WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE COUNCIL

Tuesday, 22 December 1998

Legislative Council

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THE PRESIDENT (Hon George Cash) took the Chair at 10.00 am, and read prayers.

VOLUNTARY EUTHANASIA BILL, OPPOSITION

Petition

Hon Tom Stephens presented the following petition bearing the signatures of 71 persons -

> To the Honourable the President and members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned residents of Western Australia respectfully commend to the attention of the House that:
>
> 1. Every act of euthanasia carried out with the approval of the State necessarily involves a judgement by the State that the person killed had a life that no longer mattered;
>
> 2. Inquiries into the legislation of so-called "strictly regulated voluntary euthanasia" by the House of Lords Select Committee on Medical Ethics (1994), the New York State Task Force on Life and the Law (1994), the Canadian Special Senate Select Committee on Euthanasia and Assisted Suicide (1995) and the Australian Senate Legal and Constitutional Legislation Committee (1996) each concluded that it is impossible to ensure adequate safeguards for voluntary euthanasia and that therefore legalising euthanasia will always create more victims than beneficiaries;
>
> 3. That any Bill to legalise euthanasia should be rejected as an attempt to remove the equal protection from intentional killing enjoyed by all Western Australians under existing law.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See paper No 677.]

JOINT STANDING COMMITTEE ON THE ANTI-CORRUPTION COMMISSION

Fifth Report

Hon Derrick Tomlinson presented the fifth report of the Joint Standing Committee on the Anti-Corruption Commission in relation to amending the Anti-Corruption Commission Act 1988, and on his motion it was resolved -

> That the report do lie upon the Table and be printed.

[See paper No 678.]

TITLES VALIDATION AMENDMENT BILL

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon N.F. Moore (Leader of the House) in charge of the Bill.

Clause 7: Parts 2A, 2B and 2C inserted -

Proposed section 12I -

Progress was reported after Hon Tom Stephens (Leader of the Opposition) had moved the following amendment -

> Page 8, lines 15 to 20 - To delete the paragraphs and substitute the following -
>
> (a) where the act comprising the grant of a freehold estate or lease, apart from this Act, extinguishes native title rights and interests, the native title rights and interests are extinguished in relation to the land or waters covered by the freehold estate or lease concerned; or
>
> (b) where the act is —
>
> (i) a conditional purchase lease in force as at 23 December 1996 in Agricultural Areas in the South West Division under clauses 46 and 47 of the *Land Regulations 1887* which includes a condition that the lessee reside on the area of the lease;
>
> (ii) a conditional purchase lease in force as at 23 December 1996 in an Agricultural Area under Part V of the *Land Act 1898* which includes a condition that the lessee reside on the area of the lease;

(iii) a conditional purchase lease in force as at 23 December 1996 of cultivatable land under Part V, Division (1) of the *Land Act 1933* in respect of which habitual residence by the lessee is a statutory condition in accordance with the provisions of that Division;

(iv) a perpetual lease in force as at 23 December 1996 under the *War Service Land Settlement Scheme Act 1954*; or

(v) a previous exclusive possession act under section 23 B (2) (a), (b) and (c) (ii), (iii), (iv), (v), (vii) or (viii) of the NTA (including because of section 23 B (3)), provided that —

(A) in the case of any lease described in subparagraphs (iii), (iv), (v), (vii) or (viii) the lease concerned is in force as at 23 December 1996; and

(B) in the case of any lease described in subparagraph (iv) the terms "exclusive agricultural lease" and "exclusive pastoral lease" have the meanings respectively given to them by section 247 A (a) and 248 A (a) of the NTA,

the act extinguishes any native title in relation to the land or waters covered by the lease concerned, and the extinguishment is taken to have happened when the act was done; or

(c) in any other case, the non-native title rights and interests prevail over the native title rights and interests to the extent of any inconsistency, but do not extinguish them, while such non-native title right or interest made under the act, and any valid renewal, remaking, re-granting or extension of the non-native title right or interest, is in force.

Hon HELEN HODGSON: I move an amendment on the amendment -

To amend paragraph (v) by inserting after the word "concerned" the words "to the extent of any inconsistency".

Basically I can see the intention of the amendment by Hon Tom Stephens; that is, to try to apply the principles as enunciated in the Miriuwung-Gajerrong case and the common law, to narrow the number of titles that will be covered by the proposed extinguishment and category A acts. Previously, I have clearly made the point that we should not be extinguishing. The Miriuwung-Gajerrong case makes a number of comments about when extinguishment has occurred at common law. It says that three conditions must be fulfilled: First, there must be a clear and plain expression of the intention to bring about extinguishment in that manner; secondly, an act must be authorised by the legislation - that is, the legislation which has granted the title, not that before us now - which demonstrates the exercise of permanent adverse dominion as contemplated by the legislation; and, thirdly, unless the legislation provides that the extinguishment arises from the creation of the tenure which is inconsistent with an Aboriginal right, actual use must be made of the land by the holder of the tenure, which is permanently, consistent with the continued existence of Aboriginal title or right and not merely a temporal suspension.

I also draw the attention of the committee to the document tabled last week by the Leader of the House covering the factors considered in determining whether a lease confers a right of exclusive possession. It lists 19 factors the Government has taken into account in identifying whether it believes exclusive possession has been conferred. Putting those together, if the intention is to see whether there is exclusive possession, and if that is to be the benchmark by which extinguishment is determined, we must also look at the common law which says that in some situations competing uses do not necessarily extinguish native title. The Wik decision said there can be coexistence of native title with a pastoral lease. That led to some of the issues that have resulted in this legislation. We can have competing uses and overlapping and overlaying of titles. At common law, the extinguishment is to the extent of inconsistency. I am trying to make the point that if the Australian Labor Party is genuinely trying to address the issue of whether there is exclusive possession, it has missed an important factor; that is, only where there is inconsistency should we be looking at extinguishing native title. With those comments, I will await the responses of the Leader of the Opposition and the Leader of the House, now they have had a few minutes to look at the proposal. I am interested in hearing their comments.

Hon N.F. MOORE: I will set the scene for today's debate: I do not propose to argue at great length about these issues. We have now reached a point at which we either agree with certain things, or we do not. It is now time for members either to put up their hands, or not do that, depending on the way they feel about these matters. The Government's proposed section 12I confirms the extinguishment of native title in respect of a number of types of tenure, all of which being essentially where there is exclusive title. Proposed section 12I relates to the scheduled interests - that is, the schedule about which we talked the other day - freehold estate, and certain leases that confer a right of exclusive possession. The other day I argued against the amendment of Hon Tom Stephens because it waters down that situation in respect of the scheduled interests. With this further amendment on the amendment, the member is now trying to put in place a process which would see all of the different sorts of leases, which Hon Tom Stephens says extinguish native title, in the same category as those in category B where there is not exclusive tenure; for example, as a result of the Wik decision for a pastoral lease we are looking at almost a shared tenure. The member is now trying to put these leases - that is, the ones Hon Tom Stephens has taken out of the schedule and sought to put into the legislation and by doing so get rid of the rest of the schedule - into the same category as pastoral

leases and other non-exclusive tenure, which were the category B types of tenure we talked about earlier when discussing validation.

This is just another attempt by the Australian Democrats to take away a significant degree of certainty for those who have these various sorts of leasehold tenure. As I argued the other day, it would be very easy for us to create certainty, rather than leave it open to the National Native Title Tribunal and various other legal processes to be gone through before the holders of certain land know whether their leases extinguish native title. This is just another attempt by the Democrats to water this down further. I strongly oppose this amendment in the same way as I oppose the original amendment of Hon Tom Stephens.

Hon TOM STEPHENS: The member has also asked for a response from the Opposition on this amendment. For the same reasons the Leader of the House has just outlined, we oppose this amendment because in this mini-schedule we want to provide the certainty about which the Government has spoken much, and the Opposition is keen to proceed with this smaller group of titles and tenures, not only in respect of validation, but also extinguishment. For those reasons the Labor Opposition cannot accept the amendment.

Amendment on the amendment put and a division taken with the following result -

Ayes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson	Hon Norm Kelly *(Teller)*
Hon J.A. Scott			

Noes (26)

Hon Kim Chance	Hon Max Evans	Hon Mark Nevill	Hon Tom Stephens
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon M.D. Nixon	Hon W.N. Stretch
Hon M.J. Criddle	Hon John Halden	Hon Simon O'Brien	Hon Bob Thomas
Hon Cheryl Davenport	Hon Ray Halligan	Hon Ljiljanna Ravlich	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Ken Travers
Hon E.R.J. Dermer	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon B.K. Donaldson	Hon N.F. Moore		

Amendment on the amendment thus negatived.

Hon N.F. MOORE: I again indicate to the House that the Government strongly opposes Hon Tom Stephens' amendment for the reasons I outlined last Friday. The Government believes this amendment waters down what it is seeking to do through this legislation; that is, confirm the extinguishment of native title. The amendment will leave a number of leasehold titles in doubt. I acknowledge what the Leader of the Opposition said last week about the possibility of these titles being found not to have native title. However, I am trying to point out to him that passing the clause in the Bill as it stands would remove any uncertainty as native title on those leasehold titles will be extinguished by virtue of this Bill. The member's amendment will see a number of those titles left in doubt. Those titleholders would need to follow the native title process to find a solution. That can be an expensive, time consuming and disconcerting process. If, as he indicated on Friday, the Leader of the Opposition is seeking to remove uncertainty in the minds of people, particularly in Kalgoorlie-Boulder, I ask him to agree to the Bill. The Bill creates the certainty the Leader of the Opposition believes will prevail through the native title process and saves these people the time and heartache of having their titles sorted out through the native title process. I indicate as strongly as I can that this amendment should be defeated and the Bill should be accepted as it stands.

Hon HELEN HODGSON: Hon Tom Stephens' proposal is an inadequate solution to the issues. In Western Australia we have the benefit of considering a couple of new decisions which have been handed down in the past few weeks - the Miriuwung-Gajerrong and Yorta Yorta decisions. One confirmed what sort of titles and factors must be considered in determining whether extinguishment has happened. The Yorta Yorta decision should comfort the people who are questioning the extent of native title because it indicated how frail and fragile native title is. In that case it was decided that because people had been forcibly removed from their land, they no longer had traditional ties. In the light of those new decisions and the obvious workings of the common law in this respect, regulation by statute is an inadequate solution. Anybody who thinks that legislation will overcome litigation is wrong. Anybody who has worked in tax law will know that the more one legislates, the more litigation there is. Rather than trying to provide certainty which is subject to the courts and litigation, the best solution is to allow this to develop along the lines of the common law. I appreciate that Hon Tom Stephens is moving to exclude certain forms of tenure about which the common law currently says native title does not exist. However, by confirming extinguishment on the forms of title in the schedule while excluding only a number of titles over a limited amount of land, the Leader of the Opposition is moving down a path which will be to the detriment of the Aboriginal people of this State. I do not approve of this amendment but I recognise that it at least preserves native title in some situations where the Government's clause does not. Therefore, the amendment does not have my wholehearted support. It is the second-best option but I will support it to that extent because it will save native title in some forms of tenure.

Hon GIZ WATSON: I have listened to the presentations of the Leader of the Opposition and the Leader of the House and

I hold similar concerns to those raised by Hon Helen Hodgson. The approach of a mini-schedule is a compromise. However, I have heard the concerns raised about certain leaseholders, particularly on leases on which people are in residence and I have sympathy for their situation. I believe this is an improvement from the enormous list, the grab bag of everything one could think of, the Government included in the schedule. That schedule should have been removed and the question is how much is being put back in. I have considered this amendment in detail and although it does not go as far as the Greens (WA) would like, we will support the amendment.

Hon TOM STEPHENS: I appreciate the way Hon Helen Hodgson, on behalf of the Australian Democrats, and Hon Giz Watson, on behalf of the Greens (WA), have responded to the Labor Party's amendment. I will not endeavour to summarise it because I have been told on a number of occasions never to speak for the other non-government parties. This is the first time that I have had this clear indication from both parties about how they will handle this amendment. I appreciate what has been said; that this is further compromising, in their view, the position of indigenous peoples. However, the non-government parties are supporting it on the basis that to do otherwise would subject those interests to further risk of the full schedule. I appreciate that. The words of the members of those parties are more than adequate testimony to the way they have couched their position and the way their position should be understood. I chaired both select committees on native title. Page 40 of the committee report of the Select Committee on Native Title Rights in Western Australia states -

> In particular, it should not include stock routes and should determine on a case by case basis, whether native title has been extinguished on community purpose leases and public works. With the combined effect of Court decisions and Federal legislation, it is arguable that native title may co-exist with these non-indigenous tenures.

One of the conclusions and recommendations of that section states -

> The Committee notes that proposals to 'confirm extinguishment' in relation to those interests included in the Schedule of 'Previous Exclusive Possession Acts' in the amended *Native Title Act 1975* could probably lead to lengthy and costly litigation.

As chairman of the select committee, I stand by that unanimous report. When followed, the recommendations that flow from that do not lend support for the alternative, but do lend support for going down a different path from that which is contained within the unamended Bill.

Some issues were raised on Friday in reference to Kalgoorlie. A copy of a letter addressed to Hon Norman Moore from Corser & Corser about the Titles Validation Amendment Bill has been sent to me. It states -

> We act for the Maduwongga People, who are identified in the respected work of Norman Tindale, "Aboriginal Tribes of Australia", as having a traditional connection with an area of land which includes the townsite of Kalgoorlie and Boulder.
>
> The Maduwongga People have registered Native Title Claims over the area mapped by Tindale, and confirmed (with some minor alterations) by more recent anthropological work by McDonald Hales and Associates.
>
> We note concerns expressed by you in the Legislative Council on 18 December 1998 that, in the townsite of Boulder and Kalgoorlie, which is within the external boundary of the Maduwongga People's claim, there are 87 Special Leases and 23 other Leases, as set out in a list of Land Act Leases referred to by you in the House.
>
> Of those Leases -
>
> > 45 are "Residential Leases" . . .
> >
> > 23 are "Commercial Leases" . . .
>
> and further investigation is required to ascertain the classification of the remainder of those Leases.
>
> The Maduwongga People have stated in their Claim that they do not intend their claim to include any areas where native title no longer exists as a matter of law.
>
> It would appear that on most, if not all, of the Leases referred to above, native title would be extinguished by the operation of the common law; provided the land has been used for the purpose for which the grant was made; and improvements placed on the land in pursuit of that purpose . . .
>
> In addition, if the Titles Validation Amendment Bill 1998 . . . is passed, with the amendments proposed by the Labor Opposition in the Legislative Council, then that legislation will declare that native title is extinguished by grants prior to 23 December 1996 comprising residential leases, commercial leases and other leases which confer a right of exclusive possession over the land or waters . . . Leases which do not permanently extinguish native title, nevertheless will prevail over and suspend native title rights and interests while the lease or any renewal, re-grant or extension of the leases is in force, pursuant to cl. 12M of the Bill, as proposed to be passed by the Government and Labor opposition parties.

> The Maduwongga People wish to put to you that the extinguishment provision should not apply to all commercial leases, because some commercial leases (particularly those which have not resulted in the land being subject to significant development) would not extinguish native title at common law.
>
> However, the Maduwongga People are in the process of amending their claim to comply with the new Registration Test under the NTA (as amended in 1998), ss 190A to 190C. The date they have sought to do that is by 31 January 1999.
>
> If the TVAB is passed in the form proposed by the Labor Party, the claim will be amended to comply with the Registration Test . . . and specifically exclude from its boundaries, all residential leases and commercial leases and any other leases which are shown to confer exclusive possession over land or waters. It will be required to be amended in that way, to pass the Registration test.
>
> Other native title claims over the area will need to follow the same course if the claimants wish to remain registered, and I am informed that those represented by the Goldfields Land Council intend to do so.

It is important that the House note the existence of that letter at this time. Once the work that is now being done by the Government in producing the long schedule that was introduced into the debate on Friday, which documents the forms of tenure that exist inside areas that are claimed by native title interests, is made available to a native title claimant, it immediately provides those native title claimants with the opportunity to respond and amend their claims to remove the concerns and fears of such tenure holders so that their forms of tenure, particularly residential, commercial and other forms of tenure over which native title is indubitably extinguished, can be put to rest. Good government in this area would consistently do this with claimants to remove unfounded and ill-founded concerns that can easily be allayed by ensuring that the information is available to the claimants, pointing out that, in this area of law, they would be wise to adjust their claims accordingly otherwise they run the risk of having their claims struck down, and that claims over this form of tenure should be removed once this Bill is enacted. Prior to now, it would have been wise for them to do so if they had had this information available to them in this format.

Hon N.F. Moore: It is available to claimants when they lodge a claim.

Hon TOM STEPHENS: I did not know that. I found that I could obtain this information in this format only when I sought it as chairman of the select committee.

Hon N.F. Moore: Just lodge a claim and you can get it.

Hon TOM STEPHENS: Good government, particularly one with good credentials of working as a fair and honest broker between the parties, will find that its capacity to have claims adjusted will be enhanced. When the amendment that is before the Committee is carried in this format, it opens up opportunities for that type of claim to be amended. The fears and concerns of those people within townsites such as Kalgoorlie-Boulder, with tenure forms like that, can be allayed and their concerns can be removed immediately.

Hon N.F. MOORE: We are talking about 2 500 leasehold properties in Western Australia that are currently in force in this State and are covered by the schedule. Hon Tom Stephens is taking out 2 500 leases and putting back about 800 and conditional purchase leases are included in his amendment. My rough calculations suggest that that leaves about 1 300 leasehold titles in Western Australia which would have native title extinguished if the Government's Bill were agreed to, but which will now be able to be claimed under the process if the amendment is agreed to. In a magnitude of determination in respect of the various parties, the Government should take the 2 500 leases out of the realms of doubt. The Labor Party wishes to take out 800 and the Greens (WA) and the Democrats want them all to be in the realm of doubt. That demonstrates clearly where everyone stands on this issue. Hon Tom Stephens does not need to go down the path which he is now going down. He has spent some time trying to convince members that there is no problem in Kalgoorlie-Boulder. He quoted from a letter sent to me by Corser and Corser which represents the Maduwongga people. It is all very well for this group of claimants to say what they will or will not be doing about Kalgoorlie-Boulder. However, many other claimants in that part of the world may have a different point of view. That letter also states -

> The Maduwongga people wish to put to you that the extinguishment provision should not apply to all commercial leases, because some commercial leases . . . would not extinguish native title at common law.

I referred to some leases the other day which will be subject to problems regardless of what Corser and Corser or Hon Tom Stephens may say. If we agree to this amendment moved by Hon Tom Stephens, we will leave 1 300 leasehold properties in doubt. We may clarify the situation for 800 leases, which may be a very sensible decision politically for the Labor Party as they involve conditional purchase leases in the south west. Perhaps the Labor Party is more interested in the views of people of the south west than those of people in the goldfields. The other 1 300 titles will be left in limbo until such time that they undertake a process which can be time consuming and expensive. It will create uncertainty and confusion in the minds of the leaseholders. It need not be that way. When people ask the Government why native title is not extinguished on their property, I will refer them to Hon Tom Stephens, the Australian Democrats and the Greens (WA).

Hon TOM STEPHENS: The first part of this Bill puts beyond doubt the valid title of the forms of tenure which exist across this State. The forms of tenure granted will be validated by the first part of the legislation with the support of the Labor Party.

Hon N.F. Moore: We validate what happened in the intermediate period.

Hon TOM STEPHENS: In 1995, earlier acts were validated by the original legislation. All that is happening now is that those rights, in reference to those forms of tenure and title, are validated to the point that the entitlement so granted prevails over native title interests. By virtue of this amendment, native title is to be extinguished on those areas within our mini-schedule. The interest in the tenure forms and titles of those parties will be in no doubt whatsoever. They will have a pre-eminent right in the interests granted to them in the tenure and titles. The Leader of the House gave an example of the form of tenure in which the leaseholder was entitled to store mining and exploration equipment. No-one, be it the native title claimant or anyone else, can interfere with that right. Nothing we have done interferes with that right. Those rights are confirmed and validated; they survive and are pre-eminent. However, any future acts in reference to other categories of lands not included in our mini-schedule must be put through the future acts regime. That will be the only effect of this legislation.

Hon N.F. MOORE: I explain to the Chamber the situation with the previous validation Bill of 1995. Under the past act validation provisions passed in the 1995 Bill, invalid titles which were validated extinguished native title, but valid acts did not extinguish native title. The confirmation provision in this Bill clarifies the situation with titles which were valid ahead of the last validation process. Therefore, the confirmation part of this Bill intends to make it clear beyond all doubt the situation with titles issued throughout the history of this State.

The point raised by the Leader of the Opposition is not strictly accurate. If the mini-schedule were adopted, a problem would still arise in mines and potentially with pockets of people who have leasehold property in Western Australia.

Amendment (deletion of words) put and division taken with the following result -

Ayes (15)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Mark Nevill	Hon Tom Stephens	

Noes (14)

Hon M.J. Criddle	Hon Ray Halligan	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore		

Pairs

Hon Tom Helm	Hon Peter Foss
Hon John Halden	Hon M.D. Nixon

Amendment thus passed.

Amendment (insertion of words) put and a division taken with the following result -

Ayes (15)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Mark Nevill	Hon Tom Stephens	

Noes (14)

Hon M.J. Criddle	Hon Ray Halligan	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore		

Pairs

Hon John Halden	Hon Peter Foss
Hon Tom Helm	Hon M.D. Nixon

Amendment thus passed.

Hon N.F. MOORE: This is a disappointing decision. However, I do not propose to reflect on a decision of the Chamber other than to say that we have created a situation in which at least 1 300 Western Australians who have leasehold land will have a potential problem. I am not saying that everybody will have a problem, but some will. The only winners out of this clause are the lawyers of Australia who will make squillions of dollars out of native title. The lawyers on both sides of the argument are the winners. The losers are those people who have tenure and Aboriginal people generally, because they are not benefiting either.

I called this the Megan Anwyl clause last Friday, because it will give her something to do when she is looking for a new job. I do not resile from that comment. From the way the numbers are panning out, the amendments will be passed and people in Ms Anwyl's profession will be needed in large numbers to ensure that a large number of leasehold owners in Western Australia are well represented when they seek to protect what they believe are rights they have had for a long time.

Hon TOM STEPHENS: I will speak in the same measured tone, but closer to the facts of the situation. The division in which the Government voted against the insertion of a mini-schedule showed what the Government is sometimes driven to do. In that division, the Labor Party, the Greens (WA) and the Australian Democrats supported the proposal for the extinguishment of native title on categories of land; the Government opposed the insertion of those categories in the extinguishment provision. That was a strange vote. If the Government were genuinely concerned about the fears or concerns of those tenure types, its vote in the last division would have been different. That illustrates another point.

Hon N.F. Moore: That must be the most convoluted argument I have heard since I have been here. We are voting for the original clause in the Bill, not your amendment.

Hon TOM STEPHENS: I am sorry that the Leader of the House does not understand the consequence of the way in which he has just voted. Having deleted the maxi-schedule, a mini-schedule was inserted to take out of the maxi-schedule some of those components -

Hon N.F. Moore: We are now voting on the amended clause.

Hon TOM STEPHENS: The Leader of the House does not like the point; it makes him squirm - nonetheless it stands.

Hon N.F. Moore: It is the most ridiculous argument I have heard in my life.

Hon TOM STEPHENS: I will not argue with the Leader of the House for the purpose of getting through a day that otherwise could be made particularly unpleasant. The Opposition has endeavoured to give a positive response to the holders of those forms of tenure. We have succeeded in doing that. That includes the holders of war service land settlement tenures, perpetual leases, and conditional purchase leases, which the Pastoralists and Graziers Association asked the select committees on which I served to preserve within the Bill. Liberal and National Party members voted against the exclusion of those tenure forms within the extinguishment provision of the Bill.

Hon N.F. Moore: Even your own members cannot swallow that.

Hon TOM STEPHENS: There is no other way to construe that vote. It may be that some members in the Chamber do not understand that.

The way to ensure ongoing problems and uncertainty for the community of Western Australia is to politicise, to frustrate and to put in place attacks on sections of the community, and to constantly expose native title interests to legislation and litigation to try to frustrate their rights. If the Government or other stakeholders are intent on making this issue a problem, they will cause and compound the problem that native title could represent. There is an alternative path that one of the government members in this Chamber has regularly articulated to me. I will not embarrass that member by referring to him by name, but he says that we should convert this problem into an opportunity and create through those opportunities a way to resolve the issues. In those circumstances we can move quickly beyond the need for the lawyers, and the deal makers to be paid vast quantities of scarce cash resources to protect the interests of native title holders. The alternative approach is resolution and agreement.

To the extent that people promote disputation over these issues, they will deliver the exact consequence about which the Leader of the House spoke. They will go down the path that the first select committee urged Governments and Parliaments to avoid. Eventually, as the community is helped to understand the issue through the media, they will appreciate what playing politics will do to the ongoing economic development of our areas, localities, regions and State and they will embrace the alternative solution. The participation of native title holders in the economy of the State will create opportunities that would be impossible to achieve by virtue of the alternative path, which is to oppose, to frustrate, and to restrict development opportunities. Once they participate with their hand on the key for economic development we will see economic development go ahead with the consequent benefits for all parts of this community. I commend the Chamber for its decision on the last amendment. I appreciate the support of all members on this side of the Chamber.

Hon MARK NEVILL: There is an air of unreality about this whole debate. If everyone were good, there would be no sin; but the reality is that the world does not work that way. Hon Norman Moore has tabled a letter from Corser and Corser

indicating that the Maduwongga people will modify their claim to remove commercial and residential leases from that claim in the Kalgoorlie-Boulder area. A number of claimants are involved in the Kalgoorlie area, and Hon Julian Grill was successful in getting only one native title group to withdraw its claim over leasehold land. None of the other claimants has shown any interest in withdrawing those leases from their claims. As a result those people have found themselves in the Federal Court. Those people have lived on leases for up to 90 years and they have native title claims before the court. This letter is a bit of orchestration that took place over the past two days. The legal officer who represents the Maduwongga people is also involved in lobbying for this Bill, and rightly so. I do not dispute that. However, I find it amazing that a letter can be produced in two days, as soon as this problem arises, telling the Parliament that the Maduwongga people will withdraw some of their claims over these leases in Kalgoorlie-Boulder, but not those over other leases. Legal disputes will arise over what fits into the generic list as it now stands, but other claims still exist over Kalgoorlie. If everyone were full of goodness and light, that problem would not exist but it does exist. To think that these problems can be solved by a wave of the wand of goodwill suggests an air of unreality. There will be significant ongoing problems with any leases subject to native title. That is a clear fact, and passing this latest amendment will not make it any easier.

Hon TOM STEPHENS: A number of good points were made in the contribution which I want to emphasise; that is, it is absolutely right to say that this will not be an easy matter. The challenge for us all is not to make it any more difficult. It is a challenge particularly for the Government to avoid making the task any more difficult than it might otherwise be. The passing of the federal amendments dealing with threshold tests that require the overlapping claims to be worked out and sorting out those claims that can be sustained as acceptable claims which can survive the new registration test, will sort through a number of problems. It is clear from the events last Friday and today that there are opportunities which people will take up when faced with the new reality; that is, the change in the registration test, and improved registration processes will minimise the prospects of overlapping claims and will not sustain claims that are specious or spurious. Those claims will start to fall by the wayside in double-quick time, aided by the federal amendments. With the realisation of what has been done by the carriage of the last amendment, people of goodwill in the process will be encouraged to adopt a more sensible approach by virtue of the decisions of the court and the Parliament.

It seems to me that the opportunity for Parliaments to adequately protect the interests of all sections of the community, particularly Aboriginal people, is yet to be fully put on display. It is understandable that indigenous people have not given up their lawyers just yet. Until Parliaments can guarantee the protection of their interests in these areas, it is no wonder that they seek to have around them quality legal advice and dedicated legal support, to which Hon Mark Nevill gave enormous credit the other night.

Hon Mark Nevill: One of those quality lawyers gave a land council two months of legal advice for $120 000.

Hon TOM STEPHENS: That problem must be avoided. The way to avoid that is to -

Hon N.F. Moore: You are about to create a whole lot more.

Hon TOM STEPHENS: That will happen only if the Government joins in the fray and tries to compound the problem.

Hon N.F. Moore: It has nothing to do with the Government; it relates to people who lodge claims on other people's leasehold land.

Hon TOM STEPHENS: There is an alternative path, which is being pointed out again and again. No-one in this Chamber, and certainly no-one in the Labor Party, is defending the statutes that exist in the native title area. The federal Native Title Act is the most horrendous piece of federal legislation which contains all sorts of complexities. When the state law is added to that, it is a horrendous path for people to go down. People are being directed towards the alternative path of agreements, both by the recommendations of the select committee and the comments of those in the field, and advised not to pursue resolution through this complex body of law, which creates opportunities for lawyers to become wealthy. However, if Governments and Parliaments are not prepared to protect those indigenous interests, it is fortunate that Aboriginal people have at their disposal skilled, talented and dedicated lawyers who will try to ensure those indigenous rights are not trampled upon.

Hon N.F. MOORE: The Government has opposed every attempt by the Opposition to change proposed section 12I because it believes that section in its original form provides certainty with respect to these matters. Hon Tom Stephens is drawing the longest bow imaginable when he argues that because the Government did not support what he put in its place, somehow or other it does not support the extinguishment of native title on conditional purchase lease land. The Government will now oppose the amended clause and, in the event that the committee agrees with the Government, I will seek to recommit the Bill and to return the clause to the original situation which would provide certainty for everybody who has an interest in this matter.

It is interesting that Hon Tom Stephens should defend lawyers. The Legislative Council debated a Bill the other day relating to workers compensation, and the Opposition again supported those lawyers who will make a squillion dollars from the legislation. By leaving doubts over a large number of leasehold properties, the Opposition is again supporting the interests

of lawyers who make money from the uncertainty created by legislation. Lawyers would have a lot less to do if Parliaments did not make so many mistakes or create so many opportunities for them. This Parliament is potentially creating a minefield for leasehold owners, but a gravy train for lawyers. Although I have no problem with Aboriginal people receiving the very best legal advice, I suspect that in many instances that legal advice is being paid for by the taxpayer.

Again, I do not have a problem with that, either, except that the people who own leasehold in Kalgoorlie do not get taxpayer support to look after their legal interests; they must find money out of their own pockets. That must be understood by the Leader of the Opposition. We are dealing not with two organisations with ready access to the best legal advice in the world, but, in some cases, with Aboriginal organisations with the very best legal advice - we have just been told about that by the Leader of the Opposition - and some individuals, many of whom are by no means wealthy, who must pay for their own advice. I suspect that in the Kalgoorlie-Boulder area there are several pensioners who certainly could not afford expensive legal advice or assistance in the event that they finished up in a native title process.

I conclude my comments on this clause by again saying that we will vigorously oppose the Leader of the Opposition's amendment, as we have done all the way through the various processes of his seeking to change the clause. We believe that we should go back to the original clause, recommit it later on because we have already amended it, and put it back the way it was so that once and for all we can remove the uncertainty that will affect many people in Western Australia. For the life of me, I cannot work out why the Leader of the Opposition is so adamant about going down that path. I can understand that the Greens and the Democrats do not want to extinguish native title at all, and I can understand the Leader of the Opposition looking after the interests of conditional purchase leaseholders - I can understand that, but I will not speculate on why it is - but for the life of me I cannot work out why he will not offer the same protection and certainty to the people about whom I have been talking. The obvious ones are those in Kalgoorlie, but there are the 1 300 whom I mentioned a moment ago around Western Australia who seek the same certainty that the Leader of the Opposition is prepared to give conditional purchase leaseholders in the south west. I wonder why he will not give the same certainty to everybody else.

