law and that is better than any theory. And you will not acknowledge that.

Mr LEAHY: The Government is not giving them title to the land; it is giving them an airy-fairy right to use the land. When the Government gave me a briefing on it, I asked people, including the member for Albany, whether the Government legislation on Aboriginals conveyed the same right to them as pastoral lessees already have; that is, the right to say they have been using a watering hole or camping site for 200 years. A mining lease or prospecting licence cannot be pegged within a certain distance of a pastoralist's homestead or made a watering point. Even this legislation, which provides for traditional usage and therefore ongoing rights to usage, is subordinate to anyone in the mining industry. The Aboriginal people do not even have the same rights as a person who has a grazing lease - a right to graze sheep and cattle. That is a greater title than this legislation conveys. Nobody can tell me that is a fair way to deal with Aboriginal people. Members on that side cannot say this is a fair Bill. Why does the Government propose to move 20 pages of amendments? It is proposing all those amendments because it has botched its first attempt at the Bill. It still does not have it right, and it will not get it right until it withdraws this legislation completely and introduces something else. Preferably it should negotiate a solution with the Federal Government which is workable Australia-wide. It is no good trying to pass legislation in this State which nobody else thinks is workable. In the long run, it will be overturned. The Premier admitted on television tonight that the legislation had no better than a 50 per cent chance of not being overturned. I would say it does not have a five per cent chance. It will not only cost this State millions of dollars, but also create uncertainty in economic development and mining opportunities because companies will not be able to go out and peg. It will do the very thing it purports to be trying to stop.

Mr Lewis: It need never have happened.

Mr LEAHY: It need never have happened if the Premier had talked to people in Canberra. We hear from members opposite that the Mabo decision will lock up the land. In my five years as a member of this Parliament, representing an area where many Aborigines live, I have not heard one complaint about Aboriginal people locking up areas. The only complaints I have had concern a small number of pastoralists who lease stations which abut the coast. I constantly hear complaints that they do not allow access to coastline which is owned by us all. They lock the gates and in some cases charge an admittance fee of $5 a day per person to camp along the coast, over which they have only grazing rights. Many of the people in my electorate say that pastoralists are fleecing the tourists, rather than the sheep! They are not doing their job.

Mr Bloffwitch: Go to Useless Loop and see how much you must pay there. They do not provide any facilities.

Mr LEAHY: In defence of the Shark Bay operation, it must be said that it provides a full time ranger and spent about $100 000 on constructing accommodation for him. I am not saying that $20 is a fair fee, but at least it provides some services which are not provided by the State.

Mr Bloffwitch: They do not provide many facilities for tourists.

Mr LEAHY: I am talking about stations on which the owners do not even collect the rubbish. People must obtain a key from the pastoralist to go through the gates to get access to the coast, which we all own. I have not had one complaint in my electorate about Mt James. No complaints have been made about access or about the Winjah group on the station. They allow access to the land, and the Mitchell family are doing a tremendous job and running the station well. I know that complaints have been made in some areas, but none at all have been made in my electorate. The Aboriginal people in my electorate have not been pressing for land grants. On the occasions they have asked for land, their request has been for very small parcels and on each occasion the pastoral industry has been reluctant to release the land. One Aboriginal group has been trying for the past five years to obtain a parcel of land two kilometres by two kilometres. Its request was thwarted under the previous Government, although the Minister for Aboriginal Affairs was trying to allow it, because there were problems with the Department of Land Administration. In the past 12 months there has been no action at all in this matter.

Mr Bloffwitch: Why did they want that area of land?

Mr LEAHY: The Aboriginal people concerned have asked for any land in that area. They will negotiate with the pastoral lessee. They do not want any part that is important to his station but will allow him to dictate the area. They want to go back to the land on which they were brought up, in order to be away from the influence of drinking and lawlessness in the town. On two stations in my electorate near Newman, on a number of occasions the Aborigines have been refused the right to hunt in the region. It is wrong to say that the Aborigines want to grab land or that when they get land they refuse to allow access to other people. The needs and aspirations of Aboriginal people are tied to the land. For many years I failed to understand that, but I now recognise from talking with

Aboriginal people that there is a fundamental difference in their working relationship with land from that of white people. The Aborigines do not see land as a commodity for making money, as do most white people. Aboriginal people do not have that view and have never had it. They see land as part of their being and it is very important to them, particularly the areas with which they have an ongoing association.

Mr Bloffwitch: I agree with what you are saying but surely looking at this legislation fairly, is that not what we are putting into State Statute - the right for them to continue in this State on Crown land to do that for ever more?

Mr LEAHY: If that is the member for Geraldton's understanding, he is wrong. If that were correct, the member for Kimberley and I would support the Bill. The Government cannot give with one hand a right and make it subordinate to all other rights. The Government proposes to give a right as long as nobody else wants access. The Aborigines would have no control. The Bill purports to convey rights to Aboriginal people but it conveys no such rights. That is why neither the Minister nor anybody on the Government side of the House can point to an individual Aborigine - let alone a group - that supports the Government's legislation. They have been asked to do so on a number of occasions. If that does not suggest there is something fundamentally wrong with the Bill, nothing will.

As I said earlier, the Federal legislation provides something for Aboriginal people, and also provides some protection for the people that now control the land. As soon as the legislation was suggested a couple of pastoralists contacted me and said they had difficulties with it because they did not know whether it would affect their pastoral leases. I contacted Simon Crean's office and was provided with some briefing papers, which I have no reason to disbelieve. They state categorically that no claim on pastoral leases will succeed, and that the pastoral lease has extinguished native title. That does not make Aboriginal people very happy, because it limits the scope of the Mabo decision. That decision is applicable to a very small number of Aboriginal people in Western Australia, and it is not the panacea that some Aboriginal people think and a lot of white people fear. The Federal Bill states categorically that Aboriginal people who make a claim must prove an ongoing relationship and association with the land over the past 200 years. Certainly no Aboriginal people could prove such an association with the average suburban backyard. That fear was engendered by members on the Government side and it raised a lot of ire in the community. It was fundamentally wrong and when scare tactics such as that are used, one sees them filter down through to the children, who should not cop this sort of abuse.

I relate an example from a woman I greatly respect, who is the wife of one of the horticulturists on the Gascoyne River and has four children, the oldest of whom is seven years of age. The children in this family are very well raised by parents who do not have a racist or redneck streak in them. People of a number of different races, such as Portuguese, Yugoslav, Aborigines and white Australians, live and work on the river at Carnarvon. This woman told me through my electorate officer that one of her children, who is not yet seven years old, came home from school and said that all Aboriginal people are bad because they are chasing our land. Where did that come from? I am sure the teacher did not say it. It has come from white parents through their child to this child. That is sad.

Mr Trenorden: That is not the only place that it comes from.

Mr LEAHY: I know what the member for Avon is going to say and I agree that there are racists who are black, yellow and white. I deplore that attitude as much from Aboriginal people as I do from white people, and I put that on record. Most Aboriginal people say exactly the same. Whether it is black or white it is all racist and it is wrong, but we must do something to try to change that. We cannot allow a scar on our history to be indelible. We must try to remove it and do something here which reflects what the High Court wanted. The High Court said that we should recognise native title, and for 200 years native title has been here. It took us over 160 years to recognise that Aborigines were Australians and to give them citizenship. That is disgraceful. Now, another 30 or 40 years on, the Government cannot recognise that they were here before us and recognise that High Court decision by the best legal brains in the country. The Government says, "We know better and we are going to put in place some legislation to deny Aborigines title to their land."

Unfortunately I am running out of time and I will not be able to cover all the areas I would like to, but I will read into *Hansard* some of the thoughts that have been provided to me by Reverend Neville Watson who, as members on the other side will know, has been camping on the front steps for the last seven or 10 days and intends to remain at certain times each day and fast for a period of 14 days in recognition of 200 years of white occupation. Obviously, the things he has had time to think about and put on paper are very thought provoking. I will read a few extracts. This was put on paper on 10 November 1993, and it states -

> In Western Australia today, we are doing what our forefathers did - we are extinguishing native title. So often in the past we have heard that we cannot be held responsible for what our forefathers did. This is true, but that excuse is no longer available to us - for we today are doing precisely what they did - we are extinguishing native title. And if anyone is foolish enough to think we are substituting what is known as the "right of traditional usage" then let them read clauses 20 and 23 of the Bill. To coin a phrase "what Richard giveth, Richard taketh away".

The West Australian newspaper also commented on it and I will read in part that comment. It states -

> Premier Richard Court's plan to extinguish native title will herald one of the darkest periods in Western Australia's race relations.

We are seeing this happen right now. It continues -

> What Mr Court proposes amounts to a second white invasion. This time he also wants to appear as the benign colonist, but his emerging proposal will trample Aboriginal rights just as surely as a settler with a gun in 1829.
>
> It is not acceptable in the 1990s to wipe out a race's human rights, either by legislation or violence, whether it be Bosnia or Broome. While this comparison is extreme, it seeks to highlight the inherently oppressive nature of Mr Court's plan.

That is not a left wing newspaper but *The West Australian*.

Several members interjected.

The SPEAKER: Order! You will be aware that there is a limitation on the length of material you can put into *Hansard*. I am not stopping you at this stage. I am just reminding you to take note of it.

Mr LEAHY: I did paraphrase and I have left it to the last couple of minutes to read these in. I thought those notes from a man who has camped on the front steps should be recorded.

The SPEAKER: I am not trying to stop you, you understand, but asking you to take cognisance of that.

Mr LEAHY: Not being a religious person I cannot really comment on the references he has made to the Bible, but he raises the problems of the expenditure by the mining industry on advertising and points out that the mining industry has not indicated to the people of Australia the areas where they have easily come to agreements with Aboriginal people. He points to the statement by Mr Ken Dryver, the director of operations at North Flinders, one of Australia's foremost gold producers. He said -

> We see our relationship with the landowners as being a very important element . . . we treasure that relationship, it's very important to us, both as a company and as individuals . . .

We now have an opportunity to cleanse some of the wounds that have occurred as a result of 200 years of deprivation of the Aboriginal people and to start a healing process. We can either do that or continue in the vein that we have. There is not one person here who does not recognise that Aborigines come from a very disadvantaged situation. We all know that and yet we do nothing in this legislation to remedy that. I call for all those members on the other side to examine their consciences, examine this legislation and then vote against it with us on this side of the House.

MR TRENORDEN (Avon) [7.56 pm]: Much has been said about the Mer Island people, their habits and the way they have occupied their island and existed, so I do not wish to go into great detail about many things already canvassed. We must recognise that they did have a form of land title system and also a form of local government on that island. The High Court has said the native title that it examined on the island of Mer could possibly exist on the mainland, without giving any clear definition of what native title means or the processes arising as a result of it. The Prime Minister has greatly expanded the definition from that of the High Court, and the question is why. In his address to the nation he gave little detail of how his native title Bill will work. Now that the Bill has hit the Parliament we are none the wiser as to how it will work.

As it is late in the debate and there have been many speakers before me, I will deal with what I hope and believe are new issues. Members on the other side keep quoting terra nullius, but it is unfortunate for the Australian population that they have taken a definition of terra nullius which is not correct. Terra nullius is about the tilling of the soil and the occupation of the soil. The correct definition of terra nullius no longer has a great deal of merit because the argument has gone past it. I could also canvass the history of common law from its Germanic tribal roots and the history of Statutes which came out of the Roman era, but there is little point going through those issues either because they have been well and truly canvassed.

I would like to cover two areas which have yet to be debated. There is the question of native title and its definition, and I think it is important we get to a definition. In the Commonwealth Bill, part III deals with native title. I do not have the latest Bill, but the one that fell off the back of a truck. It was available prior to last weekend; it is not the Bill presented to the Commonwealth Parliament, but substantially the same. If one looks at the definition of native title, in this copy I have one sees it is section 94 and it carries on for seven or eight pages. The definition of "determination of native title" is about holding land to the exclusion of all others. I could quote many clauses of the Bill, but I will not because there are far too many. From reading the Federal Government's Bill it is evident that if it is passed we will have a brand new definition of "title" in Australia.

The Federal Government's Bill will create special conditions for Aboriginal people only. Many Australians are under the misapprehension that they hold freehold title to their land. They do, but it is not the same sort of freehold title that people in other countries enjoy, for example, the Americans. The freehold title in Australia is actually land held in fee simple which means that the Crown has a certain amount of control over it. The definition of "fee simple" is limited to its class. An Australian who owns land owns that land only down to 60 feet, but there are limitations on the minerals in that ground because they are controlled by the Crown. This will not be the case with native title. A new title will be created for two per cent of this country's population.

Mr Lewis: It has absolute primacy over fee simple title.

Mr TRENORDEN: Absolutely. Members know that the Crown can take away land in fee simple and give compensation to the person who has that title. Will that be the case under native title? It will not. The Government will not be able to build a school or a road on land which is under native title.

Mr Kobelke: Where did you get that from?

Mr TRENORDEN: It is straight out of the Commonwealth's Bill - it is clause 94(3).

Mr Kobelke: You are wrong.

Mr TRENORDEN: This is a very important matter because it locks up the assets of 98 per cent of Australians. It does not matter whether the Australian person is of Asian, Irish or Chilean descent, if he holds title to land on which he has a business that is producing wealth for this nation it will be locked away. This issue has some chilling parallels with South Africa.

Dr Gallop: Can I ask a question?

Mr TRENORDEN: No, the member cannot because all he does is lecture.

Most members in this House would not know the origins of apartheid. Most of them would believe that the birth of apartheid was in South Africa in 1948. It was not. It happened 150 years earlier when the white people who landed at the Cape moved up the continent and, at the same time, the Negro races were moving down the continent and they met at the Limpopo River. A dispute over land ended in the signing of the Limpopo Treaty which was the first apartheid treaty. The treaty ensured that the Negro people would stay on the north side of the river and the whites would stay on the south side.

Dr Watson: That is not apartheid.

Mr TRENORDEN: It was, and I suggest to the member that she read the history books if she wants to know more about it.

The argument in our community is very divisive. The Opposition members who have contributed to this debate have not argued about the High Court decision. They keep arguing about Paul Keating's opinion of the High Court decision. Much of the argument which we have endured for many hours has not been about the Mabo No 2 decision, but about the Prime Minister's interpretation of it.

Mr Minson: It does not resemble it.

Mr TRENORDEN: That is correct, and it would do members a great deal of good to come back to the central question.

Mr Bridge: The argument from members on this side of the House is that the fundamental and most vital aspect of the High Court judgment is the recognition or otherwise of native title. It has nothing to do with Keating.

Mr TRENORDEN: The member for Kimberley is a much more reasonable person than his colleagues and his arguments are logical. I have a great respect for him and for the way he has handled this debate. When he was the Minister for Water Resources I supported him on many occasions because his decisions were logical and he did things very quietly. If more members were like him, this would be a better place. However, that is not the point. I have been listening to this debate for many hours and not all the members opposite have been as reasoned in their arguments as the member for Kimberley.

All people love land and I am not arguing for one second that the Aboriginal people do not have a special relationship with it. I return to the farm on which I was born on a regular basis and I have a special feeling for that land. I am not saying that I have the same affinity for the land as Aboriginal people do. I do not think any member on this side of the House would like land taken away from anyone, particularly the Aboriginal people.

The member for Kimberley might like to know that it is very sad for the Aboriginal people in Northam because the only piece of land with which they can identify is a reserve which was granted to them in 1902. It is on a flood plain and is located on the outskirts of that town. The Aboriginal people want that land back and they are making a concerted effort, through the courts, to get it back. I do not think they should have to do that. If their desire is so great, the land should be given to them. Many of the Aboriginal people involved were born on that land and I must admit they would not have happy memories of their time there. At least they had and have an association with that land, and I would give it back to them tomorrow. In addition, the Aboriginal people in Northam want to pursue some agricultural activities which are a little different, but they do have merit. I would like them to have some decent land in addition to the land which is on a flood plain. The important question is: How can we learn to live together? I have heard the member for Kimberley refer to this on many occasions.

I have a great love for history and before and since I was elected to this place I have travelled the world. I do not think there is one continent in this world which I have not visited. I have watched the habits of a lot of people and the main thing I have discovered in my travels is that the Caucasian people, the white skinned people, are the worst race on this earth. It can be proved without a great deal of difficulty that they are aggressive, materialistic and uncaring. One has only to consider the way in which whites have conquered the world and treated people to realise that they have gone about it in a most unnatural way. Something about Caucasian people makes them think they are better than other races.

Mr Minson interjected.

The SPEAKER: Order! If the Minister is allowed to interject in a comprehensive way and the member for Avon is happy to take it, he must speak much louder so that Hansard can hear it.

Mr TRENORDEN: It is a private conversation.

The SPEAKER: I put it to you that it is not a private conversation.

Mr TRENORDEN: The Minister said that Australians have not been as bad as people in many other places; and I concede that.

Mr Minson: I was about to say that if we look at what other races did when they conquered, while our history is not good, it is not as bad as that in many other places.

Mr TRENORDEN: The Minister is speaking about the British, the Portuguese and the French, who are all Caucasians. We may have been a bit better than others, but the basis is still the same. The missionaries went out with great zeal to do the right thing, yet most of the time they created misery. Some of the attitudes which they brought to the peoples of this world were appalling, but they thought their attitudes were right. We have heard about the mad Englishman in the midday sun. The Englishman in England did not have to worry about the hot midday sun, so in the tropics it did not worry him because, as far as he was concerned, he was still in England and did what he always did. They brought their attitude not only to this area but also to the environment, the law and health issues. That is exactly what we are seeking to do in this Mabo debate. We are seeking to apply to another race of people our materialistic values. Nowhere in this debate have I heard anyone say, "I am offering something of myself to you." We are arguing about material matters.

Dr Gallop: Is this a new Max Trenorden?

Mr TRENORDEN: No.

The SPEAKER: Order! I ask the member for Victoria Park not to interject while out of his seat.

Mr TRENORDEN: I notice that the attitude of the member for Victoria Park is very different from mine. It is very wrong that we look out of ourselves for solutions. We should treat this debate as individuals with a caring attitude to other persons. However, we are engaging in a materialistic debate. We are saying not "I will give away my asset to another person" but "I will give away somebody else's asset to another person". That makes it even worse. I have grave concerns about the division which this Mabo debate is creating in this country. This Bill talks about land and money, but not about attitude. It does not talk about a relationship between people. It is based upon the same materialistic assumptions on which other nations have acted. I have spent five weeks in Chile, and I was very impressed with the way in which the Chilean people treat each other. Even in a place like Egypt, the black sheep of the family is never thrown out so far that his family will not look after him. However, in this country some people throw out their parents, their children, their lovers or their spouses. How many people put their parents into homes and that is the last they see of them? That is not common to all people, but it is very common to Caucasian people and is a major problem.

Unfortunately, the Mabo debate is about division. Most of the debates of 1993 have been about division - the debates about the republic, the flag, multiculturalism, men versus women, employers versus employees, the employed versus the unemployed, and the rich versus the poor. Unfortunately, the rich are getting richer and the poor are getting poorer, and that is happening under a caring Federal Labor Government.

Dr Gallop: And the debate about town against country.

Mr TRENORDEN: That is another divisive debate that is occurring. It is unfortunate that this Mabo debate will continue in a divisive manner. I would like to think that we have some consciousness beyond materialistic matters, but this is very much a materialistic debate. It is about giving away other people's assets rather than our own and about applying different rules to different people, at a time when multiculturalism is meant to be visiting this nation and when people of all creeds should mix together to become Australians of the future. The Federal Mabo legislation is appalling.

MR MINSON (Greenough - Minister for Aboriginal Affairs) [8.15 pm]: This has been a long debate and most matters have been canvassed at some length, with varying degrees of accuracy. However, just to set the parameters of what I have to say, I will concentrate for a moment on what the High Court said in the Mabo judgment. Firstly, in the Murray Islands, an individual demonstrated that he and his family had had unbroken possession of the land since as far back as anyone cared to delve; therefore, they had title by virtue of that continuous possession, which related to what that individual and his family had used that land for. The decision said that it was possible, or words to that effect, that native title might exist elsewhere in Australia. It could not define it, but it said that, where it existed, it would relate to the traditional usage of that land; in other words, to the exercise of usufructuary rights. However, because those rights and usages varied around Australia, the High Court could not define it. One of the problems that we have is that while many of us refer to native title, there is no definition of native title. We know what it means in the Murray Islands in the Mabo case, but we do not know what the High Court was referring to when it said it might exist in other parts of Australia, although it did put some caveats on it in regard to the usufruct and traditional usage. The Federal Government has attempted to take the words "native title" and make them mean something which, it would seem to me, the High Court did not give it the right to do.

It took some months for what the High Court had done to sink in in Australia.

Dr Gallop: You are heading for a big shock if you think that.

Mr MINSON: How?

Dr Gallop: Because the High Court simply does not believe what you are saying.

Mr MINSON: That is interesting, but I do not have the ear of the High Court.

Dr Gallop: Neither do I.

Mr MINSON: Word has leaked out from people connected with the High Court that the judges are appalled at what has happened. They are very upset -

Dr Lawrence: What a load of codswallop!

Mr MINSON: How would the Leader of the Opposition know?

Dr Lawrence: Do not make it up.

Mr MINSON: I am not making it up. They are appalled at the debate which they have precipitated and the way in which that debate has proceeded in Australia.

Dr Lawrence: Inside sources in the High Court talk to you - that is a joke!

Mr MINSON: The Leader of the Opposition will know that one of the things that one does as a Cabinet Minister, particularly when one is on a subcommittee dealing with issues related to Mabo, is talk to a lot of people who mix in legal circles. I have no idea whether it is accurate, but neither does the Leader of the Opposition; so it is not valid for the member for Victoria Park to tell me that I am in for a big shock. The High Court made some statements, and much has been made of those statements by many people around Australia. It could be that the High Court did not intend to go as far as it did. When it dawned on Australians, particularly Western Australians, exactly what were the ramifications of Mabo we were left in a quandary. As a society, we could have reacted in a number of ways; one would have been to do nothing. That would have been a valid thing to do. In many ways it might have been the best thing to do, and to allow the next chapter to unfold.

Mr Bridge: In other words, not to recognise the legitimacy of preoccupation?

Mr MINSON: No. The member misunderstands me. In the Murray Islands, where people used the land in a certain way it was, if not unique, almost unique because Aboriginal people generally across Australia did not till the soil. It was an isolated judgment. Instead of trying to extrapolate from the judgment, a valid thing to do would have been to do nothing, and to wait for the next chapter to unfold. That would have meant a claim elsewhere and the High Court would have made a further determination, which perhaps might have clarified what the court meant. I cannot turn back the clock but that would possibly have been a better outcome than the mess and the division we now see.

Mr Bridge: If I got up now and you and I shook hands in this Chamber and agreed that this continent was occupied by Aborigines prior to the emergence of the British, we would resolve the whole Mabo issue.

Mr MINSON: I do not have a problem; the law has the problem.

Mr D.L. Smith: The problem would be the uncertainty it creates.

Mr MINSON: We have uncertainty, no matter what.

Mr D.L. Smith: We would resolve the uncertainty by national legislation.

Mr MINSON: We do not need to do it nationally. It is the wrong way. Across Australia, land administration has always been controlled by the States. That is why we have different titles, different title systems and administrations across Australia. The second reaction would have been to do as the Federal Government has done; that is, Keating's first effort. The final Keating effort is a long way from the first effort, because the first effort was enough to give any sensible Australian a fit of the vapours. The second effort is not much better but the first effort was absolutely terrible. The third way to react would be to sit down and make a sensible assessment of the issues as they apply to all Australians - in our case, to Western Australians.

I want to give members, and the media if they are here, an insight into the way we handled this legislation. It became obvious around February, as debate was beginning to warm up, that the Mabo judgment and its ramifications would be extremely important in Western Australia. I do not recall whether it was at the first or second meeting of the Cabinet that the Premier appointed the first subcommittee in the new Government - that is, the Mabo subcommittee.

Mr Kobelke: It was a ministerial subcommittee?

Mr MINSON: Yes. That committee was to consider and formulate a way to handle the quandaries to be faced as a result of the Mabo decision.

Mr Kobelke: Can you say who the Ministers were?

Mr MINSON: The committee comprised the Premier, who chaired it; the Deputy Premier, me in my capacity as Minister for the Environment and Aboriginal Affairs, the Ministers for Resources Development, Planning, Lands, Fisheries, Primary Industry, Local Government, the Attorney General; Hon Peter Foss, as a very experienced lawyer and one who is held in high regard; and legal counsel from time to time, not to vote but to give interpretation and assistance.

Mr D.L. Smith: Not enough!

Mr MINSON: That is selling them short. The constitution of the committee indicates the importance we attach to the Mabo decision. We recognised that there would be dramatic ramifications for Western Australia. I resent the comments made here about the legislation being rushed through -

Mr D.L. Smith: Without public consultation.

Mr MINSON: The member should not forget that the Federal Government was bringing in its legislation after our legislation, and that Government altered its legislation. That has led to our putting some amendments on the Notice Paper. That is a perfectly reasonable thing to do.

Mr D.L. Smith: That has nothing to do with the Federal Government legislation.

Mr MINSON: Why was the national solution pushed?

Mrs Hallahan: It is a national problem.

Mr MINSON: It is a question of land administration. It has always been the right and duty of sovereign States -

Mrs Hallahan: So it could be if the Premiers cooperated with the Prime Minister.

Mr MINSON: It is a fact that the States -

Dr Gallop: It is an Aboriginal issue.

Mr MINSON: It did not start out as an Aboriginal issue; it started as a land administration issue before it became an Aboriginal issue. If the member thinks about it he will admit that it is true.

Mrs Hallahan: Try to expand your mind to take in the ramifications of it now.

Mr MINSON: I do not mind the member having a couple of chardonnays at dinner but for her to say that I must expand my mind leads me to suggest that she should have another couple of chardonnays.

Withdrawal of Remark

The SPEAKER: Order! I direct the Minister to withdraw the remark regarding the chardonnays. It is not an appropriate comment.

Mr MINSON: Mr Speaker, I withdraw.

Debate Resumed

Mr MINSON: Why was a national solution pushed on what is essentially a State land administration problem?

Dr Watson: That is the difference between this legislation and the Federal Government's legislation.

Mr MINSON: This Bill is designed to cope with the problems that Western Australia faces. Members may not have taken notice of Keating's first effort some months ago. Its effect on Western Australia was even more devastating than that put forward now. We can handle our problems. There was no need for Keating to set up -

Dr Gallop: Why do you call the Prime Minister, "Keating"?

Mr MINSON: Is that a problem, Mr Speaker?

Dr Gallop: It indicates your attitude.

Mr MINSON: I do not have much respect for the current Prime Minister.

Dr Gallop: He happens to be the Prime Minister.

Mr MINSON: I have always respected the position of Prime Minister but when I look at what is being done in Australia I do not have a lot of respect for Keating.

Mrs Hallahan: We don't have much respect for your team either.

Mr MINSON: I question the motives of a national solution. We have heard the objectives of the legislation. I will not repeat all of them. They were clearly stated in the second reading speech -

Mrs Hallahan: Doesn't the mining industry want a national response?

Mr MINSON: With this legislation, the Government has observed the spirit of the High Court decision.

Mr D.L. Smith: Nonsense! No-one believes that. Stop saying it. It's just a lie.

Mr MINSON: If the member reads the judgment, he will find out. This Government has confirmed Western Australian titles that were issued by the sovereign State of Western Australia. That had to be done.

Mr Kobelke: You haven't done that.

Mr MINSON: We have.

Mr Kobelke: You are hoping that it will run foul of the Federal legislation.

Mr MINSON: I cannot deal with blue moons and shadows. I have to deal with what we can do in this State. As a result of the confusion which exists on what native title means, we will get rid of that misconception and give a legal right - the judgment and the Bill are there to prove it. We are making the traditional usage a legal right, and granting compensation where the State moves to destroy it. We have heard much rhetoric about what is right and what is wrong with our Bill.

Several members interjected.

The ACTING SPEAKER (Mr Prince): Order! The debate across the Chamber does not assist the member on his feet to communicate adequately. I ask members not to engage in that practice.

Mr MINSON: We have heard rhetoric and criticism about this legislation. Under its provisions, it has been said native title is extinguished by most titles except in the case of mining leases where pastoral land has been reserved for Aboriginal use. Native title holders and registered claimants have a right to negotiate on the future granting of land titles over their land, but they will not have veto rights. Governments can override a tribunal decision in the Territory interest. It seems I have heard those criticisms before under the Federal Bill. Corporate bodies will hold the native title land on behalf of the corporate holders. Although I do not have time to expand on that, it is a real problem posed by the legislation that Keating has brought in.

The aspects that have received criticism in our legislation are features of the Federal legislation.

Dr Watson interjected.

Mr MINSON: For the benefit of the member for Kenwick, I am reading out of the briefing paper for the Federal legislation. It is unbelievable.

Dr Watson: I have here the information to read; not the second-hand information.

Mr MINSON: This is a summary of the effect of that legislation. All the criticisms that Opposition members have been levelling at the Government relate to aspects contained in the Federal legislation. I suggest that the member for Kenwick take the time to read it.

Our legislation does what the High Court said should be done. There is something in it for Aboriginal people, and control and administration of the land remains in Western Australia.

I will mention the matter of only corporations being able to be granted native title. Recently, I visited the Bidyadanga Community at La Grange.

Dr Watson interjected.

Mr MINSON: The member might have been there, but she should stop muttering under her breath and listen to what I have to say. At Bidyadanga, there are five language groups. We were sitting around the table discussing native title. I said, "Why do you want native title? What do you think it means?" They said, "It means we own the land."

Mr D.L. Smith: They own an interest in the land.

Mr MINSON: I am telling the member what their concept of native title is. I said, "If we apply the High Court decision and you get native title, how many language groups are here?" They told me that there were five language groups. I said, "Who are the traditional owners?" It turned out that the traditional owners represented the group with the smallest number of people. I said, "What are the rest of you going to do?" They said, "We will stay here." I said, "But you will only stay there if the traditional owners say you can." Suddenly they did not think that native title was a good idea.

Dr Gallop: It would have been right if your party had passed the land rights legislation in 1984.

Mr MINSON: Opposition members are the ones who appeared on television stating, "We won't introduce land rights."

Dr Gallop: It was the upper House that knocked it back.

Mr MINSON: Members opposite appeared on television -

Dr Gallop: You are telling lies.

Mr MINSON: I was watching the member holding up the letter.

Dr Gallop: You are falsifying history.

Mr MINSON: I am not falsifying history, and the member knows it.

The feature of the Federal legislation about corporations holding native title is one of its worst features. About a dozen people in this State will wind up controlling approximately 50 per cent of it. The Bill before the House offers the best solution to the quandary placed before us by the High Court.

MR COURT (Nedlands - Premier) [8.36 pm]: Mr Acting Speaker -

Mr D.L. Smith interjected.

The ACTING SPEAKER: Order! I ask the member for Mitchell to come to order.

Mr COURT: I thank members of the House for their contributions to the second reading debate on this legislation. I will make a number of points that arise from the debate. Firstly, I will comment on what the Leader of the Opposition has been running around saying in the media about the amendments that were introduced to this legislation. She wrote a letter saying that the legislation had been incompetently drafted and that 30 per cent of it was defective.

Dr Lawrence: Twenty pages of amendments - that's a record for this place.

Mr COURT: The Leader of the Opposition knows only too well that the amendments are relatively minor amendments. Her maths must not be very good. She has added up the pages and said that 30 per cent of the Bill is defective. We are dealing with only seven minor amendments to seven clauses, together with consequential amendments. One amendment ensures that the negotiations are conducted in a culturally appropriate way. I would not say that that is a big deal.

Dr Lawrence: Your sense of perspective is so warped that you cannot be communicated with.

Mr COURT: The Leader of the Opposition has made a big song and dance about this. I sat in this Parliament for 11 years while members opposite brought in amendment after amendment. In this instance, we have some relatively small amendments.

Dr Lawrence: Twenty pages in one hit. That's nonsense, and you know it.

Mr COURT: The Leader of the Opposition should not lose sleep over it. The first amendment is to clause 2 and the next one is to clause 25. We will not be debating any clauses after clause 25 today. As the Leader of the Opposition knows, she has been given full access to documents and has received full cooperation from us in terms of legal advice.

It is also important to recognise that we could have commenced this debate last week, but the Opposition asked for it to be put off until this week. We willingly cooperated so that the debate could start this week. If the first amendments are too difficult for members opposite, we will ensure that they receive plenty of briefings so that they understand what they are about. The Opposition has run outside this place and said, "Withdraw the Bill, there are amendments to it." For 11 years, members opposite came into the Parliament with pages and pages of amendments to small legislation, not major legislation.

Mr Lewis: The fact is, they are not prepared.

Mr COURT: They will never be prepared. I have listened to the line that the Opposition has taken. One would have thought that if there were major flaws in the legislation, they would have been spelt out during the debate. They talk about incompetently drafted legislation. I assure them that the consensus of opinion in Canberra is that this legislation is extremely well drafted and that the Federal legislation is an absolute nightmare. I want to draw the House's attention to what the *The Australian Financial Review* said in its editorial.

Several members interjected.

The ACTING SPEAKER (Mr Prince): Order! Interjections that are accepted by the person on his feet are permitted in this House. Across Chamber debate by way of interjection is not. It is extremely difficult for the Hansard reporter to record what is being said. I ask members to abide by the conventions of the House.

Mr COURT: Fortunately, a growing number of people have taken the time to read the legislation and to get an understanding of it. *The Australian Financial Review* said -

> The West Australian Bill is certainly not irresponsible or racist.

Dr Lawrence: Consistent? You have invented a new language for misleading the public. It is not consistent with the Mabo ruling. It seeks to overturn it.

Mr COURT: This is not me who says that.

Dr Lawrence: I do not care who says it. It is wrong.

Mr COURT: I would hardly say that *The Australian Financial Review* has been writing flattering articles of anything we have done.

Mr McGinty: Neither should it.

Mr COURT: Okay. I will read it again. It states -

> The Western Australian Bill is certainly not irresponsible or racist (many would say it is more consistent with the judgement than is Mr Keating's Bill).

Some fanatical right wing politician has not written that.

I had the opportunity to listen to most of the debate. However, I have been given notes on the debate today. One thing that has come through loud and clear is that the argument put forward by members opposite is wholeheartedly in line with the approach adopted by Mr Keating. They have put themselves behind his legislation and I do not believe that they understand what that legislation will do to this State.

Dr Lawrence: If you are saying publicly what you are saying here, you are either misleading people deliberately or you do not know what you are talking about. There is no in between, Premier.

Mr COURT: I realise that a debate like this can become pretty emotional.

Mr D.L. Smith: You are further repressing disadvantaged people. You can expect it to be emotional.

Mr COURT: I am not going to comment on the member's position.

Dr Lawrence interjected.

Mr COURT: I thought members opposite would support our amendments.

Dr Lawrence: We have not had a lot of time to look at them. We only got them at 4.30 this afternoon.

Mr COURT: The debate is an emotional debate for many members. I appreciate the position adopted on this legislation by the member for Kimberley, for whom I have a lot of respect. However, I did not take too kindly to his comments equating this legislation with Hitler's Germany. I think we can do without that sort of extreme comment.

Dr Watson: It is racist; we can draw no other conclusion.

Mr COURT: The former Minister had 10 years in this Parliament to do something for Aboriginal people and what did she do?

Dr Watson: We did a lot.

Mr COURT: She did nothing. All she did was stop helicopters flying. That is all that happened. Is she saying that this legislation is racist?

Dr Watson: I am saying that it is based on racist assumptions. It is prejudiced.

Mr COURT: It accepts the High Court's ruling, and the traditional usage rights of Aboriginal people will be enshrined in law as statutory rights. Is she saying that that is racist?

Dr Watson: It is discriminatory.

Mr COURT: I will tell the House about the track record of the former Minister for Aboriginal Affairs. When pressure was exerted over the Marandoo deal, what happened? The former Government came into this Parliament and said that the Aboriginal heritage legislation did not apply to that project! That is what happened. They stand here now in this Parliament saying that they are doing this for Aboriginal people.

I would like to get some matters on the record in summing up this debate. It is desirable that, in the continuing interest of all Western Australians, people in this State come under one system of law and one system of land title and management. That system must be controlled by this State Parliament, the members of which have been elected by the people of this State. At present, the coalition is in Government. The Labor Party was in Government for 10 years. However, members of this Parliament should be responsible for managing our land system. It is equally desirable that, in the interest of Western Australians as a whole and for their future wellbeing, Aboriginal people should not live separately but as an honoured part of the general community of our State. We are concerned that there could be a trend towards establishing separatism; that is something we should fight against. This legislation intends that efficacy and certainty be restored promptly to land titles which derive from the Crown. Do members opposite dispute that?

Mr McGinty: This Bill will not achieve that.

Mr COURT: Where do land titles derive from?

Mr D.L. Smith: Land titles for Aborigines derive from the common law.

Mr COURT: This legislation restores the fact that land titles derive from the Crown, and that the Aboriginal people's traditional use of land as presently enjoyed will be safeguarded. Is that a step forward? This legislation provides that the government of these rights shall be brought within the system of land management and control administered under the Parliament of Western Australia. It provides that Aboriginal groups be encouraged to negotiate with the elected Government of Western Australia for fair and equitable compensation if those rights are extinguished or impaired.

Mr D.L. Smith interjected.

Mr COURT: I have been here for 11 years and I have never heard members opposite offering these things to Aboriginal people. The legislation provides that the existence of traditional usage will not inhibit the authority of the elected Government to act in the interests of all Western Australians, even if that does lead to the extinguishment of the right to traditional usage with fair compensation paid if that happens. The Government intends that this legislation be taken in context with the other things it is doing in relation to Aboriginal affairs in this State.

Dr Lawrence: Nothing! How long has it taken for your so-called justice committee to meet? It met only after parliamentary questioning.

Several members interjected.

The ACTING SPEAKER (Mr Prince): Order! Leader of the Opposition. An interjection can be heard, but the member for Fremantle was interjecting over the Leader of the

Opposition as were a couple of other members and I doubt anybody could understand what was being said. With respect, if members want to interject and to have it responded to it must be one at a time, otherwise the system will not work.

Mr COURT: The Government wants this Bill to be seen and interpreted as a part of what it is doing; in particular, the Aboriginal social justice task force, the work of which members opposite seem pretty keen to try to ridicule. It happens to be doing a superb job.

Mr Bridge: When have we tried to ridicule its work? We have not said one thing about it other than that we are happy with it.

Mr COURT: Members opposite have called for a national Mabo solution. Western Australia has a special case and must be treated as such.

Dr Lawrence: The same principles of justice apply throughout this country. We are one nation when it comes to dealing with indigenous people.

Mr COURT: In that case how will the Leader of the Opposition handle the situation in New South Wales, Victoria and Queensland where native title has already been extinguished?

Dr Lawrence: Does the Premier think people here are worth less than those in New South Wales? What an extraordinary notion. Lesser rights for Aboriginal people in this State, that is what he provides.

Mr COURT: The Leader of the Opposition accepts native title which is extinguished over most of eastern Australia. We will not accept that. We accept that traditional usage rights should be enshrined as statutory rights in this State and if those rights are impaired or extinguished that fair compensation be paid. Under the legislation that was introduced in the Federal Parliament yesterday, land in this State could well be locked in lengthy legal disputation for decades.

Dr Lawrence: That is what the Premier hopes. He showed his hand at the press conference. He hopes to win political seats in Western Australia

The ACTING SPEAKER: Order!

Mr COURT: The last thing we want to do is divide the State when we should be seeking unity and understanding and a solution that is fair and equitable.

Mr D.L. Smith: The Premier is the most divisive, racist, bigoted Premier we have ever had.

Mrs Hallahan interjected.

Mr COURT: Is the member for Armadale saying that I am racist?

Mrs Hallahan: Your policies are.

Mr COURT: The member for Mitchell said that I was racist; now the member for Armadale can tell me what she thinks.

Mrs Hallahan: Your policies are racist.

Mr COURT: I find it absolutely despicable to be branded a racist. It is the same type of emotional claptrap had coming from the former Minister for Justice who yesterday took it upon himself to question the independence of the Director of Public Prosecutions whom he appointed in Government. What absolute nonsense the Opposition carries on with. The important point in all of this is that Western Australia is the State best placed in Australia to help Aboriginal people. As a Government we will do something about helping them. Members opposite had 10 years and they did nothing.

Although the legislation protects the legitimate claims of the Aboriginal people, it also provides for the certainty of land title and the continuing development of our natural resources. I would like members opposite to explain how the Federal legislation will not stop the continuing development of our resources. We have worked our way through the Federal process, and it is an absolute minefield. Broken Hill Proprietary Co Ltd and Conzinc Riotinto of Aust Ltd might get through the process, but if one happens to be a small business operator one will not have a hope. We have come up with what we consider to be a fair and workable solution to a difficult issue. I have heard members opposite try to say that we have taken things off the Aboriginal people.

Mr D.L. Smith: The Premier has extinguished native title.

Mr COURT: And replaced it with the equivalent statutory rights of usage of the land. The member for Mitchell is a lawyer; he knows exactly what this legislation does.

Mr D.L. Smith: It does what the Premier is being paid to do by his mining and pastoralist friends.

Mr COURT: The member for Mitchell can carp and carp. When the member for Mitchell was in Government why did he not give the Aboriginal people a part of the formal process of the negotiations before mining and land titles were granted? Members opposite gave Aborigines no formal part in the negotiation process before mining and land titles were granted.

Mr Taylor: The Premier is a fool asking a question like that and he knows it.

The ACTING SPEAKER: Order!

Mr Taylor: Where was the Premier when we put up the legislation in 1985?

The ACTING SPEAKER: I ask the Deputy Leader of the Opposition to come to order.

Mr Taylor: The Premier opposed the legislation and he knows it.

Mr COURT: I will tell the Deputy Leader of the Opposition that members opposite were so dinkum that they took out television advertisements to say, "We will not bring in land rights. Signed, Brian Burke." No-one on the other side got up and said, "We believe it is a positive step forward that the Aboriginal people will be a part of the formal negotiating process before titles can be granted and if their traditional usage rights are extinguished in any way, fair compensation must be paid, and if they are not happy with the compensation they can go to the Supreme Court." No-one has got up and said, "There might be a few good things in the legislation." Members opposite have sounded like a mob of Prime Minister Paul Keating's sycophants. That is what they sound like. Members opposite had 10 years to do something. We have responded to the High Court ruling in a responsible way.

Mr Taylor: The Premier should be ashamed to make a speech like that.

The ACTING SPEAKER: Order! Deputy Leader of the Opposition.

Mr COURT: I commend the Bill to the House.

Division

Question put and a division taken with the following result -

Ayes (27)

Mr C.J. Barnett	Mr House	Mr Pendal
Mr Blaikie	Mr Johnson	Mr Shave
Mr Board	Mr Lewis	Mr W. Smith
Mr Bradshaw	Mr Marshall	Mr Strickland
Dr Constable	Mr McNee	Mr Trenorden
Mr Court	Mr Minson	Mr Tubby
Mr Day	Mr Nicholls	Mrs van de Klashorst
Mrs Edwardes	Mr Omodei	Mr Wiese
Dr Hames	Mr Osborne	Mr Bloffwitch *(Teller)*

Noes (20)

Mr M. Barnett	Mrs Henderson	Mr Ripper
Mr Bridge	Mr Hill	Mr D.L. Smith
Mr Cunningham	Mr Kobelke	Mr Taylor
Dr Edwards	Dr Lawrence	Mr Thomas
Dr Gallop	Mr Marlborough	Dr Watson
Mr Grill	Mr McGinty	Mr Leahy *(Teller)*
Mrs Hallahan	Mr Riebeling	

Question thus passed.

Bill read a second time.

As to Committee Stage

The ACTING SPEAKER (Mr Prince): The question is that I do now leave the Chair and the House resolve itself into a Committee of the Whole for the purpose of considering this Bill.

Amendment to Motion

DR LAWRENCE (Glendalough - Leader of the Opposition) [9.04 pm]: I move -

> To delete all words after "that" and substitute the following -
>
> > this House will, on this day one week, resolve itself into Committee on this Bill.

It is quite clear from the dismissive attitude portrayed by the Premier this evening that he has no understanding of the moment of this legislation. He has no understanding that this matter must be debated fairly and squarely, and in detail, by this Parliament.

Several members interjected.

Mr Taylor: It is good to see that the vegie patch is awake at last.

The ACTING SPEAKER (Mr Prince): Order! The Deputy Leader of the Opposition does not assist the Leader of the Opposition's cause by carrying on a debate by interjection with other members of the House. I ask him not to do so.

Dr LAWRENCE: The reason the Opposition moves this amendment is clear from the Premier's behaviour this evening, and is necessitated by the fact that today at 4.30 pm, 20 pages of amendments were delivered to our office, leaving us just four and a half hours to prepare the necessary considered response to them.

Mr Court: You are doing one before clause 25 tonight.

Dr LAWRENCE: The Premier demonstrates again by his interjection his contempt for this House. He was contemptuous in his speech by saying that these were matters of no moment and that it did not matter in any case if they were brought in late. It was clear from the Premier's statement that he had no idea - he still has no idea - of how seriously this side of the House regards this legislation, and how seriously we intend to subject it to close scrutiny; scrutiny which is deliberately denied by the Government bringing in these amendments at this late stage. I can understand the Government's desire to get this legislation through the Parliament as quickly as possible because it is a severe embarrassment. Not only is it a severe embarrassment to the Government, many of whose members are honest in saying that this legislation will not succeed, but also it is known to be deficient.

Mr Court: You want it to fail.

Dr LAWRENCE: It will almost certainly fail, and as I indicated by way of interjection on the Premier's speech, it is designed to fail. The Premier showed his hand clearly today at the National Press Club when he said in response to a question that any attempt by the Federal Government to introduce its legislation - an explicit acknowledgment that this legislation would fail - would result in the Federal Government paying the political price. The Premier clearly indicated that his goal was not justice nor even the protection of land interests of Western Australia, but to provoke a political battle, the effect of which would in his view be the complete abolition of Labor held seats in Western Australia. That confirmed for me what I believed to have been the agenda of this Premier from the first day he opened his mouth on this issue in May this year, when he first started to echo Mr Hassell's sentiments about this legislation. The amendments that are about to be introduced into this House, of which the Opposition was notified some four hours ago, further confirm the view that the Government is not serious in enacting this legislation. It is deadly serious politically. It is prepared to use any tactic to secure its own political future and as it sees it, the future of the Federal Opposition in future elections; to secure it at the cost of the Aboriginal people of this State; and to secure it in a way that its predecessors have seen fit to secure their political fortunes by exploiting sentiment in this community which is antipathetic to Aboriginal people and is antiCanberra, by insisting on a set of rights for the State which it is not prepared to apply to its own citizens, or by insisting that the Aboriginal people in this community should cop second class status. These amendments, far from being peripheral, in the brief time we have had to examine them, will make this already abominable legislation even worse.

I acknowledge that, as far as we have been able to examine the amendments, one or two provide for a slightly more proper due process in the traditional use that is applied in this case. That title is a distinctly inferior version of native title.

Mr Trenorden: You are stumbling.

Mr Minson: You have lost your place.

Dr LAWRENCE: I have not lost my place. I know precisely where I am. I speak from principle. These amendments should not be considered by the Opposition or, indeed, any decent member of this House.

Mr Minson: Why?

Dr LAWRENCE: Firstly, because they are 20 pages in volume and not insignificant. There are five pages of amendments to change the Petroleum Pipelines Act 1969; in addition, five pages which change the Public Works Act 1902; and a further five pages of amendments which change the Pearling Act. In addition, there are amendments in the preliminary section before the major additions to the schedule. We got these amendments at 4.30 this afternoon. The first question is: Where will we get legal advice at that hour apart from people within our own ranks who are not necessarily specialists?

Several members interjected.

The ACTING SPEAKER: Order!

Dr LAWRENCE: The second point is that, in so far as we have been able to examine these amendments, we have discovered one very important deficiency. It is not one of the later changes, it is one of the earlier changes. In so far as we have been able to examine it and to seek legal advice, clause 27 in its current form is already abhorred. It seeks to deny the normal common law of the due process of natural justice. It makes reference to natural justice, which is well understood in the common law and incorporated in practices in our courts and tribunals, and then proceeds to insist that the Parliament, by way of regulation - not even legislation - can overrule the procedures inherent in natural justice, understood by you, Mr Acting Speaker, and others to apply in our courts and tribunals.

That is abhorrent enough; but in the amendments that we are supposed to debate tonight - in so far as we can be confident about what they contain - we are supposed to accept not only that abhorrent section but also an amendment which would see such procedures, such regulations, such application of the principle of natural justice to the question of the termination of traditional use rights set aside totally from the time when this Bill gets assent, which could be, given the Premier's tactics within the next fortnight or so, until the beginning of next year. The so-called peripheral and trivial amendments, the amendment to clause 27, with which we are supposed to deal tonight, having been given only four hours' notice, has the effect of allowing a procedure which excludes the application of natural justice. For that period of one month the Government can take existing claims before the courts and treat them without reference to natural justice. The Premier may smile and think this is amusing; but, having looked at them, we certainly will not contemplate debating amendments to a Bill which we have already determined, after the brief examination available to us, actually make worse the provisions that relate to the ability of Aboriginals to have any justice done to their rights.

It would be possible that the extant claims - the Utemorrah claims, the Bungerin claims - if our understanding is correct, could be set aside without any procedural fairness, without reference to natural justice principles, and without the relevant section of the Bill relating to the need for regulations to ensure natural justice being applicable. They would retrospectively strike out those cases. I am sure that is no accident; it is deliberate, and I am sure that any reasonable person looking at that clause might reach that conclusion.

Mr Court: You are wrong again.

Dr LAWRENCE: I am prepared to concede that may be so. That is precisely my point: How can any member of this House, how can the Premier, sit here and accept amendments that could have that sort of effect - removing due process and fairness from these decisions - on Aboriginal people in this State? How can any member sitting in this House accept that 20 pages of amendments of that quality and character should be allowed to be introduced without any ability of this House to assess them? On the one hand, the Premier acknowledged earlier that following complaints by the Opposition - I might say, despite the denigrating comments of the Premier, that they are perfectly reasonable ones - this Bill was allowed to sit on the Table for longer than three sitting days, with another couple of days of the weekend, so that it could be properly examined. The Premier has indicated that that action occurred in response to the Opposition's requests. On the other hand, he has also indicated that changes of the magnitude of a 20 page document, which includes three major changes to the schedule and increases it by 50 per cent, require only four hours' perusal.