The CHAIRMAN: I point out at this stage, as I did previously, that there is no opportunity to agree to proposed section 12I as amended. We are considering clause 7 as amended, so in the normal course of events we will go on to other subclauses of clause 7. There is no opportunity to have a further vote on 12I at this stage. The question is that clause 7, as amended, be agreed to.

Point of Order

Hon HELEN HODGSON: Has amendment B7 been moved?

The CHAIRMAN: No. The overall question is that clause 7, as amended, be agreed to, and then we logically go on to proposed section 12J and other amendments and sections.

Debate Resumed

Proposed section 12J -

Hon TOM STEPHENS: I move -

Page 9, line 11 - To delete the words "and is".

As currently phrased, proposed section 12J extends in a number of ways beyond confirming common law extinguishment of native title. The amendment will exclude the operation of proposed section 12J from historic public works no longer in existence as at 23 December 1996, the date of the Wik judgment, such as filled-in wells and defunct and demolished railway tracks, but many other categories would fall into that provision. The amendment would limit the extinguishing effect of the act to the area on which the public work was constructed or established, except that there is no unnecessary extinguishment of native title on adjacent areas not affected by the construction of the public work. There was much argument put by crown counsel in respect of that issue before the Federal Court, and the recent decision of the Federal Court in that regard, which is now the common law position until otherwise overruled by a higher court, is accommodated by our amendment. This amendment and the amendment to proposed section 12I have the added significant advantage that they will potentially reduce significantly the compensation bill which the Government remains unable to quantify and which taxpayers of Western Australia would otherwise bear.

Hon N.F. MOORE: The Government strongly opposes the amendment. The Leader of the Opposition is trying to limit the extinguishing effect of a public work to the actual area of land over which the physical presence of a building is located. For example, if a school sits on 2 ha of land, native title will be extinguished over the land upon which a building is situated, but it will not be extinguished over the school grounds. In fact, it will still be available for a native title claim. Land on which hospital buildings are located will have native title extinguished, but the hospital grounds will not. I ask members to consider various public buildings and contemplate those which have land over which there is no physical building and then contemplate the fact that that area of land will be subject to native title claim - in other words, it will not be extinguished by virtue of this clause. That does not make any sense to me, but I will not reflect on the previous decision of the Committee which also did not make any sense to me.

The other part of the Leader of the Opposition's amendment is to ensure that there is no historical extinguishment of native title over public works land which is no longer being used for that public work. Native title is either extinguished somewhere in the past or it is not. There has been general acceptance, bearing in mind the High Court decisions, that once it has been extinguished it remains extinguished. It is suggested now that it was extinguished when there was public work in the past, but because it is no longer being used for public work, native title is resurrected. That is ridiculous.

We need to retain the historical extinguishment of native title over public works, and it is ludicrous to propose an amendment which will extinguish native title underneath a school building but not in respect of the school grounds. For the life of me, I cannot understand why the Leader of the Opposition is going down that path, just as for the life of me I cannot understand why he went down the previous path.

Hon TOM STEPHENS: The explanation is very simple. Perhaps it can be illustrated by an example. The grounds of Kununurra hospital are utilised for hospital purposes, and the survival of native title does not, and will not, prevent that land from continuing to have the opportunity to be utilised by the hospital, but insofar as within those hospital grounds there are yams that people dig, native title interests will survive and be protected. Insofar as there is a native tree with a lovely plum that is liked very much by the Miriuwung-Gajerrong people -

Hon Mark Nevill: They can dig up the lawn if there are yams under it?

Hon TOM STEPHENS: Insofar as they have a native title interest, it is protected, and the working out of that interest with the tenure holder would be sorted out by way of local agreement rather than by extinguishing that interest. For instance, there is an ochre deposit to which the Miriuwung-Gajerrong people have always had access. It is an important ochre deposit and a resource within the determination area. No-one would want to see the native title right of access to that ochre deposit which has been utilised for ceremonies until the current time -

Hon Mark Nevill: Is that not covered -

Hon TOM STEPHENS: It is a native title right; it is not a sacred site.

Hon Mark Nevill: It does not have to be sacred to be covered.

Hon TOM STEPHENS: It is not a site by way of reference to the Aboriginal Heritage Act, it is by way of reference to the traditional rights, usage and custom of the Aboriginal people that they have gained and maintained access to that site.

It seems to me and to the Labor Party unacceptable to think that because that site was included within an area covered by a public work, even though that public work might be on the far corner of the area involved, that would somehow remove that native title right to the remainder of the land that would otherwise be unaffected by the public work within that corner. For those reasons, the Labor Party has agreed to pursue this amendment.

Hon GIZ WATSON: I refer to the decision in the Miriuwung-Gajerrong case. According to Justice Lee, public works extinguish native title when the use of the land is inconsistent with the native title and permanent. However, extinguishment does not extend to the surrounding land or incidental areas. Under new section 12I and the extended definition of public works in sections 23C(2), 251D and 253 of the Native Title Act, extinguishment will extend to any adjacent land incidental to the construction, establishment or operation of the work. The Crown Solicitor's office argues that such extinguishment in the case of the Miriuwung-Gajerrong extended to the entirety of Lake Argyle, Kununurra and all areas of vacant crown land resumed for the project, which are very large areas. It is for that reason that we will support the Labor Party's amendment to limit the extinguishment to the public works specifically and not extend it to incidental or surrounding areas.

Hon N.F. MOORE: I return to the practical reality of the example of Kununurra hospital that was mentioned by the Leader of the Opposition. The effect of this amendment is that native title will be extinguished on the land underneath the buildings of Kununurra hospital but not on the grounds.

Hon Tom Stephens: If the hospital wanted to expand and conduct any other hospital activities -

Hon N.F. MOORE: I am about to come to that. If the hospital wanted to expand -

Hon Tom Stephens: No problem.

Hon N.F. MOORE: No problem with whom?

Hon Tom Stephens: With the native title interests, because the lease has been granted, and that person can pursue all of his rights with regard to the existing public work.

Hon N.F. MOORE: If native title were found to exist over the grounds of Kununurra hospital, Broome Senior High School or Eastern Goldfields Senior High School in Kalgoorlie, and if the Government wanted to expand those buildings, it would be necessary for the Crown to go through the process of resumption and the payment of compensation, in the same way that

if the Government wanted to acquire a freehold block of land for a road or another public purpose, it would need to resume that land and pay compensation, which is usually the value of the land plus a certain percentage to compensate for the inconvenience. I can only presume that is what the Leader of the Opposition has in mind. It is interesting that Hon Giz Watson should again refer to Justice Lee's decision in the Miriuwung-Gajerrong case. He also talked about access to areas of land over which native title has been granted. There is serious doubt in the mind of many people about who will have access to areas of land over which native title exists. It has been brought to my attention - and this is one of the reasons that we are appealing this decision - that in that area of land in the Kimberley over which native title has now been found to exist for the Miriuwung-Gajerrong people, persons who have a title of some other description within that area would have access to their piece of land; for example, a person who had a mining lease would have access to continue to mine. However, a person who did not have a particular reason to access that land could be denied access. It has been suggested that tourists, for example, could be denied access to that land; I am not saying they would be.

The same thing could apply to Kununurra hospital. If native title were found to exist on the Kununurra hospital grounds and Justice Lee were right - we all hope he is not - then the native title holders could say there could be no access. That would be ludicrous, just as this proposition is quite ludicrous. What would be wrong with saying that the fence that surrounds Kununurra hospital is the boundary of that public work? It is not as though it covers 10 000 square kilometres. It is just an area of land that is necessary for the existing buildings and any future expansion and that provides pleasant grounds in which people can convalesce or which they can enjoy. I cannot understand why Hon Tom Stephens wants to go down this path, other than for this question of compensation. I believe that from the simple practicality of what has been proposed, he should withdraw his proposal so that we can get some certainty into who owns and controls the lands that surround our public buildings.

Hon MARK NEVILL: This Parliament should be trying to bring about some certainty. I can foresee that some very bizarre situations will occur. If native title were extinguished underneath Kununurra hospital but not on the hospital grounds, and if the person who had been granted the lease had the right to use that lease for the purpose for which it had been granted, so that if he wanted to expand the hospital, he could, and in so doing, he would extinguish native title, possibly without any compensation, it seems to me that a demountable could be moved every two or three years over the grounds of that hospital to effectively extinguish native title. All sorts of bizarre situations could develop as people tried to get some certainty about the title, because they might want to change the purpose of the title.

In Kalgoorlie, a lease might be given for a certain purpose, but because of the vagaries of the gold industry over time, the business might fall upon hard times and the nature of that business might change. Kalgoorlie used to have woodcutters and people who carted hay. However, if the purpose of the lease were construed to have changed, all of the assets that had been built up in that business would be in jeopardy, because the lease holder would have to go through the right to negotiate process again. What we are doing here is creating a lot of problems for the future. Certainty is important. We cannot legislate for every common law decision that is made. Hon Giz Watson mentioned the Miriuwung-Gajerrong decision. At which common law decision should we be looking? Justice Lee has said that native title is not extinguished at common law by this Bill; Justice Olney has said something different. We cannot proceed on that basis.

We must consider the common law as determined by the High Court. I would be surprised if the Miriuwung-Gajerrong decision survives in its present form when considering the Native Title Act. The definition of extinguishment in the Native Title Act says that it cannot be revived. We are creating a real mess and real uncertainty. The whole idea of legislation is to bring certainty to an evolving common law situation; that is all we are doing. The laws that we are enacting cannot contemplate what the common law might be. That is the danger in focusing too much on the Yorta Yorta or Miriuwung-Gajerrong decisions. We must consider what the High Court says before we can do anything about them. I am concerned about the mess that we are getting into. As I said in the second reading debate, none of these amendments will solve our problems. I am convinced that it will exacerbate them.

Hon GIZ WATSON: I want to pursue the issue of the Kununurra hospital raised by the Leader of the House. One can understand the points being made when discussing the parameters of a hospital. However, I return to the example I raised of a project like Lake Argyle where a large area of land is set aside for public works but only a smaller portion of that land is physically occupied by the dam, pipeline or whatever it happens to be. There is no logic in extinguishing native title and no reason why native title cannot coexist on the rest of that project area. We are talking about very large areas of land in the northern part of the State. I have not heard an argument to change my mind.

Hon N.F. MOORE: I suspect that I will have significant difficulty changing the member's mind. It is her opinion that nothing should extinguish native title. The actual wall itself in the Ord Dam extinguishes native title as it is a public work. However, the lake itself does not. There is a ludicrous suggestion of native title rights existing over the Argyle Dam, which was not there until non-Aboriginal people built it.

Hon Giz Watson: The land is still there.

Hon N.F. MOORE: The land is still there, yes. However, until it drains, it cannot be used; no-one can walk along the bottom of it. There are fishing rights and so on.

Hon Giz Watson: Pull out the plug.

Hon N.F. MOORE: Yes. It is a simple issue. As Hon Mark Nevill said, we are turning something which is simple into something which is complicated. The Bill is simple. It says that land which is used for a public purpose extinguishes native title. The amendment says that land under a building which is used for a public purpose extinguishes native title but not on the surrounding grounds. That creates significant uncertainty about where we go from here if we want to expand the public building or do anything on the surrounding land. As somebody just suggested, if it is a car park and it is sealed, is it part of the public building? If so, is native title extinguished on the land under the car park?

The Leader of the Opposition suggested the ridiculous proposition of getting rid of historical extinguishment. His amendment says that in order for native title to be extinguished, a public work must be in existence on 23 December 1996. Therefore, if the Government closed a road on 22 December 1996, that road reserve would not extinguish native title. If we closed it on 24 December 1996, it would extinguish native title. I cannot work out the difference. Why would one closure extinguish native title and the other not? If it were decided at some time in the future to rebuild the road that was closed on 22 December 1996, we would have to go through the whole process of resumption and compensation. However, there would be no need to go through that process on the road that was closed on 24 December 1996 as native title had been extinguished. These are ludicrous situations.

As Hon Mark Nevill said so clearly, we are trying to get rid of uncertainty. If we go along with these amendments, we will be doing our best to create even more uncertainty. Again, I appeal to the members to allow commonsense to prevail and not support this amendment, which does all the things we are trying to avoid; that is, it will create even more uncertainty over the lands of Western Australia.

Hon TOM STEPHENS: If an area of land were large with simply a toilet block in one corner, mass extinguishment of native title would occur by virtue of the passage of this legislation unamended, without the Labor amendment.

Hon N.F. Moore: Can you give me an example of something like that?

Hon TOM STEPHENS: I do not have an example but I have a good imagination that suggests there would be many situations like that. At some stage this Chamber will have to address the idea, especially in a debate like this, of the lead speaker for the Opposition having an adviser who could interrupt him while he was speaking.

Hon N.F. Moore: That is a very rare occurrence, as you know.

Hon TOM STEPHENS: There is something to be said for recognising that we might have to equalise the situation on the floor of this place from time to time.

Hon N.F. Moore: Maybe we could just sit up in the public gallery and let the advisers argue with each other and have an applause machine and then vote.

Hon TOM STEPHENS: That is a possibility too. We could give them swords and see who wins! I will press on in the absence of a skilled and talented adviser, such as the Leader of the House had beside him, and endeavour to use my imagination as best I can.

The example I have just given was addressed in the Miriuwung-Gajerrong case. That decision referred to a public work in the corner of the land and that the public work had extinguished native title within that area covered by the public work, but not otherwise. There was another reserve where the public work covered the area.

In reference to the Kununurra hospital example - which I am sorry that I introduced - all that is required is for the parties that want to extinguish native title interests in the area to head back in the direction of striking an agreement, insofar as the proposed public work area would be used for a purpose other than that for which it had been granted; that would require a future act to go through that process. It would be a pity if the expansion of a hospital meant the destruction of a medicinal tree that was utilised by the native title claimants in that area to deliver them good health. I do not think that would be the desire of the operators of the hospital. Therefore, to strike an agreement whereby such native title interests are protected at the same time as allowing for future acts is a workable and sensible direction for the future. To go down the other path is to invite native title claimants to seek injunction after injunction and to pursue all of their rights and interests through the courts. I commend the amendments to the Committee.

Amendment put and a division taken with the following result -

Ayes (15)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Mark Nevill	Hon Tom Stephens	

Noes (14)

Hon M.J. Criddle	Hon Ray Halligan	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore		

Pairs

Hon John Halden	Hon Peter Foss
Hon Tom Helm	Hon Murray Nixon

Amendment thus passed.

Hon TOM STEPHENS: I move -

Page 9, line 11 - To insert after the word "State" the following words -

and the public work to which the act relates still existed on 23 December 1996

Hon N.F. MOORE: I know that I was a little out of order earlier when I talked about the effect of this amendment, but it is absolutely ridiculous. It means that historical public works which did not exist on 23 December 1996 have not extinguished native title. I gave the example of two roads, one being closed on 22 December 1996 and one being closed on 24 December l996. One extinguishes native title and the other does not.

Hon TOM STEPHENS: The amendment takes up the concepts provided in the federal Native Title Act as amended following Wik. The amendment includes 23 December as the date selected in that legislation.

Amendment put and a division taken with the following result -

Ayes (15)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
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Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore		

Pairs

Hon John Halden	Hon Peter Foss
Hon Mark Nevill	Hon Murray Nixon

Amendment thus passed.

Hon TOM STEPHENS: I move -

Page 9, line 12 - To insert after the word "title" the word "only".

Amendment put and a division taken with the following result -

Ayes (15)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Mark Nevill	Hon Tom Stephens	

Noes (14)

Hon M.J. Criddle	Hon Ray Halligan	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore		

Pairs

Hon Tom Helm	Hon Peter Foss
Hon John Halden	Hon Murray Nixon

Amendment thus passed.

Hon TOM STEPHENS: I move -

Page 9, line 15 - To delete the words "was or".

Amendment put and a division taken with the following result -

Ayes (15)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Mark Nevill	Hon Tom Stephens	

Noes (14)

Hon M.J. Criddle	Hon Ray Halligan	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore		

Pairs

Hon Tom Helm	Hon Peter Foss
Hon John Halden	Hon M.D. Nixon

Amendment thus passed.

Hon N.F. MOORE: I will make one final attempt to convince members on the other side that they are making a terrible mistake. We have spoken about all the reasons they should not change this Bill. I have covered the subject of leases and outlined the uncertainty the changes will create. I have made what I thought were very persuasive arguments about public buildings and sites that are in effect public works under this Act. For some strange reason, which is beyond me, a Labor Opposition supported by the Australian Democrats and the Greens (WA) has sought to change this Bill in a way that does not make any sense; it is senseless. Hon Tom Stephens said that native title will not be found to exist on leases anyway, "So don't worry about it pal" or "mate" he said, or whatever word they use on the other side of the House. They can save the people concerned a great deal of trouble by agreeing to the Government's Bill.

As Hon Mark Nevill clearly pointed out, we will be creating enormous uncertainty with respect to public works and the lands that would normally come under the control of the Government. This amended Bill could result in very damaging circumstances in the future. I again ask all members of the Labor Party to understand what it is doing here and to vote against clause 7 as it has been amended so we can put back into place what the Government sought to have in it in the first place; that is, the maximum degree of certainty. By passing legislation that means something we can try to resolve native title rather than create enormous uncertainty for many Western Australians.

Hon TOM STEPHENS: I thank the leader for his advice and repeat what I have been trying to get the Government to embrace and which came to it in part through the recommendations of the first select committee; that is, there is an alternative path which it is wiser to pursue. The Government might find some short-term political gain in bashing the heads of the Labor Party, the Greens and Democrats along the lines the Leader of the House has pursued. However, they will be short-term gains. The lessons from other jurisdictions indicates that the sweep of history requires an alternative approach that the Government has so far not been able to embrace. I commend that approach to it even at this late stage because through that approach will come the opportunity for economic development. It will ensure we remove from the equation the injunctions and litigation that will otherwise flow and that we have highlighted in the unanimous report of the select committee.

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

Ayes (15)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Norm Kelly	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Mark Nevill	Hon Tom Stephens	

Noes (14)

Hon M.J. Criddle	Hon Ray Halligan	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore		

Pairs

Hon Tom Helm	Hon Peter Foss
Hon John Halden	Hon M.D. Nixon

Clause, as amended, thus passed.

Clause 8 put and passed.

Title put and passed.

Bill reported, with amendments.

Leave granted to proceed through remaining stages.

Report

Report of Committee adopted.

Third Reading

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [12.02 pm]: I move -

That the Bill be now read a third time.

HON HELEN HODGSON (North Metropolitan) [12.03 pm]: Throughout the debate it has been fairly clear that the Australian Democrats have been extremely unhappy with the progress of this Bill. It stands as a black mark in Western Australian history, and in the way in which we treat Aboriginal people. We have been through the debate in some detail. We have looked at alternatives, trying to ensure some degree of fairness in the way Aboriginal people will be treated under this Bill. Unfortunately, we have been unsuccessful in our attempts to ensure the Bill does not extinguish native title beyond the point at which the common law currently says it should be extinguished. We must now choose between the frying pan and the fire: We must either support the third reading of a Bill which has been amended to the extent that it includes a lot of inequities, or we must vote against the Bill as a whole. That is not an easy decision to make. Whatever the outcome, it will result in inequity and injustice for 7Aboriginal people. We have tried to ensure the interests of Aboriginal people are represented in this decision; however, ultimately, this debate has been played out on a political stage. Many of the decisions have been made in the interests of the political situation, rather than those of Aboriginal people. Before the vote is taken on the third reading of the Bill, it is important that I put those comments on the record, to express that whichever way this vote goes ultimately the losers will be Aboriginal people in the State.

HON GIZ WATSON (North Metropolitan) [12.05 pm]: I also wish to express the sentiments of the Greens (WA). This has been a very unpleasant Bill to deal with. We are faced with the prospect of supporting an amended Bill which has not come as far as we would have liked in addressing the concerns about the extinguishment of native title, expressed by not only Aboriginal people but also other members of our community. We are inevitably faced with a choice between either supporting an amended Bill, or not supporting the Bill at all. I can only concur with the comments of Hon Helen Hodgson that the amended Bill with which we are left will still enable native title rights to be extinguished in this State. It is not an outcome that the Greens (WA) wanted. As stated at the outset of this debate, we have an outright opposition to the notion of the validation of extinguishment of native title. I wish to reaffirm that position at the end of the debate.

HON B.K. DONALDSON (Agricultural) [12.06 pm]: I want to make sure a couple of matters are on the public record. First, today is one the saddest days in Western Australian history because this Bill has left us with further uncertainty; I do not think any of us want that. Secondly, any chance of reconciliation has been set back many years as a result of this legislation. I am disappointed that is the case because it will create further divisions within the wider community. It will not assist the Aboriginal people in their quest. We have also seen the death throes of the union movement in Western Australia. The Australian Labor Party has got into bed with its legal friends, and has moved away from its normal support base, the union movement. It is very sad to see a party that none of us has any respect for - One Nation - being given one of the greatest boosts to its potential membership that I have ever seen in my life. On their way out, the Australian Labor Party, the Australian Democrats and the Greens (WA) will effectively boost that membership. As I said, today is a very sad day. I hope that some sanity will prevail in the future, when the appeal by the States against the decision by Justice Lee is upheld.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [12.08 pm]: The Labor Opposition understands the position put by the Australian Democrats and the Greens (WA), but does not agree with it. The Labor Opposition has heard from the Government, through the committee process and the other opportunities extended to many stakeholders, the process we should adopt in this legislation. Let us contrast the provisions in this Bill with the previous validation process that took place following the passage of the 1993 Bill, the 1995 Act. At that time, the validation of past acts was traded off in return for the participation of Aboriginal people in future acts.

The Government is not putting that sort of offer on the table with the Titles Validation Amendment Bill. Despite that, the Labor Party pressed into this area with a careful study of the law, of the claims being made by the State Government about its Bill, of the decisions being made by the High and Federal Courts and those made by the National Native Title Tribunal. A difficult interweaving was needed between an appreciation of what was happening in common law and the need to dock and mesh those two systems of law, the statutory and common law, in the Bill before us. The Labor Party believed that it accommodated the legitimate request for validation and pressed on into the area of what extinguishment, if any, was necessary. The Labor Party can defend the area where it has provided extinguishment. The Labor Party's amendments have delivered certainty, workability and equity. There is certainty about the extinguishment of native title rights in the mini-schedule. That is being met with some disappointment on the part of indigenous peoples but in response the Labor Party says that those native title interests are effectively being extinguished given the recent court decisions.

This Bill gives certainty to that situation. It provides the Government with the opportunity of a fresh start to these questions. It wanted to pursue a provocative path. The alternative available to it through this legislation is to take on the role of being an honest broker in this area and to move into this field without unnecessarily stirring up the fears and concerns of sections of the community. The Government has a way forward through these questions to show leadership and courage and to find a way of striking the balance in its responsibility as a Government. The community of Western Australia and the Government will be better off for it and what more could any party ask than to have served the community of Western Australia and its own interests? I commend that path to the Government. Eventually there will be no alternative. If the Government does not embrace the path willingly, eventually it will have to embrace it as its own.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [12.13 pm]: Again we have the unedifying situation of the opposition parties heading for the same constituency. This happens all the time. It is a problem the Leader of the Opposition faces daily. He does not know who will go as far to the left as he wants to. He cannot determine which of the parties on the other side is winning the hearts and minds of the people the Labor Party is seeking to influence. From this side of the House it is extraordinary to watch these three parties compete with each other for the same votes. They are all trying so hard to be that little bit greener, pinker, lefter and redder in the case of Hon Jim Scott than each other. The bottom line is that the Government brought a Bill to this House which was the result of an enormous amount of compromise across Australia. All members are aware of the history of the Senate debate.

We all know that the Bill which emerged from the Federal Parliament was the result of a significant compromise and that this Bill is based on that compromise. Therefore, it is in itself a significant compromise. It does not represent the views of either side of the argument. It represents the balance we are trying to achieve in Australia on a very difficult and vexed question. I argued that the School Education Bill was that sort of Bill. In the third reading stage of that Bill I found myself wondering whether it should be passed because of the way it had been amended. I have a similar problem with this Bill. I spoke against some of the amendments moved by the Labor Party and the Australian Democrats in the committee stage. Fortunately the Labor Party did not support the Australian Democrat's amendments. The Labor Party's amendments have significantly changed the balance of this legislation, a balance many people across Australia had tried to achieve. These were people of goodwill, seeking to -

A member interjected.

Hon N.F. MOORE: Members opposite can laugh all they like about that but there is significant goodwill towards this problem. Goodwill is a result of people making decisions based upon the needs of the vast majority in order to achieve a balance in what we do. If members of the minor parties opposite want an unbalanced set of laws, that is for them to progress. One day they might have more than two or three members in this House and might have some members in the other House. They might become the Government one day and then their point of view can prevail over everybody else. However, until that day they must accept that they are a minority interest. Eventually a compromise will be reached through the normal course of politics. That compromise had been reached until members opposite decided to meddle with it further.

Members opposite have again tipped the balance in one direction as opposed to the others. That is the difficulty and tragedy of what members opposite are seeking to do here. However, we will wait and see what the other House wants to do with this Bill. That is where the Government is located and where the coalition parties have a record majority. The Government is entitled to have its legislation considered in that House in the context of its total outcome. It has been an interesting debate in this House. I have appreciated the contributions made by members because it meant that this House was able to debate the issues in a sensible, mature way even if it got the wrong answer at the end of the day.

Question put and a division taken with the following result -

Ayes (26)

Hon Kim Chance	Hon Max Evans	Hon N.F. Moore	Hon Tom Stephens
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Mark Nevill	Hon W.N. Stretch
Hon M.J. Criddle	Hon John Halden	Hon Simon O'Brien	Hon Bob Thomas
Hon Cheryl Davenport	Hon Ray Halligan	Hon Ljiljanna Ravlich	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Tom Helm	Hon B.M. Scott	Hon Ken Travers
Hon E.R.J. Dermer	Hon Barry House	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon B.K. Donaldson	Hon Murray Montgomery		

Noes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson	Hon Norm Kelly *(Teller)*
Hon J.A. Scott			

Question thus passed.

Bill read a third time and returned to the Assembly with amendments.

HEALTH AMENDMENT BILL

Recommittal

HON NORM KELLY (East Metropolitan) [12.20 pm]: I move -

That the Bill be recommitted for the purpose of reconsidering clause 5.

Last week's *Hansard* indicates that the progress of the Bill during the committee stage was partially dependent upon some of the comments made by the minister about how regulations and the amended Bill would operate. It is important that we revisit clause 5 to ensure that the intent of what has been said in this place and the intent of the House is truly reflected in the Bill.

HON MAX EVANS (North Metropolitan - Minister for Finance) [12.21 pm]: The Government does not support the motion.

HON KIM CHANCE (Agricultural) [12.22 pm]: The Australian Labor Party has been aware of the possibility of this motion for some time. I am grateful to the Democrats for giving us a clear warning on the issue. However, the Australian Labor Party will not support the motion to recommit, although that may raise a few eyebrows. From the beginning, the Australian Labor Party's acceptance of the compromise offer which it received from the Government and the understanding it had with the Government was that, notwithstanding the words of the Bill, by use of the regulations, the head power of the Act could deliver the outcome which we sought; albeit a compromise outcome. The Australian Labor Party's initial view was that the default position should be that all public enclosed places be non-smoking and that smoking be permitted only by exemption within the regulations. Once we had moved from that position, into which we were forced partly because that position was not consistent with the standing orders of the House, it left us with the only option of pressing on with the regulations to try to achieve our outcome. The Bill is silent on the vital question of what can occur in a public enclosed area which contains two public enclosed spaces as defined in the Bill. The cause for the motion for recommittal is that Hon Norm Kelly wishes to move a further amendment which would redefine that. Given the commitment that we have been given by the Minister for Health about the degree of input which the Opposition and the trade union movement can have in the designing of those regulations, the Australian Labor Party does not support the recommittal.

Question put and a division taken with the following result -

Ayes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson	Hon Norm Kelly *(Teller)*
Hon J.A. Scott			

Noes (26)

Hon Kim Chance	Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Mark Nevill	Hon Bob Thomas
Hon M.J. Criddle	Hon John Halden	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon Ray Halligan	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon Dexter Davies	Hon Tom Helm	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon E.R.J. Dermer	Hon Barry House	Hon Greg Smith	
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Tom Stephens	

Question thus negatived.

Report

Resumed from 16 December.

Report of Committee adopted.

Third Reading

HON MAX EVANS (North Metropolitan - Minister for Finance) [12.28 pm]: I move -

That the Bill be now read a third time.

HON NORM KELLY (East Metropolitan) [12.29 pm]: The Australian Democrats find themselves in a difficult position in deciding whether to support the third reading of the Bill. Unfortunately, the second reading occurred in the heat of the last-minute negotiations last week which have been referred to at length during the debate. Initially, what were seen to be confusing statements by the Minister for Finance in his representative capacity made it necessary to revisit those issues. The minister clarified our understanding of the Government's true intention, and outlined the final version of the regulations. I moved that the Bill be recommitted a few moments ago to reconsider the clause in question in the full knowledge of the Government's position.

Also, the minister's use of selective information did not assist the debate on this Bill. For example, the minister referred to Cannington Greyhounds' adoption of a smoke-free policy, and how this has resulted in a large drop in track turnover. However, he did not mention that the Western Australian Turf Club, which also has a smoke-free policy, has had an increased turnover. Also, it is experiencing very few, if any, problems with implementing that smoke-free policy. I was at Ascot Racecourse on Saturday -

Hon Derrick Tomlinson: Did you win?

Hon NORM KELLY: I did. It was reassuring -

The PRESIDENT: Order! It is not unreasonable to raise an issue with which the member believes the Minister for Finance did not deal adequately during earlier stages of the Bill. However, the member cannot then introduce new material.

Hon NORM KELLY: Thank you for that direction, Mr President.

The legislation before us is best summed up in a letter I received yesterday from the Mayor of the City of Belmont, Peter Passeri, who raised the council's concerns and objections. Mayor Passeri wrote -

> Council is not opposed to the philosophy of the proposed smoking legislation in relation to its effect on public health, but is perplexed on the issue of exemptions. Surely if legislation is drafted, based on the risk to public health, providing exemptions to certain industries would seem to compromise the intent of the legislation. Further, granting some sectors within the food and liquor industries exemption would also seem to contradict the intent of the national competition policy.

That is one of the main issues pushed by the Democrats. Debate has turned to public amenity and convenience rather than pressing a public health matter, which was the reason for the Bill's introduction in the first place. The mayor states some of the concerns which the Belmont council believes require further attention -

> Council strongly objects to the responsibility of the law being imposed on Local Government Environmental Health Officers.

The Democrats have expressed the difficulty the environmental health officers face in implementing those laws and regulations without a strong and effective backup. The letter continues -

> . . . there has been no consultation or measures included to support Local Government. Again Local Government has been expected to pick up the tab associated with all aspects of this proposed new law.

The letter then mentions the need for adequate consultation and the inclusion of police as enforcement officers. I do not necessarily agree that police should enforce these matters; nevertheless, environmental health officers should receive more support to implement this legislation than is proposed. The letter further reads -

> Greater responsibility on the proprietor of the business to control customer behaviour.