It is all very well for the Premier to say that we will not be debating some of those clauses tonight. However, presumably we will be debating them tomorrow and within that time the Opposition will be expected to have developed a reasonable response, a careful analysis of the clauses, and to behave - unlike the accusations from the member for Applecross - like members of Parliament, not as a rubber stamp for this Government, especially not on this legislation.

I find it extraordinary that the Premier should sit here and nod his head and make fun of people on this side of the House who want to be diligent in the exercise of their duties. One of the things that we in this Parliament will never deny ourselves is the right and, indeed, the responsibility to look at legislation that comes through here, not in a perfunctory way, with amendments being thrown on the table and our saying, "They have the numbers; let them do what they will." We are not about to allow that to happen.

Mr Court: You used to bring Bills into this House and then debate them on the same day.

Dr LAWRENCE: We are not about to let that happen and certainly not on a Bill of this significance.

Mr Taylor: Name one.

Mr Court: All of your agreement Acts. You used to bring them in just before Christmas.

Several members interjected.

The ACTING SPEAKER: Order!

Mr Taylor: Not on the same day.

Dr LAWRENCE: This Bill is not some machinery Bill.

Mr Taylor interjected.

The ACTING SPEAKER: Order! I say again that the Deputy Leader of the Opposition does his leader no service by carrying on the cross-Chamber interjections. The leader cannot speak while he is doing that and I ask him not to continue.

Dr LAWRENCE: To put the record straight, I have no objection to the Deputy Leader of the Opposition speaking; indeed, his comments are frequently helpful.

Several members interjected.

The ACTING SPEAKER: Order!

Dr LAWRENCE: However, the cackling of these people opposite, who do not appear to understand the seriousness of this legislation, appals me. If we were debating some machinery Bill, some annual appropriation, such levity might be appropriate. But we are not; we are debating whether this Parliament should allow 20 pages of amendments, some of which are almost certainly likely to be struck down by the Local Courts because they interfere with the common law. The Government is apparently not only prepared to force through amendments of that kind but also expects our acquiescence. Although I expect the Government, in the brutal way it has come to use the Parliament, to force through the legislation, we will not endorse this action. We do not accept that this is the right way to present legislation.

Four hours is insufficient time to gain an understanding of the ramifications of 20 pages of amendments on any Bill; but mostly, we do not accept such a procedure on a Bill of this importance with such serious ramifications not only to Western Australia but for the whole nation. This legislation has the potential to divide us as a nation. The Premier spoke today about dissolution of the federation! For goodness sake, the idiocy the Premier is now perpetrating on the community is breathtaking! This legislation has the capacity to divide the nation, certainly not to dissolve the federation. It could set one group against another, blacks against white, Western Australians against the rest of the nation, progressive thinkers against reactionaries, and racists against the rest of the community. We will not stand by and see this done without a clear and firm protest.

Hansard will record that the Opposition, although not believing any decency will emanate from the Government benches, will not stand by and allow it to happen without protest.

Several members interjected.

The ACTING SPEAKER: Order!

Dr LAWRENCE: We expect the worst from this Government: We expect it will insist that the amendments be debated immediately and that it will ram the legislation through. Our expectations are more and more fashioned by the nature of the legislation brought into this House by this Government. That legislation clearly identifies the character of this Government: It is about division, dissent and bullying. The Government shows its characteristics through its behaviour in this House. The Premier can behave like an idiot but it will not excuse him from wearing this legislation, not only next year but for the next decade and beyond. The Premier will go down in history as a man of no principles, both in the way the legislation is drafted and the way it is brought into the Parliament. Everyone in the community should know that the Opposition totally repudiates the concept and method of this legislation!

Opposition members: Hear, hear!

MR C.J. BARNETT (Cottesloe - Leader of the House) [9.23 pm]: The Leader of the Opposition has moved an amendment to the effect that the House not go into Committee on this legislation for one week. I simply bring some facts to the attention of the House: The Premier presented the second reading speech on this Bill on 4 November - it is now 17 November.

Mr Taylor: What about the amendments?

Mr C.J. BARNETT: I will come to them. The Bill has been in the hands of the Opposition for two weeks, or for 13 days to be more precise. Under the conventions of the House, following the second reading of this Bill on 4 November, the Government was entitled to commence the second reading debate last Thursday, 11 November.

Mr Taylor: The Premier was not here.

Mr C.J. BARNETT: At the request of the Leader of the House for the Opposition we postponed the commencement of the second reading debate.

Several members interjected.

Mr Taylor: You were not available.

Mr C.J. BARNETT: At the request of the Opposition we agreed to delay the second reading debate until yesterday, 16 November. Moreover, the Leader of the Opposition claimed that she and the Opposition members were not ready to debate that legislation. How could it be then that 21 members opposite took it upon themselves to make contributions to the second reading debate yesterday, last night and this afternoon? Somehow members opposite who were not prepared to deal with the Bill managed to make speeches! Members opposite are either prepared or they are not. Members placed on the public record that they had conducted their research and were ready to present their views.

Mr Marlborough: What a nonsense argument. It is a different Bill.

Mr C.J. BARNETT: Perhaps the member for Peel's speech was a nonsense. If the member did not understand the legislation, what was he doing contributing to the second reading debate?

Mr Marlborough: Your test is to put the Bill on the table and to withdraw the amendments. We can then go into Committee immediately.

The ACTING SPEAKER: Order!

Mr Marlborough: I ask for a view from the Chamber of Commerce and Industry.

The ACTING SPEAKER (Mr Prince): Order! I formally call the member for Peel to order.

Mr C.J. BARNETT: I now come to the matter of the amendments. The Premier has proposed amendments to five clauses and a number of associated changes to subsidiary legislation. Most of those changes reflect matters to accommodate other legislation such as the Mining Act and the Land Act.

I do not deny that the changes to the schedule are lengthy; the Premier has conceded that. However, the reality is that there are five amendments in total. The first amendment is to clause 2 and simply relates to assent and proclamation. The first major amendment is to clause 25, and the Premier has given an undertaking that we will not deal with that clause tonight. In fact, it is highly unlikely that we will deal with clause 25 before tomorrow afternoon. Therefore, the Opposition will have tonight, all tomorrow morning and perhaps some of tomorrow afternoon in which to get its act together on these five amendments. The Opposition has plenty of time.

Bearing in mind that 21 members opposite were prepared to make contributions in the second reading debate and to keep the House sitting for hour after hour while presenting their learned opinions on the Bill, the test is now on the Opposition. The Government is ready to debate the legislation. The Opposition was ready to debate the legislation yesterday, last night and this morning, so let us see whether it is up to debating it now. The Government opposes the amendment and urges the House to now go into the Committee stage.

MR D.L. SMITH (Mitchell) [9.27 pm]: The motion before the House seeks to delay the Committee stage of this Bill by one week, or five working days. The simple fact of the matter is that, as the member for Kimberley said during the second reading debate, this legislation is shameful and brings the whole of Western Australia into disrepute. We can be fairly accused of being racist and bigots by the rest of Australia and the civilised world.

The Premier and the Leader of the House expect to justify moving into Committee immediately on the basis that these amendments deal mainly with the latter parts of the Bill. That fails to recognise that this legislation does one thing: Its primary objective is to extinguish native title, and it seeks to replace that title under clause 7, which I remind members states -

> Rights of traditional usage created by subsection (1)(b) in relation to land replace the rights and entitlements that were incidents of the native title to that land extinguished by subsection (1)(a) and, unless this Act provides otherwise . . .

The critical aspect is in the words "unless this Act provides otherwise". When members consider the preamble to this Bill and evaluate whether this legislation is better than the

Federal legislation, and whether it should be passed at all, they must understand and comprehend the total legislation. One cannot understand the impact upon native title and traditional rights unless one understands the effect of the total legislation.

The legislation does more than simply extinguish native title. It amends substantially the Land Act, the Mining Act, the Petroleum (Submerged Lands) Act, the Pearling Act, and the Public Works Act. Therefore, to understand the legislation and its effect on traditional rights, one must understand all the amendments being made to other Acts, and the way in which the amendments will impact on the rights conferred to replace native title. To explain to members opposite why it is not proper that we should rush into Committee without properly considering the effects of these amendments on the recital clause and clause 7 which effectively takes away native title, I will refer to a couple of minor things the amendments do. Proposed section 94M to be added to the Mining Act contained in the amendments presented only a few hours ago seeks to provide that if a mining tenement is subject to a condition under section 94M, and a dispute arises between the holder of the mining tenement and an Aboriginal group, as to the boundaries of the land in which the condition applies the question may be referred by either party to the responsible Minister for determination. Any determination of the responsible Minister under this section is final.

In relation to native title and the traditional rights to be created, one of the impacts of the Government's amendments will be to allow a Minister under the Mining Act to determine the boundaries of the land to which those traditional rights apply. They will have the effect of withdrawing from any court or arbitrary process, or any other provision of this legislation, that decision and giving it to the Minister. That is just one of the 30 or 40 clauses added by this legislation. It is also one of about 60 amendments contained in these 20 pages. Another proposed amendment seeks to provide that where a mining tenement in respect of any land is subject to a condition under section 94M, following lodgment of a notice of objection by an Aboriginal group; and the responsible Minister has consulted the group, and is satisfied the group is not opposed to mining, the Minister may, on behalf of the group, consent to the carrying out of mining on the land.

The consent of Aboriginal groups is substituted by the consent of the Minister. Another section deals with the effect on the Public Works Act. There are a great number of amendments to the Public Works Act, but all of those amendments to the Public Works Act are abrogated if a notice is published in the *Government Gazette*. How can it be argued that we can debate whether the traditional rights which are substituted for native title, but which exist only subject to this legislation, are adequate if we do not have the opportunity of reading and studying these amendments and the legislation they are amending? I remind members that the Mining Act runs into some 300 or 400 sections. We must understand the effect of these amendments on not only this legislation but also the Mining Act. The Land Act runs into nearly 200 sections. Again we must understand the effect of these amendments on the Land Act to understand the impact on the traditional rights conferred by this legislation. It amends the Petroleum (Submerged Lands) Act, which is very difficult and lengthy legislation for any person to understand. Nonetheless, we must understand the effects of these amendments on that legislation to understand what will be the effect of this legislation on the traditional rights of the Aboriginal people.

The whole argument of the Premier is that this Bill is satisfactory because it substitutes for native title a thing called traditional rights. Those traditional rights exist only to the extent that any part of this legislation or any part of any other written law affecting this legislation stands. One cannot say that, because the amendments do not start until clause 27 or 28, they do not impact on the earlier clauses. They impact on the very essence of the legislation. One cannot understand what are traditional rights conferred by this legislation until one understands every amendment and every piece of the total Bill and the impact it has on all the other legislation that confers rights in relation to land. It also has land management implications for any landholder. It is simply a disgrace for this Premier to say that this prejudicial, racist legislation is justified because it confers traditional rights when he will not allow this Parliament to properly consider the amendments in the legislation which confers those traditional rights.

In my early days, when I was contemplating on which side of the political fence I should lie, the only attraction of the conservative parties was that they purported to believe in God, Queen and country and all it stood for. That meant they believed in our institutions, in the Parliament, in the due process of law and in the customs and the traditions of both the Parliament and the court. What we have seen and what we are seeing by that disrespectful mob on the other side who no longer believe in any of those traditions, the institution of Parliament or the High Court, is an indication that it is their privilege to control the Parliament, keep its members in the dark and not allow us to debate in a meaningful way the Committee stage of this legislation. The Opposition claims we have had this legislation for 13 days and we, therefore, should be willing to debate it. The Leader of the House said that because 21 speeches were made on this side we must understand the legislation and be willing to debate it.

Mr C.J. Barnett interjected.

Mr D.L. SMITH: If the Leader of the House withdraws these amendments the Opposition will be happy to go into Committee now and deal with the Bill we have had for 13 days. We understand the Bill and the reason that we are opposed to it. What we do not understand and what we have not had the opportunity of seeking legal advice on is the effect of the 20 pages containing 60 amendments and 35 additional clauses to be inserted into this Bill or other legislation. We have not had the opportunity of reading the Acts which are to be amended by these provisions. Does the Leader of the House seriously believe that every member on this side of the House has had the opportunity of rereading the Mining Act in its entirety to understand the effect of these amendments since they were delivered to us?

Mr C.J. Barnett: The only amendment you have to worry about tonight is the one to clause 2 because you will have close to 24 hours to study the others.

Mr D.L. SMITH: Does he agree that the traditional rights conferred by this legislation are subject to every clause in this legislation, not just those between clauses 1 and 7, but every principle in this legislation?

Mr C.J. Barnett: Clause 2 is the only one you have to worry about until tomorrow afternoon. You have 24 hours to do your homework.

Mr D.L. SMITH: There is a two page preamble in this legislation which one must read in order to understand what it is about. It deals with the fact that the High Court has made a decision which has had an impact and it has recognised native title; whereas in the view of the person who wrote the preamble those native titles have not been recognised in the past. Therefore, we are passing this Bill in order to substitute that native title with something else. When we go to clause 7, we find that native title is extinguished and in its place are put traditional rights which are subject to other parts of the legislation, including the amendments the Government has thrown at us tonight. We cannot even get to the stage of debating the preamble to this legislation because we cannot understand the preamble. We cannot understand what is conferred by the legislation in traditional rights, because we cannot understand those traditional rights unless we understand the limitations imposed by this legislation. Apart from clause 7, which takes away something and purports to give something back, and clause 18, which is the only clause that attempts to define Aboriginal rights, the rest of the legislation is about the restrictions imposed on those traditional rights. Those restrictions, by quoting the three clauses to which I have referred, multiply the deficiencies of the legislation, the preamble and the notion of traditional rights, because they take away what the Government purports to give. How can the Government say, on the one hand, that native rights will be protected under the Mining Act, and yet if a dispute arose between Aboriginal people and CRA about boundaries the Minister could make a decision which would be final and which could not be appealed against? How can the Government expect us to accept the rest of the legislation when, at the last minute, it has introduced these amendments which are momentous in their impact on the legislation for the substitution for native title? It is one thing for us to bare our chests and say we are all racists and bigots and do not believe in equal rights. However, it is quite another thing to make a decision to be racist and bigoted, as this legislation makes us, when we do not even have the opportunity to have a reasonable, rational and well considered debate based on proper advice and consultation at the Committee stage. I do not know where the Whigs have gone on the Government side of the House. Even the member for Floreat has disappointed me on this matter. I thought she had some of the traditions of the old Whig Party in England, and I thought some members opposite might also have those traditions. But they do not. Members opposite seem to have forgotten the reforms passed in England in the 1830s. They want to take us and this legislation back to before 1830 and they want to do so by bulldozing the legislation through the Parliament, with absolutely no respect for the Parliament.

Mr C.J. Barnett: You have had it for two weeks and you are saying you cannot debate it.

Mr D.L. SMITH: The Opposition has had these 20 pages of amendments for two hours. The amendments clearly demonstrate that not only did the Government not consult the general public, but also it did not consult the Department of Minerals and Energy and the Department of Resources Development. These amendments are the response of those departments, dredged up at the last moment because they can see the deficiencies in the Government's legislation. The mining industry and the Department of Minerals and Energy are principally responsible for these changes. The Government did not consult them. It was so hellbent on beating the Federal legislation through the Parliament that it decided to take the Bill from Cabinet, to draftsman, to Parliament, without bothering to consult the departments. That department has told the Government at the last minute that the Bill is unworkable and it needs these amendments. The Government has come into this Parliament still determined to ride roughshod over Western Australians and the legislative Chamber for Western Australians, and to say it does not matter whether the Parliament has time to consider the Bill or its impact on Aboriginal Western Australians. The Government is prepared to rush into the Committee stage so that it can pass its legislation before the Commonwealth Government passes its legislation. With what consequences? Anybody who is anybody in the law, and has read the Bill, will tell the Government that it has absolutely no chance of surviving a High Court challenge. The only reason the Premier came back into this Chamber tonight after his trip over east to see Dr Hewson - who he seems to think is more important than the Western Australia Parliament - was to make a speech which has typified the conduct of the Premier throughout this Mabo debate. He has not been worried about the process or about consultation; he has not been concerned about the effect on the Parliament or the Aboriginal people. He is concerned only about scoring cheap political points on the backs of the Aboriginal people. I do not resile from one word of what I called the Premier tonight because he has been willing to stake his political career and reputation on the backs of Aboriginal people by oppressing the most disadvantaged people in our community.

Question to be put

Mr BLOFFWITCH: I move -

That the question be now put.

Division

Question put and a division taken with the following result -

Ayes (26)

Mr C.J. Barnett	Mr Johnson	Mr Shave
Mr Blaikie	Mr Lewis	Mr W. Smith
Mr Board	Mr Marshall	Mr Strickland
Mr Bradshaw	Mr McNee	Mr Trenorden
Mr Court	Mr Minson	Mr Tubby
Mr Day	Mr Nicholls	Mrs van de Klashorst
Mrs Edwardes	Mr Omodei	Mr Wiese
Dr Hames	Mr Osborne	Mr Bloffwitch *(Teller)*
Mr House	Mr Pendal	

Noes (22)

Mr M. Barnett	Mrs Henderson	Mr D.L. Smith
Mr Bridge	Mr Hill	Mr Taylor
Dr Constable	Mr Kobelke	Mr Thomas
Mr Cunningham	Dr Lawrence	Ms Warnock
Dr Edwards	Mr Marlborough	Dr Watson
Dr Gallop	Mr McGinty	Mr Leahy *(Teller)*
Mr Grill	Mr Riebeling	
Mrs Hallahan	Mr Ripper	

Question thus passed.

Division

Amendment put and a division taken with the following result -

Ayes (22)

Mr M. Barnett	Mrs Henderson	Mr D.L. Smith
Mr Bridge	Mr Hill	Mr Taylor
Dr Constable	Mr Kobelke	Mr Thomas
Mr Cunningham	Dr Lawrence	Ms Warnock
Dr Edwards	Mr Marlborough	Dr Watson
Dr Gallop	Mr McGinty	Mr Leahy *(Teller)*
Mr Grill	Mr Riebeling	
Mrs Hallahan	Mr Ripper	

Noes (26)

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Mrs Edwardes	Mr Omodei	Mr Wiese
Dr Hames	Mr Osborne	Mr Bloffwitch *(Teller)*
Mr House	Mr Pendal	

Amendment thus negatived.

Division

Question (that the House resolve itself into a Committee of the Whole) put and a division taken with the following result -

Ayes (26)

Mr C.J. Barnett	Mr Johnson	Mr Shave
Mr Blaikie	Mr Lewis	Mr W. Smith
Mr Board	Mr Marshall	Mr Strickland
Mr Bradshaw	Mr McNee	Mr Trenorden
Mr Court	Mr Minson	Mr Tubby
Mr Day	Mr Nicholls	Mrs van de Klashorst
Mrs Edwardes	Mr Omodei	Mr Wiese
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Noes (22)

Mr M. Barnett	Mrs Henderson	Mr D.L. Smith
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Dr Edwards	Mr Marlborough	Dr Watson
Dr Gallop	Mr McGinty	Mr Leahy *(Teller)*
Mr Grill	Mr Riebeling	
Mrs Hallahan	Mr Ripper	

Question thus passed.

Committee

The Chairman of Committees (Mr Strickland) in the Chair; Mr Court (Premier) in charge of the Bill.

Clause 1: Short title -

Dr LAWRENCE: Seeing that we are dealing, as I understand your ruling Mr Chairman, with both the preamble and clause 1 -

The CHAIRMAN: No, we will deal with the preamble at the end.

Dr LAWRENCE: Mr Chairman, I seek your advice on why that is necessary, because the preamble seems to me to make some sense of the Bill. It seems curious to deal with it at the end.

The CHAIRMAN: We are dealing with clause 1. Standing Order No 273 indicates the order that matters must be dealt with. The first item is clauses as printed and new clauses, in their numerical order. Consequently, we are starting with clause 1. The fifth item is the preamble, if any. We are complying with the standing orders.

Dr LAWRENCE: Perhaps I should be critical of the standing orders. It defies logic.

Members should be aware that this title is pregnant with meaning. The short title, "Land (Titles and Traditional Usage) Bill 1993" summarises in many respects this Government's attitude towards the question of Aboriginal interests. It is quite clear from the short title that there is no consideration whatsoever of Aboriginal people and their land interests, since neither is mentioned in it. That is not an accident. As we proceed to examine various provisions of this Bill it will become very clear, as I said when I first saw this legislation, that this Bill is designed not to further the interests of Aboriginal people, not to provide a framework in which the Mabo decision can be brought into law in Western Australia, not to right a historic wrong and not to protect Aboriginal interests, land or otherwise, but rather to make them subservient to every other interest of every other stakeholder in this State, including the Crown.

The short title of the Bill hints succinctly that this Bill actually extinguishes native title in all its provisions and replaces it with what is termed a statutory entitlement to exercise rights and traditional usage. The Premier has made much of that, claiming that it is a fair exchange. The short title appears to contain in it the notion of a fair exchange - taking traditional title with one hand and giving rights to traditional usage with the other.

Any fair assessment of this Bill would indicate it is not a fair exchange. The one set of rights which is removed - the extinguishment of native title - is not replaced with an equivalent right. What we are seeing in this Bill, and what is clearly contained in the short title, is the uncompensated expropriation of native title rights and their substitution by what are far less significant and far more vulnerable rights to traditional usage. The principle on which this Bill appears to operate, and on which the title is based, is that native title is too good a form of title to give to the Aboriginal people of this State. That is the effect of this legislation and I am sure it is the Government's intention.

There is a form of proprietary right to land - the right of title - which is one of the things that is taken away and it is replaced by a licence to use, which is the expression used by one of the commentators, Mr Henry Reynolds, on this Bill. A proprietary right of native title is taken away and in its place is a licence to use. That licence is very heavily hedged about with qualifications. What is offered in this Bill is clearly not land rights, but use rights, and again that is encapsulated most pungently in the title.

Compared to the native title which the Federal legislation clearly provides for and which most commentators in this country hope all States and Territories in this country will provide for, this legislation provides Western Australian Aboriginal people with very meagre pickings. Again, it is hinted in the short title - the traditional usage phrase - that what is offered by this Bill is the right to gather for sustenance or ceremonial purposes. The Government has already determined in this legislation that, "The existence of rights of traditional usage in relation to land does not create any proprietary rights in, on, above or below the land."

Quite explicitly in the short title we are led, right from the outset, to the conclusion that we are substituting for proprietary rights, rights essentially to use. They are, as I have already hinted, extremely vulnerable to the interests of others. They can be extinguished with great ease and the Bill envisages that there are a great many occasions when they will be. Their existence, the Bill declares -

> ... does not prevent the Crown or any statutory body, authority or officer from granting title to the land or taking any other action in relation to the land that may result in the extinguishment, suspension or impairment of any rights of traditional usage ...

The Government having taken away native title and conferred a far lesser right in the form of the right of traditional usage, that right can very easily be overcome by the actions of a great many agencies under circumstances which severely curtail the gift that the Government claims it is giving Aboriginal people. All other forms of tenure will override traditional usage rights, including mining leases. We are talking about usage rights and all other forms of tenure, as far as one is able to tell from the Bill and to the extent the Opposition has been able to look at the amendments. They will be subject to all other written laws, or other laws which are enforced from time to time, that apply generally to land or interests in land. As I have said before and as many commentators have now determined, contrary to what the Premier has said, this title absolutely confirms that the Aboriginal people come last. Their name is not in the Bill and their land interests are referred to only because they are subsequently taken away.

Many conservative politicians, including the Premier, who think this legislation is a real alternative to the Mabo judgment are mistaken. The most charitable view to take of some of them is that they have not properly read it and they assume that what they have been told is correct. This legislation, and the short title gives it away, is a repudiation of the Mabo judgment as well as being a gross betrayal of Aboriginal interests. The High Court buried the concept of terra nullius and what this legislation does, to quote from an observer, is to disinter terra nullius and attempt to breathe some life into the corpse. It is a concept that deserves to stay buried. It is a concept which should have been repudiated a long time ago. Like many, I welcome the fact that the High Court has finally seen fit to set aside this most extraordinary notion and replace it with one that is clearly far more in keeping with the historical facts as we know them, and with justice.

We see in this Bill an attempt to reverse history and set it back 100 years. It is saying to the world at large that the view that the English Government took of the Western Australian colonists when they first settled this place is that they were not capable of looking after Aboriginal interests. Unfortunately that is confirmed some 160 years later.

The assumption underpinning this Bill and incorporated in the short title is the traditional land owners - those people who have been here for 40 000 years or more and would be able to prove native title based on continuing possession and association - have never actually gained the rights of possession. They have been here for at least 40 000 years and have lived here, have had language and culture and have exploited the land and used it for their own benefit, but according to this Bill they have never possessed it. There is a begrudging acknowledgement of the decision on native title, and it is immediately removed. In all that time, in all the complexity of their culture and all the stories they have created about this land, the Aboriginal people have apparently acquired rights only to hunt and forage over the land. That makes them different from every other race not only in this country, but also in this world. The Government is seeking to say that the principle at work here is that the Aboriginal society is so backward and primitive that it was never able to establish rights of possession. That is basically the Government's view which is incorporated in this legislation; it is basically the Government's view incorporated in the short title. Hidden in the heart of the legislation, and giving it a motivating force, is a very clear and contemptuous dismissal of Aboriginal society; a dismissal we have heard expressed recently by Hon Ross Lightfoot in statements he made publicly.

That same dismissal of Aboriginal people as not having a civilisation is contained, unfortunately, in this Bill and is the point of view from which the Government has operated. This view is clouded in the intellectual atmosphere of the late 19th century. I thought these views had disappeared from the political lexicon of this country. Unfortunately, I have heard them expressed again today. An Opposition speaker indicated during the course of a heated debate a moment ago that he believed that this legislation and the behaviour of those supporting it was racist. That is said because this Bill is racially discriminatory and, as we will show as we go through the various provisions of the Bill, is explicitly against the interests of Aboriginal people. It treats them in ways that others are not treated and seeks to remove from them rights at common law which are not removed from others. The title of the Bill says it all. This Bill will take away the common law right to native title and substitute an inferior right which can be extinguished at will. Sadly, that affirmation of the worst elements of Western Australia's history is contained in the title of this Bill.

Mr D.L. SMITH: I am intrigued about how the Premier came by the title of this Bill. Why is there no recognition in the title of the words "Aboriginal" or "native"? Why is the Bill not given a title which reflects more truly what it is about? I will not vote in favour of the present title because I believe this Bill should be titled "The Land (Extinguishment of Native Titles and the Substantial Taking Away of Traditional Usage Rights from Aboriginal People) Bill 1993", because that is what the Bill is about. The Premier quoted tonight in his defence an editorial in *The Australian Financial Review*. I would like to quote, in regard to what will be the effect of this legislation and how the title should reflect the intent of the legislation, a media statement, with which I am sure the Premier is familiar, put out by the Australian Section of the International Commission of Jurists. I notice that it is signed by Mr J. Dowd, Chairman. Mr J. Dowd is, no doubt, Mr John Dowd, QC, a former Liberal Attorney General in the Greiner Government. That former Attorney General states about this Bill, and that is why I believe this title in no way reflects what this Bill is about, that -

> The Secretary-General of the International Commission of Jurists, Mr David Bitel, has spoken out against the Western Australian Government's Land (Titles and Traditional Usage) Bill which is designed to extinguish native title. The Bill has been described by the WA Government as its response to the High Court's Mabo decision. The Bill was tabled in the Western Australian Parliament on Thursday, 4 November 1993.
>
> Mr Bitel said that the Bill was of great concern to the Australian section of the International Commission of Jurists as its enactment would put Australia in breach of international instruments guaranteeing basic human rights to which Australia was a party.
>
> "The International Convention on the Elimination of All Forms of Racial Discrimination, to which Australia has been a party since 1975, prohibits racial discrimination and upholds property rights. The International Covenant on Civil and Political Rights (which Australia ratified in 1980) guarantees equality before the law, equal protection of the law, and cultural and religious rights."
>
> Mr Bitel said that the Bill appeared to breach these international obligations. "It extinguishes native title wherever it may have existed in Western Australia and purports to substitute statutory "rights of traditional usage" which are virtually worthless. That is so because the substitute title is subordinate to all other interests and the holders have no protections at law."
>
> Mr Bitel pointed out that the Bill also provides the ability for WA government ministers to terminate the statutory "rights of traditional usage", which the Bill proposed to grant, at ay time.
>
> He said that urgent steps are needed to ensure that Australia's international reputation would not suffer. "I call on the Western Australian Government to immediately engage in consultation with Aboriginal people in order to gain some idea as to the effects of its proposals. If at the end it decides to proceed, it is

> important for all Australians that the Western Australian Government review the Bill to ensure that it becomes consistent with Australia's human rights obligations."
>
> The Section also expressed concern at the issue of the constitutional validity of the legislation.

That statement is signed by Mr J. Dowd, Chairman, Mr D.L. Bitel, Secretary General, and Professor G. Nettheim, Executive Committee Member. That reputable body of jurists holds the view that this legislation will extinguish native title and that what it purports to substitute is worthless.

If the Premier believed honestly in this legislation, he would have the integrity to call this Bill "The Land (Extinguishment of Native Titles and the Substantial Taking Away of Traditional Usage Rights from Aboriginal People) Bill 1993". The title of this Bill says nothing about Aboriginal people, the extinguishment of their native titles, and the enormous limitations to which their traditional rights of usage will be subjected by this legislation. To not reflect that in the title is an indication that the Premier does not have the maturity to face up to the moral decision that he has made. Perhaps I should call it the immoral decision that he has made, but the Premier seems to believe that it is the right decision, and I guess in his view it is a moral decision. If the Premier believes it is a moral decision, why not have the moral courage to insert into the title the fact that native title should be extinguished and that traditional rights should be limited severely, as they will be by this legislation, including the substantial amendments which the Premier has introduced tonight, which go much further in limiting those rights than does the original Bill?

Where are we coming to as a Parliament, a Government and a State when we are not prepared to allow proper consideration in Committee of the amendments and when the Premier is not willing to reflect in the title what this Bill is about? On the one hand, the Premier wants to parade around the country and say that he is doing the right and proper thing in extinguishing native title and that he is proud of the fact that he will deprive native Aboriginal people in this State of most of their traditional rights of usage, but he is not prepared to state in the title what this Bill is about. To use the word "Titles" in the context of the Land (Titles and Traditional Usage) Bill implies to me that somehow these limited rights of traditional usage which will be taken away at the whim of any Minister are part of our total system of land management and registration. However, one of the elements of this legislation is that native Aboriginal traditional rights, limited as they are, will not be reflected in our register. We have in this State a system whereby we are progressively bringing on to the register all of the land in Western Australia, which includes all of the Crown land. We are trying to create a land information system which we are marketing around the world as being one of the best. But the Government is not prepared to make part of the register the rights acknowledged by this legislation. The State has spent $60m-odd creating Register 2000 and in making our land information system one of which we can be proud. But with the land title aspect of the information system, no-one who searches a title - even on Crown land - will be able to identify whether there is any right of traditional usage.

In a way, this legislation makes the whole Torrens title system very deficient. The essence of the Torrens system is that as far as possible all rights and interests relating to land, even if only caveatable interests, should be contained in the register. Although the Bill refers to land titles, the so-called traditional rights conferred on Aborigines will not be reflected in the register. Why is that? If that is the case, why use the word "titles" unless the legislation is all about the extinguishment of native title and the deprivation of most rights of traditional usage of the Aboriginal people of this country which were in existence before we came here?

The member for Kimberley was correct in saying that the occupation of Australia for 40 000 years is not important enough in the eyes of this Government to actually place it on the land register. Why is that? Why talk about land titles and traditional usage if the Government is not prepared to incorporate into the register the actual rights which the legislation in a limited way is recognising; that is, the traditional rights of Aborigines? It would not be an enormously difficult exercise. We understand that the Government wants those rights to be exercised without the need for a court decision. That is nothing new. In many cases in this State Aborigines have exercised their traditional rights for a long time without recognition in any way. But things have changed. The High Court has said that there is native title and that it should be reflected, where it is established by a court to exist, on our register. If the Government is to extinguish native title and replace it with traditional rights because the traditional rights will be limited to a defined area and Supreme Court decisions will reflect that, why should not the decisions and their effect be reflected in the register?

If the Government wants to include the word "titles" in the legislation the Premier should not be misleading people by saying that the traditional rights will be treated in the same way as proprietary rights of non-Aborigines. They will not be treated in that way because they will not be placed on the register. How miserable can the Government be? The title of the Bill does not refer to traditional rights; the Government does not intend to acknowledge traditional rights on the register; and the Bill will allow the Government of the day, through its Ministers, to take away those rights. The Premier does not have the moral courage to say in the title of the Bill that it is a "land extinguishment of native title and the deprivation of most of the rights of traditional usage of land by Aboriginal people in Western Australia Act 1993". At least then we would know that the Premier has the moral courage to allow the title to truly reflect what the legislation is about.

Mr McGINTY: I am a strong believer in the principle that the title of a Bill should give some indication of its contents. In a broad sense, this Bill does three things, and only one of those is reflected in the title. The first thing the Bill does is to extinguish Aboriginal interest in land known as "native title" throughout the length and breadth of the State in respect of every person peculiarly of Aboriginal race who possessed that title. Secondly, it permits a lesser right of use. Thirdly, it provides a mechanism of extinguishment of the lesser right of traditional use. The short title of the Bill uses the words "Land (Titles and Traditional Usage) Act 1993", but there is no reference to extinguishment of either native or Aboriginal title.

The Bill is directed at diluting the rights of a race of people. It makes no reference to that, although that is its primary effect. Approximately half the clauses are directed at providing a mechanism for extinguishing the lesser rights which it creates, namely the so-called right to traditional use. During the second reading debate which the Premier closed only a few minutes ago, he made the astonishing claim that the right of traditional use was comparable, equal or equivalent to native title. If that is so, why extinguish native title? We all know what has been created in its place is not comparable, equal or equivalent. It is a dramatically lesser title which is being offered to Aboriginal people.

Mr Court: How can it be equivalent, if the legislation says it must be dramatically different?

Mr McGINTY: The legislation does not say it is equivalent. It is equivalent except to the extent to which the Statute takes away that equivalence. The Statute goes on, throughout approximately half the clauses, to make it less than equivalent. I am happy to list the ways in which the right of usage is inferior to native title. With due respect, the Premier misled the House in claiming that there was a measure of equivalence or equality to native title in the new right of usage which is created by this Statute. I will cite six areas in which the new right is inferior: Firstly, native title is equal to every other title in land; that was the effect of the Mabo decision. With this legislation, this inferior or subordinate right -

Mr Court: You say that the Mabo ruling said that native title is equal to all other titles.

Mr McGINTY: Yes.

Mr Court: All titles vary. The member knows that.

Mr McGINTY: This Bill makes the new right of usage inferior to any other title. That is clear. That is probably the major area, but I will run through the others: Native title is enforceable - that is what gave rise to the Mabo legislation. The right under this legislation is unenforceable; the legislation makes that clear. The right of traditional usage is inferior to the rights of miners and all others who have mining on their land. It is inferior to the rights of petroleum developers and all others who have petroleum development on their land. It is inferior to the rights of developers and all others who have development on their land. It does not give any rights to the land because, notwithstanding the likely end result that the native title would in most circumstances be found to be a proprietary right, this Bill declares that the right of usage is not a proprietary right.

As we all know, a proprietary right is the strongest interest that anyone can have in land. What the Government has expressly provided in this legislation is in sharp contrast with the likely end result of the native title debate in the High Court, which would in all likelihood result in a finding that native title could, in many instances in Western Australia, depending upon the nature of the use, be a proprietary title. The Government has declared that, no matter what the nature of the traditional use here, there is no proprietary interest in the land created by this traditional use.

Each of those rights which the Government is proposing to allow the Aboriginal people to exercise here is dramatically inferior to the rights which have been recognised as being part of the common law of this country. It is quite misleading for the Premier to say in his second reading speech and for this Bill to suggest in clause 7(2) that the rights are equivalent in extent, when he goes on to destroy any concept of equivalence by this legislation, and particularly in the areas about which I have just spoken.

The only reason that the title is framed in this way is to create a misleading impression. I say that deliberately in the sense that, obviously, one of the great difficulties that the Government will encounter with the legislation is the potential conflict with the Racial Discrimination Act. The Bill clearly in its title signals that it will destroy or, at the very best, dilute interests which are possessed only by Aboriginal people and, at the same time, enhance all non-Aboriginal titles. That is clearly offensive to section 10, and arguably section 9, of the Racial Discrimination Act.

It would be putting it up in bold lights for the High Court and everyone else in the country to see if the Government appropriately described this legislation in terms of what it does - that is, extinguish native title, provide a mechanism to extinguish the lesser right that it created, and then recognise the traditional usages of land in allowing the right to exercise, subject to considerable restraints, those traditional usages. That would signal to everyone the clear intent of the Bill. I do not think there would then be any dispute about whether the Act was racist in the sense of its being racially discriminatory as offending the international convention on that subject matter and the Racial Discrimination Act of the Commonwealth Government.

Some people have commented that this legislation might survive a High Court challenge based upon the Racial Discrimination Act. I suggest that the deception in the title is most probably what has led them into that error. It does not accurately describe what this Bill truly does. As I have indicated, the real effect of the Bill is to enhance non-Aboriginal title and to dilute Aboriginal title. The Government should have the courage to have the Bill say what it does. The member for Mitchell has recommended that a more accurate description of the contents of this Bill would be found in the title which he has suggested.

Mr BRIDGE: The title of the Bill reflects very accurately the basis upon which this Bill operates and the Government's intention in the delivery of those areas of land which are designed to be made available to the Aboriginal people. The way in which one is able to arrive at that conclusion is to think of the operative principle that one can associate with native title. That represents a significant form of title in land.

The legislation is about not providing Aboriginal people with that important basis of property right but to put it out of their scope and offer them instead another form of land tenure which has the effect of being a licence to perform a certain number of limited functions within those areas that are identified under the statutory allocations of land. The deliberate exclusion of the word "native" from the title of the Bill was done for that very reason. That is the problem that I have had with the Bill all along. It was that concern which made me decide that I was not prepared to discuss it at the briefing made available to us recently. It was abundantly clear to me that an inferior allocation of land was being offered to the Aboriginal people. No matter how the Premier might have wanted to convince me and others that we were employing the wrong interpretation, in the final analysis, when one looks at the operative principle of native title as opposed to the principle of a statutory form of usage, one finds that they are vastly different. They cannot be brought together.

The title of this Bill is a way in which the Premier is able to do that. Where it is necessary to make reference to native title to explain the processes of the Bill, there is no hesitation to make that reference. That is a clear demonstration that the exclusion of any reference to "native" in the title of the Bill is designed to support the removal of that operative principle that could be associated with native title, which is a significantly superior tenure because it talks about a property right associated with it. If the Government is prepared to give a property right, it must include the word "native" to conform to the spirit of the High Court judgment and the whole issue of native title which this debate is about.

However, the Government is not prepared to embrace that form of title. By the title of this Bill, it has put before us its clear intention that the most beneficial form of land that will be made available to the Aboriginal people of this State represents nothing more than a licence. That is the difficulty that we have with the Bill. That is the difficulty that will create further problems, whatever the fate of this legislation might be. It puts two simple words in the path of the administration of this Bill - mission impossible! There is no way that the Government can reconcile easily that operative principle between those two fundamentals, the value associated with native title and the considerably lesser or inferior value that one associates with a statutory grant or allocation of land. To me, the title says it all.

Mrs HENDERSON: It is significant that the word "titles" inside the brackets of the title of the Bill is separate from the words "traditional usage". In other words, traditional usage is not to be seen as a form of title. Title is separate; title is what everybody else enjoys and traditional usage is the bundle of rights that is to be the Western Australian interpretation of the High Court decision. It is interesting that the word "title" is something that most people in our society regard as being of high value. It is a bundle of rights that relates to the ownership of land; it refers to the right of proprietorship, of peaceful possession and the enjoyment of land, of preventing other people from entering land and trespassing, of enjoying it without disturbance from outside, and the right to use it in a range of ways as long as that use does not impinge on the rights of others and is not unreasonable. That bundle of rights is valued very highly by people in our community. The word "title" embodies all of those legal rights and that value.

Those valuable notions of ownership, rights of possession, and rights of peaceful enjoyment are separated by the word "and" from "traditional usage", so that traditional usage is not a form of title, and it is not native title with the bundle of rights that goes with that as described by the Mabo decision; it is some other kind of right. It is interesting that the first Mabo decision that was referred to extensively in the second reading debate referred to two fundamental principles relating to rights and property. Those two fundamental principles underlie one of the universal declarations of human rights. They are that everyone has the right to own property either alone or in association with others, and no-one shall be arbitrarily deprived of that property. The embodiment of those for most Western Australians is in their notion of title because the title is the physical embodiment of their ownership of land and their right not to be arbitrarily deprived of that ownership. The High Court decision said that the right to own property in association with others and not to be arbitrarily deprived of it continues to exist for others in the community who do not currently hold title to land as recognised under our traditional Torrens system. The court said, "Here is a right that has existed. It continues to exist and it has existed for a long time. It is native title and it is a form of title. It is not just a right, a licence to use. It is a title, a form of proprietary ownership that carries with it a bundle of other rights."

That bundle of other rights is our challenge. That challenge will vary according to the High Court decision from place to place depending on the customs and traditions of the traditional owners of the land. That is the very essence of what the High Court decision now leaves us the job of sorting out. It is not really up to us to now put into legislation the question of its being a form of title. The High Court has determined that. The title of the Bill could not be more contemptuous in that this Government proclaims itself as following the High Court decision but this Bill seeks to do everything to undermine the High Court decision and to nullify it.

The form of native title recognised by the High Court was described as substantial and valuable, not to be extinguished at a whim and not to be extinguished without compensation. That is far more than traditional usage and far more than is described in this Bill where traditional usage becomes transparently clear. It is not a form of title; it is not valuable! It is a right that is subordinate to everyone else's rights. It is the right at the bottom of the heap! It is the right that comes last after the rights of miners, developers, and those exploring for oil! Every other form of right comes ahead of traditional usage. It is of so little consequence in the scheme of things that a Minister can terminate it at any time. I note in these amendments given to us late today that there is some change to that clause of the Bill. I will be interested to hear the Government's argument when we come to the debate on that clause.

Where traditional usage is exchanged in the Bill for native title, there is no provision for compensation where that traditional usage is extinguished by the Minister. What form of value has that bundle of rights that can be extinguished by a Minister and which requires no compensation? That is a direct contradiction of what the High Court said. It shows what the Western Australian Government intends in its interpretation of the High Court decision. It says, "We are not going to talk about native title in our legislation; we will talk about traditional usage and we will define traditional usage in such a way that it can be extinguished without compensation, that it is not valuable, that it undermines the very basis of the decision which said that native title is a form of right that is equivalent to those of others that cannot be extinguished arbitrarily, that cannot be taken away without compensation." In fact, native title is described in the High Court decision as a right against the whole world, not a right to come last, and not a right when all others have taken their rights and what is left is then traditional usage.

There is no question that our society has recognised freehold title as being the highest form of title - highly valued and much prized. It is interesting that while the preamble which we will discuss later grudgingly recognises in a contemptuous manner the High Court decision, the Bill then seeks to relegate this new native title to the lowest possible order and it does everything it can to ensure that freehold title that most people prize is maintained intact and that there is no question of native title impinging on anything that anyone in the community currently enjoys.

Aboriginal people have believed throughout the whole period of white settlement that they have a right to their land and that right has now been recognised by the High Court. However, this Bill seeks to nullify that recognition by the High Court and to remove the opportunity for them to move forward by determining how native title is to be recognised, what the bundle of rights is to consist of, and how we will integrate it within our system of title. Those hopes have been dashed by the title of this Bill.

The whole tone and thrust of what follows the title is to seek to denigrate and nullify everything that was in the High Court decision. It also seeks to nullify some of the comments that were made in yesterday's debate about the traditional myth that Aboriginal people were nothing more than nomads who wandered across the surface of the land, that all the land was of equal interest to them, that it had some religious and other significance, but they felt no special affinity to areas of land, and there was no notion of territoriality about their attachment to the land.

That fails to recognise a basic cultural difference between a white society which has long prized the ownership of land and which has felt no necessarily spiritual association with land, and which has now said that Aboriginal people may have spiritual association but they never had a system of territorial ownership that is in any way comparable to that which European people have long held to be the case. Some of the comments I read out in my speech give the lie to that. In the 1880s early settlers in the State commented on the attachment of different tribes of Aborigines to different areas and the sense of ownership and belonging, of territoriality and rights, which were described as normally accruing to title and which were recognised by those groups of people; that is, a right to enjoy that land without disturbance by others, a right to protect that land and the boundaries of that land from entry of others, the right to hunt, to gather and to fish often at the exclusion of others except by invitation. This Bill does not recognise any of that. It seeks to give in the most perfunctory and cursory manner a form of licence of the lowest order. That is the embodiment of what this Government thinks of the High Court decision.

The CHAIRMAN: Before I give the call to the member for Nollamara I remind members of Standing Order No 142 which refers to tedious repetition and repeating arguments used by other members in debate as part of that consideration. Most of the members have spoken quite well to the clause, but the last speaker drew my attention to Standing Order No 142.

Mr KOBELKE: The title of this Bill is deceptive because it runs together the words "land title" and "traditional usage". That gives some suggestion that traditional usage is a form of title. It clearly is not. This Bill moves to assert the titles that exist and to do away with native title. In doing that we find constructed this new concept of traditional usage and, as an earlier speaker has already pointed out, that traditional usage in no way resembles native title.

In the deception that we find in the title of the Bill we can see there is some accuracy because the Bill is deceptive. The Bill is an exercise in trickery suggesting something which it does not contain. Those who read the Bill and then come back to the title can see right from clause 1 the start of this exercise of trickery and deception. This Bill is supposed to address the whole issue of native title, but it attempts to take away native title. It does not recognise in any complete or wholesome way the existence of native title. It recognises it only in so far as is necessary to wipe it out and put in place this very vague and less valued concept of traditional usage. If we look to the Commonwealth Bill, which addresses the same area, we find its title is the Native Title Bill 1993 and in its longer title we find it is "An Act about native title in relation to land or water and for related purposes".

This Bill contains nothing positive about native title. We do not find it espousing in any way the rights of Aboriginal people as they exist under native title. The clauses that take up the rights of Aboriginal people are there to reduce and to substitute them with this much lesser right of traditional usage. In the various procedures and mechanisms that are put in place we find it is taking away whatever value there might have been in the original definition of that traditional usage.

Mr COURT: The comment that the short title is wrong and should involve the word Aboriginal is interesting. The Federal Government's legislation is simply called the Native Title Bill. The Land (Titles and Traditional Usage) Bill is a very appropriate title. Part 2 refers to the confirming of title; part 3 to native title and to the rights of traditional usage; part 4 to the compensation for the loss of native title and the rights of traditional usage; and part 5 gives the power to arrange to grant title to Aboriginal people. The Bill spells out clearly the Aboriginal people we are dealing with and the traditional usage rights that will become statutory rights in law.

One could always argue about the title of a Bill, but in this case it is appropriate because we are talking about land, title and traditional usage; that is what is covered in this legislation. The member for Thornlie commented on the extinguishment of rights of traditional usage by ministerial action. Clause 29 does gives rise to compensation because it is an Executive action. The compensation must be paid under the processes outlined in the legislation. We are debating the title of the Bill and it is appropriate for what the Bill seeks to achieve.

Division

Clause put and a division taken with the following result -

Ayes (26)

Mr C.J. Barnett	Mr Johnson	Mr Prince
Mr Blaikie	Mr Lewis	Mr Shave
Mr Board	Mr Marshall	Mr W. Smith
Mr Bradshaw	Mr McNee	Mr Trenorden
Dr Constable	Mr Minson	Mr Tubby
Mr Court	Mr Nicholls	Mrs van de Klashorst
Mr Day	Mr Omodei	Mr Wiese
Mrs Edwardes	Mr Osborne	Mr Bloffwitch *(Teller)*
Mr House	Mr Pendal	

Noes (20)

Mr M. Barnett	Mrs Henderson	Mr Ripper
Mr Bridge	Mr Hill	Mr D.L. Smith
Mr Cunningham	Mr Kobelke	Mr Thomas
Dr Edwards	Dr Lawrence	Ms Warnock
Dr Gallop	Mr Marlborough	Dr Watson
Mr Grill	Mr McGinty	Mr Leahy *(Teller)*
Mrs Hallahan	Mr Riebeling	

Clause thus passed.

Clause 2: Commencement -

Dr LAWRENCE: This clause as it was originally described in the Bill would have seen the Bill come into operation on such day as was fixed by proclamation. It may seem a matter of some insignificance that the amendment circulated by the Government at this late stage - I hope it is the only one we deal with tonight - appears simply to substitute "such day as is fixed by proclamation" with "the day on which it receives the Royal Assent" and, therefore, to be of no particular moment. However, it is important to point out that it changes the Bill so that it will come into operation on the day the Bill receives Royal assent rather than by proclamation; the effect being that Royal assent is simply achieved by being signed by the Governor alone when a fair copy of the Bill has been sent to him after the Bill has been passed by the Parliament. That procedure can be achieved far more rapidly than is the case with the existing commencement provision in the Bill. If the Bill contains, as it did in its original form, a proclamation provision, it then goes to the Governor in Executive Council who proclaims the date on which it comes into effect. Since Executive Council meetings are normally held fortnightly - even special meetings are held from time to time - that obviously can result in greater delay than the procedure suggested in the amendment of simply requiring assent. The effect of the amendment will be to bring the legislation into operation at the earliest possible time. It may also be a device to prevent a motion being moved in the Parliament to disallow proclamation after the Bill has been passed. Clearly, this amendment to the provision is designed to achieve one thing; that is, a more rapid enactment of the legislation.

I caution against that for two reasons. Firstly, when a proclamation day is set and then confirmed by a meeting of Executive Council, some capacity exists, should the legislation be deficient, to remedy that deficiency before proclamation. Given the large number of amendments we have seen already added to and amending the provisions of this Bill, that would be a wise course of action. Once the Bill has been assented to, if it is then found to be deficient, my understanding - I am willing to stand corrected on this - is that in order to remedy the Bill, in the short term at least, the entire Bill would have to be repealed and we would need to start again. Secondly, it is important not to rush this legislation because speculation has been fuelled by the Government that this Bill must be enacted at the earliest possible opportunity, not in order that justice can be done to Aboriginal people or that certainty can be conferred upon the mining industry, or that our economy can be set to right because of the lack of certainty that prevails at the moment.