The council wants that matter to be addressed as well. The mayor briefly sums up the problem in his final comment -

> My Council believes that this legislation has been prepared in haste and watered down the intent of the legislation by including exemption provisions.

The mayor highlights the weakness the Australian Democrats tried to address during earlier debate, and which we considered in deciding whether to support the Bill's third reading.

The debate has been hijacked by people placing emphasis on hotels and showing scant regard for other sectors, such as restaurants, environmental health officers, and workers at hospitality venues who are endangered by environmental tobacco smoke. The Bill outlines that premises with more than two enclosed public spaces will be covered; however, it remains silent on premises with only one or two enclosed public places. The Bill provides only a head of power to make the regulations. We urge the Government in forming its regulations for gazettal to ensure that restrictions are specified regarding premises with one or two enclosed public places. The Bill as it stands will ensure that people who visit these venues can expect to be exposed to environmental tobacco smoke. Therefore, it is critical that the Government frame its regulation so people can also be assured that when they visit any of these venues, they will have a choice about whether to encounter environmental tobacco smoke. Regardless of the venue and the number of public places within it, it should be necessary to provide a smoke-free area. That area could be determined by regulation. The Democrats urge the Government to specify that requirement in the final regulations, which is within the Government's powers.

The Democrats are disappointed that the ALP has decided not to support the recommittal to include more specifications in the Bill. We appreciate the difficult position we face with a threat that the Government will withdraw this Bill if we make it more prescriptive and push for better public health policy. If we support the Bill at this stage, we will rely on the Government to make changes down the track. Some changes have been agreed to. We hope that the Government will agree to other changes in the final regulations, and that further consultation takes place with all interested bodies, including political parties, before the final regulations are gazetted. Of course, we have the power of moving a disallowance motion if that final form is unacceptable. I would prefer not to follow that procedure as it will create uncertainty for months; that is, a couple of months can pass between moving a disallowance motion and its determination. It is far better to provide certainty to the industry and public through agreement before gazettal takes place.

In summary, the Democrats support this Bill, not necessarily because we believe it is good legislation, but because stronger antismoking measures are needed urgently. This Bill will enable that to occur. However, if the Government fails to make the required changes to the regulations, we will have no hesitation in moving or supporting a disallowance motion. The groups most supportive of the legislation are hoteliers, nightclub owners, the casino operators, portions of the coalition and Labor parties, and tobacco companies. From the information I have received in the past few days, it seems that local government bodies, environmental health officers, restaurateurs, public health groups, unions, workers in general, portions of the major political parties and the wider community in general are still opposed to this legislation and support stronger legislation in this area. I urge the Government to take those views into account, so that the Western Australian legislation is in the forefront of antismoking legislation in Australia. With those reservations, the Australian Democrats support the Bill.

HON GIZ WATSON (North Metropolitan) [12.40 pm]: The Greens (WA) are concerned at the hurried and last minute negotiations to reach a compromise on the two-bar scenario. I was clear, as a member of the Greens who was a party to that negotiation, that we did not agree, in the situation where there are only two bars, to both bars being smoking areas. We have been shortchanged on that, and it is disappointing that what we understood to be the case is not the case. I support the proposal by Hon Norm Kelly that a recommittal would be the best way to set that straight, so that everybody understands the situation. The scenario in which there are two bars and one would be non-smoking is a bottom-line issue for the Greens (WA), and any move to further erode that position would be badly thought out. The Bill is also disappointing from the point of view of the extensive list of organisations and representatives that Hon Norm Kelly mentioned when completing his speech. I have also heard from workers in the industry who are disappointed that the Bill has not gone far enough, and the situation with two bars has certainly added to that confusion.

Our position is to protect the health and wellbeing of the non-smoking public and workers in the service industry. I hope that we will be able to trust the Government, and the regulations will clearly reflect that if there are two bars, smoking will be allowed in only one of them. At this stage we must take the Government on trust and that is of concern to me. It also highlights that we often engage in last minute, rushed and pressured negotiations on significant components of legislation. It would be a lot better if we did not have to wait until crunch time to make clear what we are bargaining over. I agree with Hon Norm Kelly's observation that the danger, if we push for a recommittal, is that the Government might further weaken its antismoking stance and compromise further to the hoteliers' lobby in particular.

It is interesting in the context of debate earlier today on the Titles Validation Amendment Bill that the Leader of the House berated members on this side of the House for being beholden to minority viewpoints. If ever that is the case, it is evidenced by how the Government's move to restrict smoking has been amended, watered down, and pared back by the lobbying of a minority viewpoint. That is exceedingly disappointing in the area of public health. We wish the Government had stood more strongly on this matter. However, if we continue to hold out on this point we see the danger that the Government may backpedal even further, which would be to the detriment of the workers in the service industry and the non-smoking public. The Greens (WA) are not happy with the confusion and the outcome of the two-bar scenario and we encourage the Government to stand firm, so that where there are two bars, at least one of them is non-smoking.

HON KIM CHANCE (Agricultural) [12.45 pm]: It is useful when commenting on the third reading stage to cast our minds back to the minister's second reading speech to see how much the Bill in its current form reflects the intention and policy

of the Bill as outlined in the minister's second reading speech. I remind members of four short lines which form the second paragraph of the second reading speech which pretty well sum up the Bill. The minister stated -

> The primary object of the amendment Bill is to promote public health by reducing the general public's exposure to ETS in enclosed public places.

That is environmental tobacco smoke. To continue -

> The Bill will authorise the making of regulations for the regulation or prohibition of smoking in enclosed public spaces.

The minister expresses two themes. The first is that it is a Bill about the promotion of public health. I ask members to consider whether the Bill before us now achieves that in a substantial or an insubstantial form. I am sure that members will have read a press release which came from the antismoking lobby and was signed by a number of persons, including Dr David Roberts and Ron Edwards. In that media statement those persons purporting to be the antismoking lobby called on us to throw this Bill out. Both my leader, Geoff Gallop, and I believe that goes a little too far and perhaps it was an overreaction by the antismoking lobby. However, that comment is profound; that is, the Bill provides so little by way of protection to public health that it is not worth having at all. I do not agree with that, although I see clearly where they are coming from. It is an awful shame that the Bill in its current form is less able to provide a choice of non-smoking venues to those people who would prefer a non-smoking venue. We are not able to provide the choices that the Bill set out to provide.

The second part of that paragraph of the minister's second reading speech refers to the regulation-making power which will flow from the Act. In a sense, I obviously agree with the second reading but the Government has imposed an enormous pressure on itself. The result of the Government's looking for, and ultimately achieving, the changes in the legislation is that the whole concentration of not just the antismoking lobby but also all those persons who believe there should be a greater choice of venue for non-smokers, will be on the Government's regulation-making power. It will not go away simply because the Parliament passes legislation which is not as strong as all members know it should be. The pressure will remain and it may even intensify.

The Australian Labor Party voted against the recommittal of the Bill because it believes deep down - the Government may not believe this - that the Government has the right to govern. In addition, the ALP supported it because the Government retains its regulation-making power. All that antismoking pressure will concentrate on the regulations the Government will make under that power. The comments I have heard over the past five days indicate that the pressure will intensify rather than weaken, but instead of its being focused on the Government, the ALP, the Australian Democrats or the Greens (WA), it will be focused entirely on the Government and the Minister for Health in particular. The pressure on the Minister for Health to make regulations which meet the public perception of the need for choice for non-smokers will be immense. I have made it clear, privately to the Minister for Health, and I believe in this place but, in case I have not said it with sufficient clarity, I repeat, that the ALP, and I am sure the other opposition parties and the union movement, are extremely keen to assist the minister in that process. We all have something to add to the regulations which will flow from this legislation. The legislation has the head power to make regulations which meet the aspirations of the antismoking lobby. It is there, and it is one of the reasons I am still prepared to go along with the Bill as it is, notwithstanding the fact that I was unhappy about some of the things that happened on the way to this point. This legislation, despite what some people have said, provides some scope for improved legislation, and in some areas it provides considerable scope. I will talk about one group of people who will be affected by the way these regulations are drawn up.

The PRESIDENT: Order! We are debating the third reading and whether the Bill should be read a third time. The opportunity to talk about whichever persons the member wishes to refer to was at the committee or second reading stage. I am sure the member understands me, and understands that I intend to leave the Chair in a few minutes.

Hon KIM CHANCE: I do indeed, Mr President, and I did not intend to step outside the standing orders. However, I believe the third reading should be supported because of the regulations that can flow from the Bill. To that extent I think I am within the standing orders. The croupiers at the Burswood International Resort Casino will be affected by the regulations that will be formed from the power of this legislation. People such as that, who are exposed to environmental tobacco smoke for lengthy periods, need particular consideration when these regulations are made.

I also correct some statements made by Hon Max Evans. Members should be clear about this matter. I quote from the uncorrected *Hansard* of Wednesday, 16 December. Hon Max Evans said -

> Hon Kim Chance read the letter from Bradley Woods -

Members will recall that Bradley Woods is the spokesman for the Australian Hotels Association. It continues -

> that gave an undertaking that hotels that have two bars will make every effort to provide a nonsmoking area.

For the sake of the record I will correct that statement. The letter from Bradley Woods did not state that; it quite clearly

specified that the offer was made on the basis that a further public enclosed space would be set aside in those premises as a smoke-free area. I emphasise the words "on the basis", and it is not a question of their making every effort. That was clearly stated in the letter. The third non-smoking area was obligatory in that letter. The fact that the AHA changed its mind and applied different riding orders to the Liberal Party is of no interest to me. Hon Max Evans is also reported at page 41 of the uncorrected *Hansard* as saying -

> I am not sure why the Labor Party wanted an amendment to allow smoking in two bars,

The ALP never wanted such an amendment; it was a government amendment. At page 42, Hon Max Evans is reported as follows -

> The amendment was to delete the word "one" and insert the word "two". As I said, I do not like doing amendments on the run, but the Labor Party was quite happy with it, as it said at the time.

It was not an ALP amendment; it was the Government's amendment.

Hon Max Evans: You knew what was coming. Do not back away from it.

Hon KIM CHANCE: The Supplementary Notice Paper and the uncorrected *Hansard* of the day indicate quite clearly that the amendment to substitute "two" for "one" was moved by Hon Max Evans.

Hon Max Evans: You were right behind it.

Hon KIM CHANCE: It was based on an agreement hammered out on Monday night, and it was not made on the run. At page 42 Hon Max Evans is reported as saying -

> The legislation has now been drafted in the most commonsense way, in that a hotel that has two bars can allow smoking in both bars.

Again, that is not technically correct, because the legislation is silent on the question of hotels with two bars. A single-bar hotel is catered for de facto, and a hotel with three bars is catered for by the legislation; however, the legislation is silent on hotels with two bars. Notwithstanding that, and I am grateful for the opportunity to correct the record because anybody who read that statement from Hon Max Evans -

Hon Max Evans: You knew exactly what was there and what was agreed to.

Hon KIM CHANCE: Perhaps Hon Max Evans needs to read what he said, because if he does he will find that my comments are entirely correct.

Hon Barry House interjected.

Hon KIM CHANCE: I will deal with that in my own way. I remind Hon Barry House that had I been over concerned about that, I would have supported Hon Norm Kelly's amendment.

Hon Barry House: For once you showed a bit of courage.

Hon KIM CHANCE: My resolve is being tested. I affirm that, despite my extreme reservation and deep unhappiness about what has happened in the conduct of this Bill, the ALP will support it.

Question put and passed.

Bill read a third time and returned to the Assembly with amendments.

Sitting suspended from 12.59 to 2.00 pm

SITTINGS OF THE HOUSE - EXTENDED AFTER 10.00 PM

Tuesday, 22 December

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [2.00 pm]: I move -

> That the House continue to sit beyond 10.00 pm.

I hope that the House can make significant progress in respect of the legislative program. I do not wish to give any undertakings in respect of what we would do after 10.00 pm, because I would like to be in a position at about 10.00 pm to assess progress and to discuss it with the leaders of the other parties before I come to a conclusion on how much we will do after 10 o'clock, if that is necessary. Rather than saying that the House sit beyond 10.00 pm in order to do certain things, I would prefer it if the House agreed to that motion, and then at about 10 o'clock I will discuss the matter with the leaders of the other parties and reach an amicable arrangement about how much later to sit, if it is necessary to sit beyond 10 o'clock at all.

Question put and passed.

NATIVE TITLE (STATE PROVISIONS) BILL

Second Reading

Resumed from 1 December.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [2.02 pm]: The Native Title (State Provisions) Bill will have the support of the Australian Labor Party against a backdrop of the House successfully amending it and the other place agreeing to those amendments. In that form, its enactment would meet our enthusiastic support. It is important to recognise that we are acting within a legal and political context that, in effect, has been laid down by the Commonwealth Parliament and the High Court of Australia. We know that common law native title rights and the principles of non-extinguishment and non-discrimination are here to stay. All parties are required to remember that as they embark upon the debate. In providing for a regime to regulate future acts over certain areas, and native title rights clearly must be involved in view of that backdrop and context, one set of native title rights might simply be the entitlement to travel across land periodically for a specific purpose such as gathering bush tucker or the right to exclusive and constant occupation and use of the land. The overriding aim of the Bill is to respond to those realities and to produce workability, equity and reasonableness.

The Bill must be considered against the backdrop of the racial discrimination legislation. Also, we have the context of the Commonwealth Constitution as interpreted by the High Court, the Native Title Act as enacted and then amended, and then of course now as it would be interpreted by both Houses of the Commonwealth Parliament. Not only must the legal and constitutional issues be taken into account but also practical political considerations are relevant to the legislation. We are, as we embark upon the Bill, embarking upon a process that I do not think this Parliament has ever previously embarked upon in handling this aspect of law. The Government must remember that the Bill is not subject only to the whim of the Government; it is subject to the will of Parliament and not just simply the will of this Parliament or this Government. Other processes must be taken into account when considering the passage of the Bill and the proposed amendments.

The House must be reminded that, once passed by Parliament, the Bill will be subjected to a process whereby it must gain the approval of the federal minister, and that minister is entitled to object to its provisions on the basis that, in his view, they do not conform to the federal Native Title Act. If he objects, the Bill will need to be reconsidered by this Parliament. If, however, the federal minister gives his approval, his determination in favour of the Bill will be open to judicial review by any interested party. Judicial review can be sought on the basis that, despite receiving approval from the federal minister, the Bill does not comply with the provisions of the Native Title Act. That is one of the first hurdles over which the legislation must jump. If such an application for judicial review were successful, the federal minister's determination could be ruled invalid. In such a case, the Bill would again be reconsidered by this Parliament before being resubmitted to the federal minister.

As we all know, a further check on the Bill is the provisions of the federal Native Title Act which leaves open the opportunity of a decision of either House of the Federal Parliament striking down the effectiveness of the state legislation. That, of course, has particular relevance in the context of the political makeup of the Senate. The Senate is left with an opportunity to review the determination of the federal minister if the Bill is approved by that minister. The Senate can disallow that determination. If the Bill were to pass unamended through this Parliament and be approved by the federal minister, the Senate would certainly do so on the basis that it did not comply with the Native Title Act.

It is the Labor Party's view that the Bill fails to comply with the Act in at least two ways. It fails to comply significantly with the spirit of the Native Title Act and the compromise agreement that was reached between the Federal Government and Senator Harradine in what has become known as the Harradine-Howard 10-point plan as amended. The Bill now purports to protect Aboriginal interests when future acts in this State are carried out. They are not supposed to be emasculated when any form of future act to which the legislation applies, particularly one that is intended to be carried out in an alternative provision area, is proposed. The Labor Party has serious doubts that Senator Harradine, in particular, and the majority of the federal Senate would regard the Government's proposed Bill as one that protects Aboriginal rights and interests to the extent that he envisaged when he agreed to the amendments to the Native Title Act. We have good reason to have such a view of Senator Harradine's current position. We know from various comments that he has made, as well as from various comments that the federal Labor Party has made, that there is genuine concern about the unamended Bill that was introduced into the Assembly and then delivered to the Legislative Council.

Secondly, the Labor Party considers that the Bill fails to comply with the letter of the Native Title Act, which sets out in sections 43(2) and 43A(4), (6) and (7) a number of requirements that must be complied with if the State is to provide for alternative provisions to the national regime. This Bill is deficient in a number of ways in not containing the processes that it is required to contain in order to reach the minimum standards set by the Native Title Act. A further very important consideration is that the framework that is provided by the State must be sufficiently attractive to encourage native title claimants to use the provisions of this legislation. If the indigenous interests do not consider that their rights are properly taken into account, they may choose to ignore the statutory approach and use the common law. During the second reading debate on the Titles Validation Amendment Bill, I spoke about the use of the common law to achieve an outcome that does

not effectively benefit any of the parties involved - indigenous peoples, proponents for development, miners and other future act proponents, and the Government, which has the responsibility of representing the State generally. However, if the alternatives are considered to be "not much", as against something of significance, although expensive and time consuming, the latter may be seen to be the only option. This Parliament has a responsibility to all parties to pass legislation that provides sufficient amounts of equity, certainty and workability to ensure that its processes will be used.

The Labor Party's amendments seek to rectify each of the failings that we have identified within the Bill. In the interests of expediency, I will not go into great detail about those matters at this point but merely give a broad outline of the relevant areas, because this Bill does require proper committee consideration and in our view should not be dragged out unnecessarily at the second reading stage. In our view, an objects clause should be inserted to establish the principles which govern this legislation. The definition of "alternative provision area" should be amended to exclude vacant crown land, irrespective of any historical tenures, and to include the intertidal zone where those areas extended to the low-water mark. Part 3 consultation parties should be required to consult in good faith with a view to reaching an agreement about specified matters. Both the "good faith" requirement and the "with a view to reaching an agreement" are - we agree with the Premier in this regard - implied within the Bill and therefore should be explicit so there is no confusion about the intent of this legislation. We should make explicit in this legislation that which the Premier says is implicit. This applies also to any part 5 consultation. When the Native Title Commission becomes involved in the part 3 process, the range of matters it can take into account should be extended to include those matters referred to in the Native Title Act. This is similarly extended in part 5. Due to the involvement of the minister in the process, it is also appropriate for a copy of the determination to be disallowed by this Parliament. This applies in parts 3, 4 and 5 of the Bill.

We propose to amend part 4 to widen the matters with regard to which negotiations may take place. This is provided for in the Native Title Act, but the Government has not seen fit to copy that part of that Act into this Bill. Where the minister is proposing to overrule a decision of the Native Title Commission, the relevant parties should be able to make submissions to the minister before the minister makes a determination. We propose a number of amendments to improve the processes and procedure of the Native Title Commission, including the appointment of members to the commission and the executive director. We believe that regulations made pursuant to this Act would obviously play an important role and should, therefore, be subject to the scrutiny proposed by this House. This House should request the other place to: Establish a parliamentary joint committee on native title, with specified duties; require the minister to consult the Equal Opportunity Commissioner and to report on specified matters; and enable the Attorney General to authorise the provision of assistance to specified persons.

The West Australian said in its 30 December 1996 editorial that -

> Politicians such as Mr Court and people with financial interests in land are all too ready to wave aside essential principles of human rights when they appear to conflict with commercial interests. People should be wary of any proposition that treats human rights as disposable commodities to be withdrawn for political convenience under legislative decree.

This editorial was written in the context of criticisms by the Premier of the Wik decision. However, I hope members of this House will acknowledge that it is not in the interests of any party, including this Government, to continue to take such an approach to native title issues, and that this Parliament should act only on principles of decency and equity.

As one of the participants in the regular debates that the State Parliament has had about Aboriginal affairs, I have always had grave apprehension about vesting in State Governments powers with regard to Aboriginal people. I have had a personal philosophy that has propelled the Labor Party into trying to bolster the role of the Federal Government in handling the question of the future and destiny of Aboriginal people as a way of best protecting their interests. When I first heard of the proposals that were put by Prime Minister Howard and were agreed to subsequently by Senator Harradine, I was particularly apprehensive about the direction in which we would be going when we were faced with state legislation to put in place a state process. Members will know that I was keen to try to convince certainly my colleagues, and more particularly this House, of the need to try the alternative strategy of leaving as much of this in the hands of the National Native Title Tribunal as possible, rather than setting up a state process. In moving to establish the first select committee on native title, I did take members with me to try to explore those issues, along with others. The work of that select committee, together with the work that Dr Geoff Gallop has done with his party room on this question, has effectively brought me to a changed viewpoint.

The views that are expressed by the Leader of the Opposition in the other place, Dr Geoff Gallop, are that as Western Australians, we are faced with the responsibility within all of our institutions of becoming a contemporary society which accommodates all of the rights and interests within our community, that protects issues such as the environment by the statutes, processes and institutions of our State, and that protects the other interests of Western Australia by embedding that protection within our institutions. Dr Gallop is basically a champion of a State that does that. Therefore, when faced with this state legislation, he puts his efforts into persuading the likes of me to say that our task is to make sure that all of our institutions, not just simply of government - those creations of the statute and the Parliament - and all of the stakeholders and all of the structures of our society accommodate appropriately the interests of the indigenous people, among all the other

considerations that must be taken on board. He does not shirk from urging the Labor Party to accept legislative responses such as this and then come forward with a process of improving that legislation to make sure that it does the job of accommodating the requirements of the Constitution, the decisions of the High Court in this area, the requirements of the federal legislation, and our requirements and responsibilities as state legislators. Therefore, that is effectively what has happened to enable the propositions that have now been adopted by the Australian Labor Party on this Bill.

There are two questions that I will leave with the Government which have not yet been answered adequately. I seek those answers now in the second reading debate. We have yet to receive a categorical assurance from the minister handling the legislation that the Bill, in its current form presented to the Legislative Council as 29-2C, has the support of the Federal Government; or is it still the case that the unanswered questions from the Opposition on this issue reveal a truth that the Federal Government and its officers are still pressing the State to amend this legislation in the certain knowledge that currently it is not up to the minimum standards required by the federal Native Title Act? It is appropriate for the state minister to answer that question. No matter how the answer may be couched, I understand that this State Parliament is required to respond to the challenge of that native title legislation and pass the Bill only when the Labor amendments at least have been included within the provisions of the Bill.

The other general and less specific concern is the incontrovertible fact that the cost of administering native title through this state provisions legislation will be a very expensive exercise for this State. A firm agreement between the Commonwealth and the State on the costs associated with the establishment of the state Native Title Commission has yet to be tabled. I gather that there has been an exchange of letters which suggests that the Commonwealth may pick up 50 per cent of the establishment costs. However, I have yet to see tabled a signed-off agreement between the two Governments. Also, the compensation question has yet to be signed off although there is a proposal that the responsibility for compensation be apportioned 75 per cent to the Commonwealth and 25 per cent to the State. The final detail has not yet been made available publicly, only the exchange of correspondence. It is appropriate for the Government to table a final agreement on those questions before it embarks upon requiring this Parliament to consider and bring to resolution this legislation. Nothing hangs on that as far as we are concerned other than that the Parliament is entitled to the information.

I note, however, that all the other States have gone down a variety of different paths and processes that are not identical to that which has been embarked upon in this State. That might be, in part, because in Western Australia these issues are of a much more contentious nature and much more partisan and political in the way they have been debated. However, other States have left in place the National Native Title Tribunal to do work that is required in the administration of the native title issues. It puzzles me that the State would embark upon trying to grab for itself the application of the registration test. The smartest thing any Government could do is leave that with the National Native Title Tribunal because it will be a lengthy and time consuming process as well as consumptive of resources. Spending commonwealth resources in that area, from a State's perspective, seems preferable to throwing away the much needed scarce resources of this State on those questions. Nonetheless, the policy option that has been adopted by the State Government, which it is entitled to do, is to bring forward this legislation. To allow this legislation to cross all its potential hurdles and overcome the obstacles in its way, the State Labor Opposition will bring forward its amendments to give the people of Western Australia better law in this area than otherwise would be provided for by the Bill that has landed in this place. I look forward to obtaining the support of the majority of the members on the floor of this House for those amendments when we get into committee on the Bill.

HON GIZ WATSON (North Metropolitan) [2.25 pm]: I note from the second reading speech that this Bill is to establish a comprehensive native title regime administered by a state Native Title Commission. The State will also have determination powers to deal with objections by native title parties to future acts. The state commission will in effect take over the role of the National Native Title Tribunal. Significantly, this Bill seeks to replace the right to negotiate on pastoral leases and certain reserves with a regime of consultation. I will deal with each of these proposals separately.

The Bill seeks to remove the right to negotiate on the vast majority of land in Western Australia; to restrict the right to negotiate in areas where that right still applies; to provide an unprecedented amount of ministerial interference in any decision made under the provisions of the Bill; to provide no appropriate mechanism for appeal from the commission's decisions; and to allow for the setting up of a commission that will not be given even the status of having a judge presiding. To remove the right to negotiate over land which has been established for Aboriginal people is an extraordinary proposal. The right-to-negotiate procedure under section 29 of the unamended Native Title Act provides for a six-month period for mining leases and four months for exploration licences in which native title holders and claimants can negotiate with the Government and grantee parties on the granting of certain interests in land. This Bill proposes to remove that right in a substantial part of the State.

In the Select Committee on Native Title Rights in Western Australia we heard from witnesses of the significance of the right to negotiate for Aboriginal people and the substantial difference that has made to the self-esteem and empowerment of Aboriginal communities. The right-to-negotiate provision is a foot in the door for Aboriginal claimants to have an opportunity to negotiate on a legal footing with a European legal system which has left them with very little. I understood from witnesses such as Pat Dodson that the removal of the right to negotiate was perceived as a huge loss to Aboriginal people; I can only agree. This Bill is putting forward an appalling proposition.

This Bill seeks to confirm the removal of the right to negotiate over the intertidal zone. I will speak on the significance of the intertidal zone to Aboriginal communities. It has been said earlier in this debate that various members have never been out of the suburbs and seen what is happening in the country. I have spent quite a lot of time over the past few years dealing with the management of coastal areas and the intertidal zone and speaking particularly with Aboriginal people from the Kimberley and Pilbara, who to this day are heavily dependent on the intertidal zone for a substantial amount of their food supply. Of course, Aboriginal people do not make a distinction in their law between the land and the sea; it is a continuity. Indeed, 43 title claims include sea claims as well as land claims.

The first report from the Select Committee on Native Title Rights in Western Australia went into some detail on the coastal area and the intertidal zone. The committee discussion on page 173 of the report reads -

> The right of Aboriginal people to fish, hunt and gather food on the intertidal zone and coastal waters is a traditional right that in many places continues to be exercised to this day. The access to this food source has been and continues to be the mainstay of sustenance for many Aboriginal communities. In particular, this practice represents for many Aboriginal people their primary source of protein in their diet.

The report later reads -

> Aboriginal tradition does not make a distinction between land and sea with respect to recognition or traditional ownership of the country.
>
> . . . Many marine organisms, in particular fish species, migrate between near shore and offshore habitats. Exploitation of certain species by recreational or commercial fishers in deeper waters affect the availability of fish to Aboriginal communities closer to shore and in tidal creeks, rivers and estuaries.

The committee commented -

> This may well impact on the traditional right to fish and hunt for the purpose of satisfying their ". . . *personal, domestic, or non-commercial communal needs* . . . " as recognised in the *Croker Island* case.

I believe that this Bill will be at odds with the decision in the Croker Island case. The committee further commented -

> Aboriginal communities need to have a legally recognised role in the management of "living aquatic resources" and other activities in the coastal environment and responsibility for continued sustainability for those resources and the environment.

I remind members that all parties agreed to this report. The committee's recommendation 34 was that the State establish joint management regimes with Aboriginal people in the intertidal and offshore areas. If we were to do what was proposed in this Bill - to remove the right to negotiate over intertidal areas - that would remove the legal requirement for Aboriginal interests to be consulted in the management of the intertidal area. As I say, that could well be at odds with the decision in the Croker Island case.

I also note that it would be at odds with the situation which has arisen in Canada and New Zealand with indigenous people's involvement over coastal management and resources. The Canadian response has been to involve indigenous people in the management of fish resources. This same approach in New Zealand has led to the participation of Maoris in commercial fishing. These have been negotiated outcomes rather than the statutory removal of their rights to be involved in negotiating on the coastal zone.

In the second committee, the Select Committee on Native Title, we heard submissions from the Western Australian Fishing Industry Council and the petroleum industry. Their submissions acknowledge that their requirement for land in the intertidal zone is fairly minimal; in fact, in most cases it involves access for a pipeline. WAFIC pleaded the case that Aboriginal people should not have the right to negotiate over intertidal zones because it might conflict with the objectives of setting up aquaculture ventures. The majority of aquaculture occurs offshore and is not sited in the intertidal zone. As members who are familiar with the geography of the north of the State will know, the area between high and low-water marks comprises huge mud flats. Consequently there is very little opportunity for siting facilities on it; in fact, the petroleum and fishing interests acknowledge that the most likely use would be for a service corridor or pipeline crossing it. Their request for the right to negotiate to be removed from intertidal zones was not presented with much vigour. Having spoken to a lot of Aboriginal people in the Kimberley, I know that they gather a significant amount of food from tidal creeks and mud flats. These areas are a reliable and substantial food source. There is every reason that those people should maintain the right to negotiate over those areas.

Much argument has been made about why we need to establish a state commission to take over the role of the National Native Title Tribunal. The passing of the amendments at the national level means that there is no necessity for establishing a state commission. I have said that given this State Government's record of constantly trying to reduce the rights of Aboriginal people in this State, one must inevitably view with suspicion the move to establish a state commission. There is inevitably mistrust of the State's intention in establishing its own body to deal with native title matters in this State. The

Government has said that the National Native Title Tribunal is not doing a good job and has not made agreements; that this is the justification for establishing a state-based commission; and that we can do things better and more efficiently here. One of the most obvious comments that should be made on the proposal to replace the National Native Title Tribunal is that it currently employs about 235 staff in Perth.

I refer to the "Interim Report on the Operation of Native Title Act 1993 and the Effectiveness of the National Native Title Tribunal" dated September 1998. At page 7 it reads -

> Sixty per cent of the Tribunal's total staff complement of 235 are located in the Principal Registry in Perth which includes case management and future act staff (95) - and the business support and executive functions.

Under this Bill the National Native Title Tribunal will eventually be phased out. I understand that if the state Native Title Commission comes into operation, the National Native Title Tribunal will remove its headquarters from Perth and take with it the staff and expertise it has established. I understand from answers to questions in the committee and from parliamentary questions that the proposed new state commission would employ roughly 40 people. Presumably it will have a much reduced workload given that this Bill will remove the right to negotiate from a huge swag of Western Australians.

The interim report refers to the number of agreements the National Native Title Tribunal has managed to reach. At page 13 it reads -

> A recent audit by the Tribunal indicates that, at the end of August 1998, there have been 574 agreements struck by native title parties nationwide which are indicative of a developing culture of mediation and negotiation. Of these, 246 relate to native title determination applications while a further 328 are future act related agreements. The Tribunal played a direct, mediation role in the majority of native title determination related agreements, and a lesser role in the future act agreements which are predominantly agreements arrived at between parties without the direct assistance of the Tribunal.

Below that comment is a pie chart of the breakdown of agreements by State and Territory in the period between 1994 and 1998. I note from the diagram that Western Australia represents 81 per cent of the agreements reached. The report continues -

> While there is no statutory requirement on the Tribunal, as a mediation service, to monitor the number of agreements reached between parties, it has carried out this national audit to compile a retrospective record of all manner of agreements in all States and Territories. The completion of this data base is timely, because in the heat of the recent political debate over the Native Title Act amendments it has become fashionable to argue that the National Native Title Tribunal has delivered little in the way of outcomes for the community because there have been only two agreed determinations of native title on the Australian mainland. Senator Harradine, for instance, recently told 2BL's Richard Glover program that
>
> > "**Out of the hundreds and hundreds of applications under his (Mr Keating's) Act, only two have been determined. Now that's not working**".