This haste is being anticipated for none of those reasons, but simply in order that it get into law ahead of the Commonwealth legislation. The view has been expressed that in so doing it somehow achieves a more significant status in the light of any challenge and is more likely to resist challenges in the court and any attempt by the Federal Government to overturn its provisions. In fact, it is more likely to prevail.

The Opposition has sought advice on that question from a range of sources, including the Commonwealth Government, and also from legal people in Western Australia with a knowledge of the Constitution, the Mabo decision and this legislation so far as they have been able to master it. They tell us that they can see no possible justification for that view; that even if the Premier were determined that his Bill should be the first to get up and running in order that it be somehow better protected against other legislation or protected against challenges under the Racial Discrimination Act this haste does not achieve that end, and that even if that legislation were to be assented to ahead of the Federal Government legislation, it would not in any way render it better legislation. It will stand or fall in the courts on its own merits. The judgment about its status will not be affected by the speed with which it goes through this Parliament. The only view we can have of this haste is that the Premier has adopted a strategic position that if his Bill is in first the big, bad, bogey Federal Government will have to knock out an existing piece of legislation in order to ensure that its legislation becomes the law of the land. It is a crude political purpose at best, and one that the Opposition does not see any reason to assent to, particularly given the complexity of this legislation and the fact that the mechanism contained in the Bill of proclamation, rather than assent, is more likely to achieve the necessary remedy to any deficiencies that are certain to occur in this Bill. I will be mightily surprised if we do not see further amendments in the course even of this Committee stage. The Opposition has some amendments it could make, although we are disinclined to tidy up this mess. However, in the other place it may be that the Government will realise this Bill contains severe deficiencies which some observers indicate to me mean that it is unlikely to survive the first and most primitive challenge to its provisions. Perhaps by the time it gets to the other place that will be true and clear, in which case the mechanism of assent provided for here will make it even more difficult.

Mr D.L. SMITH: The Premier owes members an explanation of the reason for the change in the legislation coming into effect on a day fixed by proclamation and now, under the amendment, coming into effect on the date of assent. The tradition has been that, generally speaking, legislation comes into effect on the date it is assented to. The use of proclamations has been to facilitate legislation which requires the development of regulations, other forms and the like to be effected. One of my concerns is that under this legislation payments for compensation must be made within 12 months from the date on which divisions 2 and 3 come into effect. The original intention was that they would come into effect on a later proclamation. The effect of this amendment is that they will come into effect immediately upon assent. The people will have to make their claims within 12 months of the date of assent. Part of the requirement in a claim for compensation is compliance with any other requirements of the regulations as to the form and content of compensation claims.

I would be interested to know whether the Premier does intend this legislation to come into effect on the date of proclamation, how developed are the regulations and when they will be promulgated, so that people will know how to make their claims and to identify that they comply with the requirements of this Government's regulations. Beyond that, I do not want to delay the House.

Obviously, it has been changed for a reason, and I ask the Premier to explain that reason to the Committee. It concerns me that this requirement is coming into effect on assent, rather than when regulations and other orders are in place and some people may be even more limited to make their claims for compensation or to pursue their court actions as a result of that curtailment.

Another concern I have is that an advantage of delaying proclamation of some parts of the legislation might enable the start of an advertising campaign, not of the form that is currently being undertaken, but one advising Aboriginal people of their rights and entitlements under this legislation and making sure that they are fully aware of those rights and entitlements before the legislation was proclaimed. That would enable them to take full advantage of the 12 months, rather than their spending a fair part of the 12 months ascertaining their rights and entitlements, or whether they have any, and then starting the process after they become aware of it. I would have preferred the proclamation process. There are a great number of aspects of regulations, court rules and a number of other things that need to be put in place for the legislation to be fully effective.

I am concerned that, in moving to have the legislation come into effect on assent, we will not be ready to deal with the problems that this legislation, in a procedural sense, will create for people because the regulations and the like will not be available. I am further concerned that it will not enable us to have the education process and that people, who might be deprived by the 12 month limitation of not taking their action early enough, will not be aware of their rights and entitlements before that 12 month period starts to run. If the Premier still insists on proclamation, I ask him to think - perhaps overnight - about some of the opportunities of extending some of the limitation periods in the legislation.

Mr McGINTY: In answering the question from the member for Mitchell, could the Premier explain the amendment to clause 27, proposed new subclause (4)(a), and how it relates to the change to the date on which this legislation will come into effect?

Mr COURT: I move -

> Page 4, lines 6 and 7 - To delete "such day as is fixed by proclamation" and substitute "the day on which it receives the Royal Assent".

I thank members for their comments, particularly the member for Mitchell, who sought an explanation about why the date when the legislation will come into effect has been changed. The Parliament does not have the power to disallow a proclamation, which is what the Leader of the Opposition said. The member for Mitchell was quite correct in explaining why we have proclamation or an assent. When this Bill was drafted it was considered that a delay in its commencement could be necessary to enable the procedural fairness processes to be provided by regulation in the granting of various titles. We are now, however, satisfied that most of the common forms of title will be dealt with by the amendments to the various Acts, as has been set out in schedule 1.

Mr D.L. Smith: But not the compensation rights.

Mr COURT: That being so, there is now no need to depart from the normal rule that Acts that validate past actions should commence as soon as they have been passed by the Parliament.

The member also asked a question about the regulations. We have identified the provisions which require regulations, and they will be ready shortly after assent. The member suggested an advertising campaign to explain to the Aboriginal people how the legislation works and what are their rights under this legislation, and that is something we propose to do. I would not call it so much an advertising campaign, but an education campaign, but it will also involve advertising. We would move immediately so that Aboriginals are aware of the provisions of the legislation and their entitlements.

Later in the debate I will comment further on that in that the effectiveness of this legislation will be very much tied to the manner in which negotiations are carried out when there are claims that traditional use is being impaired. At this stage when the Aboriginal people are notified and the negotiations start to take place between the Government people, the developers involved and the Aboriginal communities, it will be critical that we ensure that those negotiations are appropriate for the circumstances; if they are not, they simply will not be effected. That will be one of the challenges that we face. It is a difficulty now under the existing processes, but it is something that we will address.

Mr D.L. Smith: Could you give a bit more information about when the regulations will be available - six weeks or six months?

Mr COURT: They will be ready in about a month.

In response to the question from the member for Fremantle, the effect of clause 27(4)(a) is that titles granted after assent will be validated in that fashion. If the existing commencement provision remains, titles granted between assent and commencement - that is, proclamation - would be validated by clause 5 of the Bill.

Mr McGinty: What is the significance of 1 January next year?

Mr COURT: I was going to say it was the date Mr Keating chose. The Federal legislation has chosen 1 January for its future Acts. As members know, it is retrospective, and the legislation will take the States' legislation back to 1 July.

Mr D.L. SMITH: Another problem I put to the Premier related to claims for compensation regarding a title extinguished between 1975 and the date of assent, and that that claim must be made within 12 months of the date on which those provisions receive assent. If the regulations will not be proclaimed until a month after the legislation is passed, that 12 months will effectively be reduced to 11 months. Given that it will be some time before we consider those clauses, will the Premier consider amending that provision to make it, say, 12 months from the date of publication of the regulations? This could be done in all places within the Bill in which it is required. This will comply with the original intent of the full 12 months period for application, not less the time taken to have the regulations in order.

Mr COURT: We will consider that matter tonight, and when the provisions are discussed tomorrow we will give a view in relation to those points.

Amendment put and passed.

Division

Clause, as amended, put and a division taken with the following result -

Ayes (25)

Mr Blaikie	Mr Marshall	Mr W. Smith
Mr Board	Mr McNee	Mr Strickland
Mr Bradshaw	Mr Minson	Mr Trenorden
Dr Constable	Mr Nicholls	Mr Tubby
Mr Court	Mr Omodei	Mrs van de Klashorst
Mr Day	Mr Osborne	Mr Wiese
Mrs Edwardes	Mr Pendal	Mr Bloffwitch *(Teller)*
Mr House	Mr Prince	
Mr Lewis	Mr Shave	

Noes (20)

Mr M. Barnett	Mrs Henderson	Mr Ripper
Mr Bridge	Mr Hill	Mr D.L. Smith
Mr Cunningham	Mr Kobelke	Mr Thomas
Dr Edwards	Dr Lawrence	Ms Warnock
Dr Gallop	Mr Marlborough	Dr Watson
Mr Grill	Mr McGinty	Mr Leahy *(Teller)*
Mrs Hallahan	Mr Riebeling	

Clause, as amended, thus passed.

Dr Lawrence: Did that count include the body at the back of the Chamber?

The DEPUTY CHAIRMAN (Mr Johnson): Yes, he is in the Chamber.

Dr Lawrence: It could be anybody; he might be dead.

The DEPUTY CHAIRMAN: I recognise him. I saw him move!

Clause 3: Interpretation -

Dr LAWRENCE: This clause contains some very significant interpretive definitions. It is important that we consider these in their entirety. I shall ask some questions on some definitions which appear to provide some extravagant powers which begin the process of dismembering native title. I ask the Premier to indicate what is meant by the definition of "Aboriginal person". What is the basis of both the definition and the determination that the definition was deemed to be sufficient? It reads that an Aboriginal person means "a member of the Aboriginal race of Australia".

The clause contains some, but not all, the definitions used in the Bill. Scattered throughout the Bill, and included in a substantial number of amendments received today, are additional definitions. As a rule, definitions appear in only one part of the Bill, although exceptions can be found. For example, clause 17(1), contains the definition for "general laws", and clause 33(8) defines "claimed period". All definitions which apply in this Bill are not included in the interpretation section. The complexity of this legislation is such that the defining phrases should be included in the interpretation provision.

Also, the definitions in some provisions appear to change the apparent meaning of words. I draw the Premier's attention to the definition of "court" as including a "tribunal or an arbitrator". Clauses 12, 30 and 46 are transitional provisions which provide that the legislation is a bar to any proceedings before a court. For example, clause 12(1) reads -

> If in any proceedings in a court (other than the Supreme Court) a determination is made on a question in connection with the existence or extent of rights of traditional usage in relation to land, that determination has effect for the purposes of those proceedings only and is not binding or effective in respect of people other than the parties to those proceedings.

Therefore, the wide definition of "court" - namely, it simply "includes a tribunal or an arbitrator" - would appear to wipe out private rights which may have been the subject of commercial arrangements which in the past have recognised Aboriginal rights to land entered into at any time. It would appear to the Opposition from reading the definition of "court" and various clauses of the Bill which are a bar to any proceedings before the court, that this wide definition, which includes arbitrators, seems to wipe out private rights which may have been the subject of other arrangements which recognised Aboriginal rights to land and which may have been entered into at any time. I seek some clarification on that matter.

The definition of "grant" includes the bringing into existence of a title to land; however the grant is or was described and also includes a contract to grant. The High Court decision said that native title could be extinguished by a grant of land. It explicitly recognised that. However, this definition appears to try to widen the concept of grant, as it would normally be understood, in order to maximise the amount of land over which native title has already been extinguished. This Bill provides for the extinguishment of native title where grants have been made and, in particular, treats a contract to grant land as a grant. However, normally one would expect that it must have been carried out in order to be described as a grant, and would not simply be the contract to enter into it. The Opposition wants to know how many contracts to grant land, as opposed to actual grants, have been entered into, but not yet translated into title. It would seem this definition is an attempt to include all those contracts to grant land which have not yet been translated into titles and would appear to significantly extend the definition intended by the High Court decision on native title. Again I ask for the Premier's clarification.

The definition of "interest" in land includes -

> (a) a legal or equitable estate or interest in the land; and
>
> (b) a right to occupy, use or traverse the land or any other right over or in connection with the land; and
>
> (c) an easement, charge, power, licence or permit over or in connection with the land;

Clauses 8 and 11 seek to provide that traditional usage rights are clearly subservient to those with title. After all, that is the principal effect of this Bill. "Title", as it is further defined later on is to include any interest in land. Taken in context with (b) above it is not simply possession. This makes the question of title adverse to Aborigines and so wide it appears to include a mere licence holder such as a sandalwood cutter, a prospector or anyone with any right to come and go on land. They appear to be given the right to disrupt traditional use by Aborigines under the Bill. If our interpretation of those definitions is correct, "interest", taken in context with (b) above, in conjunction with "title" which is defined as "an interest in land" appears to suggest, since traditional usage rights are subservient to "title", those rights are subservient to these other "interests" in land. That falls well short of what I think most people would have considered reasonable in any contest between traditional usage and other purposes. In other words, as I have said before, in many clauses of this Bill, are provisions which put Aboriginal interests well behind those of others.

"Native title" as defined in this Bill grudgingly recognises what will be defined by the Mabo decision as common law entitlement. I am sure that by now everyone knows that common law recognises many things, not just, as in this case, native title. It recognises things such as fee simple freehold which gives a right of occupation for use of land. Considered with clause 7 which extinguishes native title, freehold title and other rights to land held by Aborigines at large are in grave risk of being extinguished. This definition as it stands, meaning one or more rights or entitlements of a kind recognised by the common law, being rights or entitlements to the occupation or use of land, or otherwise relating to land, exercisable by Aboriginal persons in accordance with Aboriginal tradition, can be read in the vein that since the common law recognises fee simple freehold for example, joined with clause 7 which extinguishes native title, it may well mean there is a grave risk that other rights to land in which the rest of the community can feel secure, because this native title definition refers specifically to an Aboriginal person, could be extinguished in the hands of Aboriginal people. That is probably not intended. Again, I seek the Premier's clarification.

I have already mentioned the problem which exists with "title". However, I draw attention to the moral vacuum in that definition, apart from anything else. "Title" sets out ownership of land and interest in or in respect of the land whether proprietary or otherwise but it does not include native title - we know that is what this Bill is about - nor does it include rights of traditional usage. That is again a definitional device for making native title and even traditional usage subservient. Under the definition of "title", paragraph (2) provides that "use" includes use for, or for a purpose associated with or incidental to, mining operations, operations for the recovery of petroleum, prospecting or exploration. It provides an extended definition of interest which I mentioned earlier which relates again to what "title" in others can extinguish Aboriginal rights and traditional usage. Again there are all those aspects by that definition effectively being provided with the capacity to extinguish Aboriginal right to traditional usage. It includes use of land incidental to, not central to, mining and petroleum prospecting and other operations. One might logically conclude from this that it could also extend to people transporting food and materials into these areas enjoying "privilege" over the rights of traditional usage. If I am correct, and the advice I have had is correct, that definition would appear to widen very considerably the group of people and the uses which again extinguish Aboriginal right to traditional usage.

It is important we recognise that even those definitions, such as a court, a grant, an interest in land, native title, title and use, provide a clear framework for the systematic disposition of the Aboriginal people and a subjugation of their rights.

Mr D.L. SMITH: One of my pet hates in definition clauses is the defining of things in a way that uses the word being defined as part of the definition. For example the definition of "an Aboriginal person" means a member of the Aboriginal race of Australia. I do not know what it adds to the definition of Aboriginal to say that. If we mean Aboriginal person, why do we not refer to a descendant of the indigenous people who preoccupied and governed Australia before the British settlers came here? We would then know exactly whom we were talking about. To leave it in a form where the word "Aboriginal" is defined by reference to the Aboriginal race, does not advance it very far. In the definition of "Aboriginal group" although reference is made to clan, there is no reference to family. It may be, in relation to claims that may be made, that those rights are exercised only by individual family groups rather than clans, and I would like to see the word "family" added to that area.

The other example of defining words unusually or improperly is the definition of "rights of traditional usage" as "one or more rights of traditional usage created by section 7(1)(b)". We all know that that clause contains no definition of those rights at all. The only definition of those rights is contained in clause 18, and at some stage the people who claim these rights of traditional usage may be able to go the Supreme Court, or have it referred to the Supreme Court by somebody else, to have those rights defined. It is not helpful in this case to refer to traditional usage. One matter that is confusing for me as a lawyer is the difference between interest in land and title to land. The Government appears to acknowledge in the definition of "title" to land that title includes an interest. Under the definition of "interest" in land, that interest may be nothing more than a right to traverse the land or any other right over or in connection with the land. One would have thought the right to traverse and use the land for certain purposes is the very essence of the traditional usage right in native title. In relation to interest in land there is no specific exclusion of native title or rights of traditional use, as there is in the definition of title to land. At first reading, one could take that to mean that the right of traditional usage is an interest in land because it appears to fit within the definition. If it is, I would like to know whether it is a caveatable interest under the Transfer of Land Act. On a second interpretation, because title includes an interest and excludes native title, one could assume that it is meant to exclude native title or rights of traditional use from being an interest in land as well. It seems to be a circular method of approaching the issue without saying directly whether the rights of traditional usage constitute an interest in land, and if they do constitute an interest in land, whether it is a caveatable interest.

A few other minor questions of concern relate to the definition of "Aboriginal tradition". I notice the absence of any reference to law, whether tribal or otherwise. It seems to imply that the Aborigines did not have any system of law, but only systems of observances and customs. I think that is a bit derogatory and I would like the words "tribal law" or "Aboriginal law" to be included, if the Government is not prepared to leave it as "law" by itself. Similarly, in relation to the definition of "native title", although it states that the rights and entitlements of a kind recognised by the common law are exercisable, I wonder whether it means that at all. I understand native title exists only where it is available in the context of the Mabo decision, and it must be of a kind not only recognised by the common law, but also one that has been exercised by a particular Aboriginal group continuously. I wonder whether, by the definition of native title in this Bill, those people who cannot prove continuous use of land but who can claim that the rights they seek to exercise have been exercised by Aboriginal persons to whom they were related in the past, can still exercise them even though they have not been exercised continuously. It seems to me, and I hope I am right, that the Government is opening up the range of people who can make a claim, even though they cannot prove that right has been exercisable by them continuously since time immemorial. If it means by "a kind recognized by the common law", that it must be of a kind that has all the elements the High Court referred to in Mabo No 2, it is perhaps not so broad. Again, I do not know why it is referred to in the way it is in the definition.

Mr THOMAS: My questions are related to the matters raised by the member for Mitchell. I have some interest in discovering precisely what rights will be conferred upon people who enjoy the so-called benefits and rights of traditional usage and, in particular, I ask the Premier for his understanding of the rights conferred upon them by the legislation.

As the member for Mitchell indicated, this definitions clause is a convenient place at which to raise these questions although the clause on its own does not tell us everything and one must refer to other clauses. The definition of the "rights of traditional usage" refers to clause 7(1)(b), which is a central part of the Bill that extinguishes native title and replaces it with traditional usage. Regrettably, within that clause there is no explanation or enumeration of the rights that would attach to traditional usage. Further on, in clause 18 is explicit reference to rights to take and use food, water, and materials from the land for sustenance or for purposes relating to Aboriginal tradition. In clause 3 a definition of the word "land" is quite expansive and states that it includes coastal waters and other water, land covered and sometimes covered by coastal waters or other water, and land within coastal waters. My understanding of traditional Aboriginal culture is that, among other things, people would have used the land in a traditional manner to hunt, occupy and fish, and on occasions they also traded on the land. When people hunted they did so with technology that is not used today. When they occupied the land they did so in dwellings which are quite different from the dwellings they would wish to occupy today. They fished with technology that is quite different from that they would use today. They also traded across Australia, and there is archaeological evidence of material which has its origins in Western Australia and has been found in the furthest reaches of the Eastern States. There was also trade in the northern parts of Australia with Indonesian people. Will the people who enjoy the benefits of the rights of traditional usage be able to enjoy the land to hunt, fish, occupy and trade in a manner that is consistent with people's modern aspirations to use modern technology for these purposes?

Aboriginal culture was not static and in some places where it has been continuous it has changed quite markedly, but it can be traced to 1788 or 1829, whichever time one wishes to take, with the addition of technology and knowledge which has been obtained through interaction with European people. Will people be able to hunt with vehicles and rifles; occupy land in the type of dwellings of their aspirations; fish with modern technology, and trade their produce as they did as part of their traditional culture?

Mr BRIDGE: I ask the Premier to elaborate on the definitions under the heading "native title". As we understand it, native title as it is known to exist does have a number of features; for example, there is fee simple and freehold and other rights associated with it. The advice I have about this definition is that it throws into doubt those other rights and titles that conceivably could be held by an Aboriginal person or groups. If I am reasonably accurate in putting forward that scenario, it again underpins the subtlety enshrined in every stage of the legislation in this Bill in the watering down of the rights that are likely to be conferred on Aboriginal people. There is no point in the Premier going round and advocating to the community at large that this package contains a decent sort of deal for the Aboriginal people, when it is based on what he is putting forward, which is, "We are not giving you native title as you understand it and has been recognised by the High Court's determination, but it enables a very good deal of another type of land package which is very strong and very meaningful." If our interpretation of the definition is reasonably accurate, it is not like that at all. That is a problem that will continue to be the case with this legislation. In my earlier comments I said I considered that what the Premier is offering is at best really a licence. He must demonstrate clearly that I am not correct in that assertion, that our understanding of his definition is not correct and that my reading of it on my advice upon it is not correct. If he is not able to do that, it does not matter how one reads it or interprets it, there is a clearly demonstrated inferior land right and entitlements available to the Aboriginal people through this legislation. I would like the Premier just to answer me in respect of that definition and the way I have interpreted it.

Dr WATSON: I want to endorse the concern of the member for Kimberley and my other colleagues. Without giving an exaggerated view of our concerns, when one compares the definition of native title with title and traditional usage here one can see that it is really, as it were, a minimalist approach to the High Court decision. I have before me also the definition as provided for in the national Bill and, of course, that extends its definition of common law rights and interests which are being subsumed, it would seem, under the Western Australian definition of traditional usage. We will be debating clause 7 more fully, but I want to put on record my concerns that even though native title will be extinguished, if this Bill passes both Houses the very definition of native title does neither justice nor credit to the High Court's findings and decisions. It emphasises the fact that this is not a Bill to recognise or protect native title or to give any understanding to the dispossession of Aboriginal people from their land. Neither is it a Bill to reflect the opportunities that have been provided by the High Court. This is clearly a land management Bill, and all it gives Aboriginal people is a licence to practice, perhaps with the authority of a Minister, some of their traditional cultural pursuits across their land at the whim, and I say that advisedly, of the Minister. Incidentally, I and some of my colleagues are mystified as to which Minister is responsible for the carriage of this Bill. It is not clear whether it is the Minister for Lands, the Minister for Aboriginal Affairs or, indeed, the Premier. Perhaps that should be included in the definitions.

Mr COURT: The answer to the last question is that the Minister responsible is whoever the Premier appoints to take over that position.

Dr WATSON: Whoever the Minister is, it is clearly not the Minister for Lands or Aboriginal Affairs because this Minister is bound to consult the Minister for Lands.

Mr COURT: If I may run through the definitions; on the first one, the question of "Aboriginal", it is a conventional definition, and whether anyone is an Aborigine is a question of fact. As I understand it, that is the way in which it was described when the previous Government's own legislation was brought in in the eighties, but it is, I am told, accepted that that is a conventional definition. The Leader of the Opposition raised the question of the court in relation to 12(1): That does not wipe out anything but merely confines the decision of a court, tribunal or arbitrator to the parties to a particular action of arbitration. By contrast, a declaration under clauses 10 or 11 has effect generally and relates to clause 16.

Dr Lawrence: You are reading that. Do you understand what it means?

Mr COURT: I am about to take it further. The broad definition is provided to enable, where the need arises, the ability to remove questions of traditional usage arising in other courts or tribunals to the Supreme Court.

The land which is the subject of a contract to grant is not Crown land under the Land Act and is treated in the same way as grant land; that is, it is alienated. Does that answer the Leader of the Opposition's question?

Dr Lawrence: No, not really. I asked how many fit into that category .

Mr COURT: I cannot provide that figure now.

Dr Lawrence: I would appreciate it being provided at some stage because it is germane to this debate.

Mr COURT: A number of members have raised questions about the definition of "native title". The intention of the Bill is to describe native title in whatever form it may exist. There is no intention to limit the definition.

Mr D.L. Smith: What happens if an Aborigine holds a freehold title? Is it intended to eliminate that freehold title?

Mr COURT: No.

Mr D.L. Smith: A freehold title is recognised by the common law.

Mr COURT: The Government did not define it in case the definition it intended to use was seen as limiting the scope of native title. I understand the same applies to the Federal Government's legislation.

Dr Lawrence: The difference is that its legislation does not try to extinguish it. It does not become a problem even if it is there.

Mr COURT: The same process applies under this Bill.

Dr Lawrence: Having recognised that title, you are having to extinguish it. The question asked is germane to the Bill even if the definition is the same as the Federal Government's legislation. My recollection is that it is not.

Mr D.L. Smith: You are extinguishing any right of Aboriginal persons recognised by common law. That would include freehold, leasehold and all the other types of title recognised by common law.

Mr COURT: The definition of "native title" includes that it must be exercisable by Aboriginal persons in accordance with Aboriginal tradition.

Dr. Lawrence: We had a question a while ago about what that means in a contemporary culture. With due respect, I do not think that solves the problem at all.

Mr COURT: As far as the definition of native titles is concerned?

Dr Lawrence: It does not overcome the problem I identified and the member for Mitchell underlined. To say that because it is in accordance with Aboriginal tradition -

Mr COURT: That decision will be made by a court.

Dr Lawrence: Don't you think it is better to get it right first?

Mr COURT: No, it is left open and that is also the case with the Federal Government's Bill.

Dr Lawrence: I will double check because I think that is incorrect.

Mr COURT: Is the Leader of the Opposition saying that there should be a definition which precisely spells out what native title is?

Dr Lawrence: In later clauses you proceed to extinguish native title and it appears that it extinguishes other forms of title recognised by the common law such as freehold or leasehold exercised, in this case, by an Aboriginal person.

Mr COURT: No, it states in the Bill that they are not exercisable in accordance with Aboriginal tradition.

Dr Lawrence: It does not follow. They can still be exercising their Aboriginal traditions on land which has characteristics that are absolutely identical to the land that I hold in my suburban block in Subiaco.

Mr Bridge: We are not in any doubt about native title. At the moment you are reinforcing my worry that this Bill does more than that.

Mr COURT: The definition in this legislation is the same as the definition in the Federal Government's legislation which states that the expression, "native title" or "native title rights and interests" means the communal group or individual rights and interests of Aboriginal people or Torres Strait Islanders in relation to land or water; firstly, where the rights and interests possessed under the traditional laws are acknowledged and the traditional customs observed by the Aboriginal people and Torres Strait Islanders; secondly, where the Aboriginal people and Torres Strait Islanders by those laws and customs, have a connection with the land or waters; and, thirdly, the rights and interests are recognised by the common law of Australia.

Dr Lawrence: It is an extremely different definition. It goes into detail of what the common law means.

Mr COURT: It states that the rights and interests are recognised by the common law of Australia.

I advise the member for Cockburn that traditional usage, like native title, is a question of fact. The Government deliberately did not set out to define it in the Bill and that is also the case with the Commonwealth Bill. When it comes down to a dispute, it will be left to the court to define it.

Dr Lawrence: The Federal Government allows for that determination at an early stage.

Mr COURT: What determination?

Dr Lawrence: It has provided for tribunals to which people can apply to have questions determined.

Mr COURT: Not for native title.

Dr Lawrence: Not in your Bill.

Mr COURT: No, in the Federal Bill.

Dr Lawrence: Only if there were interruptions to traditional usage would people appeal for a process of recognition and recompense. Otherwise they are recognised, but not registered in any way. The two processes are not equivalent.

Mr COURT: The tribunal does not grant native title under the Federal legislation.

Dr Lawrence: I understand that, but they are not equivalent processes.

Mr COURT: If it comes down to a dispute a court will determine what native title is. If there is a dispute in this case, the Supreme Court will determine what traditional usage is. If there is a dispute over compensation, the court will decide what the compensation will be.

Mr Thomas: Are they allowed to hunt with rifles?

Mr COURT: That is something that will be determined by the court. It is the same with the Federal legislation.

Mr Thomas: For months you have been saying that the courts are making legislation.

Mr COURT: I have explained that it is the same process under the Federal legislation. Does the member think we should limit it?

Mr Thomas: I think you should define it.

Mr COURT: I find it amazing that members opposite want to restrict the definition.

Mr Thomas: No, open it up.

Mr COURT: It is wide open in this legislation; it is up to the court to determine.

Mr BRIDGE: I have no doubt about the meaning of clause 7 and when we debate that clause what we already know will be reinforced; that is, it extinguishes native title. The meaning of this definition is abundantly clear because it is also the intention of this legislation. My reading of this definition is that it puts at risk also those other categories. I would like the Premier to tell me that those other categories under this definition are not at risk.

Mr COURT: The definition in the context of this Bill, or in any context, could not sensibly be interpreted to include titles granted to Aboriginal people by the Crown. The definition must be read in conjunction with Aboriginal tradition. Therefore, it is a title that is granted as part of the Aboriginal tradition, not as granted to Aboriginal people by the Crown.

Mr D.L. SMITH: Two aspects of the grant of an interest in land are of concern to me. My understanding of the High Court decision is, firstly, that a grant of interest in land by the Crown can have the effect of extinguishing title and, secondly, that Aboriginal interests in terms of traditional usage rights are always subservient to people who have an interest in land. Would the right of a person who has a licence to go on to particular land to cut sandalwood be superior to that of Aboriginal people, and would a grant before 1975 of a sandalwood licence have the effect of extinguishing native title?

Mr Court: The right of the licensed sandalwood cutter and the prospector would take precedence over native title, as well as the traditional usage.

Mr D.L. SMITH: Would the grant of a sandalwood licence prior to 1975 have the effect of extinguishing native title?

Mr Court: It would not extinguish it but it might impair it.

Mr D.L. SMITH: Would the rights of prospectors be superior to Aboriginal traditional rights, wherever they exist, in the sense that those traditional rights are subservient to the rights of prospectors?

Mr Court: A prospector could go on to lands that are subject to native title under the terms of the prospecting licence that he is given, and that would vary depending on what were the native title conditions, remembering that under the High Court ruling native title will vary over different parts of Australia.

Dr Lawrence: You are talking as if traditional usage rights are equivalent to native title, and we repudiate that.

Mr Court: The Leader of the Opposition is saying that traditional title rights are proprietary rights. I said it can be a wide range of things, but the Leader of the Opposition is going down the Keating track by saying that they are proprietary rights.

Dr Lawrence: They may be, and you are suggesting that they are always subservient to these rights on or over the land, and that is not true.

Mr D.L. SMITH: Will the areas which the sandalwood collector or the prospector can access extend to areas which the Aboriginal people regard as sacred?

Mr Court: That is covered under the Aboriginal Heritage Act.

Mr D.L. SMITH: This legislation will be passed later in time, and it expressly makes the exercise of traditional rights, sacred or otherwise, subject to the exercise of rights by these other people.

Mr Court: The prospecting licence is granted under certain conditions, which include having to comply with those heritage requirements.

Mr D.L. SMITH: I would not like to have to go to the court on that basis. This legislation is very loose, because it does not make the rights of traditional usage, which might be deemed to be sacred in terms of religious or spiritual beliefs, or heritage areas, superior to those of other people.

Mr THOMAS: When I asked the Premier earlier what rights would attach to people who were able to enjoy traditional usage of land, he said that would be up to the court to decide. The Government has been saying that it is creating what my colleague the member for Kenwick has described as a licence to exercise certain rights on certain land.

Mr Court: People will not need a licence. It will be enshrined in law that people can carry on with those traditional usages.

Mr THOMAS: This Bill will create a new set of rights which certain people will be able to exercise over certain pieces of land. When the Premier was asked what those rights would confer, he essentially shrugged his shoulders and said that would be up to the court to decide. There is an enormous difference between a right to walk over land and spear animals and a right to drive through it in a four wheel drive vehicle and shoot animals. One would think that the Legislature, when it is conferring these rights on people, should define them a bit more specifically than it has at present. Similarly, the rights to occupy, fish or trade may be exercised in ways which may have a different range of benefits for the people who enjoy those rights.

Aboriginal people have traditionally had the right to receive visitors on their land. One of the areas of land where I expect that native title would exist and would, were it in Western Australia, be replaced by the rights conferred in this Bill, is Uluru. That is not necessary because legislation has already been enacted, but that land was vested in the Aboriginal community, and I expect it would have qualified for native title had that earlier action not been taken. Had those people had native title, they would have been able to use that traditional right to engage in a tourist venture, which is what has happened anyway. Would people who enjoy the benefits of traditional usage, which includes the right to receive visitors and extend hospitality, and presumably charge for it in some sense, be able to engage in tourist ventures, which is one of the areas in which Aboriginal people in many parts of the State would like to engage for their economic benefit?

It is totally unacceptable that we in this Legislature should extinguish native title and replace it with a new set of rights which some of the citizens of this State will be able to exercise on a particular piece of land, and that when the people who will be the beneficiaries - and I use that word in a wide sense - of this set of rights come to us and say "What will this Bill, which will become an Act in the next month, mean, and what can we do now that that right is conferred?", all we can say is that the Premier said during the Committee stage that it will be up to the court to decide. Why do we bother?

Basically, all we are saying is that the court can define what it means. We are not doing the judiciary a great service because what guidance are we giving them to define what they mean? Are we indicating that we would like them to find in a way that Aboriginal communities can use the modern benefits of European civilisation and technology to exercise their traditional occupation of the land?

A criticism from the conservative side of politics following the Mabo decision was made by Mr Bill Hassell, the President of the Liberal Party, who said that he is opposed to unelected judges making laws. That is, the judiciary effectively is replacing the Legislature in this country. The Premier has left these questions unanswered, and it will be up to the courts to decide precisely what rights people have in relation to traditional usage and activities on the land. That is unacceptable. It is a contradiction to the criticism made of the Mabo decision and the way it came about. We as legislators should be more specific about the rights we confer on citizens with the passage of this legislation.

Mr D.L. SMITH: The issue really is whether the Aboriginal tradition as defined in this clause meets the High Court's idea that traditions can evolve and are still evolving.

Mr Court: The answer is yes.

Mr D.L. SMITH: If part of the traditional right was to construct a humpy on the land, under modern conditions would it be right to construct and occupy a house on the land?

Mr COURT: The member for Cockburn misunderstands the High Court ruling on native title. Native title was the label put on a bundle of traditional usage rights by Aboriginal people which would vary across Australia. The court deliberately did not define that.

Dr Lawrence: They gave some clear boundaries.

Mr COURT: It is the same definition as we are using. That is the whole purpose. For members to say that there should be a tighter definition is the exact opposite to what the judiciary spelt out.

Mr Thomas: Can they build a house on the land?

Mr COURT: That would be up to the court to make a determination. Such a general definition is up to the courts.

Mr McGINTY: I found the answer by the Premier regarding the responsible Minister really trite. It does not appreciate the fundamental importance of that question to the operation of the Bill.

Mr Court: Do you want to know the individual?

Mr McGINTY: No. The Premier should listen. The structure of this Bill is such that a range of duties are imposed on the Minister. The answer was that any Minister of the Crown could be made the Minister responsible for the administration of the Act. That is not satisfactory because certain conflicts emerge depending on whether that person has other responsibilities. Although this Bill deals primarily with the question of interests in land or the uses of land, it is not appropriate that the Minister for Lands be the Minister responsible for this Act.

It is important that we know, either by a definition in the Bill or by a statement of intent from the Premier, the way it will operate. I say that because we currently have an Aboriginal Lands Trust which is the holder of significant title to land on behalf of Aboriginal people; it is the manager of interest of land and the Minister responsible for that trust is the Minister for Aboriginal Affairs. Therefore, it is not necessarily the case that the Minister for Lands would be the Minister responsible for the administration of a Bill, the title of which indicates it is a Bill about lands. The reason why it should be the Minister for Aboriginal Affairs lies in clauses 41 and 43.

Mr Court: It would be any Minister other than the Ministers responsible for mining or land administration.

Mr McGINTY: So, it would not be the Minister for Lands?

Mr Court: It would not be the Minister for Lands.

Dr Lawrence: Fisheries or tourism?

Mr Court: Mining and lands are the two main areas where it would be inappropriate for those Ministers to be the Minister responsible for this legislation.

Mr McGINTY: I appreciate that comment insofar as it has ruled out the Minister for Lands being the responsible Minister for the administration of this Act.

Mr COURT: With the granting of land titles, we will have a new process where Aboriginal people are involved in such things as negotiations, and a recommendation is made by the Minister to the Minister for Lands, so we could not have a Minister making recommendations to himself.

Mr McGINTY: I draw attention to clauses 43 and 41. Clause 43 basically gives the Minister power to determine which Aboriginal people will be parties to ministerially initiated action for extinguishment of land. At clause 41 under "Advancement of Aboriginal Interests" it would appear to be inappropriate for anyone other than the Minister for Aboriginal Affairs to be the Minister responsible for determining matters designed to advance Aboriginal interests. The problem is what I see as an inconsistency in the Bill arising from the lack of definition. Each clause would tend to suggest strongly that the appropriate Minister should be the Minister generally responsible for the welfare and advancement of Aboriginal people in this State.

However, returning to clause 26, the Minister is also the person who is responsible for giving notice to Aboriginal people to extinguish even their meagre rights of traditional occupation and usage or to suspend those rights if the Minister considers that extinguishment or suspension necessary for any purpose for which the land could be taken or resumed compulsorily under any written law. It seems to me we have a conflict where a range of duties entrusted to the responsible Minister includes the advancement of Aboriginal people, which by traditional definition is the role of the Minister for Aboriginal Affairs. He is the advocate of Aboriginal people presumably within Cabinet and within Parliament but he is also the Minister responsible for acting against the interests of Aboriginal people by effecting extinguishment of their rights. This question needs greater consideration with a view to our knowing, before we proceed further, who is the Minister responsible because of the inherent conflict.

Mr COURT: The two Ministers who I said would not be responsible are those responsible for the mining and land administration areas. The member is correct. There is a clause in the legislation which would involve taking away some things from Aboriginal people and another area involves the advancement of Aboriginal interests. It is important in Government to get away from the concept that it is only the Minister for Aboriginal Affairs who can do good things for Aboriginal people.

I see no conflict if the Premier were the Minister responsible for this legislation. Any number of other Ministers could be responsible. We have not made a final determination on whether the legislation will come under the responsibility of the Minister for Aboriginal Affairs, if that is what the member is asking. We are definitely saying that the mining and lands Ministers are not the appropriate Ministers to take responsibility for this legislation.

Dr WATSON: Who will have conduct of this Bill once it is given the Royal assent?

Mr COURT: As I have just explained, we have not appointed anyone. It would be presumptuous to say who the Minister responsible for the legislation will be when the legislation has not yet gone through the Parliament. In the normal process, as the Premier, I will decide which Minister will be responsible for the carriage of this legislation. There is a possibility that I may be responsible, but we have not made that final determination.

Division

Clause put and a division taken with the following result -

Ayes (25)

Mr Blaikie	Mr Lewis	Mr W. Smith
Mr Board	Mr Marshall	Mr Strickland
Mr Bradshaw	Mr McNee	Mr Trenorden
Dr Constable	Mr Minson	Mr Tubby
Mr Court	Mr Nicholls	Mrs van de Klashorst
Mr Day	Mr Omodei	Mr Wiese
Mrs Edwardes	Mr Osborne	Mr Bloffwitch *(Teller)*
Mr House	Mr Pendal	
Mr Johnson	Mr Shave	

Noes (20)

Mr M. Barnett	Mrs Henderson	Mr Ripper
Mr Bridge	Mr Hill	Mr D.L. Smith
Mr Cunningham	Mr Kobelke	Mr Thomas
Dr Edwards	Dr Lawrence	Ms Warnock
Dr Gallop	Mr Marlborough	Dr Watson
Mr Grill	Mr McGinty	Mr Leahy *(Teller)*
Mrs Hallahan	Mr Riebeling	

Clause thus passed.

Clause 4: Act binds the Crown -

Dr LAWRENCE: I make the observation that this clause binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, in all its other capacities. That appears to be stating that the Government must abide by the Act - unexceptional - but appears to concede a limit to the powers of the Parliament to bind the Crown in all of its manifestations, for example, the Commonwealth of Australia. It suggests very firmly that this Bill undermines itself in that clause and confirms my view that it is not a serious legislative proposal because it appears to admit that it cannot bind the Crown in all of its manifestations, which means particularly the Commonwealth Government.

Even if that is not the understanding attached to this clause, it is an interpretation that can certainly be made of it and it is an interpretation that can be certainly made of the actions of the Government on a broader scale. This clause encapsulates the strategy of the Government which is, quite clearly, to draw the Commonwealth into the Western Australian arena and then beat it around the head because it does what is correct.

Mr COURT: I am informed that this is merely a standard clause, because the State has never been able to bind the Commonwealth.

Dr Lawrence: And it won't on this occasion either.

Mr COURT: I am just saying that it is a standard clause.

Clause put and passed.

Clause 5: Confirmation of titles already granted -

Mr McGINTY: I would appreciate from the Premier a clear statement of the Government's view on this Bill and the Racial Discrimination Act. This clause presents the question for the first time in the legislation. It may assist in dealing with future clauses if the Premier were to give a clear statement of the way in which he see this legislation fitting within the Racial Discrimination Act.

The point has been made in a number of the second reading debate speeches about the apparent certainty that this legislation will fail when it eventually gets before the High Court. It may prevent us, in the light of what the High Court has already said on the question of extinguishment of native title in the Queensland context, from falling foul of the Racial Discrimination Act.

To refresh the Premier's memory, I refer him to the Mabo No 1 judgment in 1988, in particular the decision of Justices Brennan, Toohey and Gaudron at page 96, which states -

> By extinguishing the traditional legal rights characteristically vested in the Miriam people, the 1985 Act abrogated the immunity of the Miriam people from arbitrary deprivation of their legal rights in and over the Murray Islands. The Act thus impaired their human rights while leaving unimpaired the corresponding human rights of those whose rights in and over the Murray Islands did not take their origin from the laws and customs of the Miriam people. If we accord to the traditional rights of the Miriam people the status of recognised legal rights under Queensland law (as we must in conformity with the assumption earlier made), the 1985 Act has the effect of precluding the Miriam people from enjoying some, if not all, of their legal rights in and over the Murray Islands while leaving all other persons unaffected in the enjoyment of their legal rights in and over the Murray Islands. Accordingly, the Miriam people enjoy their human right of the ownership and inheritance of property to a "more limited" extent than others who enjoy the same human right.
>
> In practical terms, this means that if traditional native title was not extinguished before the Racial Discrimination Act came into force, a State law which seeks to extinguish it now will fail. It will fail because s 10(1) of the Racial Discrimination Act clothes the holders of traditional native title who are of the native ethnic group with the same immunity from legislative interference with their enjoyment of their human right to own and inherit property as it clothes other persons in the community. A State law which, by purporting to extinguish native title, would limit that immunity in the case of the native group cannot prevail over s 10(1) of the Racial Discrimination Act which restores the immunity to the extent enjoyed by the general community. The attempt by the 1985 Act to extinguish the traditional legal rights of the Miriam people therefore fails.

That is a clear statement that the extinguishment of native title, which this Bill does, particularly in clause 7 and also in clause 5 by seeking to validate certain titles, runs into the same problem as the Queensland Act.

Mr COURT: Queensland took away some rights without paying any compensation and without any replacement for what was taken away. In that regard, it did not comply with the racial discrimination legislation. Under this legislation, extinguished rights will be automatically replaced with traditional statutory usage rights and if those rights are taken away, fair compensation must be paid. A procedure must be in place that is seen to offer procedural fairness. The two situations are quite different. Queensland offers no compensation and no replacement. In this case, fair compensation must be paid and it is replaced with a statutory right just as common law land titles that we used to have will be replaced with the statutory land titles.

Mr McGinty: Are you putting forward the proposition that you can extinguish title or interest in a discriminatory way; however, provided compensation is paid the discrimination is removed? Does payment of compensation render what would otherwise be discriminatory, non-discriminatory?

Mr COURT: No. If a right is taken away, fair compensation must be paid.

Mr McGinty: My question was whether you regard any act which would be racially discriminatory and offensive to the Act as not being racially discriminatory if you pay compensation. Is that all that is needed?

Mr COURT: I do not follow the member. If a court says that someone has a traditional usage right and that is taken from that person, he must be paid fair compensation.

Dr Lawrence: We are talking about clause 5, Premier. We are talking about the confirmation of title already granted.

Mr COURT: That is right. If, in the validating of titles, some native title was extinguished, under this legislation proper compensation would have to be paid.

Mr McGinty: I thought the majority in Mabo No 2 spoke about more than mere compensation being required to render non-discriminatory an act that would otherwise be discriminatory. It seems to me, whether it be in respect of the validation of certain titles in relation to the Racial Discrimination Act, that compensation might not be enough. For instance, the due process considerations were spoken about by most members of the High Court. There is no notice to people and there is no right for people to object. None of those considerations are in here in relation to the validation of these titles. It seems to me that the mere payment of compensation is not enough.

Mr COURT: When we extinguish native title and replace it immediately as a statutory right, nothing has been taken away; it has been replaced. Native title becomes a statutory right under this traditional usage. We are saying that, whatever those rights were, they are given a statutory basis. The other point is, if it is taken off them they have to be paid fair compensation.

Mr McGinty: Is it enough to meet the requirements of the Racial Discrimination Act in your view?

Dr Lawrence: This is the first clause where you are likely to fall foul of the Racial Discrimination Act. That is why the questions are being asked so pointedly.

Mr McGinty: Will compensation meet the requirements of the Racial Discrimination Act?

Mr COURT: As long as the proper processes are gone through.

Mr McGinty: There are no processes in this legislation. You are extinguishing native title. Okay, you pay compensation under clause 5. However, you do not have processes of notices to Aboriginal people that their rights have been extinguished and evaluations made of their arguments.

Mr COURT: But it is automatically replaced. The point that was made in relation to the validation of past titles is that we cannot provide procedural fairness retrospectively. Those acts have happened.

Mr McGinty: Those acts are invalid.

Mr COURT: From 1975 until now?

Mr McGinty: Yes, they offend the Racial Discrimination Act.

Mr COURT: That is why, if someone believes native title has been extinguished, they must put in a claim within 12 months. We were asked tonight to extend that time by changing the date of proclamation to the date of assent.

Mr McGinty: You can't challenge the extinguishment. That is the important point. You don't have a due process provision. The majority of the court in Mabo No 2 was of the opinion that due process was needed. There is no process in this legislation other than to assess the quantum of compensation.

Mr COURT: Those titles have already been granted.

Mr McGinty: In law they have not because they have been invalidly granted. That is why you are proposing to legitimise them.

Mr COURT: That is right and as part of that process we have to make sure that proper compensation is paid.

Dr LAWRENCE: Despite what it may seem, we are trying to be helpful because I think the Premier is in trouble on this clause. This clause is clearly an attempt to, in a very wholesale way, actually defeat the provisions of the Racial Discrimination Act, not to meet them. In other words, where the titles have been granted without consultation and compensation, this clause simply extinguishes Aboriginal rights of common law notwithstanding that this is contrary to the international covenants upholding rights to property which Australia has entered into and which are reflected in the Racial Discrimination Act. That is the point of our objection. The second effect of the clause is that Aboriginal people get no right of traditional usage when their title has been extinguished, although we are told that they are not necessarily at odds and their only right is compensation under clause 28. That is the effect of those provisions. In conjunction with other clauses, this Bill extinguishes common law native title including native title comprising proprietary rights in WA and replaces it with a non-proprietary system of statutory rights.

It is arguable, and will be I am sure argued at some stage, that such a complete extinction of title held by a racial group even with compensation is in breach of the Racial Discrimination Act. The member for Fremantle has already indicated that in Mabo Nos 1 and 2 the High Court very clearly indicated that extinguishing native title in the way that was done under the Queensland Coastal Island Declaratory Act 1985 was invalid as it would have deprived the islanders of native title while leaving all other persons who held property unaffected. That is one of the points about breaches of the Racial Discrimination Act. It was significant that the Queensland Act did not provide compensation. This is the point the Premier is trying to use as the linchpin of his argument; however, it is clear that the High Court did not say that compensation alone would have saved the Queensland legislation from being struck down and the Mabo decision coming into effect. They were also influenced by the extent of extinction of title. It is arguable that the traditional usage Bill beginning from this clause is contrary to the Racial Discrimination Act and will be found to be. That is the matter for the lawyers because it is bound to end up in the courts.

Mr COURT: For a start, the Government is not saying that any invalid titles have been issued. We are saying that all titles issued are valid title, but if someone was able to prove that they had native title and it had been extinguished, compensation must be paid. The Commonwealth has the same difficulties with retrospectivity. As far as the Commonwealth is concerned I am sure it believes that all titles that it has granted are valid titles. This is the difficulty one has when one is retrospectively looking at that so-called validation.

Clause put and passed.

Clause 6: Previous extinguishment or impairment not affected -

Dr LAWRENCE: In this clause we get to the nub of the Bill - the retrospective confirmation of title - which we tried to point out to the Government in clause 5, offends some important principles. Clause 6 deals with the replacement of the existing contemporary native title with statutory rights of traditional usage. This is where the Bill is at its most offensive. In case there was any doubt after clauses 5 and 7 of any remaining title, clause 6 puts the kybosh on it, and there is no doubt that it is designed to do that.

This is a draconian clause. It may appear to be inoffensive, but it has the effect even if native title were accidentally extinguished - not deliberately - that will stand. There is no quarter to be given. Under clause 5, in the case of titles already granted, according to the Premier all of them legitimately conferred, there is some suggestion of compensation. In the case of clause 6, even if it is accidentally extinguished or impaired in the past, that stands; and, of course, in clause 7 we see the beginning of that final extinguishment of native title. It must be remembered, and again I want to draw this to the attention of the Chamber, that the High Court has said that Executive acts can extinguish native title. We have not disputed that. Consequently, any act of a Minister - even in error - can have the effect of extinguishment. It need not be a deliberate, careful act after an assessment of competing interests or economic needs of the State, but simply an error. Yet it has the same effect as a carefully constructed and deliberate decision set out under the various provisions of this Bill.

In my view that is not a reasonable course of events. We are talking in the past. This is talking about native title that has been extinguished or impaired by any event or action and cannot be revived. Nothing in this Bill revives it. That is even if subsequently there were quite clear indications it was not intended and native title could have been continued, and perhaps there has even been continuing occupation according to the decisions of Mabo 2.

Mr Court: You talk about an "error", what do you mean?