The report continues -

> This limited measure of outcomes fails to recognise two things:
>
> . that the Tribunal, as a mediation service and not a Court, is unable to impose agreements on parties and, in any case, does not make determinations of native title. That is the role of the Federal Court; and
>
> . that the *Native Title Act 1993* allows for non-native title resolution. Mediated agreements between native title claimants and other stakeholders which do not involve formal determinations of native title may still represent positive outcomes of the process.

The report expands on that. My point is that there has been a concerted political campaign to play down the achievements of the National Native Title Tribunal in reaching agreements - and it has been a politically motivated misrepresentation of its achievements. Given that the tribunal has been working with relatively new and changing legislation, to which amendments have also been made at federal level, it has not only done a reasonable job in the circumstances but also its outcomes indicate its rate of reaching agreements is improving.

If members are interested, I refer them to a second diagram on page 15 of that interim report which indicates that the cumulative number of native title-related agreements by the year 1997-98 was a little more than 200. That would be more useful to consider in the context of dealing with native title claims. The resolution of those claims, irrespective of whether it is via a state or national regime, requires the public to understand that the process of reaching agreements is slow and requires adequate resources and good faith by all the parties involved.

We should leave the National Native Title Tribunal to continue to operate at least for 12 months under the amended federal legislation and then assess the impact of that, before we rush into establishing a new regime which will inevitably take time to come to terms with exactly the same procedural issues in which the National Native Title Tribunal has been gaining expertise.

The other main issue which has been pursued vigorously and of which we have certainly heard much, during debate on both the State Provisions Bill and the Titles (Validation) Amendment Bill, is workability. One area of contention is the time taken to deal with claims and the procedures involved in that. An issue that came to light in the select committee is the level of resources that has been supplied by the Government via, for example, the Department of Minerals and Energy to deal with the huge number of section 29 and other procedures under the native title claims process. It seems to me that there has again been a deliberate policy of starving departments of the human resources to process claims. That has added weight to the argument of workability. However, anything will be unworkable if we choose not to apply sufficient commitment and resources to seeking a resolution. The Government's approach has been to aid and abet unworkability rather than to examine constructive ways of improving efficiency and ensuring outcomes for all parties, not just for native title claimants.

There has been a distinct lack of leadership in this matter. In fact, the "leadership" has been to hope that it will go away to the point where the Government is proposing legislation to remove the right to negotiate as a way of speeding up the process. It is appalling that we are considering legislation to remove the right to negotiate under the Bill.

I will move a number of amendments in the committee stage, and will also examine with interest the amendments proposed by both the Australian Labor Party and Australian Democrats. A significant component of this Bill comprises the ministerial override provisions. I note the legislation does not provide for a cheap, accessible or speedy appeal mechanism. It is compromised by the wide range of ministerial powers to intervene at every stage of the process. No fair-minded person could view the regime laid down in this Bill as being based upon fairness or respect of property rights, in particular. The ministerial review and alternative provisions do not even provide the basics of natural justice. Parties are not given a statutory right to present their case to the minister.

In making a decision adverse to the native title claimant, the minister need only consult with the Minister for Aboriginal Affairs. The minister has the power to intervene in or override a determination of the commission, rather than act on the applicant's behalf. Most of the decisions concerning the ministerial powers and administrative law appear to focus on the review of decisions by Parliament and ministers. The method of appeal was considered to be inadequate by the Commonwealth Administrative Review Committee, the Kerr committee, which in 1971, in its report stated -

> The traditional democratic methods of bringing possible injustices to notice seem to us to be inadequate. They depend on the administration conceding error and do not ensure independent review. This inadequacy extends not only to decisions made by administrative officials but also to decisions made by Ministers and statutory delegates of Ministers. In making this last mentioned point we are not referring to policy decisions made by Ministers but to decisions made by them or their delegates, often in the application of settled policy, affecting the rights of citizens. Such decisions of Ministers and their delegates can be affected by error of fact or law.

We will be raising some further points in the committee about the excessive right of numerous ministers to override the decisions of the state commission, should it be established. I conclude my remarks by restating that the Greens (WA) will oppose this Bill in its unamended form and will be listening with interest and participating in the committee stage of this Bill.

HON HELEN HODGSON (North Metropolitan) [2.54 pm]: The Australian Democrats are unable to support this Bill, as it is placed before the House. Having just received the 22-page Supplementary Notice Paper, at this stage I am unable to say whether we will support it when it comes out of the committee process; however, I will give a commitment that in committee we will examine each amendment on its merits to determine whether to support it. Although we will not deliberately prolong debate in this place, it is important that we accept that this Bill has been given a certain amount of scrutiny, and that scrutiny will be given to the amendments at the appropriate stage in committee.

The Bill covers a number of topics, including, in part 2, the vesting of the Commonwealth Native Title Act functions in agencies of the State, alternative procedures for the right to negotiate brought about by the deal between Senator Harradine and Prime Minister Howard. That deal was not endorsed by the Australian Democrats in the federal Parliament, and will not be supported by the Australian Democrats in this Parliament. Consultation procedures apply under proposed section 24MD(6)(b) of the federal Native Title Act. Some other provisions relate to compensation, the establishment and functions of a state native title commission as well as the consequential amendments. This Bill is the second in the Government's package of native title legislation, and we still have to deal with the third Bill.

As far back as 1993 the Premier of Western Australia, along with Premier Kennett in Victoria, led the hue and cry over the decision of the High Court of Australia in the Mabo case. In those days, the political discussion was about people's backyards being claimed under native title. Of course, that has been proved in the courts not to be the case. The political rhetoric has moved on to the issue of uncertainty, and that is also untrue. Neither of these campaigns has been constructive, and each has been waged with political motivations. These campaigns have lead to the development of political parties, such

as the one which is not represented in this House to which reference has already been made. I make mention of that in this context, to put on record the mind-set that this type of legislation produces. We will be opposing the injustices in this legislation.

Since 1993 we have had the often-mentioned legislation which passed through this Parliament and which, subsequently, was found to be invalid by the High Court of Australia; comments from the Premier threatening a statewide referendum to abolish native title which resulted in a referral to the federal Human Rights and Equal Opportunity Commission in July 1993; and in September 1993, the establishment of a fund under the state budget to fight the Mabo case and native title claims. In this context and background, it is not surprising that we are rather cynical about this latest package of legislation and the potential impact it will have on native title in this State. We have continually argued in not only this place but other Parliaments to uphold the rights of Aboriginal Australians, and fairness and decency for all Australians. We have participated in the Federal Parliament in both the Mabo and the Wik pieces of legislation, as they have come to be known, and we have been very active in trying to ensure the outcomes are just. We are again operating in that way in this Parliament.

Firstly, the form of the state commission strikes at the heart of our democratic system by abrogating a crucial principle for the rule of law; that is, the separation of powers. In short, we have here a Government seeking to constitute a commission that will be administering both the land regime and the method of reviewing the decisions made. Quite clearly that is an abrogation of the separation of judicial and administrative powers. This legislation has been dealt with in the Federal Parliament on two occasions. The preamble to the Native Title Act deals with the right to negotiate, which is a core issue of this Bill. The preamble states -

> Justice requires that, if acts that extinguish native title are to be validated or to be allowed, compensation on just terms, and with a special right to negotiate its form, must be provided to the holders of the native title.

It further states -

> It is particularly important to ensure that native title holders are now able to enjoy fully their rights and interests. Their rights and interests under the common law of Australia need to be significantly supplemented. In future, acts that affect native title should only be able to be validly done if, typically, they can also be done to freehold land and, if whenever appropriate, every reasonable effort has been made to secure the agreement of the native title holders through a special right to negotiate.

That statement dealt with the basis of the right to negotiate; that is, the need to recognise the harm which had been done to Aboriginal people prior to 1993 and the need to preserve their position in the future.

Hon N.F. Moore: Didn't it also say something about pastoral leases?

Hon HELEN HODGSON: Not as far as I can see. It is intriguing that the preamble was not amended by the 1998 Native Title Act amendments. Therefore, the federal Native Title Act contains a preamble which specifically states there is a need for the right to negotiate and to preserve special rights for indigenous people. The second reading speech of the 1998 amendment Act presented to the Federal Parliament states that -

> . . . it has become apparent that the 'right to negotiate' procedures . . . have failed to deliver the outcomes that were expected.

It continues -

> The government proposes to remove the right to negotiate where it is inappropriate because of the nature of the rights to be granted, the minimal impact on the land, or the limited native title rights that can exist. However, the basic procedural rights of native title holders are protected.

That means that the Federal Government thought it was appropriate to remove the right to negotiate in situations of minimal impact or only limited native title rights. However, the legislation goes beyond the situations listed in the second reading speech and applies an alternative regime. That is what we are legislating for here. We are looking at the alternative provision regime, as we are entitled to do under the federal legislation. I do not have a problem with that. We are saying that we approve of this state or territory regime and, as is pointed out in the federal second reading speech, the Act requires that alternative regime to satisfy specific criteria including the provision of procedural rights for native title holders equivalent to others with like interests in the land and compensation for any loss or impairment of native title rights.

I am not convinced that we should be progressing down the path of the alternative regime introduced by this Bill. It is available to the State but it is not required; the State can chose to do this if it wishes. It is my understanding that other States either have introduced regimes which do not go as far as what this Bill is planning to introduce or specifically not introduced a scheme. Obviously some timelags are involved, but members will find that the Western Australian Government is the second Government to legislate this far with this much haste. The first was the Northern Territory, and I understand that there are some serious question marks over whether its legislation will be accepted. I have heard that the federal minister may have refused to sign it off, but I am not in a position to know that authoritatively. Western Australia is the first State

to proceed with this alternative regime to the extent the States have been given permission to do so. We should not be going that far, this fast, at this time.

There is no question that the right to negotiate in its original form caused difficulties. The Select Committee on Native Title Rights in Western Australia acknowledged that. Its recommendation 10 states -

> The Committee notes that problems in any new system often lie in the parties themselves and the newness of the procedures.

My response is that a large part of the Wik legislation dealt with problems with the procedures and the right to negotiate. A whole section of the Federal Parliament "Bills Digest" about the Wik legislation summarises the provisions relating to the management of claims. It covers issues such as application regimes, Federal Court proceedings, the National Native Title Tribunal and the functions allocated to it as opposed to the Federal Court, legal aid, the registration test, and definitions. Many of the perceived problems and issues in the right to negotiate were addressed. We have not yet had an opportunity to see how well these are working. Effectively the new provisions have been in place from 30 September, although some of them may have had transitional applications. We should wait to see how well the federal regime is working before we rush in and create a state commission which will replicate the work done in the federal commission and cost the State a significant amount of money. The only reason I have heard for establishing our own commission is that it is the only way we can implement the regime contained in section 43A of the Native Title Act. We do not need to implement that regime. It is an unjustified watering down of native title rights and I am not prepared to support it at this stage. We should wait and see how the system shakes down after these significant amendments and then decide whether to introduce the state commission.

A number of issues about the right to negotiate were brought to both committees. We heard a significant amount of evidence from mining interests. The phrase "right to extort" has been used to describe the right to negotiate. I am not condoning any abuses of the right to negotiate, but that right is a procedural matter which has been largely addressed by the introduction of the threshold and to a further extent by the introduction of other administrative processes of the federal regime. It is inappropriate for us to pass judgment and establish a whole new regime based on the behaviour of some individuals.

There is an issue about the right to negotiate for people who are approached about mining claims. The same could be said of any group of people, from any background anywhere in Australia. When someone is approached and a person sees a commercial opportunity, that person will seize that opportunity. Evidence to that effect was given to the two select committees. However, human nature cannot be changed by removing a person's rights; that is not the way to do it. The way to do it is to tighten up the rules and ensure that it is managed properly; that is what the federal legislation endeavoured to do.

The State Government does not have a good reputation when it comes to the right to negotiate and the preservation of the rights of indigenous people. I have an article titled "Land, Rights, Laws: Issues of Native Title" from the Native Title Research Unit at the Australian Institute of Aboriginal and Torres Strait Islander Studies. It is called "Engineering Unworkability: The Western Australian State Government and the Right to Negotiate". It details the history of this State and its management of native title claims since the introduction of the Mabo legislation.

Hon N.F. Moore: What is the author's name?

Hon HELEN HODGSON: Anne De Soyza. I can make the article available to the minister if he has not seen it. The author states -

> The review shows that any unworkability of the RTN was the product of a deliberate strategy on the part of the State to frustrate the operation of the NTA. The strategy involved working to the narrowest interpretation of its obligations under the NTA. In other words, the State maintained a strict adherence to form rather than substance.

The article continues -

> There are two discernible periods in the State's strategy of passive resistance. The first follows the decision in . . . *Walley & Ors v WA* . . . In the first phase the State's interpretation of the minimum requirements for compliance with its obligations, was that it merely had to appear to hold itself ready and willing to participate, and to sit out the negotiation period. The State offered to convene meetings between the other parties but was not itself prepared to engage in negotiations. In addition, the State followed the practice of applying for arbitral decisions by the NNTT regarding the doing of the future act, as a matter of standard procedure where the 6 month negotiation period had expired, unless an agreement has been finalised between the grantee party and the native title party.

In the second phase, according to the author, the State drew up a set of procedures by which it proposed to fulfil its obligation to negotiate in good faith. The article continues -

> The new procedures were contained in a negotiation protocol . . . which was circulated by the DME to native title parties and to grantees. The protocol established the following procedure:

1. inviting submissions from the native title party regarding the proposed grant;

2. an initial meeting to be convened by the DME with the other parties and, if required, subsequent meetings at which the DME will attempt to identify common ground;

3. if an agreement appears achievable the DME offered to participate in the negotiations either directly or in a monitoring role as agreed by the parties;

4. if negotiations were to break down or any impediments to an early resolution were identified, the DME offered that its staff would be available to discuss these matters with the parties concerned, or request the NNTT to mediate.

It appears that, as with its negotiating strategy in the first period, the State saw itself as a convenor of meetings, and an adjudicator between the other parties, rather than as a party to the negotiations with the obligation to negotiate in good faith.

That is the crux of many of the problems that we have had in Western Australia. This article summarises the author's view of how native title has been managed. It also corresponds exactly with a great deal of other information that I have been given; for example, the process of sending out form letters. Form letters are sent at the opening and the end of the negotiation period stating, "We are opening negotiations with you" and "We are through the negotiation process and we are now closing negotiations with you." In the process, no real discussion has taken place. It is quoted in the article, and I have heard evidence of this as well, that "the State followed the practice of sending junior staff from the Land Access Unit to meetings. These personnel did not have the authority to do more than argue with or listen to the other parties." We are negotiating with someone who has no power to negotiate. That is crucial to whether the State is acting in good faith.

Mr Pat Dodson gave evidence to the Select Committee on Native Title. I specifically asked him whether we need a state provisions Bill or would the Native Title Act, as amended this year, be sufficient to give protection to Aboriginal people. Part of his response, as recorded in the report stated -

> In answer to the question of whether there is a state regime or commonwealth regime, this State has an appalling record. Some of the politicians should read in Hansard their speeches made in past years. It has an appalling record in relation to indigenous people in this State. The ability to trust a state instrument versus a Commonwealth instrument is something indigenous people will be reticent to do. They will not find themselves having confidence in a state regime if it is not transparent, objective, independent and subject to some parliamentary supervision or override because, unfortunately, business is done in this State in a different manner than we might like. I am afraid that under those circumstances I prefer the commonwealth position being retained as a body that is independent at the federal court level.

It is clear that indigenous people in this State do not trust the State Government's record in negotiating on native title. This Bill proposes to require them to operate under a state commission which, in its current form, raises questions about how independent it will be because there is a blurring of the lines between judicial and administrative actions. We expect indigenous people to trust us and accept that this commission will treat them fairly and ensure that their native title rights are observed. All we have to do is look at the seven cases which have been recently identified in which the State Government has specifically operated outside the existing legislation and in exchange has granted an indemnity. It shows a total disregard for ensuring that procedures are followed.

I remind members of the oft-sighted and never debated thirty-sixth report of the Standing Committee on Government Agencies, titled "State Agencies: Their Nature and Function". At least three members of that committee are sitting in this Chamber now. Some of the guidelines contained in that report have never been debated in detail and put into place; such as a way of ensuring that judicial review bodies are separated completely from administrative functions. This is another instance of our following the report and dealing with legislation which is contrary to the report which has been around for four years. Plenty of evidence is available and plenty of discussion has been held on whether judicial and administrative functions should be dealt with by the same body.

A further issue raised by Hon Giz Watson was the intertidal zone and its importance to Aboriginal people. In my reading of the Croker Island case, I came across an article outlining information of which I was not previously aware. It discussed the importance of the intertidal zone. The article, which appeared in the *Native Title News*, Volume 3, Number 9, considered the operation of high and low-water marks. I was not aware that most of the original reserves granted to Aboriginal people were deliberately delineated to the low water tide mark for the good reason that this area was considered to be important to these people, not only culturally but also regarding their sustenance. That notion is dealt with specifically in legislation. Until the arrival of this set of measures, it was considered that such areas in which Aboriginal people have an interest should be protected. I find it odd that this Bill suddenly is changing over 100 years of legislative tradition. We say that in this instance, although this intertidal zone is important for the wellbeing of Aboriginal people with reserves and other land use, we cannot give them the full right to negotiate over that part of their country and their native title rights.

The Australian Democrats go further. I have a media release from July at the time of the Croker Island decision when the matter was before the Senate. Senator Woodley, who handled the matter for the Democrats in Federal Parliament, specifically called on the Senate to grant the right to negotiate across land and sea. When talking about the way in which Aboriginal people relate to their country, and use it for ceremonial purposes, hunting, fishing and so on, it is artificial to say that the right to negotiate will be deleted on areas at the high or low water tide mark. My colleague commented that if it were found that sea rights existed, we would effectively write a blank cheque for compensation; that is, by removing the right to negotiate over sea, we would open up the possibility for indigenous people to claim compensation for infringement of their sea rights. Undoubtedly, we will debate in committee the compensation issues; the State's exposure with the future acts regime, whether through the right to negotiate or the consultation procedure, is an issue in itself.

The federal legislation specifically provides for the use of indigenous land use agreements, and the state legislation preserves such use. As other members indicated earlier today, it is generally accepted that land use agreements are the best way to go. Rather than undertaking litigation, people should talk and show genuine cooperation on an equal footing to reach agreements which suit everybody. We look for a win-win situation. Unfortunately, I see the prospect of many win-lose situations. When one has many losers, one has many social problems and a great deal of unrest. We should establish land use agreements which preserve people's rights and make people feel like winners with something in-hand, so to speak, at the end of the process.

The history of treaties in Canada extends back over hundreds of years. British Columbia is a more recent example, although I do not wish to discuss that controversial case. A tradition of treaty making exists in Canada in which indigenous people work together with industry and government to develop a system whereby everyone comes out in front; by that, I mean everyone. Once that is achieved, one can do away with the spirit of confrontation which permeates the atmosphere in this State. The select committee heard a great deal of evidence clearly based on anger and bitterness on both sides of the argument. We want an environment in which people from both sides deal together in a spirit of friendship with a willingness to negotiate to ensure everyone is treated as equals. We do not see much of that in this process. This legislation is heavily biased, and I fear it will entrench the position of Aboriginal people as losers in such negotiations.

I have not yet addressed the question of consultation as opposed to the right to negotiate. The minority report of the Select Committee on Native Title, which I signed, raised the disagreement about what is involved in the consultation right. The right to negotiate is to be replaced with a right to consult. The question is: What does the right to consult actually mean? Is it the same as negotiation, or is it some other level of animal? Mr Dodson gave some evidence to the select committee on how negotiation and consultation might differ. He said, among other things -

> Not every negotiation must be hostile. They can be done in an amicable manner where quid pro quo situations arise and compromises can be readily entered into. Much of it depends on how the scene is set. Obviously if there is belligerence at the start of negotiations there will be a belligerent response. . . . Very hard negotiations take place in a commercial environment and bargains are driven hard by either side. Ultimately, the commercial decision must be made and if in the judgment of a developer the enterprise or activities they wish to undertake are still able to stand up on the basis of the economics of it they will enter into the agreement. If they are not that will become clear in the process of those negotiations and they will walk away from that.

Negotiation has been part of legislation since the Native Title Act was first introduced. That is now being replaced with consultation. What is the difference? The Aboriginal and Torres Strait Islander Commission's analysis of the Wik amendments following the Harradine compromise indicates that the main difference between negotiation and consultation is consultation's absence of a requirement for the parties to act in good faith. When comparing the Native Title Act with the state Bill, I found that many provisions of the Native Title Act, as amended in July, mention not "consultation", but "notification and comment". Everyone would agree that "notification and comment" involves no decision making on the part of the people being notified. However, "consultation" has been used with the section 43A regime, which establishes the State-based alternative provision regime.

The report of the Select Committee on Native Title Rights in Western Australia quoted evidence from Mr McIntyre which reads -

> I had a quick look at some dictionary definitions to which I refer in the background paper. It may well be that the boundaries of what consultation means to most people will be shifted when put into the legal arena. I often think of consultation in the light of Governments organising a meeting and telling us what they want to do, giving an hour for questions and then doing what they wanted in the first place. The fact that the word consultation is in the legislation means it will have to be given a more dictionary oriented definition, which means decision making between equals, to paraphrase the shorter Oxford Dictionary. We will find we have not created an easier process for government or industry;

I emphasise that sentence. To continue -

> We have created a different one which we will need to address.

That same sentiment was expressed by Mr Glen Shaw at the time of the second select committee - the Select Committee on Native Title Rights - when he said that we need to consider the dictionary definition of what is consultation. We need to turn our minds to why we are taking this route of an alternative provisions regime. Is it because we hope to set a different standard, being consultation as opposed to the right to negotiate? If that is the case, what is it we see as the differences between the two? If those differences are such as to remove one party's right to negotiate on an equal footing that is close to unconscionable conduct and would not be tolerated in a contractual context, why should we tolerate it in a legislative context? On the other hand, if the right to consult is similar to the right to negotiate, why are we taking these steps? Why are we introducing a state-based commission given that in evidence to the first select committee Mr Clarke indicated that the main reason for needing a state commission was so that we could have a state-based regime? Given that, why are we taking this step if there is no effective difference between the right to consult and the right to negotiate? I question whether we are doing the right thing in terms of what the legislation before us is saying. Will the legislation make anything easier for industry or will it simply be another excuse to say that it is still an unworkable regime and for the Government to validate some more titles - not that I think there are many left that we have not validated at this stage?

We are heading down a path of confrontation rather than reconciliation. We should be focusing on indigenous land use agreements, and the use of those agreements to promote equity among all people whether black or white, whether Aboriginal, miners or pastoralists. We cannot do that by developing a culture of confrontation.

I refer people again to the report I referred to in the debate on the Native Title Validation Bill which is the Kimberley conference report, "Our Place Our Future". The conference was convened after the second debate on Wik and before the Senate finally compromised its position. People at the conference were looking forward to a time when they would work together. I will finish with a quote from a Rick Farley who was one of the speakers at that conference. He states -

> I have three very simple propositions that I want to put to you this morning.
>
> The first, is that change is inevitable and the pace of change is going to keep on getting faster and faster. There is going to be a whole lot of external influences at work on regions like the Kimberley and that is inescapable.
>
> Secondly, in order to deal with all of these pressures, regions are going to have to be strong and you will need to think about the structures which will provide the strength to deal with all of these pressures.

The next point is the key. To continue -

> Thirdly, in thinking about those structures, people should recognise that, while there are differences within a region, ultimately there are more things that unite people living in the same area, than things which divide them.

That is the sentiment we should encourage in the way we handle native title. We should not look at what will suit miners or Aborigines; we should be looking at what will best suit the community of a region and of an area. By moving down this path we are not doing what we should be doing. We should be encouraging land use agreements and working to bring people together rather than setting up walls between them.

HON GREG SMITH (Mining and Pastoral) [3.35 pm]: One of the fundamental aspects of the Bill is to change the right to negotiate to the right to consult over pastoral leases. That has proved to be one of the major sticking points between the Government and the Opposition. During the hearings of the Select Committee on Native Title Rights in Western Australia we heard different arguments on how the right to negotiate process did and did not work. I will refer to case studies in which the right to negotiate has caused mining tenements not to be taken up or developed. The case studies also outline some of the unreasonable demands made by claimants in the right to negotiate process. The fundamental reason for legislating for a right to consult rather than a right to negotiate is so that native title claimants will not have any greater procedural right than other title holders on land - be they a pastoral lease holder or a mining tenement - and all title holders will have equivalent statutory rights. Case study 1 reads -

> The Company has applied for a number of small (5 hectare) mining leases in the south-eastern Goldfields region of Western Australia. The mining lease applications are covered by a number of individual and over lapping native title claims made by members of the Ngadju people.
>
> **Native Title impact**
>
> An individual claimant asserting to represent the Ngadju people advised the Company that agreement could be reached and the mining lease granted by payment of the following to his claimant group:
>
> 1. $100,000 signature fee.
> 2. $40,000 annual exploration payment.
> 3. $300,000 on commencement of mining operations and on a yearly basis for the duration of the mine.
> 4. $75,000 additional sum to be paid in respect of any other mineral deposit or multiple mineral deposits to be paid on an annual basis.

The claimant also presented the Company with further conditions requesting that specific payments and consideration be afforded private contracting companies owned by an individual within his claim group. This benefit did not relate in any way to the other over lapping Ngadju native title claimant groups.

The Company advised the claimant that the agreement terms specified were unacceptable, particularly given that the payments requested by the claimant during the first two years of exploration were likely to be equal to or greater than the actual expenditures committed in the ground.

The mining leases remain ungranted to date.

Case study 2 reads -

Project Overview

The Company commenced exploring a 260 sq km land package in Western Australia in 1986 and has to date spent over $3 million on exploration activity in the area. To service the exploration programme the Company also established a full camp facility for 10 people in 1986.

As part of the ongoing exploration process, 5 mining lease applications were lodged by the Company in November 1994. The mining lease conversions are part of the ongoing tenement requirements of the Western Australian *Mining Act* 1978. The mining lease applications are yet to be granted and have attracted 10 native title claims. At no time over the past 11 years has a Company employee observed any member of the 10 native title claimant groups in the area.

Native Title Impact

In April 1996 the Company made initial contact with native title claimant, Mr Leo Thomas of the Waljen people. The contact was made via Mr Thomas' solicitors based in Perth. The Company then met with Mr Thomas' solicitors, following which a draft 88 page agreement to permit grant of the mining leases was presented to the Company by the solicitors on behalf of Mr Thomas.

I have a list of the demands. A full copy of the draft agreement is available from the Association of Mining and Exploration Companies if anyone would like to see it. It continues -

The draft agreement stipulated that the Company would pay over $500,000 per annum to Mr Thomas on behalf of the Waljen people. Given the Company's intention to continue high risk mineral exploration on the mining leases once granted, it refused to sign the agreement. It is the Company's view that the payment demands are extortionate, uncommercial and could never be contemplated by a company with responsibility for shareholders' funds, particularly given the existence of 9 other native title claims affecting the mining lease applications in question.

The impossibility of the native title claimant's demands has prompted the Company to decline further negotiations with the 9 other claimants . . . Based on its experience with Mr Thomas, the Company has also resolved to spend shareholders funds only on granted mining leases to the exclusion of all other projects/tenements. Accordingly, the Company's exploration programme in the area has ground to a halt.

I will use one more example, which is case study 3, as follows -

Project Overview

The Company is a small Australian publicly listed company exploring in the Goldfields region of Western Australia. The Company has discovered an orebody that straddles an existing Company mining lease on which a mine and processing plant is located, and continues into ground covered by 2 prospecting licences owned by the Company. The Company has lodged applications to convert the prospecting licences to mining leases so that it can proceed with development of the ore body to feed its existing mill.

Seven separate native title claims have been lodged over the ground covered by the Company's existing mining lease and mining lease applications.

Native Title Impact

The Company applied to convert the prospecting licences to mining leases in October 1995 and December 1995 respectively. The Company spent over a year attempting to conclude compensation agreements with all 7 native title claimant groups to enable grant of the mining leases and development of the orebody.

Protracted disputes between overlapping claimants and general claimant infighting during this period prohibited the Company from concluding the necessary agreements. Twelve months ago the Company suspended its gold mining operation in the Goldfields and retrenched all staff other than the few undertaking care and maintenance of the processing plant.

The company has since spent $3m in Bolivia, where the Bolivian Government has offered it a range of taxation and free trade incentives. It currently employs more than 30 Bolivian nationals.

That is a quick grab of three separate instances where the right to negotiate has prevented mining tenements being exploited to provide income for Australia. This legislation seeks to give Western Australia a workable system in which to operate with native title. Those who have anything to do with native title know that the present system is not working. The validation Bill will clarify where native title does not exist, and with this Bill the Government is trying to set up a system for dealing with native title where it does exist. The foreshadowed amendments will go a long way towards making the state provisions Bill unworkable. I think the operation of the native title system in Western Australia will remain with the National Native Title Tribunal. I sincerely hope the Bill will go through without amendment, but I do not like its chances of doing that.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [3.44 pm]: I thank members for their contribution to this debate. The Leader of the Opposition has indicated the Labor Party's support for this Bill, subject to the Government agreeing to the Labor Party's amendments. Those amendments arrived on my desk halfway through the speech by the Leader of the Opposition, which is a bit late bearing in mind the processes of legislation. The Bill has been around for a long time, has been in this House for two or three weeks and has been to a committee of the Legislative Council. I received the amendments two or three hours before the committee stage. If I did that to the House, I would be told in no uncertain terms that it was unacceptable. I believe it is unacceptable.

Hon Tom Stephens: The amendments in the format in which we have presented them are familiar to the Government.

Hon N.F. MOORE: It is interesting that the honourable member lectured me the other day saying that whatever happened in the other place is none of our business. That was his comment when I used that argument on him in this place. The amendments could have been presented earlier. None of the amendments is mine, so I will not take any credit for bringing them on late. The Leader of the Opposition referred to a number of comments and I will defer consideration of them until the committee stage. He said he had a problem with State Governments and State Parliaments having jurisdiction in this area.

Sitting suspended from 3.45 to 4.00 pm

Hon N.F. MOORE: I indicated to the Leader of the Opposition that in committee I will talk about the amendments that he briefly discussed. I have had a cursory glance at the amendments. They will be unacceptable to the Government in this Chamber and in the other Chamber. They go too far from what I can understand to be their intent.

Hon Tom Stephens: All of them?

Hon N.F. MOORE: I do not know about all of them; I have not yet read them all. I received them only when the Leader of the Opposition was speaking.

I was surprised and amazed at the comment by the Leader of the Opposition that he has serious problems with State Parliaments and State Governments involving themselves in Aboriginal issues. I had a feeling that he was about to insult all state members of Parliament, past and present, by suggesting that we are incapable of dealing with legislation relating to Aboriginal people. He then went further to explain that Dr Gallop, a man of great intentions, had persuaded him that this Parliament was capable of dealing with such matters. Similarly, Hon Helen Hodgson commented on the inability of members of this Parliament to deal with such matters. People who are elected to this Parliament are no different from people who are elected to any other Parliament in Australia, including the Federal Parliament. They are individual citizens of Australia who come here to make decisions based upon their best understanding of the proposals, and to do so with generally no malice towards any group of people or person. To suggest that we are incapable of doing that is a gross insult not only to current members but also to past members.