Dr LAWRENCE: This Bill says it cannot be reversed. It says, "If native title had been extinguished or impaired by any event or action." It is not as in clause 5 "other title", but "by any event or action that took place before the commencement of this section, nothing in this Bill revives that native title and removes that impairment." It is the Premier's Bill, can he explain to the House what it means?

Mr Court: What do you mean by "error"?

Dr LAWRENCE: The Premier cannot expect me to guess what is on his mind. He must be able to tell the Chamber what it is that may have extinguished or impaired native title but does not fall under clause 5.

Mr Court: It is talking about native title extinguished.

Dr LAWRENCE: No, it is not. Clause 5 says the grant of a title during the prescribed period has effect and is to be regarded as always having effect according to its tenor; subclause (2) says that a title to land granted during the prescribed period or any act, matter or thing done by reference to such a title is not to be regarded as ever having been invalid. Clause 5 is confirming titles to land that may have otherwise been since 1975 seen to be discriminatory given the existence in common law of native title. Clause 7 goes on to extinguish contemporary title. Clause 6 is stuck in there to make sure, apparently, that nothing else might have been done that might be argued as having in a sense accidentally extinguished or impaired native title which will allow its revival. It says, "If native title has been extinguished or impaired by any event or action that took place before the commencement of the section, nothing in this Act revives that native title or removes that impairment." It is not talking about other competing titles. If the Premier says my interpretation of that is incorrect, he has a responsibility to say precisely what it means.

It is clear that Executive acts of a serious kind can extinguish native title. It seems that a Minister could extinguish it, perhaps in error, perhaps deliberately, going through the processes of clause 7 onwards but not in the light of clause 5.

Mr COURT: We are talking about previous extinguishment.

Dr Lawrence: I understand that.

Mr COURT: We are not talking about what happens in the future, but previous extinguishment. Things that happen in the past do not resurrect native title.

Dr Lawrence: Anything?

Mr COURT: Yes.

Mr BRIDGE: This section drives home the two barrels at the one time. Clause 6 states that whatever the impairment or otherwise that may have occurred in the past it cannot be retrieved because of this Bill. Clause 7 states in clear detail how native title to land that existed immediately before that commencement is extinguished. That leaves no doubt as to the intention and the application of this legislation. When one combines those two clauses it spells out what has been said by many: Absolutely nothing will be available to the Aboriginal people. I find it unbelievable that we must continue to say this to people who I thought had a bit of brain in their brain box and a degree of intelligence. There is no way those two clauses can be interpreted to mean other than absolutely nothing being available.

Further in the Bill another swipe is made at clause 19 which refers to the non-availability of proprietary rights. The Premier must try to a greater extent than he has ever done before to even remotely get me thinking that there is anything in it at all. This is the whole folly of this exercise and is where the whole tragedy of this debate in Western Australia lies. There would not be the polarisation, the anxiety and the division in the community were there a bit in it for everybody, because in the end we would be going down some pathway towards resolution. Even if it were not as good as we would like, from whatever particular angles we may have come in pursuit of fair play, at least it would be a start in the right direction.

I repeat again to the Premier what I have said on public record, which he has not liked:

This clause contains the confirmation that at the end of the day when this legislation is operative, and the due processes involved are suddenly available to be followed through, there will be nothing to gain from it.

Mr Court: I think you have the wrong clause.

Mr BRIDGE: I have not the wrong clause. I have made reference to what clause 19 states, and we will get to that clause later. That is how I interpret it, because clause 7 clearly refers to the extinguishment of native title. Before that the Bill refers to the inability to be able to retrieve anything that has been extinguished before. How could I have it wrong? It is written in the Bill. That is the big problem with the legislation. I do not know how, in the context of what is printed in the Bill, the Government is going to be able to retrieve the situation to be able to offer anything at all to the Aboriginal people.

Mr COURT: Clause 6 relates to past events, not the future. It reflects what the High Court said in the Mabo decision; that is, once native title is extinguished, it cannot be revived at common law. All clause 6 does is confirm that action.

Mr McGINTY: I will focus on the concluding words of clause 6 "nothing in this Act revives that native title or removes that impairment". One could make a number of general comments about this Bill, one of which is that an awful lot of nonsense is spoken in the Bill. Another one is that there could not possibly be any hint anywhere in this Bill of any revival of native title. This whole Bill is about extinguishing the rights of Aboriginal people in Western Australia. There can be no suggestion that any clause in this Bill would in any way by inference, by express provision or otherwise, revive native title. If the Premier cannot tell me that this clause is not an absolute nonsense by pointing to one single clause in this Bill which could in any way, even in a relatively extreme way, be interpreted as giving revival to native title, I suggest that he drop this whole clause.

It is an absolute nonsense which is designed to suggest that the Bill is quite benevolent in its operation. One could even interpret it in such a kind way as to say that it is bestowing rights on Aboriginal people which simply have been extinguished in the past. It is a complete and utter nonsense. I challenge the Premier to now give me a clause and an interpretation which is susceptible to that approach, or else drop clause 6 altogether.

Mr COURT: The legislation provides for compensation if people prove that their native title was extinguished. However, the Government is just putting it beyond doubt that the native title cannot be revived. So, where it is gone, it is gone. The legislation contains the process for the compensation to be made.

Mr McGINTY: I know that the hour is getting late, but I simply did not understand that response; it made no sense.

Mr Court: I just explained to you: There is nowhere that revives the title because that is a past act that has already happened. If it is proven that the native title was there and had been impaired or extinguished, compensation must be paid. The legislation makes provision for the compensation.

Mr McGINTY: Clause 6 does not refer to compensation. What is the relevance of this clause to compensation?

Mr Court: We are talking about the previous extinguishment.

Mr McGINTY: Yes, it has been extinguished. This clause states that nothing in this Bill revives that native title. That is an absolute nonsense. One could place no possible construction on any clause in this Bill which would give rise to a revival of native title. The clause is not relevant to the question of compensation. I ask the Premier again whether he can point to anything in the Bill which gives any meaning or validity to clause 6. Otherwise, will he drop it?

Mr COURT: The summary is that by including this clause we are putting the position beyond doubt and we are glad that the member for Fremantle agrees with us. He is saying that it is not necessary; we have put it in there to put that issue beyond doubt.

Division

Clause put and a division taken with the following result -

Ayes (25)

Mr Blaikie	Mr Lewis	Mr W. Smith
Mr Board	Mr Marshall	Mr Strickland
Mr Bradshaw	Mr McNee	Mr Trenorden
Dr Constable	Mr Minson	Mr Tubby
Mr Court	Mr Nicholls	Mrs van de Klashorst
Mr Day	Mr Omodei	Mr Wiese
Mrs Edwardes	Mr Osborne	Mr Bloffwitch *(Teller)*
Mr House	Mr Pendal	
Mr Johnson	Mr Shave	

Noes (20)

Mr M. Barnett	Mrs Henderson	Mr Ripper
Mr Bridge	Mr Hill	Mr D.L. Smith
Mr Cunningham	Mr Kobelke	Mr Thomas
Dr Edwards	Dr Lawrence	Ms Warnock
Dr Gallop	Mr Marlborough	Dr Watson
Mr Grill	Mr McGinty	Mr Leahy *(Teller)*
Mrs Hallahan	Mr Riebeling	

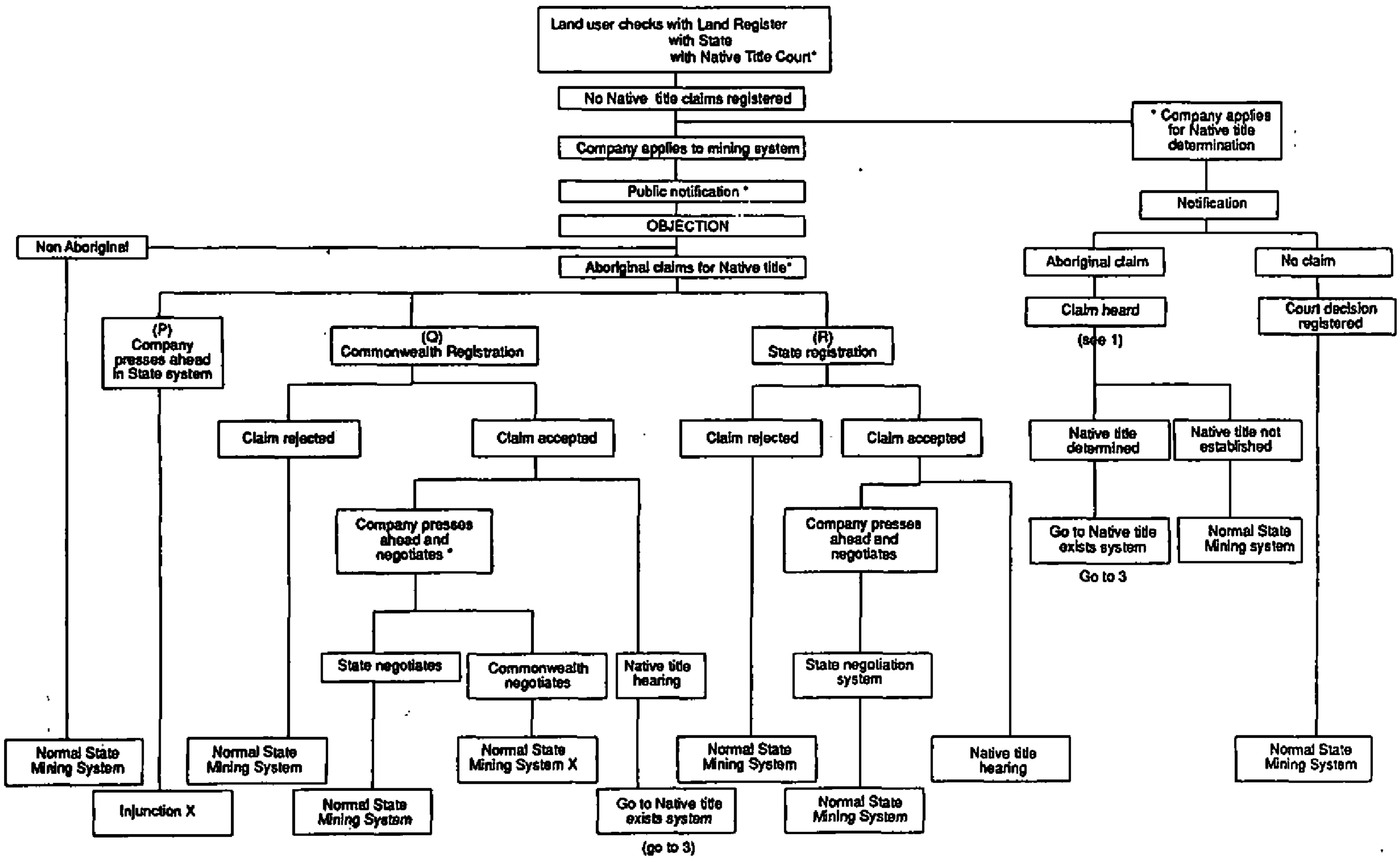
Clause thus passed.

Progress

Progress reported and leave given to sit again, on motion by Mr Court (Premier).

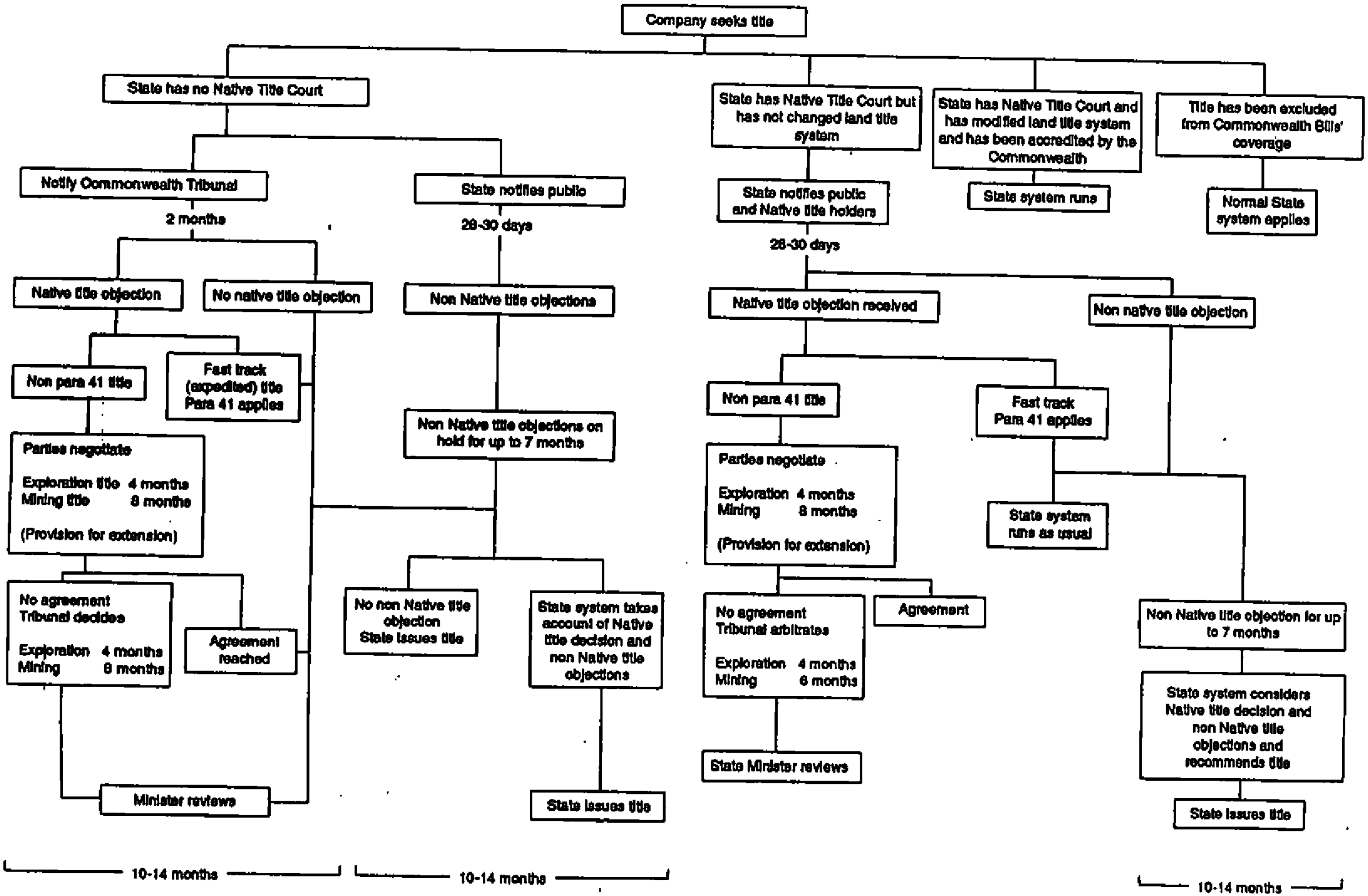
House adjourned at 1.13 am (Thursday)

2. PROCESS FOR DEALING IN LAND NATIVE TITLE NOT KNOWN



Non-compliant States - P or Q: Compliant States - P or Q or R:
X Major Problem Points if States Uncooperative

3. PROCESS FOR DEALING IN LAND
NATIVE TITLE KNOWN AND CLAIMANT REGISTERED



QUESTIONS ON NOTICE

PREMIER AND CABINET, DEPARTMENT OF - EXPENDITURE ACCOUNTS MEDIA REPORTS, INFORMATION LEAK

706. Mr RIPPER to the Premier:

(1) In relation to recent media reports about the expense accounts of the Departments of Premier and Cabinet, was the information leaked to the media?

(2) If so, will the Premier ask the Commissioner of Police to investigate the source of the leak?

(3) If the information was not leaked -

(a) who provided the information to the media;

(b) on whose authority?

(4) Was the information to be provided to the media?

(5) How did the accounts come to be in the possession of the member for Avon?

(6) Were the accounts audited?

(7) If so -

(a) by whom;

(b) when?

(8) Were the accounts authorised by the Director General of the Ministry of the Premier and Cabinet?

(9) Who was this officer at the time?

(10) Will records of similar expenditure in the Departments of Premier and Cabinet be regularly made available in the future?

Mr COURT replied:

(1) No.

(2) Not applicable.

(3) (a) I did, after repeated requests.
(b) Not applicable.

(4) Not applicable.

(5) I presume from the media, though the question should be directed to the member.

(6)-(10)
I am advised that the Ministry of the Premier and Cabinet is subject to an audit process conducted throughout the year by the Office of the Auditor General. In addition, the ministry's internal auditor undertakes specific audits as directed by the accountable officer and/or internal audit committee. The accountable officer is the Director General, Mr D.G. Blight.

CONSULTANTS - MINISTER FOR PLANNING; HERITAGE, DEPARTMENTS OR AGENCIES EMPLOYMENT

762. Mr RIPPER to the Minister for Planning; Heritage:

(1) What consultants have been retained by the Minister and the Minister's departments or agencies since 6 February, 1993?

(2) What amounts have been paid to each consultant?

(3) What services were provided by these consultants?

(4) For what period were these consultants engaged?

The answer was tabled.

[See paper No 584.]

WESTERN AUSTRALIAN POTATO MARKETING AUTHORITY - PRIVATE INVESTIGATOR'S REPORT, TABLING; IMPROPER ACTIVITY FINDINGS

1047. Mr GRILL to the Minister for Primary Industry:

(1) (a) Referring to a private investigation earlier this year into the activities of the Western Australian Potato Marketing Authority, does the private investigator's report contain any findings of illegal or improper activity;

(b) if so, what is the nature of that activity?

(2) Given that the Minister has had in his possession a copy of the private investigator's report for at least two and a half months, what action has the Minister taken on its findings?

(3) When will the Minister table the report in the interests of accountability?

Mr HOUSE replied:

(1) The private investigation referred to was into alleged black marketing of potatoes, rather than "into the activities of the Western Australian Potato Marketing Authority". A minor part of the investigation focused on distribution of potatoes from the authority's store. The report contains a number of allegations pertaining to black marketing. In the opinion of the authority's legal advisers, insufficient evidence was available to lead to successful prosecutions under the Act and regulations. The authority's legal advisers saw no evidence of illegality or impropriety by employees in terms of distribution of potatoes.

(2) I am satisfied that the authority has obtained sound legal advice on the evidence presented and acted accordingly, subsequently strengthening its performance in enforcing the Act and regulations and its internal management procedures in relation to black market activity. The authority is ready to act on any information where sufficient evidence is available and successful prosecution is likely.

(3) It is not my intention to table the report in view of the above.

SALMON FISHERIES - COMMERCIAL, TOTAL ALLOWABLE CATCH REMOVAL

1210. Mr HILL to the Minister for Fisheries:

(1) Why did the Minister remove the total allowable catch applying to the commercial salmon fishery?

(2) Does the Minister intend introducing any other resource sharing measure to replace the total allowable catch in the next salmon season?

(3) If no, why not?

Mr HOUSE replied:

(1) The measure applied did not provide any significant conservation benefit.

(2) A buy back proposal of commercial salmon licences is being examined in the context of changing resource sharing usage of Australian salmon. Specific research is to be undertaken on the recreational fishery as well as into economic aspects of salmon fishing.

(3) The distribution of Australian salmon is largely influenced by the conditions of the Leeuwin current on the west coast. Metropolitan anglers

reported last season as being one of the best seasons ever, even though there was no total allowable catch quota.

NINGALOO MARINE PARK - BAG LIMITS REVIEW

1212. Mr HILL to the Minister for Fisheries:

(1) Was it the Minister's predecessor's intention to monitor and review the bag limits applicable for the Ningaloo Marine Park on an annual basis?

(2) Will the Minister honour this commitment?

(3) If yes, when will the review be undertaken?

(4) If no, why not?

Mr HOUSE replied:

(1) As the member was the previous Minister, he is best placed to know this.

(2) I have a commitment to review bag limits.

(3) A review meeting was held in Exmouth on 30 September 1993. The review was conducted through the Coral Coast parks advisory committee with representatives from the Fisheries Department and key interest groups. I will receive a final report and recommendations from the review meeting shortly.

(4) Not applicable.

FISHERIES - TRAWL MANAGEMENT PLAN, SOUTH WEST NORTH OF CAPE BOUVARD, EXTENSION

1214. Mr HILL to the Minister for Fisheries:

Will the Minister give consideration to extending the trawl management plan for the south west north of Cape Bouvard?

Mr HOUSE replied:

The management plan for the south west trawl fishery is currently under review. All aspects of the plan may be discussed through the review process. However, the current boundaries of the fishery already extend north to the area off Guilderton.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1264. Dr LAWRENCE to the Minister for Commerce and Trade

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr COWAN replied:

Nil.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1265. Dr LAWRENCE to the Minister for Resources Development:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr C.J. BARNETT replied:

Three: Two representatives from the State Energy Commission of Western Australia; one as a delegate and the other representative delivered a paper. One officer from the Energy Policy and Planning Bureau.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1266. Dr LAWRENCE to the Minister for Primary Industry:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr HOUSE replied:

Nil.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1267. Dr LAWRENCE to the Minister for Water Resources:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr OMODEI replied:

Nil.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1268. Dr LAWRENCE to the Minister for the Environment:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr MINSON replied:

I am advised that no officers from agencies within my three portfolios attended this conference.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1269. Dr LAWRENCE to the Minister for Community Development:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr NICHOLLS replied:

One staff member from the Department for Community Development attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1270. Dr LAWRENCE to the Minister for Labour Relations:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr KIERATH replied:

Two.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1271. Dr LAWRENCE to the Minister for Police:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr WIESE replied:

Police Department	- one staff member
Police Licensing and Services	- nil
WA Fire Brigades Board	- one staff member
Bush Fires Board of WA	- nil

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1272. Dr LAWRENCE to the Minister for Planning:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr LEWIS replied:

One.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1273. Dr LAWRENCE to the Attorney General:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mrs EDWARDES replied:

Director of Public Prosecutions - nil.

Western Australian Electoral Commission - nil. The commissioner did attend to present a keynote case study; he also chaired the eight sessions on day one and four sessions on day two of the conference. No registration fee was payable.

Ministry of Justice - nil
Office of Women's Interests - nil
Equal Opportunity Commission - nil
Office of the Information Commissioner - nil
Law Reform Commission - nil.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1274. Dr LAWRENCE to the Minister representing the Minister for Mines:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr C.J. BARNETT replied:

The Minister for Mines has provided the following reply -

Department of Minerals and Energy - no staff members from the department attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993.

Department of Land Administration - no staff members from the department attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993.

Western Australian Land Authority - no staff members from LandCorp attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1275. Dr LAWRENCE to the Minister representing the Minister for Transport:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr LEWIS replied:

The Minister for Transport has provided the following response -

One from Westrail. One registration was shared by four staff from the Main Roads Department who attended different sessions. One member from the Port Hedland Port Authority registered but did not attend due to other urgent commitments.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1276. Dr LAWRENCE to the Treasurer representing the Minister for Finance:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr COURT replied:

The Minister for Finance has provided the following reply -

None.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1277. Dr LAWRENCE to the Minister representing the Minister for Health:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr MINSON replied:

The Minister for Health has provided the following reply -

Health Department of WA - one
Sir Charles Gairdner Hospital - three - shared one registration
Nil attendance from WA Alcohol and Drug Authority
One representative from the Health Promotion Foundation.

Three members of the Arts portfolio were invited to attend as major speakers. No fees were paid and no registration fees were charged. Each speaker only attended the session during which their paper was delivered. Two of the members were from the Department for the Arts and one from the Library and Information Services of WA.

Nil attendance from the Department of Fair Trading.

PERFORMANCE INDICATORS IN THE PUBLIC SECTOR CONFERENCE - DEPARTMENTAL STAFF ATTENDANCE

1278. Dr LAWRENCE to the Parliamentary Secretary to the Minister for Education:

How many staff from departments for which the Minister has responsibility attended the conference Performance Indicators in the Public Sector held on 11 and 12 October 1993?

Mr TUBBY replied:

The Minister for Education has provided the following reply -

One.

KALGOORLIE FRINGE DWELLERS - BEGA GARNBIRRINGU FUNDING

1349. Mr TAYLOR to the Minister representing the Minister for Health:

With reference to the apparent commitment made by the Minister during the Minister's July 1993 visit to Kalgoorlie to support the commitment of ongoing funds to the Aboriginal Health Workers program for fringe dwellers, can the Minister inform the House whether -

(a) no offer of funds to the Bega Garnbirringu has yet been made;

(b) as a result the corporation has not been able to adequately address the fringe dwellers' health issues?

Mr MINSON replied:

The Minister for Health has provided the following reply -

(a) Agreement has been reached to purchase from Bega Garnbirringu, Aboriginal health worker services for the fringe dwellers in Kalgoorlie. The level of funds committed to this project in 1993-94 is $50 000. This project is an extension of the initiative commenced in 1992-93. Negotiations with Bega Garnbirringu have always been on the basis that the level of funding would be at least at the level provided for 1992-93. Bega Garnbirringu has been advised of the offer of $50 000 for the service contract.

(b) Not applicable.

BRADSHAW, DR WAYNE - MEDICAL BOARD OF WA, CHANGE OF ADDRESS NOTIFICATION

1365. Mr RIPPER to the Minister representing the Minister for Health:

(1) Did Dr Wayne Bradshaw notify the Medical Board of a change of address this year or last year?

(2) If so -

(a) on what date;

(b) what was the address provided?

(3) What was the previous address?

(4) For how long was Dr Bradshaw registered at the previous address?