Hon Tom Stephens: I based my comments on the experience of the history of Western Australia dealing with such questions.

Hon N.F. MOORE: Interestingly, the Leader of the Opposition does what the Democrats do; that is, a bit of forum-shopping. They go to the forum where they will get the best decision that suits their purpose. The Leader of the Opposition referred to the land rights Bill of Brian Burke. That was a decision of the Parliament with which the current Leader of the Opposition did not agree, but his then leader at the next election demonstrated clearly that he was not going to get into the path of land rights again, and in a sense concurred with the decision of the House.

Hon Tom Stephens: QED.

Hon N.F. MOORE: QED. The Leader of the Opposition asked a couple of questions about the relationship between the Federal and State Governments and I indicated that there had been extensive consultation with federal officials in respect of the Bill. The State Government is satisfied that the Bill meets all the requirements of the Native Title Act. At no time have commonwealth officials indicated that the Bill does not comply in those areas that the Labor Party is trying to amend. In fact, I am told that there are several proposed Labor amendments - I have not looked at them individually - which, if

adopted, might render the Bill non-compliant with the Native Title Act. We will talk about those in due course. It is not possible to have a determination made by the Federal Government or the federal minister ahead of this Parliament determining its position. Once the Bill goes out of this Chamber, and assuming that it is eventually proclaimed, it will then go to the federal minister and the Federal Parliament to be assessed in the context of whether it meets the requirements of the federal legislation. Until we reach that point, we cannot get someone to say whether it does or it does not, because no-one knows what the result will be.

As to cost sharing and administration, I am advised that in fact it was Mr Keating who gave the States an assurance that the Federal Government would reimburse the States up to 50 per cent of the cost of setting up and operating a state body. Because it was Mr Keating we must ask some questions about whether that commitment will still stand, but I am advised also that the present Prime Minister has indicated through correspondence that the Commonwealth will meet 50 per cent of the cost of administration of a state body and that compensation - 75 per cent commonwealth and 25 per cent state - will also be met.

Again, Hon Giz Watson argued against native title legislation. We will deal with that issue in detail in committee. She talked about removing the right to negotiate and bringing in the process of consultation. I make it clear to members that in respect of the right to negotiate and the consultation process we are talking about an administrative arrangement that is in place pursuant to the existing federal law where native title claimants have certain rights in respect of what might happen over land that someone else seeks to use. In virtually every case so far, those native title claimants do not have native title conferred upon them.

In respect of the right to negotiate that has been in place for a long time and caused great difficulty and in respect of the proposed consultation process, we are talking about native title claimants who are yet to demonstrate or have it determined that they have native title rights at all. They have a right in respect of negotiation over an area of land to which we might eventually find that they have no native title rights at all. I do not know whether that means that we must pay back the money, because money has changed hands in some cases. When we talk about such rights, we must accept that they are rights in relation to an administrative procedure and that they might in fact have no relationship at all with some native title right that is eventually found. People must understand that. There is a lack of understanding among several people.

Also, Hon Giz Watson commented on what she regarded as a deliberate policy by the State Government to starve of resources and funds agencies that deal with native title issues. As the Minister for Mines, I have provided the Department of Minerals and Energy - when I say that I have, I mean that the Government has done so through the budgetary process - with what I believe to be adequate resources to deal with the processes that are required under the native title process. As I said in answer to a question some time ago, I could provide hundreds more staff to deal with native title but the chances are that that would not make much difference.

The problem is not the number of people who are working on it, but that the process is such that it is almost impossible to reach a conclusion if somebody wants to avoid a conclusion being reached. This all has to do with the question of negotiating in good faith. In the current native title negotiations, the Government is the only party that is required to negotiate in good faith. The other parties are not required to negotiate in good faith, and in many cases they do not. It would not matter how many staff we had; the parties would not reach an agreement. Therefore, I reject completely any suggestion that the State Government has sought to make the process unworkable by not providing enough resources, when it is the process that is creating the unworkability and not the resources that are attached to it.

Hon Helen Hodgson reminded me again of how self-righteous the Democrats can get at times. The way that she pontificates on issues such as this makes me think that it is a pity we do not all have the same attributes and aspire to the same greatness that she has achieved. Hon Helen Hodgson said that if we could all get together and be nice to one another, we would solve all of our problems. That is a bit like Hon Mark Nevill's comment this morning, which was along the lines that if people did not sin, there would be no need for heaven and hell.

Hon Derrick Tomlinson: He said that if everyone were good, there would be no sinners.

Hon N.F. MOORE: Yes; that is right. However, some of the people who are engaged in disputes about native title will always be engaged in disputes about native title because of the value of what they are arguing about, not just in terms of land ownership and use, but in terms of money. Hon Helen Hodgson has displayed her amazing simplicity and naivety about these matters in saying that we should all be nice to one another and -

Hon Helen Hodgson: That is a bit of an oversimplification of what I said.

Hon N.F. MOORE: I listened to the member very carefully, and I thought that I was in church!

Hon Tom Stephens: You should spend more time in church.

Hon N.F. MOORE: That is right, but one of the reasons I do not go much any more is that I hear lectures like that!

Hon Helen Hodgson said that the Democrats are not engaging in political activity but are being honest brokers and are trying

to keep everybody honest, including the bastards on both this and the other side of the House. The Democrats are playing politics. The Democrats would love to delay this legislation, and to use the numbers that they will eventually have in the Federal Parliament to achieve there what they cannot achieve here. That is straight out political opportunism. The Democrats could not achieve what they wanted to achieve in the Federal Parliament either, because that person about whom they speak in such a denigrating way, Senator Harradine, had the audacity to come up with a position that was different from theirs. I find the self-righteousness of the Democrats very hard to swallow at times. The way that the Democrats will denigrate anyone who does not agree with their point of view again demonstrates the self-righteousness that grates on most of us mere mortals -

Hon Mark Nevill: You had better get used to it, because they will be controlling the Senate for the next six years!

Hon N.F. MOORE: I hope I do not have to get used to it. I certainly will not be listening to it. However, I guess that for a while we will have to listen to it in this Chamber, until somebody sorts out this place. The Democrats can achieve what they want to achieve in the Senate only if they get the support of the federal Labor Party. I hope that the enlightened views of some members of the Labor Party in Western Australia will prevail over some of the unenlightened views of their federal leader and some of his colleagues, particularly the shadow Minister for Aboriginal Affairs, if it is the same fellow as before, who had an extraordinary attitude towards these things.

Hon Helen Hodgson is also clearly opposed to the Western Australian Parliament's setting up its own regime and has accused us of rushing this Bill through. If this is rushing, I would hate to be going slowly! The member quoted from a number of sources to promote her argument. I have not heard of De Soyza, but that quote is contained in an ATSIC publication, so while I have not in any way put to one side that argument, I am a little cynical towards the point of view of that person. Hon Helen Hodgson also quoted evidence given to the committee by Pat Dodson and Mr McIntyre. It is interesting that she is so selective about whose evidence she is prepared to accept and whose evidence she is not prepared to accept. Hon Helen Hodgson then talked about Ric Farley, who has demonstrated for all to see that he is quite capable of significant flexibility with regard to where he belongs in the political spectrum. He has now finished up with the Democrats, which is probably where he belongs.

Hon Helen Hodgson spent time criticising the Government for abiding by the native title legislation to the absolute letter of the law, and then spent time criticising the Government for allowing the seven special cases to proceed. The member cannot have it both ways. She cannot criticise us for being sticklers about native title law and also criticise us for supposedly not being sticklers. Again, as I said in the debate on the Titles Validation Amendment Bill, anyone who has a problem with the validity of the grant of the titles in those seven so-called special cases should take legal action, and no-one has done that at this time.

Hon Greg Smith raised a number of case studies. While clearly he approached the matter from the point of view of the mining industry, he demonstrated that most of the land about which we are talking in Western Australia is in remote parts of the State, and that the industries that create the wealth and the jobs in that part of Western Australia are the pastoral and mining industries. I have always had the strong view - this has not always been borne out by reality - that the mining industry should provide far more employment for Aboriginal people than is currently the case. While there are some good examples of where that is happening, the mining industry needs to work a lot harder in that area. At the same time, I can understand the frustration that is experienced by mining companies when the native title process prevents them from going ahead with a project. Hon Greg Smith referred to a company which this year has spent $3m in Bolivia, where some government incentives are in place to attract Australian companies to explore. That is a fact of life. I have mentioned in other places that in the past financial year, the exploration dollars in Western Australia have dropped by 4 per cent; and that for the first time in seven years, there has been a reduction in exploration expenditure in Western Australia. There is significant evidence that companies are now taking their exploration dollars overseas. The people who will lose out if mines and projects are not developed in Western Australia will be all Western Australians, including Aboriginal Western Australians. I thank Hon Greg Smith for raising that practical example of where problems may arise.

I thank members for their comments. Some of the proposed amendments may make this legislation totally unacceptable; and if that is the case, we will have to decide whether to proceed with the Bill at that point. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon N.F. Moore (Leader of the House) in charge of the Bill.

Clause 1.1: Short title -

Hon TOM STEPHENS: I may have been distracted during the reply by the Leader of the House in the second reading debate. Can the Leader of the House clarify whether officers of the Federal Government are still pressing the State to

consider and introduce amendments to the Native Title (State Provisions) Bill in order to ensure that this legislation is in accord with the Native Title Act?

Hon N.F. MOORE: The advice I have is that that is not the case. As I said during my response to the second reading debate, this legislation is not yet finalised by a long shot. There are 22 pages of amendments and if the last debate was any indication, they will all be agreed to. Therefore what comes out of this sausage machine will be different from what has gone in. The ultimate determination on this legislation will be made when it is passed and forwarded to the Federal Government for its consideration.

I might add, as a true blue West Aussie, that I am appalled at the process; however, it is a process over which we have no control. If I had any choice I would not be going through this process. This Parliament is capable of making its own decisions. The Leader of the Opposition can be as pedantic as he likes. My advice is that the Federal Government is not seeking further changes. However, at the end of the day, the process is such that the Federal Government will decide whether the legislation is agreeable.

Hon TOM STEPHENS: I understand that subsequent to the legislation being introduced into the Legislative Assembly a number of amendments were produced in that place by the Government. Can the minister confirm that those amendments were as a result of requests by commonwealth officials to accommodate the requirements of the federal native title legislation?

Hon N.F. MOORE: This is all history. Some of the amendments were proposed as a result of discussions with the Commonwealth, not as a result of any standover tactics or insistence by the Commonwealth; suggestions were put to the Government which the Commonwealth thought might improve the Bill. That related to some, not all, of the amendments.

Hon TOM STEPHENS: In view of that, were any issues raised by the Commonwealth that have not been tackled by virtue of the amendments so far included within the Bill?

Hon N.F. Moore: I don't know.

Hon TOM STEPHENS: In view of the close proximity of the minister to the officer in charge of those discussions between the State and the Commonwealth, I wonder if the -

Point of Order

Hon MARK NEVILL: Point of order, Mr Chairman.

The CHAIRMAN: No reference can be made to any advice that the minister receives. The opinions and responses that the minister puts are the minister's and wholly the minister's. Hon Mark Nevill.

Hon MARK NEVILL: Thank you, Mr Chairman. You have just addressed my point of order.

Debate Resumed

Hon HELEN HODGSON: I notice that this Bill does not have any objects clause. However, I note that there are objects in the federal Native Title Act. That Act states that one of its objects is to protect native title. Why is there no equivalent provision in this Native Title (State Provisions) Bill?

Hon N.F. MOORE: I understand that one of the amendments proposed is to incorporate a number of objects in the Bill. At the time the legislation was drafted the Government considered that it did not require an objects clause. Essentially, it is an administrative Bill and describes what can and cannot be done under certain circumstances. Ultimately, we all know what will be the result; that is, to deal with the question of native title in Western Australia. It is a matter of opinion whether it needs an objects clause; the Government decided it did not. However, I understand that an amendment to that effect will be made anyway; therefore, what is the point?

Hon HELEN HODGSON: I thank the Leader of the House. I overlooked the fact that new clauses are printed at the back of the Supplementary Notice Paper. Does the minister admit that the Bill should be interpreted as beneficial legislation in the context of the provisions in the Native Title Act?

Hon N.F. MOORE: Forgive me if I do not know the technical meaning of beneficial legislation. I gather there is a legal or technical term to which that relates. It is my view that it is beneficial, if the member is talking about it being beneficial in what it actually does for Aboriginal people.

Hon HELEN HODGSON: Has the Government received any legal advice from the Crown Solicitor's Office on whether it would be interpreted as beneficial legislation?

Hon N.F. Moore: No.

Clause put and passed.

Clauses 1.2 to 2.5 put and passed.

Clause 3.1: Definitions -

Hon TOM STEPHENS: I move -

Page 9, after line 12 - To insert the following paragraphs -

or

(c) that is current vacant Crown land; or

(d) in relation to which section 12K of the *Titles Validation Act 1995* applies;

"current vacant Crown land" means Crown land that -

(a) is vacant as at; and

(b) in relation to which any tenure of non-exclusive possession had ceased to have any effect on or before,

the 23 December 1996;

The purpose of this amendment is to exclude the specified areas, as defined, from the alternative provision area, as defined, so that future acts over such areas are no longer part 3 acts, as defined in clause 3.5 of the Bill, and therefore are part 4 acts, as defined in clause 4.4(1)(c). As the Leader of the House will be aware, this amendment was pursued by the Labor Opposition in the other place. The reason for the amendment is that the meaning of alternative provisions area includes areas over which there exists some historical non-exclusive possession tenures. On current use, such areas are effectively vacant crown land. This distinction is artificial and operates to prevent objectors gaining access to the negotiation procedures provided for in part 4. Current vacant crown land is defined to make such areas subject to part 4 procedures. The exclusive possession acts, as defined in section 12K of the Titles Validation Amendment Bill, for the benefit of Aboriginal people are also excluded in part 3 provisions. It is for those reasons that I commend this amendment to the Chamber.

Hon GIZ WATSON: The Greens (WA) support the amendment, and concur with the reasons given by the Leader of the Opposition. I would like to amend the amendment to add a further paragraph (e) after paragraph (d). I move -

To insert after paragraph (d) the following -

(e) covered by a reservation, proclamation or dedication under which the whole or part of the land or waters in the area is used for the purpose of -

(i) a conservation park,

(ii) a national park,

(iii) a class A nature reserve,

(iv) a State forest, or

(v) a timber reserve

pursuant to section 29 of the *Land Act 1933*, section 41 of the *Land Administration Act 1997*, section 20 or 25 of the *Forests Act 1918* or section 8 or 10 of the *Conservation and Land Management Act 1984*.

The reason for the amendment is that we wish to ensure that those types of reservations are also covered by this provision. This is particularly significant to the Nyoongah people because, in their traditional country, there remain very few areas over which they will maintain the right to negotiate. We wish to ensure that those conservation reserves are part of that inclusion.

Hon N.F. MOORE: It is a little disappointing to have that amendment read out now. The effect of it is to take away another 15 per cent of the State from the right-to-consult process and put it into the right-to-negotiate process, as I understand it. On top of that, Hon Tom Stephens' amendment will take away another 12.5 per cent from the right-to-consult process and put it into the right-to-negotiate process. I want to get members' minds around what we are talking about here. Essentially in general terms we are proposing that the right to negotiate remain over vacant crown land. If they look at a map of Western Australia and the area of land we are talking about, they will see that under the present Bill the right to negotiate covers about 31.5 per cent of the State. I do not know what it is in square kilometres but it is a huge piece of land. Aboriginal people will still retain the right to negotiate over that land. There seems to be a misunderstanding in some minds at least that the Government is taking away the right to negotiate entirely and replacing it with some sort of consultation process. What we

are doing is trying to put in place a consultation process in respect of that land tenure where there is coexistence of titles; in other words, pastoral leasehold. I am delighted to receive this amendment moved by Hon Giz Watson. If ever I do this to her in the Chamber at some time and she does not think that she has had enough time to think about it, she should not be critical. She has put up a very significant amendment.

I find it necessary to talk about the two amendments together because I cannot talk about one separately from the other. As I said a moment ago, in Western Australia the right to negotiate under our legislation unamended still applies to over 30 per cent of Western Australia. Western Australia is a big bit of land. We are saying that the right to consult should apply to about 61 per cent of the land mass of Western Australia; that is, essentially the pastoral lands of Western Australia. That applies to all of the conservation reserves that Hon Giz Watson is seeking to take out of the right-to-consult process and put into the right-to-negotiate process.

Hon Greg Smith interjected.

Hon N.F. MOORE: That could well be right. The net effect of Hon Giz Watson's proposal is to put the conservation reserves into the right-to-negotiate process. That applies to a fair amount of the south west. Hon Tom Stephens' amendment is to put the historical pastoral leases into the right-to-negotiate process.

Hon Mark Nevill: It is about 15 per cent of the State.

Hon N.F. MOORE: The figures I have are that under the Bill the right to negotiate applies to 31.5 per cent of the land, the right to consult applies to 61 per cent of the land and native title is extinguished over 6 per cent of the land. Anybody who has spent a lot of time running around saying that we are extinguishing native title willy-nilly should understand that in our best estimates it represents about 7 per cent of Western Australia. The rest comprises 31.5 per cent with the right to negotiate and the 61 per cent with the right to consult and over which native title is not extinguished. We must go through the process to determine people's rights and obligations in respect of 92 per cent of Western Australia. Anybody who thought for one fleeting moment that there was mass extinguishment this morning simply does not understand the facts. To start off with what Hon Giz Watson is trying to do and I hope the Labor Party will oppose this -

Hon Tom Stephens: We will be listening very carefully to your argument.

Hon N.F. MOORE: So the Leader of the Opposition did not know about this either?

Hon Tom Stephens: I am interested to hear your answer.

Hon N.F. MOORE: Is the Leader of the Opposition suggesting he did not know what they were doing? Was the Leader of the Opposition having consultations over this? Was he having negotiations behind the Chair that we did not know about? Did he know what they were doing?

Hon Tom Stephens: Have I spoken to the Greens (WA)? Yes, I have. You make it sound like an accusation of consorting with the Greens. Have I seen this amendment in this form? No, I have not.

Hon N.F. MOORE: I am talking to the Leader of the Opposition in the same language that he talks to me when he is trying to get something out of me about the relationship between the State Government and the Commonwealth. I was not even there. At least the Leader of the Opposition was on this occasion.

I am quickly trying to come to grips with Hon Giz Watson's amendment. She is trying to take out of the right-to-consultation land and put into the right-to-negotiate land all of the following: Conservation parks, national parks, class A nature reserves, state forest and timber reserves, "pursuant to section 29 of the Land Act 1933, section 41 of the Land Administration Act 1997, section 20 or 25" - I do not know how one can have "or". You might like to look at that quickly, Mr Chairman. I am not sure whether it is right. Her amendment continues, "of the Forests Act 1918 or section 8 or 10 of the Conservation and Land Management Act 1984". My understanding, for the benefit of the Leader of the Opposition, is that this represents about 15 per cent of the Western Australia land mass. Under the Bill that is an area where the right to consult will apply; under the amendment of Hon Giz Watson the right to negotiate will apply.

Hon Tom Stephens: Could you help me? Where in the Bill will the right-to-consult regime cover those areas that are subject to the Greens' amendment?

Hon N.F. MOORE: The conservations reserves are tenures which coexist with native title in the same way as pastoral leases, so it is appropriate that they should be included with pastoral leases as category B acts, which we talked about in the previous legislation, which do not extinguish native title. We believe that part 3 is the proper process to apply to coexisting tenures. Therefore, I ask the Chamber to reject the amendment moved by Hon Giz Watson and subsequent to that I will be asking it to reject the amendment moved by Hon Tom Stephens.

Hon DERRICK TOMLINSON: I would like some direction on what I suppose is a point of order but probably not in the form of a point of order. The Leader of the House in his second reading summing up indicated that he had only just received the Supplementary Notice Paper containing approximately 22 pages of amendments and made the observation that there

were no amendments that he could see on a brief reading of it standing in the name of Hon Giz Watson. Hon Giz Watson in rejoinder indicated that she did not believe it was appropriate to give notice of an amendment because her amendment amended amendments on the Supplementary Notice Paper. The form of the amendment - to give it the name that the mover used - is an addendum. It does not amend the amendment; it adds to it in a form different from the original amendment and different again from the clause that is under consideration. I could accept an amendment to an amendment but not an addendum to an amendment which argues a different case. The clause and the amendment argue for land which is covered by one or other sections of the Native Title Act or the Titles Validation Bill just passed by the House. Given that the addendum argues a case different from the amendment and that the member is trying to move an addendum to the amendment, is it in order?

The CHAIRMAN: The member is correct. There is no substantive point of order, although the point he raises is relevant; that is, we have substantive amendments and/or addendums here. It would be helpful if Hon Giz Watson gave the House greater notice of what is on her supplementary notice paper or what she intends to move if that is possible. It makes it difficult not only for the minister to respond or for members to consider but also for the Chair to determine whether the addendums or amendments to amendments are in order. Although there is no point of order, any additional notice that can be given with respect to these proposals would be welcome, I am sure, by all members of the House.

Hon DERRICK TOMLINSON: I take it, Mr Chairman, that means you will accept this addendum as an amendment?

The CHAIRMAN: Yes.

Hon GIZ WATSON: I appreciate there is a problem with this addendum appearing now. I sought to put an amendment on the Supplementary Notice Paper but the words were ruled out of order. The problem is in drafting things on the run as a result of dealing with this Bill within tight time constraints.

Hon Derrick Tomlinson: You have had plenty of time.

Hon GIZ WATSON: I did not have the substantive ALP amendments until this morning. It was therefore difficult for me to formulate additional amendments to it.

Hon Derrick Tomlinson: Your addendum is different in form; therefore, it should have been moved as a separate amendment.

Hon GIZ WATSON: I accept that; that is due to my inexperience in this matter. As it followed immediately from the amendment on the Supplementary Notice Paper in the name of Hon Tom Stephens, I was advised it would be seen as an amendment to that. I am happy to take advice that it is not that. I can only go by advice given at relatively short notice. I apologise for presenting it in this format at this point.

The Leader of the Government in response to this amendment referred to sections 20 and 25. They have been separated because section 20 refers to state forests and section 25 refers to a timber reserve. I appreciate that there has been little opportunity to consider this in any detail. I was very much limited by the lack of drafting available at short notice.

Hon N.F. MOORE: I said to the House that I thought the area of land covered by the addendum was 15 per cent of the State. In fact, it is more like 9 per cent of Western Australia. The first figure of 15 per cent was an off-the-top-of-the-head comment. The amount of land involved in Hon Tom Stephens' amendment is about 12.5 per cent. The intention of both these amendments is to transfer 9 per cent plus 12.5 per cent of Western Australia from the right-to-consult to the right-to-negotiate type of tenure. Even though the figure is reduced from 15 per cent to 9 per cent, the amount of land the member is seeking to transfer from one category to another is greater than the total amount of Western Australia over which native title has been extinguished and which, as I said a while ago, is only 7 per cent. Anyone who tries to tell the media there has been mass extinguishment of native title in this House does not know anything about the map of Western Australia.

I have had a map prepared dealing with the historical pastoral lease which Hon Tom Stephens is trying to change from one category to another. Unfortunately, *Hansard* does not record a map of a large area of land, so I am happy to table it. It would be helpful for members to understand what Hon Tom Stephens is seeking to do. Had I had Hon Giz Watson's addendum earlier I could have provided a map to indicate the result of her proposal. The Government is putting in place legislation that will allow native title interests to be dealt with properly over 30 per cent of Western Australia. We are saying the right to negotiate process should remain. The right to consult should be put in place over 60 per cent of Western Australia and we are acknowledging that in respect of 7 per cent of Western Australia, native title has been extinguished. Members opposite are trying to move vast amounts of land - more than another 20 per cent of Western Australia - out of this right-to-consult area into the right-to-negotiate area. If anyone does not know what problems negotiations have caused, they have had their heads buried in the sand for a long time.

In responding to the Wik decision and the federal legislation, which clearly provides processes where there is coexistence of titles, we are putting in place provisions to ensure the rights of all titleholders in a coexisting sense are dealt with properly. Just as a pastoral leaseholder has an interest in the pastoral lease, the State Government of Western Australia has an interest

in the conservation of parks, national parks, class A reserves, state forests and the timber reserves, all outlined by Hon Giz Watson. It is appropriate that those rights and interests be protected, as well as the interests of potential native title claimants. When more than one group has an interest, it is more appropriate to use the consultation process, rather than the right to negotiate process. I hope that has made it clear to members what is being done here. In Committee we will reject the proposal of Hon Giz Watson, and then go further to reject the proposal of Hon Tom Stephens.

Hon TOM STEPHENS: Firstly, I fully appreciate the difficult situation in which the minor parties, both the Australian Democrats and the Greens (WA), are placed by virtue of the late arrival of a consolidated version of the Labor Party's amendments, although they will appreciate that it is simply the refinement of amendments with which they are familiar. Nonetheless, it places them under a time constraint within which to respond with their amendments. Secondly, I acknowledge that, because the Labor Party has agreed to press on with this legislation, it has placed the minor parties under time pressures that they have already told the Chamber they would prefer not to be under. To that extent, I accept that that places them in a doubly difficult situation as they endeavour to prepare further arguments in support of their amendments.

I simply go to the amendment before us. I am prepared to accept the commentary that has been produced for me; that is, there is a difficulty in seeing within the Greens' amendment a defined meaning for some of the words contained in it. It runs the prospect of leading to increasing uncertainty and extensive litigation to argue some terminology within the amendment. Where the five categories are picked up and sought to be included within the amendment, we know neither exactly the basis upon which the amendment is constructed, nor the supporting legal analysis of the meaning and effect of it. I have not had direct submissions for support of this amendment; however, that is not to say that all of the submissions the Labor Party has received on this question have gone past me. We have had no opportunity to consult with industry about such an amendment being moved. I hope Hon Giz Watson understands that for those reasons I am unable to support her amendment. I hope, therefore, that in the absence of the Government showing any willingness to support the amendment -

Hon N.F. Moore: You didn't notice that I was not enthusiastically supporting it? I was vigorously opposing it.

Hon TOM STEPHENS: Hon Giz Watson may have greater powers of persuasion. She may be able to convince the Leader of the House in her next contribution.

Hon N.F. Moore: She has no more chance of that than you have of convincing me to support yours.

Hon TOM STEPHENS: I will sit down and wait to hear whether there is any supportive argument.

Hon MARK NEVILL: I am even more confused with these amendments and addendums. This amendment looks at one aspect of historical leases. Many of these now occupy national parks. I refer to the definition of current vacant Crown land. I suppose the inclusion of the word "and" might change it. It refers to land in relation to any tenure of non-exclusive possession that ceased to have effect on or before 23 December 1996. Some of those leases ceased to have effect in the 1880s. If they were on a national park, I suppose we could argue the land was not vacant. I wonder whether the Leader of the House can advise how there will be a right to negotiate on these historical pastoral leases and on these reserves referred to by Hon Giz Watson, and how that affects them.

Hon GIZ WATSON: By way of further explanation: First, in response to the Leader of the Opposition, this amendment was discussed. It is just in a different form of words, because when I presented the amendment to the Clerk, I was told that it was out of order. I wish to put beyond doubt that these reserves will be subject to the right to negotiate, and not merely to consult. I have been informed that I was not able to have the original form of words because they had to be consistent with section 43A of the amended federal Native Title Act. From the advice given to me, there was some doubt whether these reserves would be within the right to negotiate process. I wanted to put that beyond doubt and, in doing so, I have formulated the amendment in the words that have been moved. I hope that explains why there might be some confusion. We believe those reserves should be maintained under the right to negotiate because there is no inconsistency between the objective of conservation and the maintenance of native title rights.

Hon Mark Nevill: How did you come to that view?

Hon GIZ WATSON: In all cases where there is no inconsistency between the objective of maintaining the native title claimants' right to negotiate and other land use objectives, we argue that the right to negotiate should remain on those lands. I have moved the additional amendment to put that beyond doubt.

Hon N.F. MOORE: In respect of the matters raised by Hon Mark Nevill, if a pastoral lease has been forfeited and has become a national park, it remains under part 3 - that is, the provision dealing with the consultation procedures - for two reasons: First, it was historically a pastoral lease and we are seeking to preserve that. Hon Tom Stephens tried to remove that; secondly, it is under there because it is a national park. National parks, conservation areas and so on should be part 3 land because there is more than one interest. The interests in all of these claims are the State of Western Australia and the potential native title claimants. It remains under part 3 in the Act regardless of whether it is a historical pastoral reserve or a conservation reserve as described by the honourable member.

Hon Mark Nevill: If you have a national park without that amendment and a historical pastoral lease with the right to negotiate under other amendments, you have a conflicting situation.

[Questions without notice taken.]

Hon TOM STEPHENS: The Labor Party will not support the amendment moved by Hon Giz Watson for some of the reasons that I outlined earlier; that is, we have not found the supportive legal analysis convincing as to its effect. Hon Giz Watson and Hon Christine Sharp have drawn my attention to the fact that the amendment was drafted to draw on sections of the Native Title Act. However, neither the Labor Party nor I have received submissions from native title interests on these matters that would have enabled us to test the case for this amendment against any competing case that may have been put to us by industry and other groups. In those circumstances, members will understand why the Labor Party and I are not in a position to accept the amendment moved by Hon Giz Watson.

Hon GIZ WATSON: I am naturally disappointed that the Australian Labor Party will not support the amendment. I appeal to colleagues on this side of the Chamber to support the maintenance of the right to negotiate over the proposed reserves contained in that amendment. An additional reason to support my amendment is the clear indication of continuity of use and contact with those reserve lands by south west Aboriginal people, and Nyoongah people in particular. The maintenance of the right to negotiate rather than a mere obligation to consult would go a long way to achieving equal joint management of conservation reserves. We believe that would be a positive outcome if this amendment were successful. We note the significant difference between maintaining the right to negotiate and merely requiring a regime of consultation. In a number of national parks in which there have been attempts to incorporate Aboriginal management, the complaint has been that Aboriginal interests have been put to one side and treated as secondary.

The amendment is consistent with the policy of the Greens (WA) to support equal participation in management of those conservation reserves where there are traditional Aboriginal interests in those areas. If this amendment were successful, conservation reserves would be some of the few areas in the south west land division where the Nyoongah people will be left with the full right to negotiate over lands.

Hon MARK NEVILL: These amendments presuppose that native title exists throughout the State. In the south west it is least likely that native title still exists. What happens when we give Aboriginal people the right to negotiate in a conservation or a national park and there is a later determination that native title no longer exists because of the different criteria in the Act - the same ones that were found in the Yorta Yorta decision; that is, the lineage is not there or they are not practising their culture and ceremonies? What then happens to the right to negotiate that people have been given? That is quite a powerful and valuable right. Does it continue on the national park after native title is found not to exist? If that statutory right is taken from them, the Government might have to pay compensation for removing that statutory right. What is the situation in areas such as the south west where people are given this powerful and valuable statutory right to negotiate, and where native title may have been washed away by the events of time?

Hon HELEN HODGSON: With respect to the issues raised by Hon Giz Watson in her amendment, people think in terms of the monetary side of the right to negotiate because that is how it has been displayed in some parts of the State. However, many Aboriginal people would like a say in land management issues, and that is why the right to negotiate is so significant in relation to conservation parks, national parks, state reserves and so on. I take on board the comments about whether people can prove native title claims over areas of the south west and whether a determination can be made, but when those people return to their country in the south west, these are the areas to which they would return as most of the country is inaccessible because either titles have been granted with exclusive possession or they do not have access to it.

The minister commented on some of the conservation practices - in their broadest context - of Aboriginal people and he referred to their burning techniques. There is evidence around the Rudall River area that the burning techniques used by the Aboriginal people are a means of regenerating spinifex and that they have a conservation effect. The Aboriginal people would be willing to share that expertise and knowledge of land management practices, and that can be preserved by way of the right to negotiate. I do not see much difference between the burning techniques of the Aboriginal people in a cultural context and the burning practices of the Department of Conservation and Land Management. Both have the effect of clearing undergrowth. People have different motivations, but the ultimate effect is similar. For those reasons, it is important that the right to negotiate be preserved over those areas which in some parts of the State are the only areas to which the Aboriginal people feel they have access.

My further questions are not specifically related to the issue raised by Hon Giz Watson, but I appreciate that the minister is anxious for debate on this matter to proceed. I note reference in this clause to reserves, and I note that protection given to native title claimants under section 47B of the Native Title Act does not apply to land subject to reservation. Is the status of reserves regularly reviewed? How does the Government propose to ensure that land formerly reserved but no longer used for that purpose is no longer recorded as a reserve? Will the Government provide resources to ensure that the land tenure system is up to date with regard to current reserves?

Hon N.F. MOORE: I come back to the amendment relating to the addendum. This right to negotiate and right to consult question has nothing to do with land management; that is another issue altogether. If members think the Government will manage national parks and reserves through the native title process, they are ignoring the fact that it is the job of a whole raft of government agencies to manage conservation reserves and areas which are conserved for a variety of reasons. The right to negotiate process is about making determinations on the position of native title claimants with regard to certain land. The right to negotiate and the right to consult are available to people, even though they may not be native title holders. They are given the rights because they are lodging a claim, but it does not mean they have any rights to ownership in the context of native title.

Hon Mark Nevill asked whether the right to consult and the right to negotiate would expire if native title were found not to exist. It might be some time down the track. If a group lodges a native title claim, by virtue of being a claimant it is given certain rights provided that group meets the registration test. Once it meets that test, it has status in the context of negotiating about the future act being considered by whoever has made application for the land. It may well be that some time down the track native title is found not to exist, even though the claimants may have been given some consideration to enable the future act to proceed. I understand there is no suggestion of that being returned, even though native title might not exist. I reiterate that this proposal with respect to the right to negotiate or right to consult has nothing to do with land management.

If the member wishes to raise a serious issue about Aboriginal people being involved in land management of reserves and so on, she should put it to the minister in charge of those reserves. Aboriginal people are involved in the management of a number of national parks in Western Australia - the Karijini National Park is a good example - and are doing an excellent job. There is no suggestion that a native title process must be in place to ensure that shared management occurs. In those sorts of national parks and reserves where the Government is allowing people, such as tourists, access, it is a good way of creating employment for Aboriginal people who have an affinity with that part of the country.

Hon Helen Hodgson asked a number of questions about reserves. They are subject to review. In the case of conservation reserves, reviews are undertaken to assess the need for more areas to be added to the conservation estate. I cannot recall any deletions from conservation reserves. Reserves no longer required for the purpose for which they were vested are returned to the crown estate and are either re-allocated or cancelled, whatever the case may be.

We must make some progress. There is a simple question before the Chair, and that is that we either agree or disagree to all the conservation reserves that are outlined in the amendment moved by Hon Giz Watson. They should not be included in part 3. We should move along very quickly.

Hon HELEN HODGSON: I appreciate the minister's comments but I want to ask a couple of questions. He specifically referred to Karijini National Park as an example of co-management between Aboriginal people and, I presume, the Department of Conservation and Land Management. Are there any mining leases or tenements in Karijini National Park? Who has made decisions in respect of granting them? Has there been any input from local Aboriginal people in the process?

Hon N.F. MOORE: We are going almost from the sublime to the ridiculous. I am asked questions about things that have absolutely nothing to do with the amendment or the Bill. I understand that there are some mining tenements in Karijini National Park, but I do not know what they are for, who granted them or who owns them.

Hon GIZ WATSON: I appreciate that we must make progress. However, Hon Mark Nevill asked what would happen if at a later date native title were not proven on reserves. I refer again to the Miriuwung-Gajerrong decision, which found that certain things did not extinguish native title. They include: The vesting of land in the national parks authority for tourism purposes; flora and fauna conservation legislation; and lease of reserves under section 41A of the Land Act, to which I referred in relation to the amendment. There is every indication that native title -

Hon Mark Nevill: I was talking about the south west.

Hon GIZ WATSON: The amendment applies equally to all national parks, not just the south west. I raised the issue to do with the south west because it is particularly significant to Nyoongah people. Hon Helen Hodgson referred to mining and to why it is important to maintain the right to negotiate on reserves. As we know, the Government pursues various future acts such as mining within conservation reserves. Removal of the right to negotiate would remove the right to negotiate over future acts such as mining.

Hon N.F. MOORE: In order for mining to take place in a national park, an Act of Parliament is required. If that is not consultation, I do not know what is.

Amendment on the amendment put and a division taken with the following result -

Ayes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson	Hon Norm Kelly *(Teller)*
Hon J.A. Scott			

Noes (21)

Hon Kim Chance	Hon B.K. Donaldson	Hon Murray Montgomery	Hon Tom Stephens
Hon J.A. Cowdell	Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch
Hon M.J. Criddle	Hon John Halden	Hon Ljiljanna Ravlich	Hon Bob Thomas
Hon Cheryl Davenport	Hon Ray Halligan	Hon B.M. Scott	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Tom Helm	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon E.R.J. Dermer			

Amendment on the amendment thus negatived.

The CHAIRMAN: The question is now that at page 9, after line 12, that the words proposed to be inserted be inserted.

Hon N.F. MOORE: Again, the Government is very strongly opposed to the Leader of the Opposition's amendment. It is inconsistent with the Native Title Act. I refer members to page 119 of the Native Title Act, at which there is the definition of an alternative provision area. It mentions land, namely leases, which is or was covered by that title before the Act commenced, so it talks about the area of land being an area in which there was an historical tenure. The Leader of the Opposition seeks to eliminate historical leasehold from that area of land which is to be considered an alternative provision area. By doing so, he would transfer about 12.5 per cent of Western Australia - that is, nearly double the land which is freehold or over which native title has been extinguished - from that area of land for which the right to consult exists into that area of land for which the right to negotiate will be provided in the Bill.

I hope that the Leader of the Opposition understands the magnitude of what he seeks to do and that what he is seeking to do is contrary to the intent of the Native Title Act. He must also understand that at least one lease in the Wik decision was indeed an historical lease, and it was not considered by the High Court that it should be treated any differently from a lease which currently exists. I should like to table a map which shows the area of land to be added by the Leader of the Opposition from the right-to-consult to the right-to-negotiate parts of Western Australia - some 12.5 per cent of Western Australia, which is a huge area of land. I am sorry that I do not have the actual number of square kilometres, but the area involved is huge. I refer again to the suggestion earlier today that we were extinguishing native title over large areas of land when in fact we did not do that. If the Leader of the Opposition gets his way, a huge amount of Western Australia - 43 per cent of Western Australia - will be subject to the right-to-negotiate process.

[See paper No 683.]

Hon N.F. MOORE: I ask the Committee emphatically to reject the amendment.

Amendment put and a division taken with the following result -

Ayes (13)

Hon Kim Chance	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon J.A. Cowdell	Hon Helen Hodgson	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon Cheryl Davenport	Hon Norm Kelly	Hon Tom Stephens	
Hon E.R.J. Dermer	Hon Ljiljanna Ravlich		

Noes (12)

Hon M.J. Criddle	Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Ray Halligan	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*

Pairs

Hon Ken Travers	Hon M.D. Nixon
Hon Mark Nevill	Hon Peter Foss
Hon N.D. Griffiths	Hon Barry House
Hon John Halden	Hon Simon O'Brien

Amendment thus passed.

The CHAIRMAN: The question now is that clause 3.1, as amended, be agreed to.

Hon N.F. MOORE: The Government will again oppose this clause, as amended, on the basis that it will continue to oppose the proposals put by the Opposition in respect of this Bill. The net effect of this amendment, for the benefit of anyone who is not sure what this is about, is that we have now removed from that part of the Bill which deals with the right to consult some 12 per cent of Western Australia and put it into that area where the right to negotiate will prevail. The right to negotiate is the most serious issue facing the resources industry in Western Australia, and vast areas of land will now be put

back into that category, when the Wik process and the 10-point plan - the federal law - were all about trying to sort out this problem. The Labor Party is now giving us the continuation of a monumental problem over large areas of land.

Hon TOM STEPHENS: I encourage the Leader of the House to think twice about his intention to defeat an amended clause, because if his call to vote against this amended clause were carried by the Chamber, he would be stripped of the definitions section to part 3, which I do not think is his intention.

Hon N.F. Moore: I would seek to have it reinstated - to recommit the clause.

Hon TOM STEPHENS: Without being able to check that every member is here and ready to vote, I am keen to put this to resolution quickly. I do not anticipate that the Government would consider voting against its own definition clause, even though it has been amended by the Committee.

Hon N.F. Moore: If it is unacceptable, I will seek to have it recommitted.

Hon TOM STEPHENS: An unusual process has been embarked upon; nonetheless, it seems to be the mode of operation.

Hon N.F. Moore: It is useless keeping members waiting if you are keen to put the amendment.

Hon TOM STEPHENS: That decision has already been made by the Chamber. It is now a question of whether amended clause 3.1 will be agreed to by the Chamber. It would be extraordinary -

Hon Derrick Tomlinson: Let's get on with the vote.

Hon TOM STEPHENS: That is one of the options. The alternative is that we draw breath for a moment to ensure that we all understand exactly what we are doing.

Hon Derrick Tomlinson: We all understand.

Hon TOM STEPHENS: All right, the member opposite understands. I am just making sure that everybody else understands.

Hon Derrick Tomlinson: You are just making sure your own members are here. If you, as Leader of the Opposition, cannot be assured of that, you are not much of a leader.

The CHAIRMAN: Order!

Hon TOM STEPHENS: There is an argument along those lines too.

The CHAIRMAN: Order! The Leader of the Opposition should address the Chair.

Hon TOM STEPHENS: Mr Chairman, I am keen to ensure that the Government does not defeat its own definition clause in part 3.

Hon N.F. Moore: It is not a definition clause because of what you have done to it. It is a highly amended and ruined clause and I ask members to have enough sense to recommit the clause to insert the original clause. I will be doing that all the way through, just so you understand.

Hon TOM STEPHENS: So that I will understand it also, if by any chance -

Hon Greg Smith: Sit down and let's have a vote.

Hon Max Evans: Sit down and vote.

The CHAIRMAN: Order, members!

Hon TOM STEPHENS: If by any chance a vote of this Chamber were taken that by accident did not reflect the numbers on the floor of this Chamber -

Hon N.F. Moore: You would seek to recommit?

Hon TOM STEPHENS: I am just assuring the Leader of the House that I will move to have the clause further considered when we get beyond the committee phase of the debate. I commend the amended clause to members.

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

Ayes (14)

Hon Kim Chance	Hon John Halden	Hon Ljiljanna Ravlich	Hon Tom Stephens
Hon J.A. Cowdell	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Norm Kelly		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans			

Pairs

Hon Mark Nevill	Hon M.D. Nixon
Hon Ken Travers	Hon Simon O'Brien
Hon N.D. Griffiths	Hon Peter Foss

Clause, as amended, thus passed.

Clauses 3.2 to 3.4 put and passed.

Clause 3.5: Acts to which this Part applies -

Hon TOM STEPHENS: This clause of the Bill in division 2 deals with relevant future acts and their validity. The Government has provided a detailed commentary in the explanatory notes. The notes indicate that clause 3.5 specifies the types of future acts to which this part applies; that is, a part 3 act with reference to the relevant sections of the Native Title Act. The clause notes go on to say that part 3 acts include permissible, lease, etcetera, renewals under section 24IC of the Native Title Act, the renewal, regrant, remaking or extension of term of a lease, licence, permit or authority, which creates a right to mine, onshore acts which pass the freehold test, the creation or variation of a right to mine other than one created solely for the purpose of the construction of an infrastructure facility associated with mining, and the compulsory acquisition of native title rights and interests other than where the compulsory acquisition is for the purposes of conferring interests on the government party or to provide an infrastructure facility. The notes indicate that subclause (5) provides that part 3 does not apply to any future act where a decision is made to process a future act application under part 4.

As members of the select committee know, and other members of the Chamber may know, this clause of the legislation has attracted substantial consideration of how it is possible and appropriate to make an amendment to this provision to ensure that the question of the intertidal zone is considered within the provisions of this Bill. Part 3 alternative provision areas should, in the view of the Labor Party, include future acts intended to be carried out on the landward side of the mean low-water mark; that is, the intertidal zone. Limiting those areas to above the high-water mark is also similar to the vacant crown land distinction - an artificial distinction where such an area, for example a historical pastoral lease, is extended to the low-water mark. This becomes relevant in view of the most recent amendment that was moved in the earlier clause, to which the Leader of the House took great exception. The Labor Party is still considering whether to proceed with the amendment to this clause. The amendment merely recognises that an alternative provision area should include the full area of such a tenure. Evidence exists that Aboriginal people, particularly those in the north of the State, make substantial use of the area between the high and low-water mark in the intertidal zone.

As members of the Select Committee on Native Title Legislation will know, we received a detailed and passionate submission on this question from indigenous interests, in particular Mr Patrick Dodson, the Chairman of the Western Australian Indigenous Working Group. We know that Aboriginal people, particularly in the north of the State, make substantial use of the area between the high and low water marks for a range of purposes. I once heard at least one Aboriginal person from the Kimberley say that he spent 90 per cent of his life in the intertidal zone. It is of substantial interest to people who spend so much time in that part of their traditional country. Incorporating this area into the part 3 regime would require consultation with objectors and provide parties with a clear statutory process.

Argument is now being, and should be, considered on which way to proceed on this amendment. This was an issue that became subject to detailed select committee consideration and detailed ALP consideration. Some members may have noticed that originally some consideration was given to including this amendment within part 4. After detailed submissions and consideration of that prospect we pulled back from doing that, confident that that was outside the capacity of this Bill. We took persuasive argument from a number of quarters, not least of which was from the Western Australian Fishing Industry Council, and we took House advice on that issue. That left us confident that part 4 would have a problem but part 3 would not. We therefore left this amendment on the Supplementary Notice Paper.

I asked Peter Johnston -

Hon Greg Smith interjected.

Hon TOM STEPHENS: We should give him his correct title. Mr Johnston is a constitutional lawyer who works at Wickham Chambers and teaches constitutional law at the University of Western Australia. During the Labor Party's consideration of these Bills it was successful in getting the Ministry of the Premier and Cabinet to allocate it with resources

that could be spent on legal opinion. The Labor Party, therefore, effectively purchased some consideration of this question from Mr Johnston. I then asked him whether he would make that available to me in my capacity as chairman of the Select Committee on Native Title Legislation. He formulated some advice on this specific question, some of which is contained within the minority report to which my signature is attached and which deals with intertidal zone issues. Mr Johnston says in the opinion above his signature -

> It is the intention of the amendments proposed by the Opposition that the provisions in part 3 and 4 of the *Native Title (State Provisions) Bill 1998* should be applied in relation to the intertidal zone.

His submission in response to suggestions that the proposed amendments would be invalid if passed by reason of section 109 of the Commonwealth Constitution follows -

> This is said to be because they would be inconsistent with either specific provisions of, or the general intention behind, the Native Title Act (NTA), in particular s26(3).

There would be a problem in proceeding down this path. That is under section 26(3) of the federal legislation. When considering what we may do at this part of the Bill, it is illustrative and important to refer to that section of the federal Native Title Act, which states -

> . . . "This Subdivision *only applies* to the act to the extent that it relates to a place that is on the landward side of the mean high-water mark of the sea."

That is a reference to an act to which this subdivision applies is to be read as referring to the act to that extent only. When briefing the Opposition, the Attorney General expressed a novel opinion when he stated, "When in any doubt about 109, just legislate anyway and see whether anyone challenges you." That is one approach that could be adopted.

Hon Kim Chance: Expensive.

Hon TOM STEPHENS: Surely a good states' righter, like the Leader of the House, given the tenor and tone of his earlier remarks, would not want to do an about-turn in regard to this clause, and suddenly adopt a different approach about whether it could be amended. The Leader of the House says that it is up to Parliament to get on with the legislation, and it is not on for it to be called to book by the Federal Parliament. I will construct an argument for the Leader of the House where, in the confines of the Bill, it may be appropriate to proceed. Mr Johnston continues -

> By way of preliminary general comment, there are a number of difficulties and complexities involved in attempting to determine whether a State law is inconsistent with a Commonwealth law. Section 109 cases often attract a division of opinion in the High Court. To identify inconsistency, two alternative tests have been developed. One is to ask if the State law directly conflicts with the Commonwealth. The second is to ask whether the Commonwealth law shows a general intention to exclude totally the operation of any State law (generally described as 'covering the field').
>
> It has been submitted that there is a direct inconsistency between the proposed State provisions and s26(3) of the NTA. This assumes the exclusion of the operation of subdivision P of Part 2 Division 3 of the NTA from the ITZ is the effect of s26(3). Such a view is given some superficial support in so far as the editorial note to section says "Sea and intertidal zone *excluded*". However, when the actual terms of s26(3) are read it is evident that that is a rather inexact and misleading side note.
>
> What s26(3) in fact says is: "This subdivision *only applies*"

Mr Johnston's emphasis is on the words "only applies"

> - to the act to the extent that the act relates to a place that is on the landward side of the mean high-water mark of the sea." It does not say: "This Subdivision does not apply to the [ITZ] . . . ". This should be contrasted with s26(2) which uses the expression "does not apply".

Section 2 specifically argues that this subdivision does not apply. Different learning is utilised in the following section of the act. It continues -

> This is a crucial linguistic distinction. To say something only applies to a geographically or spatially limited extent does not necessarily mean it is intended to exclude the application of similar State provisions in an area beyond that designated by the Native Title Act.
>
> All that s26(3) is doing on its plain and natural reading is applying positively the benefit of the right to negotiate, among other things, in respect of acts to the extent they have effect on the landward side of the high-water mark . . . . It stops there. It does not in terms say they *do not apply* below the HWM. Consequently, there is no direct inconsistency in terms of a textual contradiction or exclusion of the State's capacity to apply similar provisions conferring similar (not the same) rights as those available under the NTA in the ITZ. That is, the State is not

> applying the actual provisions of Subdivision P there. It seeks to create a similar and parallel regime in that zone. If however the word "only" in s26(3) is ambiguous, a beneficial interpretation should be given and the sub-section read down.
>
> It may also be argued that if there is no direct inconsistency nevertheless there may be a "covering the field" type intention limiting the right to negotiate to the land and no further. A point to note is that it is often problematic to identify the so called "field". A legislative field may be three dimensional. That is, it may cover a certain *subject matter*, or extend over a limited *geographic* area. Finally, its *temporal* (i.e. how long it is to operate) may need to be considered.
>
> Further, in dealing with 'covering the field' inconsistency, two directly opposite intentions can be ascribed to Commonwealth laws. One is to exclude the operation of State laws entirely, even if they are compatible. The other is to leave room for State laws to *supplement* or *complement* a regime primarily laid down by the Commonwealth.

Mr Johnston has referred to ex parte McLean (1930) 43 *Commonwealth Law Reports* 472. He continues -

> If the Commonwealth law contains no express statement of its intention, the matter is left to inference.

Mr Johnston quotes the relevant case of Wenn v the Attorney General in Victoria (1948) 77 CLR 84. His submission continues -

> It addresses the issue of what inferences can be drawn, negatively, from an omission to apply a regime or benefit beyond a certain point? If the Commonwealth had meant to exclude the right to negotiate in the ITZ, rather than leave that area unaffected and therefore open to State complementation, it could have made it abundantly clear by stating "This part is not intended to apply below the HWM".
>
> Although it is arguable that there may be some direct or indirect inconsistency between the State Bill if amended as proposed by the Opposition and the NTA, the contrary view is in my opinion the preferable view. The State Parliament should be reluctant to take a restrictive reading of its powers.

Those words should resonate in the eardrums of all state legislators. Any champion of this Chamber would find some assurance in Mr Johnston's opinion. The submission continues -

> Rather, it should rely on the presumption of Constitutional validity.

Mr Johnston further said -

> I had formed the above opinion before I became aware that an opinion had been expressed to the Select Committee that the proposed amendments are unconstitutional because the Commonwealth's NTA is intended to cover the field of matters with respect to matters affecting native title except to the extent provided, relevantly, by sections 43 and 43A of that Act.

Mr Peter van Hattem gave a detailed submission with a contrary view on this question. I found that illustrative because the name van Hattem was familiar but I was not sure why. I asked Mr van Hattem about his involvement in these Bills and found that he had been involved in drafting the drafting instructions for one Bill.

Hon Ken Travers: Works for the Crown Solicitor, does he?

Hon TOM STEPHENS: No, he was involved in the drafting instructions for part of the package of Bills before the Parliament.

Hon Derrick Tomlinson: Are you saying that he compromised his position?

Hon TOM STEPHENS: No. I am only saying that Mr van Hattem came from an interest group. He was representing the Western Australian Fishing Industry Council. He is a skilled and talented lawyer.

Hon Tom Helm interjected.

Hon TOM STEPHENS: No, that was Mr Pettit. The Labor Party has had a variety of legal opinions on a number of legal questions. In the end, we have received good advice which we have run with in this House on what can and cannot work, what would and would not work before the High Court, what would and what would not be valid and what would and what would not survive. We have had good advice in marked contrast to members of the Government. In that context, we should feel deeply suspicious of the Government's position about some of these issues in contrast to the legal expertise that has been proffered which has a contrary view to the Government on many of these issues. When we have adopted a position, we have subsequently found it was a well-advised position. In this area, all of our predictions and the legal advice have stood us in very good stead

Hon Tom Helm: You said you thought that they cared.

Hon TOM STEPHENS: No, I do not think I said that.

Hon Greg Smith interjected.

Hon TOM STEPHENS: We all aspire to do exactly that, Hon Greg Smith. I am not suggesting the contrary. We both say that we are doing the same thing; this is my way of doing it and he has his way of doing it. He should not ascribe to me motives that are other than that; that is, simply walking into this area and trying to do the best by all sections of the Western Australian community. Mr Johnston states -

> According to that view "alternative" State laws permitted consistently with those provisions are the full extent to which any State regime complementary to that of the Commonwealth may be made. The provisions of the various subdivisions in Division 3 of Part 2 of the NTA, so it is submitted, contain the full range of applications and exceptions in relation to future acts that may be validated. Only if an act falls within one of the relevant categories can it be the subject of subdivision P. Anything not covered by that regime is not capable of being validated by the combined effect of the Commonwealth NTA and "alternative" State laws. It is in that context that the argument for invalidity seeks to implicate the so-described "exclusive" effect of section 26(3) of the NTA.

He continues -

> So much may be conceded so far as the alternative State provisions authorised by sections 43 and 43A may operate within the spatial area marked out by s26(3). The view expressed is, with respect, consistent and logical. What it fails to address, however, is where the spatial or geographic limit of the applied alternative provisions is to be drawn. On my analysis set forth above, section 26(3) only purports to set the physical limit to the operation and application of Subdivision P above the HWM. The argument fails to take into account that the proposed amendments are not intended to apply the actual provisions of Subdivision P to the ITZ. Rather, they are intended to apply a parallel and equivalent set of State provisions (not "alternatives") in an area that the NTA has left open to State regulation of native title aspects below the HWM.
>
> It is submitted, therefore, that the State Parliament should adopt a beneficial reading of the Commonwealth's legislative intent rather than a restrictive view. This is consistent with normal interpretive principles, particularly where a restrictive reading has a widely pervasive detrimental effect on vested rights (*Bropho v Western Australia* (1990) 171 CLR 1). In that context it may be noted that *Mabo v Queensland (No 2)* (1992) 175 CLR 1 foreshadowed a wide range of fishing and sea rights in the Murray Islands. In areas such as the North of this State the magnitude of the native title interests in the ITZ that would be diminished or curtailed suggests that a comprehensive "exclusion" in the ITZ of rights equivalent to those available above the HWM would have been clearly and unequivocally expressed.
>
> It is also relevant to note that s25(5) of the NTA seems to contemplate that the States may make alternative laws without reference to any necessary geographic limitation.

I now refer to subdivision P, and section 25(5) headed "overview of subdivision", which reads -

> States and Territories may make their own laws as alternatives to this subdivision. The Commonwealth Minister must be satisfied as to certain matters before such laws can take effect.

This provision was responded to by Mr Johnston as follows -

> Hence, if the suggestion be that the WA Parliament cannot extend the right to the ITZ, such a suggestion may have overlooked s25(5). It arguably provides a basis for the application of alternative amendments like those proposed for the ITZ.

Mr Johnston then referred to policy considerations. This is more a matter of the constitutional validity, and the scope of the federal Bill and, therefore, the scope of the state legislation. I shall complete my consideration and discussions on those matters once I have finished this contribution. If the question of the constitutional validity of the amendments is considered to be a vital point, Mr Johnston suggested that we would be wise to take further legal advice. The Labor Opposition agreed with the time frame under which the Government wanted the select committee to operate - it existed for only 10 days. Therefore, no further legal advice was sought. We took good advice from around Parliament and beyond and were confident in moving on this amendment; however, the same clear opportunity did not arise with the amendment to part 4. I leave my contribution for the moment. I recognise the importance of this provision, and I look forward to the Government's response to the possibility of proceeding with the amendment on the Supplementary Notice Paper to clause 3.5. I look forward to seeing whether it would attract the Government's support if it were moved.

Point of Order

Hon N.F. MOORE: Has the Leader of the Opposition moved the amendment?

The CHAIRMAN: He has not moved the amendment.

Hon N.F. MOORE: Mr Chairman, I seek your advice on whether the amendment is in order; however, I understand that I cannot do that until someone moves it.

The CHAIRMAN: That is exactly the case. I cannot make a ruling until someone moves the amendment.

Hon N.F. MOORE: I hope we will not debate all night an issue which may be out of order. It would be a total waste of time.

Debate Resumed

Hon GIZ WATSON: In my contribution to the second reading debate, I indicated that the matter of high-water mark versus low-water mark was a particularly critical issue in the Bill.

Hon N.F. Moore: Would you not be better to find out whether the amendment is in order first?

Hon Greg Smith: Move the amendment.

Hon GIZ WATSON: It is not my amendment.

The matter of the low-water mark and the high-water mark is a critical part of the Bill, particularly when an extensive intertidal zone is involved. As members know, the north west of Western Australia has an extensive intertidal zone. As indicated by the Leader of the Opposition, evidence was heard from both sides of this argument regarding how the legal ruling would apply to a move to reinstate the right to negotiate on the intertidal zone. We heard from Mr Greg McIntyre, the legal coordinator for the Western Australian Native Title Working Group, we had the benefit of a written legal opinion from Mr Johnston, and we heard from Mr Peter van Hattem. On perusing those opinions, the matters raised by Mr Greg McIntyre in his submission to the second select committee caught my attention. At page 55 of that report Mr McIntyre is reported as saying -

> By opting for the low-water mark rather than the high-water mark the Government would be countermanding two historical facts. The high-water mark has been understood to be the common law definition of the State and the boundaries of the State. A witness this morning said it has been so since 1901. It was confirmed as the area to which the common law extends in the Seas and Submerged Lands Act. It is the definition which the Native Title Act has chosen for distinguishment between on-shore and off-shore. The definition has historical significance. It is an internationally recognised limit of the on-shore area of an international State. From there we measure the international waters. The Government would be creating a new concept by measuring from the low-water mark rather than from the high-water mark.

By way of written submission provided to the second native title select committee Mr McIntyre stated -

> The low water mark is the line which defines the "limits of a State" with sufficient accuracy for it to be recognised in Australian and international law and at common law as the defining line of the jurisdiction of a State in the Commonwealth of Australia.

He went on to say -

> It is not rendered impossible for any party to comply with the State law by the Commonwealth law merely because the State law provides for Consultation and Negotiation rights to apply in the inter-tidal zone, where the Commonwealth has provided that the Right to Negotiate under subdivision P of the NTA does not apply to the inter-tidal zone.

A final quote from Mr McIntyre's evidence to the committee reads -

> In the present instance the enactment by the State of alternative provisions to the Subdivision P provisions of the Commonwealth NTA, which include extending rights to the inter-tidal zone, is not incompatible with Commonwealth legislation.

That has been suggested. To continue -

> The Commonwealth has expressed an intention in NTA s.25(5) to leave scope for the operation of such a State law.
>
> There is nothing which excludes the inter-tidal zone from the definition of an "alternative provision area" in NTA s.43A(2). Indeed s.43A(8) allows for the possibility that the State might make different provisions for some kind of land or waters than for others. It follows that there could be a regime specifically addressed to the inter-tidal zone if the State Parliament so chose.

I find that the most convincing evidence presented to date. We have a difficulty because conflicting legal opinions have been submitted on this matter. However, having considered both sides of the argument, I suggest that not only is there no impediment to include the intertidal zone, but also there is strong justification for re-including the intertidal zone in the right-to-negotiate provisions for the reasons I outlined in the second reading debate.

Hon N.F. MOORE: I will not get into a debate about this now. The Bill uses the term "high-water mark", and it is the Government's view that that is consistent with the federal Native Title Act. It is the Government's view that any change to that would be at worst unconstitutional and at best inconsistent with the Native Title Act. All the advice the Government has is that the proposed amendment is out of order. I am looking forward to an opportunity for you, Mr Chairman, to let me know whether you agree with that. Regardless of whether it is out of order in the context of debate in this Chamber, the advice provided to the Government is that the current Bill conforms to the requirements of the Native Title Act. We are legislating in the context of the federal law. I indicated earlier that I do not have much enthusiasm for this sort of legislation, but it is a fact of the matter. I had nothing to do with the federal law; the Federal Parliament determined that. It also determined that the States could legislate for their own regime, provided it was consistent with the federal law. It would be extraordinary and quite inappropriate if the Legislative Council so amended the Bill that it became inconsistent with the commonwealth law. The Government is trying to introduce certainty into this whole process, and this will add another uncertainty. The amendments so far today are enough to make everyone totally uncertain forever.

I do not want to debate what is right or wrong, other than to say that the Government is not convinced by Hon Tom Stephens' argument or Hon Giz Watson's argument that any proposed amendment on the Notice Paper is acceptable. For every lawyer members opposite can quote, I can find another half dozen who will say the exact opposite. Members are entitled to prefer the view of certain lawyers because they share their views. However, Governments, whether they like it or not, are required to seek legal advice and to make decisions on the basis of that advice in the context that it is impartial. The Government's advice is that this amendment would be inconsistent with the Native Title Act. I wish someone would move the amendments to see whether the Chairman agrees with me.

Hon TOM HELM: I share the view of the Leader of the House; that is, this Parliament is required to debate this matter within the parameters laid down by the federal legislation. Members are fully aware of my position on this matter. As I said in the second reading debate, I feel obliged to the indigenous people among my constituents - particularly those in the north west but also those in the central desert - who voted almost to a person for the ALP in the last federal election.