(5) Was the notification of change of address posted locally, or did the letter arrive from overseas?

(6) Did the Medical Board advise the Police Department that they had received correspondence from a fugitive?

Mr MINSON replied:

The Minister for Health has provided the following reply -

In responding to this question the member is referred to my response to question without notice from Hon A. MacTiernan, dated 9 November 1993.

(1) Yes.

(2) (a) 5 September 1993 - received 13 September 1993

(b) 7 Council Road, Mundaring.

(3) 15A Courageous Place, Ocean Reef.

(4) Since 31 December 1991.

(5) Not known, envelope not retained.

(6) No.

MEDICAL BOARD OF WA - MEDICAL PRACTITIONERS REGISTRATION FEE

Bradshaw, Dr Wayne, Registration Payments

1366. Mr RIPPER to the Minister representing the Minister for Health:

(1) What is the annual fee payable by medical practitioners to remain registered by the Medical Board?

(2) What is the source of payments to maintain Dr Wayne Bradshaw's registration?

(3) If by cheque, on whose account is the cheque drawn?

Mr MINSON replied:

The Minister for Health has provided the following reply -

In responding to this question the member is referred to my response to question without notice from Hon A. MacTiernan, dated 9 November 1993.

(1) $120.

(2) His 1993 registration fee was paid by cheque.

(3) This information is not available. The Medical Board of WA records on whose behalf the payment was made - ie Dr Bradshaw - and the name of the bank and branch.

GOVERNMENT DEPARTMENTS AND AGENCIES - POLLING, MARKET RESEARCH OR SURVEYS

1401. Mr RIPPER to the Minister representing the Minister for Mines; Lands:

(1) What polling, market research or surveys have been undertaken by departments and agencies under the Minister's control since 6 February 1993?

(2) (a) who conducted each project;

(b) and what was the cost?

(3) What was the purpose of the project?

(4) Which projects were authorised by the Minister?

Mr C.J. BARNETT replied:

Department of Minerals and Energy -

(1) Client satisfaction surveys are under way for the scientific support program, petroleum tenure subprogram and regional geoscience mapping subprogram.

(2) (a) They are being conducted by the institute for research into international competitiveness at Curtin University.

(b) Total external cost will be more than $20 075.

(3) To establish performance indicator measures and serve as a basis for strategies for improvements in performance.

(4) Formal approval of the Minister was not required or sought.

Department of Land Administration -

(1) The Department of Land Administration has not engaged the services of market research or survey firms to undertake market research or surveys since 6 February 1993.

(2)-(4) Not applicable.

Western Australian Land Authority -

(1) LandCorp regularly undertakes market research to provide information in support of its land development program, and the following surveys have been undertaken since 6 February 1993 -

(i) Attitudes to industry survey - Geraldton.
(ii) Albany - "Mainstreet" - public consultation.
(iii) Bunbury - Victoria Street upgrade - public consultation.

(2)

(i)	Australian Bureau of Statistics	$4 120
(ii)	Ms Kay Geldard	$6 024
(iii)	Ms Del Ambrosius	$4 819

(3) (i) To gauge Geraldton community's attitude to industry.
(ii)-(iii)
To gain community feedback and reactions to a joint LandCorp/local government project.

(4) None of the above required ministerial approval.

GOVERNMENT DEPARTMENTS AND AGENCIES - POLLING, MARKET RESEARCH OR SURVEYS

1410. Mr RIPPER to the Minister for Labour Relations; Works; Services; Multicultural and Ethnic Affairs:

(1) What polling, market research or surveys have been undertaken by departments and agencies under the Minister's control since 6 February 1993?

(2) (a) who conducted each project;

(b) and what was the cost?

(3) What was the purpose of the project?

(4) Which projects were authorised by the Minister?

Mr KIERATH replied:

Department of Productivity and Labour Relations -

(1) Three client satisfaction surveys have been conducted by the Department of Productivity and Labour Relations' policy, labour relations services and workplace reform areas since 6 February 1993. These involved the department's public sector clients. A survey on the issue of women and part time employment was conducted in the public and private sectors. Evaluations of training seminars and publications were also undertaken.

(2) (a) DOPLAR conducted all projects.

(b) Nil cost to the department as existing departmental resources were used.

(3) The client satisfaction surveys were conducted to obtain information for use in preparing performance indicators, as per the Auditor General's requirements. Information from the other surveys was collected for policy development purposes.

(4) Nil.

Department of Occupational Health, Safety and Welfare -

(1) A survey of readers of selected Department of Occupational Health, Safety and Welfare publications was carried out in March/April 1993, to assess the effectiveness of these publications in the workplace.

(2) (a) The project was undertaken by Curtin University's centre for health promotion research.

(b) Cost of the project was $30 356.

(3) The purpose of the project was to assess whether the information contained in the documents is suitable for use by various persons in the workplace - employers, managers, supervisors, employees, and health and safety representatives; whether the documents adequately convey the intended message; the effect on knowledge of the OHS issues concerned; and the penetration of documents within workplace requesting them. The project was conducted to ensure that DOHSWA's preventive publications are effective in getting information to, and used in, workplaces.

(4) Not applicable.

Building Management Authority -

(1) The BMA has conducted a number of surveys making use of both outside consultants and the skills of BMA employees, none of which were authorised by the Minister.

(i) Customer satisfaction survey - corporate clients; commissioned date 3 February 1993; implementation date September 1993.

(ii) Customer satisfaction survey - building occupiers; commissioned date 3 February 1993; implementation date July 1993.

(iii) Construction operations - project survey; commissioned date 6 July 1993; implementation date August 1993.

(2) (a) (i) Curtin University - BMA cooperative education program
(ii) Curtin University - BMA cooperative education
(iii) Reark Research Pty Ltd.

(b) (i) $12 800
(ii) $12 800
(iii) $2 500

(3) (i)-(ii) Customer service ratings survey
(iii) Project completion satisfaction.

(4) Nil. Note: Internally developed surveys: The BMA is involved in a range of service delivery surveys conducted by its employees, including breakdown repair services, minor works services, and property services.

Department of State Services -

(1) The Department of State Services undertakes regular customer surveys for performance assessment purposes. No polling is undertaken. Since 6 February 1993 customer surveys were undertaken in the following areas: Perth Observatory, Mail West, State Microfilm, State Supply Disposal Centre - customer and vehicle satisfaction surveys, State Government Bookshop, Supply West, State Print and the State Supply Commission.

(2) (a) With the exception of the State Supply Disposal Centre all surveys were conducted in-house. For the disposal centre's vehicle satisfaction survey, an external telemarketing consultant - 132929 Australia Pty Ltd - conducted telephone interviews.

(b) The consultancy fee for the disposal centre's vehicle satisfaction survey was $816.75. The remaining survey costs, involving in-house personnel, were from the department's normal operating budget allocation.

(3) The purpose of all surveys is to measure customer satisfaction and to gather information for planning purposes.

(4) All surveys were authorised departmentally.

LANDCORP - MUNGARI INDUSTRIAL ESTATE, CAPITAL WORKS EXPENDITURE

1415. Mr TAYLOR to the Minister representing the Minister for Lands:

(1) What amount, if any, will be expended by LandCorp on capital works for the Mungari industrial estate in 1993-94?

(2) If no funds are to be expended, what is the reason (or reasons) for the lack of expenditure?

Mr LEWIS replied:

The Minister for Lands has provided the following reply -

(1) Capital works - $25 000.

(2) Not applicable.

WATER AUTHORITY OF WESTERN AUSTRALIA - PARKLAND TRAIL CANNING VALE PUMP STATION, LANDCORP-WINTHROP JOINT VENTURE

1416. Mr THOMAS to the Minister representing the Minister for Lands:

(1) Did the Minister for Water Resources in answer to question on notice 1343 of 1993 state that the Water Authority of Western Australia constructed the Parkland Trail Canning Vale pump station for the LandCorp and Winthrop joint venture?

(2) Did the Minister for Water Resources state that the price to LandCorp and Winthrop joint venture was $217 085?

(3) Did the LandCorp and Winthrop joint venture obtain quotes from private contractors for this work?

(4) If yes to (3) -

(a) who quoted;

(b) what prices were submitted?

Mr LEWIS replied:

The Minister for Lands has provided the following reply -

(1)-(3)
Yes.

(4) (a) DM Drainage quoted to provide the parties with an independent check on the WA Water Authority's estimate of the cost of the works.

(b) $180 000; however, this did not allow for the cost of design and supervision.

QUESTIONS WITHOUT NOTICE

BRADSHAW, DR WAYNE - ATTORNEY GENERAL, CAMPAIGN DONATIONS

442. Dr GALLOP to the Attorney General:

Further to the question put to the Attorney General by the member for Albany yesterday which was in order and answered by the Attorney General in these terms, "Dr Bradshaw made a contribution to the campaign by meeting accounts to the value of $2 000, and he also lent the campaign a facsimile machine" will the Attorney General confirm that the campaign donations she received from Dr Wayne Bradshaw were the full extent of campaign assistance provided by Dr Bradshaw either directly or indirectly?

Ruling - By the Speaker

The SPEAKER: I rule the question out of order.

ROADS - GREAT EASTERN HIGHWAY, EAST OF SAWYERS VALLEY, IMPROVEMENTS

443. Mrs van de KLASHORST to the Minister assisting the Minister for Transport:

I have had a number of complaints regarding the condition of the Great Eastern Highway east of Sawyers Valley and within the Sawyers Valley townsite. Can the Minister advise the condition of the road in these areas and what improvements can be made?

Mr McGinty: That is most probably out of order. The member is not allowed to ask a Minister questions. Don't be silly!

The SPEAKER: Order!

Mr McGinty: Members opposite are only allowed to ask dorothy dix questions.

The SPEAKER: Order! Member for Fremantle, I give you notice.

Mr LEWIS replied:

I have been advised by the Minister for Transport that there are some problems with the Great Eastern Highway in Sawyers Valley and east of Sawyers Valley. There was a fatality six kilometres to the east of Sawyers Valley and this area has been -

Mr McGinty interjected.

Mrs Henderson: They don't have to, they are protected.

Mr LEWIS: Members opposite are terribly rude.

The SPEAKER: Order! I ask the Minister to continue with his answer.

Mr LEWIS: The area east of Sawyers Valley has been examined and corrective roadworks will be done at a cost of $200 000 in 1993-94.

Mrs Henderson: What did the royal commission say about question time?

The SPEAKER: Member for Thornlie, order!

Mr LEWIS: There are also some problems with the roads within Sawyers Valley and $400 000 has been appropriated to rectify those problems. That work will be shared between the Main Roads Department and the local authority.

POLICE - COUNTRY STATIONS, LEAVE REPLACEMENTS

444. Mr CATANIA to the Minister for Police:

I refer to the Minister's answer to question 626 which reveals that a contingent of 259 police officers were deployed to Parliament House for the workers' rally on 19 August 1993 -

(1) How is it possible that 259 police officers were mustered for a peaceful protest, yet country police stations are facing closure because the Police Department is unable to arrange a handful of temporary replacements for officers going on leave?

(2) Does the Minister agree with the view expressed by the Minister for Primary Industry on 28 January on Bunbury ABC radio when Mr House said that the majority of country police stations were consistently understaffed because there were not enough numbers to cover rostered leave, which meant country police did not have the power to get out into the local beat?

Mr House: That was when you were in Government. You couldn't handle the issue properly. You didn't have enough policemen.

Mr CATANIA: I would not yell too much, Mr House.

The SPEAKER: Order! The member for Balcatta's question is extensive, I ask him to get to the point.

Mr CATANIA: Finally -

(3) Mr House says that a strong, visible police presence is one of the most effective deterrents to petty crime in the south of the State. Does the Minister recognise that the Government's cutbacks of the police budget is the root cause of this problem and will result in a proliferation of petty crimes in regional communities?

Mr WIESE replied:

(1)-(3)

Let me deal with the last part of that question first, because I think the last part really gets to the guts of what this question and the whole issue is all about. It is about 10 years of neglect by the previous Government -

Several members interjected.

Mr WIESE: - in which the Police Force of this State was run down. The Opposition does not like to hear the facts put before it, Mr Speaker. The real core of the problem relates back to this very factor; over 10 years of the previous Government, now the Labor Opposition, from having a ratio of expenditure of 70 per cent on salaries and 30 per cent on contingencies, which are the resources which a police force requires to do its job, we have now a situation where the Police Force in Western Australia has 83 per cent of its total budget spent on salaries and only 17 per cent -

Several members interjected.

The SPEAKER: Order! Order!

Mr WIESE: - of its budget is available to provide the resources which are essential for a police force to do its job. That is the key problem, the core problem, which this Government and the Police Force in Western Australia are having to address, and that is what this Opposition does not like to hear.

TAFE - MIDLANDS REGIONAL COLLEGE
Fine Arts Diploma Course

445\. Mr DAY to the Parliamentary Secretary representing the Minister for Education:

(1) Is it correct that the fine arts diploma course at the Midlands Regional College of TAFE will not be offered at first year level next year?

(2) If so, what is the reason for this situation?

(3) Given the relative lack of educational facilities at a tertiary level in the eastern metropolitan region, will the Government consider reinstating this course at all levels, that is, years 1, 2 and 3, at the Midland TAFE in -

(a) 1994;

(b) succeeding years?

Several members interjected.

Mr TUBBY replied:

I thank the member for some notice of this question.

Several members interjected.

The SPEAKER: Order! The Deputy Leader of the Opposition and the member for Armadale.

Mr TUBBY: What an unruly lot members are today.

Several members interjected.

The SPEAKER: The level of interjections is such that members are getting to the stage where it is almost impossible to carry out an orderly question time. I advise members that if this process continues and the disruptions are such that we cannot proceed in an orderly manner, I will have to give consideration to the continuation of question time today.

Several members interjected.

The SPEAKER: Order!

Mr TUBBY: The reply is as follows -

(1)-(3)

It is correct that the first year level of the diploma of fine arts and design -

Several members interjected.

The SPEAKER: Order! The member for Perth.

Mr TUBBY: - will not be proceeding next year.

Several members interjected.

The SPEAKER: Order!

Mr TUBBY: The State effort in TAFE vocational arts courses exceeds the national average -

Several members interjected.

The SPEAKER: Order! Order! The member for Perth and the member for Thornlie are making comments about the member reading his answer and relating it to questions and interjections last night about the possibility of whether someone was reading his speech. I was in the Chair at that time. I was not in a position to determine whether, contrary to standing orders, you were reading your speech, so I did not take any action. But that matter is quite different from this, where a person representing the Minister in another place is properly entitled to read his answer, and it may represent the direct views of that Minister.

Mr TUBBY: The decision was made to maintain 1993 art teaching effort levels at Midland regional college in 1994. The three year diploma of arts course commenced in 1992 with an intake of first year students. In 1993 the first and second year of the diploma were offered. Given the decision to maintain effort in 1994, the existing groups will become second and third year students next year. It is not intended that there will be a change in the 1994 course profile. This has been finalised. However, an annual review process is undertaken. At this stage a new intake of first year students will occur in 1995.

BRADSHAW, DR WAYNE - MUNDARING ADDRESS, POLICE INTERVIEW

446. Mr CATANIA to the Minister for Police:

With reference to weekend media reports that a Mundaring address is being used as a mail collection and redirection point by fugitive Dr Wayne Bradshaw -

(1) Why have police not interviewed the occupants of 7 Council Road, Mundaring to establish whether they know Dr Bradshaw's whereabouts, since that address was given by Dr Bradshaw as his mailing address only two months ago - more than a year after warrants were issued for his arrest?

(2) Is the Minister satisfied with police efforts to locate Dr Bradshaw?

Mr WIESE replied:

(1)-(2)

I am unable to answer those questions because I am not aware whether the Police Department has interviewed the occupants of the house to which the member refers.

Several members interjected.

The SPEAKER: Order!

Mr WIESE: Perhaps, Mr Speaker -

Several members interjected.

The SPEAKER: Order! The member for Thornlie.

Mr WIESE: Perhaps, Mr Speaker, if the member were to put the question on notice, I would be prepared to seek an answer. However, I must tell the House it is very possible that this is one of those matters which is still under current police investigation, and it may not be appropriate to provide that information. If the member will put that question on notice, I will refer it to the Commissioner of Police for an answer.

JUSTICE, MINISTRY OF - RANGEVIEW REMAND CENTRE

447. Mr BOARD to the Attorney General:

Will the Attorney General please bring members of this House up to date with the current situation at the Rangeview Remand Centre at Murdoch? Are security problems still delaying the opening and is there any indication, if this is the case, when it will be rectified?

Several members interjected.

The SPEAKER: Order! The member for Cockburn. The member for Mitchell - come to order.

Mrs EDWARDES replied:

Mr Speaker -

Several members interjected.

The SPEAKER: Order! I formally call to order the member for Mitchell.

Mrs EDWARDES: Mr Speaker -

The SPEAKER: Order! I formally call to order again the member for Mitchell. There has not been one word of substance replied by the Attorney General yet. I formally call to order the member for Fremantle.

Mrs EDWARDES: Mr Speaker, I am pleased to advise the House that the in-ground detection system has been redone and is currently being tested. Also the tenders have been let for the remaining security -

Several members interjected.

The SPEAKER: Order!

Mrs EDWARDES: The remaining work is the reinforcing of windows; the elimination of hanging points in the cells, which was basically as a result of the design of the basins and also of the bunk beds; and the provision of a store outside to ensure that vehicles do not enter the centre and also to ensure that there is not an opportunity for an escape.

Several members interjected.

The SPEAKER: Order!

Mrs EDWARDES: There will also be additional security mechanisms, such as infrared beams, which will prevent wandering and, of course, the additional wire. The anticipated date for opening -

Several members interjected.

The SPEAKER: Order! I will have to take action against the member for Thornlie if she continues. There is a place for some interjection. The member for Kenwick just interjected in a way I am sure some people might not find very pleasant, but no action was taken. Because nobody else was interjecting it was possible for the Attorney General to continue her reply, but it is not when a series of people are interjecting.

Mrs EDWARDES: It is anticipated the centre will open before Christmas. I assure everybody, particularly the community there, that until the security systems are in place and are working the remand centre will not be opened.

BRADSHAW, DR WAYNE - ATTORNEY GENERAL, CAMPAIGN DONATIONS

448. Dr GALLOP to the Attorney General:

In view of the potential conflict of interest arising from her responsibility to Parliament for the administration of investigation and prosecution in Western Australia: Has the Attorney General checked her campaign records since she became Attorney General and since Dr Bradshaw became a fugitive, and can she confirm that the campaign donations she received from Dr Wayne Bradshaw were the full extent of the campaign assistance provided, directly or indirectly, by Dr Bradshaw?

The SPEAKER: Order! I would like to see that question. It may contain material that could make it inappropriate. I remind members of Standing Order No 106 which states that a question must come within a person's ministerial responsibilities. Of course, Standing Order No 109 states clearly that members cannot use argument and opinion. Some of the questions of late have transgressed on both grounds; some on only Standing Order No 109.

The addition of the opening words makes it much more likely that this question relates to ministerial responsibility; therefore, I admit the question.

Mrs EDWARDES replied:

I am pleased to be able to answer the question. I hope it will not take so long this time.

Mr Hill interjected.

The SPEAKER: Order! I formally call to order the member for Helena. I believe that the comments made by the Leader of the Opposition were out of order. I do not wish to take action against her, but I ask her to be wary of remarks of that sort. She has stated that the words were exactly the same, or words to that effect. I advise members to study carefully Standing Orders Nos 106 and 109.

Mrs EDWARDES: I advised the House yesterday that I had sought advice from the State Director of the Liberal Party, and I tabled a letter from him which identified the donations for the 1989 and 1993 campaigns. As members would see from this letter, the state director advised me after having made inquiries of those associated with the running of the campaign.

Dr Gallop: How come you didn't need to do that when you were asked questions about Robin Greenburg?

Mrs EDWARDES: I did; I asked the fundraising committee to advise me. I do not know the details. The obvious advantage of the Liberal Party system over the Labor Party is that it provides a great deal of distance over the Labor Party. How many members opposite received money from the leader's account?

Several members interjected.

The SPEAKER: Order! The Leader of the Opposition.

Mrs EDWARDES: Members opposite do not like the fact that the McNair report states that the grubby little campaign the members opposite are running is starting to affect them. As far as the independence of the Director of Public Prosecutions is concerned, and the implications made by the shadow Leader of the House yesterday, I refer members to the second reading speech of the Director of Public Prosecutions Act in which the member for Mitchell, as the Minister, states -

> A significant advantage of the establishment of the office of director is that the legislation will make it absolutely clear that the director will act with complete independence from the Attorney General and the Government of the day.

I remind members opposite of an article in *The Sydney Morning Herald* on 21 October 1992 which refers to the big donations to them from their mates in those days. It states that Dallas Dempster donated \$812 000 to the ALP; Robert Holmes a Court donated \$30 000; John Roberts donated \$692 000; Warren Anderson donated \$366 000; Alan Bond donated \$2.03m; and Laurie Connell donated \$860 000. The royal commission made it clear -

Several members interjected.

Mrs EDWARDES: Do members opposite want to hear more about their donations from their mates?

Mr Marlborough interjected.

The SPEAKER: Order! I formally call to order the member for Peel. I will not allow interjections while I am on my feet. I remind members that the level of interjection was such that one could not hear the answer, and frequently one could not hear the question. That is intolerable. During the question an opportunity arose for the member for Victoria Park to address a question to the Attorney General, which she decided to take. However, it does not help when three or four other interjections are cutting off your colleague.

Mrs EDWARDES: I deny the insinuations which have been made by the Opposition. No-one will interfere with the way I perform my duties as Attorney General.

Dr Gallop: Did you receive campaign assistance from the City of Wanneroo in 1989?

Mrs EDWARDES: Absolutely not. I carry out my job according to the oath I have taken, without fear or favour. I assure this House that under this Government there will be no favours, as the royal commission revealed in the large donations that people were starting to make to the previous Government. It is obvious that people are becoming sick and tired of this grubby little campaign with which Opposition members are continuing to proceed.

CREERY WETLANDS DEVELOPMENT - DECISION

449. Mr MARSHALL to the Minister for the Environment:

Last week the Minister indicated that a decision would be made by today on the Creery wetlands development.

(1) Has the Minister received a decision?

(2) If so, what is that decision?

(3) If not, when will a decision be made?

Mr MINSON replied:

(1)-(3)

For members who are not familiar with this development I will explain that the area involved, known as the Creery wetlands, which has been written about extensively recently is held by a developer and has in the past - I think over a period of 10 years with various owners - been put forward for development in one form or another. It is divided into three areas. Area A, which is degraded woodland and about which no-one seems to have much argument, can be developed. Area C, which everybody agrees is an important wetland area is the place where migrating birds are likely to stop for feed and rest. Nobody seems to argue about that area and it should not be developed. Area B is a mixed area in between the two which is about 50 per cent samphire flats in quite good condition and the other half is quite degraded. Some doubt exists about its value. Members will be aware, probably from the Press, that a number of appeals have been made, I think about 20, against the development. I want members to also be aware that the argument is about 50 per cent of Area B. In my opinion, certain information is required. Firstly, I want to know how many birds use that part of Area B which is under question, what types they are and whether the area is significant.

I am quite puzzled, having received all the information held by the Department of Conservation and Land Management, the Environmental Protection Authority and the appeal convenor, at the definitive nature of some of the statements that people have been making. I am not satisfied that all the information that we should have to make a proper decision is available. Today, I wrote to the appeals convener and requested him to provide a range of information so that I can make a proper decision about this matter.

Mr Blaikie: You are a very responsible Minister.

Mr MINSON: I must say that in situations like this, it is very easy to make a popular and political decision, but that does not make it a right decision. I have tried quite hard to make proper decisions since I have been in this office. I inform the member for Murray that I am not prepared to make a decision until all that information is in my hands. I do not have it. I refuse to make a decision which has a poor foundation. Therefore, I will await that information, even if it takes months to collect, before I make a decision.

ATTORNEY GENERAL - GOVERNMENT OFFICER A SIGNATORY TO HER CAMPAIGN ACCOUNT

450. Dr GALLOP to the Attorney General:

With reference to the Attorney General's answer to question 435, in which she said she had no knowledge of any officer in her ministerial office or in a department for which she is responsible being a signatory to her campaign accounts, will the Attorney General investigate whether any officer in her portfolio was or is a signatory to her campaign account, and provide to the House the results of this investigation?

The SPEAKER: Order! I ask that that question be passed to me. Questions such as this are extremely difficult to rule on when they are at the margin, but because the question does in its final part deal with the responsibilities of the Attorney General, even though it deals with matters which properly are not within the general order of questions under Standing Order No 106, I will admit the question.

Mrs EDWARDES replied:

Members opposite may think these matters are important, but I did not go home last night and ask my husband. When I got home in the early hours of this morning, I talked about Scott's birthday party next week when he turns seven, and about his jujitsu belt grading. I do not know whether my husband ever was or is a signatory. Seeing that members opposite are continuing their campaign against my husband, because that was the first question that was knocked out yesterday, and he is obviously the person that members opposite are targeting, let me just say that yesterday I received a letter from the Director General of the Ministry of Justice, who advised me that in view of the public interest in this matter, Colin Edwardes has advised him formally that he will not be an applicant for the position of executive officer level 7, executive support, Ministry of Justice, when that position is advertised in the *Public Service Notices* this month. He will continue to act in the position until a permanent appointment is made in January, and will then proceed on annual leave.