Hon N.F. Moore: People in the central desert do not have a serious problem with high and low-water marks.

Hon TOM HELM: Of course they do not, but they have a problem with interference with their brothers and sisters on the coast.

Hon Derrick Tomlinson: I do not think they would recognise them.

Hon TOM HELM: The member would be surprised. The information from them, whether or not they have a coastal zone, is that they would prefer the Labor Party to chuck this mess out and not debate it at all.

Hon Derrick Tomlinson: Move it then and chuck it out.

Hon TOM HELM: Not this clause, but the whole rotten, stinking mess that the Federal Government has given us to deal with. The arguments I presented for getting rid of it were defeated in the caucus room. Therefore, members are trying to patiently work their way through this legislation, for which the parameters have been set by federal law. The State Government is desperately trying to put it through in its own way. I go back to the last time the Government tried to put legislation through that was too -

Point of Order

Hon N.F. MOORE: I can put up with only so much, and the member's comments have nothing to do with the clause. I ask you, Mr Chairman, to advise the member that he should talk about the intertidal zone and clause 3.5, and get on with the debate.

The CHAIRMAN: I look forward to the member addressing the clause.

Debate Resumed

Hon TOM HELM: My opening remarks were in response to the closing remarks of the Leader of the House about how uncomfortable he was dealing with federal legislation. I am responding to that - no more and no less. Therefore, I will continue down that track, even though I was winding up.

To talk to the clause one must understand where some of us in the Labor Party are coming from. We have an obligation to ensure that the clause, along with others that we are about to amend, is amended correctly and that it reflects how we as Western Australians consider that the legislation should flow. Of course I respect people who are able to use legalistic terms in relation to various relevant pieces of legislation, but the majority of the people whom I represent and I do not understand much of the verbiage that is used in this place. As the Leader of the House has indicated, there is a good chance that the amendment will be ruled out of order. If that is the case, how can we possibly put on the record how we feel about such a clause without the amendments that we propose? We hope that we will have a chance to amend the clause so that it properly reflects how we Western Australians feel. I was concerned to hear the Leader of the House say, "Let's take a chance; these

things are always appealed in the courts; let's bring some certainty." Is that certainty the certainty of an appearance in court? I see the curled lip of the Leader of the House when he talks about the amount of money that lawyers will make out of the legislation. He has said more than once that people have the ability to appeal. The point is that surely the rules are a little different in that sense.

When we debate the amendment we must consider the importance of the low-water mark. The Leader of the House must address why it is important to change our view of the intertidal zone agreement at which the Rubibi group in Broome arrived with local and state governments. We must talk about shell middens, which can indicate a substantial connection to the intertidal zone and so on. Those matters must be addressed. Perhaps we should get on with it, but in the meantime some points should be expressed just in case our amendment is ruled out of order.

Hon KEN TRAVERS: This is a key clause. Whether or not an amendment has been moved, it is still incumbent upon the Government, which brought the legislation into this place, to justify why it has chosen the high-water mark.

Hon N.F. Moore: I just did.

Hon Derrick Tomlinson interjected.

Hon KEN TRAVERS: I inform Hon Derrick Tomlinson that I refrained from participating in this debate for some time to allow the processes to proceed as rapidly as possible. As Labor members will be well aware, I wanted to make a second reading speech on the previous Bill and on this Bill, but I was asked not to by the Leader of the Opposition.

The CHAIRMAN: Order! The member might like to address the clause.

Hon KEN TRAVERS: I respect my right to speak in this place, and I will speak about the issue because it is a crucial part of the legislation. It is a pity that Hon Greg Smith has been called away on urgent parliamentary business and is not here, because I am sure that if he were here, he would try to tell me that I do not go up to the Kimberley and do not understand how this works. This issue is very important to the Aboriginal people of the north west, although for those of us who spend a disproportionately larger amount of our time in the south west, it probably does not make a great deal of difference how we view the intertidal zone. In the north a lot of activities take place within the intertidal zone, and to seek to prevent the native title owners from having access to part 3 of this Bill for that area below the high-water mark is a major erosion of some of their rights.

Hon Derrick Tomlinson: There is a lot of erosion in the intertidal zone.

Hon KEN TRAVERS: Particularly around the Derby area, where the mangroves are being washed out on a regular basis.

Hon Derrick Tomlinson: There is serious erosion.

Hon KEN TRAVERS: Yes. Hon Tom Helm and I examined this problem earlier this year. Hon Derrick Tomlinson may laugh and try to ridicule this part of the debate -

Hon Derrick Tomlinson: No. It is a serious matter.

Hon KEN TRAVERS: It is a crucial area, because a lot of activities take place -

Hon Derrick Tomlinson: You are just filibustering, and you know it!

Hon KEN TRAVERS: I am deeply hurt! If the member respected the Chair and allowed me to get on with my speech -

[Hon Derrick Tomlinson took the Chair.]

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): The member will continue!

Hon KEN TRAVERS: Now I can properly speak to you, Mr Deputy Chairman, without incurring the wrath of the Chairman on this issue. As I was saying to you when you were in another place, although you might jest about erosion, what takes place on those mudflats and mangrove flats in the north of this State is of crucial importance to the Aboriginal people in that area. The Government knows that by putting in the high-water mark, it will exclude a significant area of activity for -

Hon Greg Smith: Do not fool yourself!

Hon KEN TRAVERS: I am glad that Hon Greg Smith was listening. I had hoped he would come back into the Chamber. It is interesting that Graeme Campbell is the only conservative politician in this country who is prepared to say that he does not believe in native title, but whenever we ask members on the other side of this place whether they believe in native title, they are silent. The only one who has ever responded -

Point of Order

Hon N.F. MOORE: Mr Deputy Chairman, we are not debating what Graeme Campbell has said, or whether we believe in native title. I ask the member to speak to the clause.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): The member is aware of the topic, and I ask that he abide by the request to speak to the clause.

Debate Resumed

Hon KEN TRAVERS: Mr Deputy Chairman, what I am saying is relevant, because what we are seeing here is another attempt by the Government to narrow down, cut off, limit and put barriers around native title, because fundamentally members opposite do not agree with the principle of native title.

Hon Greg Smith: Are we going to exclude Aboriginal people from the intertidal zone?

Hon KEN TRAVERS: This will exclude the traditional native title owners of an area from having recourse, under part 3 of the Native Title Act, to land on the intertidal zone.

Hon Greg Smith: What is part 3 of the Act? You have no idea what you are talking about.

Hon KEN TRAVERS: I know exactly what I am talking about. If the member read the debate in the other place he would understand that I am adopting the same approach that the Premier adopted; that is, I will not answer his individual questions and points which is what the Premier chose to do, even though he was the person handling the Bill.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Perhaps Hon Ken Travers' problem will be solved if he were to address the Chair rather than unruly interjectors. Then he will not have to imitate the Premier.

Hon KEN TRAVERS: Thank you, Mr Deputy Chairman. The member can read part 3 of the Act and see the entitlements that native title claimants have on the right to consult on the intertidal zone. The member can do that, it is fairly easy. Even the member who was interjecting, I hope, can read. That is why I was developing the line of argument about the issue of support for the principle of native title. If members do not support the principle of native title, at every opportunity within the Bill the Government seeks to reduce it and to find ways of winding it in. Fundamentally, the members on the other side would love to see native title done away with; they would love to see native title in this country finished from beyond the high-water mark to the top of Uluru.

Hon Greg Smith: Ayres Rock.

Hon KEN TRAVERS: The removal of the intertidal zone is just another little part of it. At least people like Graeme Campbell have the decency and honesty to say, "I disagree with native title and I will take up a petition to have it ruled out completely. I will not sit here and try to take away a little bit on the intertidal zone or a little bit from somewhere else." He has the honesty and integrity to stand up and argue these points. However, Hon Greg Smith has never come into this place and told us whether he believes in the principle of native title, has he?

Hon Greg Smith: I accept it but I don't agree with it.

Hon KEN TRAVERS: He accepts it but he does not agree with it! That sounds to me as though he does not accept the principle of native title. That is why at every opportunity his Government brings into this place a Bill for an Act that seeks every opportunity to limit the debate, the influence of native title and the options and avenues of recourse that the indigenous or native title owners have for any rights to consult under this Bill. All we are talking about is the right to consult. It is important that the Leader of the Government, commonly called Log, comes into this place and tells us why -

The DEPUTY CHAIRMAN: Order! Hon Ken Travers is going very close to offending the standing orders of this place and I suggest that he does not use derogatory names in that way. I invite the member to continue.

Hon KEN TRAVERS: I thank you for your guidance. However, I am sure that term has been used previously in this place to refer to other members.

The DEPUTY CHAIRMAN: Whether it has been used previously is irrelevant. If the term is derogatory, it is derogatory whether it is used one time or 100 times. I have just told the member that it is derogatory.

Hon N.F. Moore: Maybe he could be a bit original, too. Can't you think of another insult?

Hon KEN TRAVERS: No.

The DEPUTY CHAIRMAN: Order!

Hon N.F. Moore: You are developing a nickname.

Hon KEN TRAVERS: With that, I would urge the Leader of the House to -

Hon N.F. MOORE: I move -

That the question be now put.

Question put and a division taken with the following result -

Ayes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans			

Noes (14)

Hon Kim Chance	Hon John Halden	Hon Ljiljanna Ravlich	Hon Tom Stephens
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Norm Kelly		

Pairs

Hon Peter Foss	Hon J.A. Cowdell
Hon Simon O'Brien	Hon Mark Nevill
Hon Murray Nixon	Hon Ken Travers

Question thus negatived.

Hon N.F. MOORE: Now that the Opposition wants this debate to continue, I ask it to either move its amendment or let us get on with it. I do not know what on earth is the delay. We have had two totally irrelevant speeches. Fortunately, I managed to get the call, otherwise we would have had a third. If there is a problem with whether the amendment is in order, let us have the decision made so that we can know whether it is in order. If it is in order, let us debate the amendment and get it disposed of. Let us get a decision instead of sitting here all day. We have been here for about 45 minutes on a clause to which nobody is prepared to move an amendment on the Supplementary Notice Paper. Members keep wandering around the Chamber like the little mice that one finds when one turns on a light at night. Nobody wants to do anything except not make a decision. It is a total and absolute waste of time. If we are trying to get this Bill finished in some form or another before the Chamber rises, may I suggest to members that we make a decision. It is not hard. Let the Deputy Chairman respond to my request that the amendment be moved, and then we will know whether it is in order and we can proceed one way or another.

Hon TOM STEPHENS: Mr Deputy Chairman, I ask you to consider this request: Late advice on my amendment has come from the Table, and I want the opportunity of considering that advice. I ask that you consider leaving the Chair to provide us with a chance to further consider this matter.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Before the Leader of the Opposition invites me to leave the Chair to consider some late advice on the matter before the Chair, he should indicate the nature of that late advice and why it is important that we should interrupt debate while he deliberates outside the Chamber on the nature of the advice he has received.

Hon TOM STEPHENS: You will appreciate, Mr Chairman, that it is important that I do not refer or involve the Chair in any issue before the Committee. I will avoid doing that. I have an amendment on the Supplementary Notice Paper on which I have fresh advice, the source of which I will not mention. I want the opportunity to make further submissions on this question. There are two ways of proceeding. One is to ask you to leave the Chair briefly, the other is for us to filibuster. I commend the first alternative.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): I requested some explanation as to why I should leave the Chair. I am left in mystery. However, because it is so mysterious, it is appropriate that the mystery be resolved by my leaving the Chair.

Hon N.F. MOORE: This is highly unusual. I do not recall a Leader of the Opposition doing this in my time. Just because the member is not ready to debate something, it is highly irregular for the Committee to suddenly stop its business while the Leader of the Opposition gets advice from a lawyer whose name he will not reveal. We have a considered amendment on the Supplementary Notice Paper. If it were not considered, it would not have been put there. The member has obviously had a number of weeks in which to seek legal advice on this. For some strange reason he now wants to close down the Committee while he gets more advice that might support his argument. Why does he not just give the Chairman a chance to rule whether his amendment is in order? Rather than leave the Chair until the ringing of the Bells, Mr Chairman, you should ask the Leader of the Opposition whether he intends to move his amendment; if he does not, you should put the question and get on with the debate.

The DEPUTY CHAIRMAN: There are two courses of action available to me. One is to proceed with the debate and to invite the Leader of the Opposition to move his amendment, then for me to rule on it. If he were to disagree with the ruling, he would have the right to ask the President to rule on my ruling. The alternative is for the matter that he wants to resolve

without involving the Chair to be resolved while the Committee is suspended. There is precedent for the Chair to be vacated; therefore, I will vacate the Chair until the ringing of the Bells.

Sitting suspended from 8.43 to 9.00 pm

Hon TOM STEPHENS: I regret to advise that I need to give further consideration to clause 3.5, and to achieve that I move -

That further consideration of clause 3.5 be postponed.

Hon N.F. MOORE: The Government opposes the motion. We have had long enough to reach our conclusion about this matter. I will tell members exactly what the Leader of the Opposition is trying to do here: He is trying to ensure that he gets the right ruling from the Chair on his amendment. I do not know how he will do that. Surely the Deputy Chairman will make the decision about the ruling. I am at a loss to understand how having a delay and postponing the clause will change the Deputy Chairman's point of view on this matter. I am looking forward very much to the Deputy Chairman being given a chance to rule on this. The amendment is very important to the Labor Party, and I suspect the Australian Democrats and the Greens (WA), because it is its way of making sure the Bill is not acceptable to the Federal Government. It is all about putting into this Bill an inconsistent clause. As those opposite know, the federal minister is obliged to make a determination on this legislation on the basis that it is consistent with the federal law. There is a very good argument that it will be inconsistent and, therefore, the federal minister will have no alternative but to say that he cannot make a determination supporting that legislation. That is what this is about.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson) Order! The question before the Chair is that clause 3.5 be postponed. The Leader of the House should confine his remarks to that.

Hon N.F. MOORE: There is no need to postpone a decision on this clause. We now know that the intention of those opposite is to kill this Bill somewhere else, rather than here and, therefore, overcome their political problems. They are seeking to postpone this legislation until they can somehow or other get an opinion that may persuade you, Mr Deputy Chairman, about the merits, or otherwise, of the amendment. I do not see how a postponement can have any effect on your judgment. When the amendment to this clause is moved, if it ever is and we are still alive at that point in history, I will ask for a ruling about whether the amendment is in order. How a postponement of this clause will in any way affect the judgment of the Deputy Chairman is beyond me. Perhaps, Mr Deputy Chairman, you could help me by letting me know how that could make any difference to the way in which this place operates.

Hon Kim Chance: Your logic might be incorrect; you might be wrong.

Hon N.F. MOORE: I may well be; I have been wrong before. On this occasion I am seeking to find out how a postponement will change the view of the Chair.

The DEPUTY CHAIRMAN: Order! There is no question before the Chair, other than that clause 3.5 be postponed. I have been asked to rule on nothing. Nothing else has been moved and nothing is influencing anything because there is nothing in my mind in this regard. I suggest that we consider the question that clause 3.5 be postponed.

Hon NORM KELLY: In the interests of members, it would be handy to get an indication from the Leader of the House of how he intends progressing the debate throughout tonight. I can see good reason to postpone this clause.

The DEPUTY CHAIRMAN: If the member wants to discuss with the Leader of the House what he will do for the rest of the night, there is a place to do that. Right now we are considering the question that clause 3.5 be postponed. If the member wishes to speak to that, he has the floor.

Question put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon John Halden	Hon Ljiljanna Ravlich	Hon Tom Stephens
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Norm Kelly		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans			

Pairs

Hon Ken Travers	Hon Murray Nixon
Hon Mark Nevill	Hon Peter Foss
Hon John Cowdell	Hon Simon O'Brien

Question (postponement of clause) thus passed.

[Continued on page 5509.]

Clause 3.6 put and passed.

Clause 3.7: Part 4 may be applied to a Part 3 act -

Hon HELEN HODGSON: I move -

> Page 13, lines 13 to 15 - To delete the words “person who has applied for, or made a request or submission for, the doing” and substitute the words "consultation party in respect”.

Clause 3.7 provides that if a person has applied for or makes a request or a submission for the doing of an act which would otherwise come within clause 3.5 - on which we are still deliberating - the proponent, for want of another term, of a native title act can ask the government party to treat a part 3 act as a part 4 act. If the proponent requests, a matter can be treated under the right-to-negotiate procedures instead of under the consultation procedures currently being considered. I originally thought that it was inappropriate for the government party to have a discretion but was talked out of that.

The amendment that is still on the Notice Paper is a different issue. Currently the clause provides only for the proponent to have the right to request that it be dealt with under the right-to-negotiate provisions rather than the right-to-consult provisions. If the parties are supposedly of equal standing and are able to negotiate or consult on an equal footing, it is very odd that the right to request treatment under a different section is limited to one side of the equation. It is inappropriate for the legislation to do that because it is seen as being unfair and biased in favour of one party to the negotiations or consultation as the case may be. For those reasons, it is only just and fair to alter the legislation to provide that any consultation party can request that it be treated under the right-to-negotiate provisions instead of the consultation provisions. It is still at the discretion of the government party. If there is a concern about opening the floodgates and all native title applicants making a request to have the right-to-negotiate provisions applied, the government party will be in a position to judge those requests on their merits. However, it is not appropriate, fair or reasonable for only one party to have the ability to make that request to the government party. Therefore, I am moving to redress that balance.

Hon N.F. MOORE: The Government does not accept the amendment. This amendment would allow any consultation parties, including a native title claimant, to request that a future act which affects both a part 3 and a part 4 area to be done under part 4. The proponent should have the option of choosing the appropriate process for a future act. This relates to a piece of land which may have two types of tenure over it. The proposal is that, on the application of a person who is seeking to carry out a future act on that land, that person apply to the Government for the future act being done under the process which is appropriate for his circumstances. It is unnecessary for all consultation parties to have the same capacity for that request. This is just another example of members seeking to put more land into the part 4 right-to-negotiate provisions. The Opposition is seeking to do that tonight with its amendments in order to cause more difficulty for people who are seeking to create wealth in this country.

Hon HELEN HODGSON: I will clarify a point that the minister made in his comments on the amendment. He indicated that this section deals with cases in which a proponent has both a part 3 and a part 4 area within the same act. I cannot see anything in the legislation that provides that limitation. Is there a legislative limitation or is it simply an intention and a policy limitation?

Hon N.F. MOORE: I have indicated that I do not propose to support this amendment and I do not propose to answer questions all night. We will indicate to the House whether we support or reject an amendment and that is as far as I propose to go.

Hon TOM STEPHENS: The Opposition is listening attentively to the answers given by the Leader of the House. Mr Chairman, you have been here long enough, as has the Leader of the House, to know that we have sat through debates in which ministers have been asked questions. The House requires answers to those questions, particularly when a Bill is before the House. I urge the Leader of the House to listen again to the question that was posed by Hon Helen Hodgson and answer the question about the detail that she has sought. I am endeavouring to fully appreciate the Government's reply so we can in turn make a decision on these issues. I have been in this place when Labor ministers were put through hell by coalition members who forced them to answer questions before legislation was passed.

Hon Max Evans: Hon Joe Berinson never used to answer any of my queries.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): The Leader of the Opposition and I have been in this place long enough to know that ministers will answer questions in the manner they consider appropriate. There is no compulsion on a minister to provide an answer which the interrogator requests.

Hon TOM STEPHENS: I appreciate that, Mr Chairman.

The DEPUTY CHAIRMAN: Therefore, I ask the Leader of the Opposition to return to the question before the Chair.

Hon TOM STEPHENS: These are complex Bills, and this measure is no less complex than the other two in the package. Clause 3.7 provides that on application from the proponent, the government party may determine that a part 3 act is to be dealt with under part 4. This is outlined in the commentary provided by the Government. An act which affects both an alternative and a non-alternative provision area thus may be dealt with under part 4 rather than being processed under both parts. For example, a mining lease application, which may cover both vacant crown land, part 4 tenure, and a pastoral lease, part 3 tenure, may be processed only under part 4. Alternatively, the clause notes state that an applicant may choose to have the title granted in accordance with section 43B of the Native Title Act, which allows the act to be processed under part 3, with no other activity to be undertaken under the part 4 area until the provisions of part 4 have been complied with. It seems that effectively this amendment moved by Hon Helen Hodgson, as far as I understand it, would result in a consultation party being able to force a part 3 act to be dealt with under part 4. Do I understand it correctly?

Hon N.F. Moore: Absolutely.

Hon TOM STEPHENS: If the Leader of the House is able to provide additional information in response to Hon Helen Hodgson's question, I would appreciate it.

Hon N.F. MOORE: The member got it right.

Hon TOM STEPHENS: Is the Leader of the House able to answer the questions? I appreciate that the Bills are difficult, and that the Leader of the House may not have full knowledge of this Bill; that may be the case for all of us.

Hon N.F. Moore: I have answered every question asked of me. I'm getting tired of this -

Hon TOM STEPHENS: We are all tired.

Hon N.F. Moore: You would do us all a favour by accepting the fact that the Government does not agree with the amendment. When we say so, we will vote against the amendments. Just get on with it! You're seeking to delay, frustrate and confuse.

Hon TOM STEPHENS: Not at all. I ask the Leader of the House to extend the courtesy I am endeavouring to extend to him; that is, in dealing with the issues before us in the Leader of the House's time frame, I urge him to respond to the question asked by Hon Helen Hodgson.

Amendment put and a division taken with the following result -

Ayes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson	Hon Jim Scott *(Teller)*
Hon Norm Kelly			

Noes (24)

Hon Kim Chance	Hon B.K. Donaldson	Hon Barry House	Hon Tom Stephens
Hon J.A. Cowdell	Hon Max Evans	Hon Murray Montgomery	Hon W.N. Stretch
Hon M.J. Criddle	Hon N.D. Griffiths	Hon N.F. Moore	Hon Bob Thomas
Hon Cheryl Davenport	Hon John Halden	Hon Ljiljanna Ravlich	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Ray Halligan	Hon B.M. Scott	Hon Ken Travers
Hon E.R.J. Dermer	Hon Tom Helm	Hon Greg Smith	Hon Muriel Patterson *(Teller)*

Amendment thus negatived.

Clause put and passed.

Clauses 3.8 to 3.11 put and passed.

Clause 3.12: Notification of acts -

Hon TOM STEPHENS: I move -

Page 15, after line 14 - To insert the following subclause -

(2) Before a Part 3 act is done, public notice of the act must be given by advertisement —

(a) in a newspaper circulating generally throughout the State; or

(b) in a newspaper that satisfies any requirements prescribed by the regulations for the purposes of this paragraph.

The amendment will provide for notification to the public, in addition to the persons specified. It reflects a similar provision in clause 4.10(1) and, as the amendment suggests, will be used to maximise the opportunity for members of local communities to become aware of a proposed act which may affect their property or other interests.

Hon N.F. MOORE: We can probably describe this amendment as *The West Australian* newspaper clause. Just as the Opposition has looked after the interests of lawyers, it is now about to look after the interests of *The West Australian*. The Government does not support the amendment. The Opposition wants the general public to be notified of any act proposed by the Government by advertisements in newspapers. This is inconsistent with the Native Title Act, although that does not seem to worry the Leader of the Opposition. Section 43A(3)(a) of the Native Title Act sets out the notification requirements. The Native Title Act requires notification of registered native title claimants, representative bodies and registered bodies corporate, but not the public. The ALP's amendment is not required to ensure compliance with the Native Title Act and would be an additional expense and an unnecessary imposition on the notification party. For mining titles, the Mining Act already specifies that title applications be advertised in the newspaper. For land titles, a notice of intent to acquire land titles is required to be published in the *Government Gazette*. There is no reason for any party not to know about the proposed future act. In any case, the only parties who can object are those to whom specific notification is given, so there is little point in undertaking wider notification. The Government opposes the amendment on the grounds that it would create an unnecessary expense, and there is no need for us to go down this path because everyone who has an interest will already know, because there is a requirement for specific notification.

Hon HELEN HODGSON: The Leader of the House referred to a conflict with the provisions of section 43A(3) of the Native Title Act.

Hon N.F. Moore: Section 43A(4)(a).

Hon HELEN HODGSON: The section states that for the purposes of paragraph (1)(b), the alternative provisions comply if, in the opinion of the commonwealth minister, they contain appropriate procedures. My understanding of that is that an advertisement would not be contrary to it in any way; it is only prescribing the manner in which it will be dealt with. I do not see that the amendment is out of order or against the scope of the Native Title Act.

Hon GIZ WATSON: I support the amendment. It is a reasonable inclusion. Again, the arguments of the Leader of the House for not circulating a public notice in the newspaper do not hold up. I acknowledge that additional cost will be involved, but in the scheme of things it is important to uphold the principle that information be broadly available. I do not agree with the Leader of the Government on this matter. It is a useful amendment which the Greens (WA) will support.

Hon N.F. MOORE: For the benefit of Hon Helen Hodgson, who selectively quoted from the Native Title Act, section 43A(4) states -

> For the purposes of paragraph (1)(b), the alternative provisions comply with this subsection if, in the opinion of the Commonwealth Minister, they:
>
> (a) contain appropriate procedures for notifying each of the following that an act to which the provisions apply is to be done:
>
> (i) any registered native title claimant . . .
>
> (ii) any registered native title body corporate . . .
>
> (iii) any representative Aboriginal/Torres Strait Islander body . . . ; and
>
> (b) give any claimant or body corporate the right to object, . . .

The Native Title Act requires that certain individuals involved in that land be notified. The state law does the same. To require it to be placed in a newspaper is another unnecessary burden on people who are required to give notifications about all sorts of things. It only gives a lot of money to *The West Australian* newspaper, because it is probably the only paper that satisfies the requirements of the amendment. If Hon Helen Hodgson thinks that people scattered throughout outback regional Western Australia read *The West Australian* every day, I suggest that she go out there to see what they do.

Hon HELEN HODGSON: I thought of that and recognise that *The West Australian* might not be readily accessible, but the amendment provides an option for a newspaper that satisfies any requirements prescribed by the regulations for the purposes of this paragraph. Surely if people read *The Kimberley Echo* which circulates in that area, and if it meets the requirements, it would be perfectly adequate. Therefore, the comments of the Leader of the House do not change my opinion.

Hon N.F. MOORE: There was a time when the mere thought of legislation supporting *The Kimberley Echo* would have caused Hon Tom Stephens to have apoplexy and oppose this totally and absolutely. Hon Helen Hodgson does not understand the way of life in Aboriginal communities. They do not have a daily newspaper delivered. *The Kimberley Echo* is not delivered to every little Aboriginal group in the Kimberley. They do not have the *Kalgoorlie Miner* at Warburton every day. Opposition members do not understand. What is the purpose of the exercise when everybody involved in a native title process must be notified anyway? The amendment is totally unnecessary and would create another expense for people in a productive sector of the community who are trying to ensure that enough wealth is created in society to enable everyone to live as they would like.

Amendment put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon John Halden	Hon Ljiljanna Ravlich	Hon Tom Stephens
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Norm Kelly		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans			

Pairs

Hon Ken Travers	Hon Simon O'Brien
Hon Mark Nevill	Hon Peter Foss
Hon J.A. Cowdell	Hon Murray Nixon

Amendment thus passed.

Clause, as amended, put and passed.

Clause 3.13: Further provision as to notices -

Hon HELEN HODGSON: I move -

Page 15, after line 18 - To insert the following subparagraph -

(a) the location and details of the relevant land or waters;

I was surprised to find that the legislation tells us about the notices that must be issued. The clause states -

(a) the closing date;

(b) the title of the Government party who will receive objections . . .

(c) the time of close of business on the closing date of that Government party.

Nowhere does the Bill require one to state what land or waters are involved. However, it does require that the registered native title body corporates and native title claimants be informed. It is appropriate to have some way of determining what land we are talking about. I appreciate that some people may feel this is an unnecessary degree of detail, but the Bill already contains such a degree of detail that something as fundamental as the land in question should be contained in the notice. I would be interested to know whether some other provision deals with this matter. I could not find one when I was working through this legislation.

Hon N.F. MOORE: Clause 3.15 provides for the making of regulations in respect of this matter. We will accept the amendment as a belt and braces exercise.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 3.14 and 3.15 put and passed.

Clause 3.16: Right to object to doing of act -

Hon HELEN HODGSON: I move -

Page 17, lines 1 to 7 - To delete the subclauses.

The Supplementary Notice Paper treats this amendment as one deletion, but it involves two issues, subclause (2) and subclause (3). Subclause (2) limits the grounds on which an objection may be lodged, and states that an objection may be lodged only on the ground that the doing of the act in relation to the relevant land would affect the person's registered native title rights and interests in relation to that land. Many other questions may arise when a person lodges an objection to an application, such as whether an act is ultra vires, or whether matters arise that need to be resolved through administrative law processes. The lodging of an objection is, therefore, often the first step in drawing attention to these other grounds. Although it may be argued that the ground outlined in subclause (2) is very broad, we believe that it is too prescriptive and should be deleted because it limits the grounds of objection.

The second issue is subsection (3), which states that if there are one or more registered native title bodies corporate in

relation to all of the relevant land, then only the registered native title body corporate can lodge an objection. I have examined the Native Title Act to see how it handles the situation of bodies corporate and native title claimants, and I have not been able to find anything that states that where there are a body corporate and other claimants, they cannot both have full standing and full rights. Section 43A(4)(b) of the Native Title Act states that the alternative provisions comply with this subsection if, in the opinion of the commonwealth minister, they -

> give any claimant or body corporate the right to object, within a specified period after the notification, to the doing of the act so far as it affects their registered native title rights and interests; and

This Bill will lead to a conflict between the federal and state Acts because the federal Act requires that any claimant or body corporate must have the right to object. The state legislation specifically excludes certain claimants who may have a claim registered in their own name from the right to object by virtue of there being another claim by a registered body corporate. This legislation will set up an inconsistency which is the very inconsistency that we have been accused of all night and which does not comply with the federal Native Title Act. In this case the Government is setting up the inconsistency.

In response to the previous interjection, this is not the way to deal with overlapping claims because they are dealt with by way of the registration test and the procedural issues that have already been dealt with in the Wik legislation. This is a further instance of the government policy that has been implemented all the way through the Bill, where the Government has said that it will not deal with issues until any overlaps are resolved. The way to resolve overlaps is not by saying to claimants that they have no right to object. By dealing with it in this way, we will run into unnecessary difficulties with the federal legislation.

Hon N.F. MOORE: In response to the second part of the member's proposed deletion in part 3, I indicate that a claim cannot be lodged if a native title determination is already in place. In respect of subclause (2), the member is trying to open up the grounds for objection to doing an act. Clause 3.16(1) states who can lodge an objection to doing a part 3 act. However, subclause (2) constrains the objection to matters affecting the person's registered native title rights and interests in that land. If those subclauses are deleted, anybody will be able to lodge an objection to the doing of a part 3 act on any grounds he wishes, regardless of whether it has anything to do with native title. For example, it would be possible for people who did not like uranium mining to say, "We are opposed to it because it is a uranium mine", which has nothing to do with native title interests. We say that the right to object to doing an act should be constrained to objections about the effect that the doing of the act would have on a person's native title rights and interests in the land, and for no other purpose. The Government does not support the amendment.

Hon HELEN HODGSON: Firstly, I am aware that there cannot be a claimant where there is a native title determination. We are talking about claimants rather than where a determination has been found. Secondly, removing subclause (2) does not broaden the scope to the extent that the Leader of the House believes it does because there must still be a registered native title body corporate or a registered native title claimant. In order to achieve that status, claimants must go through the registration tests which are now being administered by the National Native Title Tribunal. It would be difficult for a person who did not have some standing to reach the status required to be able to object. Neither of these arguments is convincing in this case. I would be interested to hear the response of the Australian Labor Party to these amendments.

Hon TOM STEPHENS: The Opposition has been persuaded by the argument put by the Leader of the House that the deletion of subclauses (2) and (3) would make it possible for objectors to raise objections on grounds other than those relating to their native title rights and interests. In the view of the Opposition this is considered to be contrary to the approach that is being adopted in the Native Title Act. The purpose of the Bill is to deal with matters affecting native title interests and not general community land use concerns which we feel would be otherwise accommodated, as does the Government in reference to that deletion. For that combination of reasons, we oppose the amendment.

Amendment put and negatived.

Clause put and passed.

Clauses 3.17 to 3.23 put and passed.

Clause 3.24: Consultation -

Hon TOM STEPHENS: I move -

> Page 20, lines 2 to 13 - To delete the lines and substitute the following lines -
>
> > In the case of any Part 3 act, the consultation parties must consult with each other in good faith with a view to reaching an agreement about -
> >
> > (a) minimizing the effect; and
> >
> > (b) compensating for the effect,
> >
> > of the act on the enjoyment of registered native title rights and interests in relation to the relevant land and waters.

The clause is moved to require parties to consult in good faith about the matters specified, with a view to reaching an agreement about minimising and compensating for the effect of the act on the enjoyment of native title rights and interests.

Hon HELEN HODGSON: During the second reading debate earlier this evening I discussed this issue and the question of what is a consultation obligation as opposed to a right-to-negotiate obligation. It seems that one of the key differences is whether parties are required to consult in good faith. There is quite a bit of legal history about what is "in good faith" in native title matters in this State. It is perfectly appropriate that it be established in legislation that whether parties are consulting or negotiating, it must be in good faith. The Democrats support the amendment.

Hon N.F. MOORE: The Government does not support the amendment. It is inconsistent with the Native Title Act, which specifically requires consultation about access to the land and the way in which anything authorised by the Act may be done in relation to future acts on pastoral leasehold land. The Native Title Act does not require that consultation must be in good faith. It does not require an agreement to be reached. It does not require compensation to be addressed through consultation. The amendment proposes that parties consulting about a proposed act must consult in good faith with a view to reaching an agreement about minimising the impact of the act on registered native title and on compensation. The amendment amounts to the reinstatement of the right to negotiate over pastoral leasehold land. It would result in all of the problems associated with the right to negotiate, such as arguments about the interpretation of "good faith" and upfront compensation being demanded by claimants who have not yet proved their native title claim. I keep reminding members that what we are talking about is people making claims and not people who have had native title granted to them. The Bill is quite clear that the parties must consult about ways of minimising the impact of the act on native title rights and interests. There is no such thing as bad faith consultation. Consultation by its very nature must be done in good faith. Unless a party has consulted, it cannot seek to have the commission conduct a hearing and make a recommendation.

The Bill allows parties to make an agreement if they wish, but it is not compulsory. The matter can also be resolved if the consultation results in the objection being withdrawn. Under the amendment, the parties must reach agreement about compensation before the grant can proceed. In practice this would be a de facto veto and goes beyond even the Native Title Act right-to-negotiate requirement. The concept under part 3 is that compensation is required for the actual loss or impairment suffered as a result of the activity that takes place. That is determined only when native title has been established. This is similar to what a pastoralist receives when mining occurs on a pastoral lease or the Government compulsorily requires part of a lease. The amendment is trying to equate a mere claim for native title with the rights of a freeholder. Reference to "good faith" is specifically absent from section 43A of the Native Title Act, which indicates that it was deliberately not included in the alternative provisions and should remain excluded. Negotiation is defined as "communicate or confer with (another or others) for the purpose of arranging some matter by mutual agreement; have a discussion or discussions with a view to some compromise or settlement" or "to treat with another or others, as in the preparation of a treaty, or in the preliminaries to a business deal; to arrange for or bring about by discussion and settlement of terms", which indicates a process requiring equal input from all participants.

Consultation is defined as "take counsel; seek information or advice from" or "take into consideration for, or ask advice of, seek council or a professional opinion from" or "to refer to for information" or "to have regard for in making plans". Consultation requires one party to allow another to make representations. It will be clear, as a matter of fact, where the opportunity for one party to allow another to make representations has occurred. Consultation is not a reciprocal process by which there must be controls to ensure reciprocation occurs in a fair and full manner.

The amendment is far reaching and for all the reasons I have outlined the Government is opposed to it. It is another example of an amendment being outside the terms, conditions and processes established under the Native Title Act.

Hon BARRY HOUSE: This is not the first time the mover of this amendment and the people who have supported it have heard the lengthy explanation given by the Leader of the House. It was spelled out to us very clearly during the hearings of the Select Committee on Native Title that the words "good faith" were inconsistent with the federal legislation. I am very disappointed that, having forced the establishment of the committee and the need for it to sit at great inconvenience to everybody and endure all sorts of lengthy procedures, the Leader of the Opposition is prepared to disregard the advice given to that committee. That plainly obstructs the process of this Committee and wastes its time.

Hon GIZ WATSON: I support with enthusiasm this amendment. I understand that it is a significant amendment. Hon Barry House made an interesting point. Negotiating in good faith is an obvious aspect that should be reinstated. I see no problem with negotiating in good faith. Having an understanding of the theory and processes of negotiations and reaching agreements, I am aware that it is an essential component of reaching any agreement. I support the substantive changes in moving from the Bill's original proposal to minimise the impact of the act on registered native title rights and interests in relation to the relevant land, to the need to consult in good faith and to reach an agreement and that that include minimising the effect and compensating for the effect of the act on the enjoyment of registered native title rights and interests in relation to that relevant land and water. That is a fair and reasonable proposition and the Greens will support the amendment with enthusiasm.

Hon TOM STEPHENS: Members should be aware that the select committee received a variety of opinions on this question, and Hon Barry House has referred to one shade of that advice in opposition to this amendment. The earlier select committee, as the member knows, received a substantial number of submissions on the question of what would happen if consultation was not defined nor given content and meaning, if we left an opportunity for the courts to come down with a definition, as happened in Canada. The courts eventually step in where Parliaments have not otherwise given a definition. The member knows only too well the decision in the Delgamuukw case in Canada. That spelt out what was required with consultation, and how it can vary from mere consultation at one end of the scale, to consent being required at the other, depending on the diminution of the native title rights being impacted on. That is where the courts step in, given the absence of parliamentary or statutory shape and definition for the concept of consultation.

I remember a funny story - I will be very brief - about something that happened a long time ago. During the Noonkanbah dispute in 1980, Sir Charles Court sent a convoy to Noonkanbah - some people in the gallery have more familiarity with this than others. A chap came along to a house, "Cherrita", in Waratah Avenue, Dalkeith, which had a lovely rose garden and a letterbox out the front. This chap decided he would consult with the owners of the house about his intentions to mine the rose garden. He popped a letter into the letterbox, spoke to the letterbox for a little while and did not get any objections to his efforts and, therefore, considered that he had consulted in good faith with the occupants. He then pressed on to dig up the rose garden. The occupant of that house was Sir Charles Court, who did not take kindly to that form of consultation, which he thought was inadequate. It is a humorous story. It illustrates one notion of fleshing out what we are talking about here with regard to the concept of consultation.

Hon N.F. MOORE: The humour of the Leader of the Opposition does not pervade the whole Chamber. It shows that he does not understand what consultation is. Talking to a letterbox is not consultation. This character, whoever he or she might have been, might have thought it to be amusing or that somehow or other it represented a legislative requirement; however, it is just absurd - and the Leader of the Opposition knows that. Here we are talking about a process of consultation, of what must be done when consulting. To enable the Leader of the Opposition to understand very clearly what is happening here: When we were given the Keating Native Title Act, there was an enormous amount of uncertainty and concern in the community. Then we had the Wik decision and the Wik legislation. People in the real world who spend money on investment were beginning to think we were getting some way towards resolving all the uncertainties that surround mining and resource development, in particular. I use that industry as an example because it is our biggest and is absolutely vital to the future of our economy. The people who work in that industry, who invest their money, had been hoping like hell that the legislators of Australia could get something right. When they saw the 10-point plan and the native title legislation go through the Federal Parliament, they breathed a small sigh of relief, thinking that at last we were getting somewhere. I do not know what their reaction will be tomorrow when they see what is being done here, but I will take guess: It will be one of total and absolute horror.

In clause after clause, including this one, their capacity to have access to land is being watered down, and those opposite are beefing up all the problems, the obstacles and the objections that will be put in place. Today, the Opposition has extended the area of land over which the right to negotiate must apply. It is now virtually turning the consultation process into a right-to-negotiate process. The mining industry and the resource sector will be furious at what the Leader of the Opposition is doing. I hope they take it out on the Leader of the Opposition at the next election because he needs to understand what he is doing to his party in the parts of Western Australia which create the most wealth in this nation. That is where the mining and resource sectors operate. Step by step, incremental bit by incremental bit, the Leader of the Opposition is making it more and more difficult for people to invest their money and create wealth. I have been saying that all night because that is what it comes down to. The Labor Party will be sorry.

Hon TOM STEPHENS: This is an important clause and the Labor Party understands only too well what it is doing here and why it commends this amendment to members. Consultations should be required to be conducted in good faith with a view to reaching an agreement that minimises and compensates for the effect of the act on the enjoyment of native title rights and interests. In debate on this issue, the Premier said that what the Labor Party is making explicit through its amendment is implicit in the Bill. On that basis alone one would think there was reasonable support for making explicit what the Government has acknowledged is implicit.

The Government has acknowledged that it is implied that the parties must consult in good faith. To suggest otherwise would be to absurdly suggest that the parties could consult in bad faith. Similarly, it is implied that the parties will be consulting about reaching an agreement. If they are not, what is the point of the consultation in the first place? Surely the Government does not want to be seen to be suggesting that its process is merely some form of notification by which the future act proponents simply let indigenous people know that they will perform the act regardless of whether those people like it. These matters should be explicit so there can be no confusion about what is intended.

Hon N.F. Moore: How can they reach agreement about compensation before there is any native title?

Hon TOM STEPHENS: Objectors to this amendment should bear in mind that either consultation party can apply to the native title commission for it to hear and determine objections. That can be done at the end of the four-month period without

limitation or prior to the expiry of that period, provided the party can satisfy the NTC that it has made reasonable endeavours to resolve the issues and that further consultation is unlikely to serve any purpose. If the consultation period has expired or these conditions are satisfied, the NTC must approve the application. The provisions protect any party which considers that it is being locked into an unworkable regime. It would not be conscionable to suggest that parties should not be required to make reasonable endeavours to resolve the issue or that they should cease consultation where it may still serve a purpose.

If parties are willing to enter into consultation with these aims, as obviously should be the case, they have nothing to fear about this amendment. This amendment will encourage native title proponents to take part in the process as they will be able to achieve a real and worthwhile result by doing so. The amendment is obviously also to the benefit of future act proponents as it means claimants will choose to use the statutory process and not resort to the common law. If one looks objectively at the amendment and considers the reasons I have outlined in support of it, there is no reason for members on either side of the Chamber to oppose it.

The Labor Opposition believes this type of amendment gives this legislation more certainty and the definition which would otherwise be sought through the injunction process. The alternative path advocated by the Government leaves open the likelihood of litigation based on this clause. Therefore, consultation devoid of the statutory definition which the Opposition is giving it would be litigated and somewhere down the track the courts would determine what consultation should mean across the variety of categories. This avoids that tortuous, procrastinating, delayed route. This provides all parties with more certainty and workability by providing a definition. The Parliament should have the courage to include in the clause an appropriate definition of consultation.

Hon GIZ WATSON: Because this is a very important matter, I will refer to the section of the report of the Select Committee on Native Title which deals with what is good faith negotiation. This is an extraordinary proposition because, as the Leader of the Opposition said, if there is no acceptance of the principle that an essential part of the negotiation, whether it is by consultation or by way of right-to-negotiate processes, is that it should proceed in good faith, the implication is that it must be in bad faith.

Hon N.F. Moore: Just because something is not in good faith does not mean it is in bad faith. It is based on talking to each other. It is not a question of good or bad faith at all.

Hon GIZ WATSON: If there is no problem with good faith, why not make it explicit? Item 3.1 on page 147 of the report states-

> The Tribunal has ruled that essential to the concept of good faith negotiation was a willingness to compromise, an open mind and " . . . *a genuine desire to reach an agreement as opposed to simply adopting a rigid pre-determined position and not demonstrating any preparedness to shift*". The NNTT in *Re Koara People No 1* and *WA v Thomas & Ors* indicated a list of factors which must be considered when determining whether this obligation has been met. These include:
>
> - unreasonable delay in initiating communications;
> - failure to contact one or more parties;
> - shifting position just as agreement seems in sight;
> - adopting a rigid non-negotiable position;
> - stalling negotiations by unexplained delays;
> - failure to make proposals in the first place;
> - failure to make counter proposals;
> - failure to do what a reasonable person would do in the circumstances;
> - sending negotiators without authority to do more than argue or listen;
> - failure to provide parties with information about the tenement and information from the Register of Aboriginal sites;
> - failure to convene meetings between parties; and
> - failure to seek referral to NNTT if negotiation breaks down.

Members must understand that there are many ways to stall processes of consultation and agreement unless the parties are bound by a good faith provision. I am amazed that there is not unified support for this amendment.

Hon N.F. MOORE: I foreshadow a further amendment to this amendment. We are dealing with the deletion of the lines but I foreshadow that, in substituting the new lines, it read "in the case of any part 3 act, the consultation parties must consult with each other in good faith". I suggest that we stop there and delete the rest of the words in the amendment. I am suggesting that we find a compromise between what the Leader of the Opposition is arguing and what I am arguing. As I argued a moment ago, consultation does not necessarily mean that the parties must find an agreement. One discusses the situation, but that does not necessarily require one to reach an agreement, particularly regarding compensation.

The consultation parties, under the proposal, will reach an agreement about compensation. I do not know that compensation is appropriate until such time as native title is found to exist. To make a requirement of the consultation process that agreement be reached is to go well beyond the meaning of consultation. If and when native title has been established, and only then, compensation will be payable. That is the theory of this process. A problem is that money will be paid to enable

future acts to take place on a particular area of land covered by a native title application. I will move to delete all words after "faith" in the second line of the amendment.

The CHAIRMAN: The minister will be aware that he outlined a foreshadowed amendment, which will be moved following the determination of the question before the Committee at the moment; namely, that the words to be deleted be deleted.

Hon TOM STEPHENS: It seems that Hon Giz Watson's contribution has borne fruit; namely, some progress has been made with the Government's consideration of the amendment. Maybe if the member kept talking, the amendment would go the distance! I appreciate that progress; it is a major step. Nevertheless, it is not adequate, and I will press on with my amendment.

Hon HELEN HODGSON: I have some concerns with the foreshadowed amendment. Although it incorporates the good faith requirement discussed most extensively in relation to the amendment before the Chair, the deleted words would remove any reference to ways of minimising the impact on the registered native title rights and interests. Also, it would remove any reference to the enjoyment of native title rights and interests, which was the original wording in the Bill. Amendments are being moved on the run. Although the intention is to ensure that the good faith component is incorporated, it would appear that we could end up with a compromise which does not achieve the desired outcome. Although good faith will be retained, the provision will not state the subject of the consultation nor outline the ultimate goal.

Regarding the Leader of the House's difficulty with the amendment as it stands, the words "with a view to reaching an agreement" mean exactly as they read; namely, that one is to consult to see whether an agreement can be reached. It is wrong to claim that this amendment as it stands would result in an agreement, thereby obviating the need for the rest of the legislation and a commission to engage in consultation. The process is for parties to talk and consult in good faith in the hope of achieving an outcome. It is good to set the goal; namely, with a view to reaching an agreement. Nevertheless, the legislation does not go so far as to say that parties are to consult with the expected result of reaching an agreement.

The Leader of the House referred to the difficulty of compensating for the effect. Surely "compensating for the effect" is a fairly broad statement. It is not necessarily setting up the requirement for compensation in the technical context to be a part of the good faith consultation. It is likely that in some circumstances that compensating for the effect could mean there was an undertaking between the parties to say that these conditions would be met, and that might be sufficient to compensate for the effect of the act on the enjoyment of native title rights and interests. The issue of compensation in its technical legal sense arises later in the legislation. However, this is too narrow an interpretation of the phrase. The broader meaning of compensating means that we go beyond monetary compensation or the goods, services and property that are referred to later in the Bill and look at undertakings as a way of compensating for the effect of certain things happening. I appreciate that the Leader of the House is trying to work the good faith requirement into the proposal before the Chamber, and into the Bill. However, his proposal does not improve the legislation because of the effect of the deletion. It leaves us with something that is not specific enough to say what we are endeavouring to tell people they should be doing. For those reasons I will support the ALP's proposal rather than the Leader of the House's foreshadowed amendment.

Hon N.F. MOORE: I do not propose to proceed with my foreshadowed amendment. The amendment moved by Hon Tom Stephens deletes lines 2 to 13 and replaces them with another form of words. That will create another inconsistency with the Native Title Act. If members opposite are seeking to ensure that this legislation is ruled out by the federal minister, they are going about it the right way, and they should be prepared to say that is what they are doing.

Hon TOM STEPHENS: The Opposition is providing the legislation with its best chance of workability to survive all comers.

Hon BARRY HOUSE: Another problem with the amendment is that it is selective. It refers to reaching an agreement, minimising the effect, and compensating for the effect. Why does the Opposition not insert words to the effect of maximising the social and economic benefits for the native title claimants, or maximising wealth and job creation for native title holders? The Opposition should take a positive approach rather than a negative approach. If the Opposition wants to go into those aspects, it could have an endless list, which would make the whole thing pointless. The amendment is angled purely from the Opposition's protective, paternalistic attitude to Aboriginal people, rather than trying to improve their wellbeing through improving their lot in education, health and housing.

Hon TOM STEPHENS: Hon Barry House has made some good points. I had not previously entertained such amendments, but if the member were to move those I would do my best to accommodate them. The member should put forward his formula and we will see what the Committee decides.

Amendment (deletion of words) put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon John Halden	Hon Ljiljanna Ravlich	Hon Tom Stephens
Hon J.A. Cowdell	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Norm Kelly		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans			

Pairs

Hon Mark Nevill	Hon Simon O'Brien
Hon Ken Travers	Hon Peter Foss
Hon N.D. Griffiths	Hon M.D. Nixon

Amendment thus passed.

Amendment (substitution of words) put and passed.

Clause, as amended, put and passed.

Clauses 3.25 to 3.27 put and passed.

Clause 3.28: Commission may notify intention to hear -

Hon HELEN HODGSON: I move -

Page 22, after line 5 - To insert the following new subparagraph -

(b) that the consultation parties have consulted with each other in good faith; and

We have already discussed in some detail the requirement for good faith, so I will not go back over that part of the argument. However, I will indicate the intended effect of inserting the new subparagraph in the clause. Clause 3.28 deals with the commission hearing and determining objections, and subclause (2)(b) states that a notice with regard to a part 3 act may be given by the commission on the application of a consultation party. However, in the process of granting an application under subclause (2)(b), it cannot act prior to the expiry of the consultation period unless it is satisfied -

(a) that the applicant has made reasonable endeavours to resolve the issues on which the objections are based; and

(b) that further consultation is not likely to serve any purpose in that respect.

My proposal is to incorporate a good faith requirement as well. Members will note that it refers to consultation parties. That means that it would involve all parties to the consultation process acting in good faith. That results largely from evidence that the select committee heard about the way in which negotiations under the old regime proceeded. In some circumstances parties to the consultation - I say "parties" because we heard evidence from all sides about it being an issue - will often object and commence the process but not actually work through the process in good faith in order to try to achieve an outcome. That can be seen as a stalling or delaying tactic. It is appropriate that the commission should consider applications and say, "Yes, there is a requirement for you to act in good faith. You must observe the requirement in section 3.25. Before we grant an application to proceed with determining an objection prior to the expiry of the consultation period, you must show that you have acted in good faith with each other in trying to resolve the issue for yourselves." That is the basic premise of the amendment. It will improve processes and I commend it to the Committee.

Hon N.F. MOORE: The Government opposes the amendment on the same grounds as it opposed the previous one; that is, its inconsistency with the Native Title Act.

Amendment put and negatived.

Clause put and passed.

Clauses 3.29 and 3.30 put and passed.

Clause 3.31: Time for making recommendation -

Hon HELEN HODGSON: I move -

Page 23, line 18 - To delete the word "may" and substitute the word "must".

Clause 3.31(2) is interesting because it deals with the overlap between the Executive and the role of the commission. It gives the commission power to ask the minister to extend the allowed period, which is four months, in order to make a recommendation when the commission is unable to make a recommendation within that time. I note, however, that the minister may comply with that request. It seems to me that the commission is in a position to know what is going on and

to say to the minister that it needs more time. It is inappropriate for the minister then to say that it cannot have more time because that would be a case of the Executive interfering in a function of the commission in relation to the determination of objections. We run into the grey area of what is administrative and what is quasi-judicial. It would be far cleaner to say that the commission must ask, but that, when the commission asks, the minister must comply with the request. It would become more of a notification procedure than the minister having a veto. It is not appropriate for the minister to have a veto in such a situation. I commend the amendment to the Committee.

Hon GIZ WATSON: We support the amendment, because it deals with a matter that I raised during the second reading debate; that is, the need for the commission to be clearly independent from government control. We agree with Hon Helen Hodgson that it is only reasonable that when the commission makes that request, the minister must abide with that request.

Hon N.F. MOORE: The Government does not accept this amendment, because it will require the minister to grant an extension of time for the commission to make a recommendation simply on the basis that the commission has requested such an extension, and it will take away any ministerial discretion with regard to this matter. In our view, there must be that discretion with regard to these sorts of extensions.

Hon TOM STEPHENS: The Labor Opposition is of the same view as the Government on this question. One does not move lightly to reduce ministerial discretion, particularly where such discretion has the ultimate safeguard of parliamentary disallowance. We also have some concerns about the potential impact of this amendment on the time lines already in the Bill. Therefore, we are convinced by the Government's argument and will vote against this amendment.

Amendment put and negatived.

Clause put and passed.

Clause 3. 32 put and passed.

Clause 3. 33: Making of recommendation -

Hon HELEN HODGSON: I move -

> Page 24, lines 12 to 19 - To delete the subclause.

Subclause (3) states that the commission must not specify a condition that has the effect that an objector is to be entitled to payments worked out by reference to the amount of profits made, any income derived, or any things produced, by any other consultation party. That is contrary to clause 33(1)of the Native Title Act, which states in respect of the right to negotiate that -

> Without limiting the scope of any negotiations, they may, if relevant, include the possibility of including a condition that has the effect that native title parties are to be entitled to payments worked out by reference to:
>
> (a) the amount of profits made; or
>
> (b) any income derived; or
>
> (c) any things produced;
>
> by any grantee party as a result of doing anything in relation to the land or waters concerned after the act is done.

I concede that that is in the right to negotiate part of the Native Title Act and not in the consultation procedures, but the Leader of the House has said many times tonight that a matter is outside the scope of the Native Title Act. The Native Title Act is silent on many of the matters with which we have dealt tonight. However, that does not mean that we cannot have a provision to that effect in our legislation.

In considering the scope of the terms and conditions outlined in section 43A, just because it does not say that it cannot be done a particular way does not mean that our legislation cannot prescribe that provided it is within the parameters set out in section 43A. There is nothing in that section which says that compensation cannot be calculated in these ways. There is a requirement in the right-to-negotiate provisions that it can be calculated in those ways. It is inappropriate to prevent or limit that method of calculating compensation. For those reasons it is inappropriate to have that exclusion in this legislation.

Hon N.F. MOORE: At the risk of repeating myself, it is the Government's view that this amendment is again inconsistent with the federal Native Title Act. This amendment seeks to give the commissioner the power to make determinations to give people a share of profits, income derived or other things produced as a result of a native title agreement being reached. It is not something that the National Native Title Tribunal can do and it is not something that the commission at the state level should be able to do either. I must repeat myself until I get sick of saying it: It is inconsistent with the native title processes at the federal level and we are required at least to be consistent with that legislation.

Amendment put and negatived.

Clause put and passed.

Clause 3.34: Criteria for making recommendations -

Hon TOM STEPHENS: I move -

Page 24, line 21 to page 25, line 13 - To delete the lines and substitute the following lines -

(1) In making its determination in respect of a Part 3 act, the Commission must take into account the effect of the act on —

(a) the enjoyment by the objectors of their registered native title rights and interests;

(b) any area or site on the relevant land of particular significance to the objectors in accordance with their traditions; and

(c) the economic or other significance of the act to —

(i) Australia;

(ii) this State;

(iii) the area in which the relevant land is located; and

(iv) Aboriginal peoples who live in that area.

(2) In taking into account the matters mentioned in subsection (1), the Commission may also consider the effect of the act on —

(a) the way of life, culture, traditions and economic interests of any of the objectors;

(b) the freedom of access by any of the objectors to the relevant land;

(c) the carrying out, by any of the objectors, of rites, ceremonies or other activities of cultural significance, on the relevant land in accordance with their traditions;

(d) any other matter that the Commission considers relevant.

(3) While taking into account the effect of a Part 3 act as mentioned in subsection (1)(a), the Commission must also take into account the nature and extent of —

(a) existing rights and interests that are not native title rights and interests, in relation to the relevant land;

(b) existing use of the relevant land by persons other than the objectors; and

(c) unless it recommends that the act not be done, consider ways in which the impact of the act on registered native title interests of the objectors in relation to the relevant land can be minimized.

(4) Taking into account the effect of a Part 3 act on an area or site mentioned in subsection (2)(d) does not affect the operation of any law of the Commonwealth or the State for the preservation or protection of those areas or sites.

This amendment will have the effect of extending the matters that the state Native Title Commission must take into account, depending on the matters that the act affects. The commission is obliged to take into account only the matters specified. It may consider the other matters at its discretion as not all of those matters will be relevant to all objectors or those persons with existing rights or uses of the land. The amendment is self-explanatory and I commend it to the Committee.

Hon N.F. MOORE: The Government vigorously opposes this amendment. The amendment is again entirely inconsistent with the Native Title Act, which, for the information of the Leader of the Opposition, does not prescribe any criteria for the consultation process. Section 39 of the Native Title Act sets out the criteria to be applied for determinations under the right-to-negotiate procedure. The Leader of the Opposition's amendment seeks the same criteria to be applied to the consultation process. This is clear evidence that the Australian Labor Party is attempting to reinstate the right-to-negotiate provisions on pastoral leasehold land. It has been working around this all day and we are now returning to a situation where the right to negotiate, in a pseudo sense at least, is being reintroduced into part 3 of the Bill, which relates to the consultation process. For those reasons the Government is totally opposed to this amendment.

Hon GIZ WATSON: The Greens (WA) will be supporting the amendment. I want to move an amendment to the Labor Party's amendment, to delete subclause (1)(c), which states that in making its determination in respect of a part 3 act, the

commission must take into account the effect of the act on the economic or other significance of the act to Australia, this State, the area in which the relevant land is located, and Aboriginal peoples who live in that area. In moving that amendment -

The CHAIRMAN: Order! The member is foreshadowing that amendment because the question before the floor at the moment is that the words proposed to be deleted by deleted. The member can certainly foreshadow the amendment.

Hon GIZ WATSON: I wish to foreshadow that amendment. We are arguing that the inclusion of "economic or other significance" in such broad terms to Australia and this State is inappropriate in this context. It leaves a very wide area of consideration that the commission must take into account. We suggest that if those arguments were weighed up against the applications of native title claimants, this would provide an unreasonable weight to that aspect in the commission's deliberations.

Amendment (deletion of words) put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson
Hon J.A. Cowdell	Hon Norm Kelly	Hon Tom Stephens	Hon E.R.J. Dermer
Hon Cheryl Davenport	Hon Ljiljanna Ravlich	Hon Bob Thomas	*(Teller)*
Hon N.D. Griffiths	Hon J.A. Scott	Hon Ken Travers	

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans			

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon Tom Helm	Hon M.D. Nixon
Hon John Halden	Hon Simon O'Brien

Amendment thus passed.

Hon GIZ WATSON: I move -

That proposed subclause (1)(c) be deleted.

For the reason I gave earlier, if the commission is required to take into consideration the economic or other significance of an act to Australia and state, economic arguments could always be stacked up against the claimants. That is what we have seen time and again; therefore the Greens seek support to delete proposed section (1)(c).

Hon N.F. MOORE: All I can say is: Good grief!

Hon TOM STEPHENS: The Labor Opposition will not support the amendment moved by Hon Giz Watson. The requirement that we set up here the equivalent to a National Native Title Tribunal is a sensible requirement that will have the state body taking into consideration issues such as the economic significance of an act to Australia, the State and the areas in which the act is located and to the Aboriginal people who live in that area. Such an amendment would probably guarantee the disallowance of the Bill by the federal minister. That is not a policy consideration for the Greens (WA), but it is for the ALP. This provides an appropriate area of consideration for the commission and we will be opposing the amendment moved by Hon Giz Watson.

Amendment put and negatived.

Hon GIZ WATSON: I move -

In line 2 of proposed subclause (2) - To replace the word "may" with "must".

The commission should not be left with discretion on that matter because as members will know we are talking about taking into account matters mentioned in proposed subsections (1)(a), (b), (c) and (d). It is more appropriate that this be consistent with both subclauses (1) and (2) of this clause where "must" is used. We wish to remove the discretion in proposed subsection (2).

Hon HELEN HODGSON: I will be supporting the second amendment on the amendment basically because the issues raised in proposed clause 3.34(2) go right to the heart of native title. It is not based on ownership in the context that we know it, but on the traditions, usage and customs that go with the land and people identifying with their country. We have significant

sites in the compulsory provision, but this issue goes beyond the existence of significant sites - I am sure other people in the Chamber will say there is heritage protection for those anyway - to the access and the cultural and customary usage of the land; therefore, it is vital that they be relevant considerations. Having said that, there is no requirement that the commission make a decision in favour of people based on those provisions; it is a requirement that it consider the effect, which in no way predetermines the outcome.

As things stand, proposed subclause (1) relates to economic matters, and they will be given certain weight, and it will be mandatory that the commission consider them. A certain amount of opposing weight must be placed on the other side; that is, to protect the native title rights, customs and usage of the land by Aboriginal people in an area. Although proposed subclause 1(a) refers to the enjoyment of the registered native title rights and interests, that is not adequate and it must go to the matters specified in proposed subclause (2), to indicate some of the relevant matters in determining whether the Aboriginal claimants have the prospect of being granted a native title determination for an area. The only way to do that is to look at some of the other issues. Native title determinations will occur, based on the evidence. It is important to balance the scales between the different consultation parties. If we are to take into account matters relevant to one party, being primarily economic significance of the act, we must also take into account cultural and native title significance. To do that, we must make a provision that the commission must consider those things, as opposed to what it may consider.

The CHAIRMAN: The question is that this amendment - that is, that the word "must" be substituted for the word "may" - be agreed to.

Hon Tom Stephens: I was looking forward to the Leader of the House's reply, which is about to be forthcoming.

The CHAIRMAN: I assure the Leader of the Opposition that if it were about to be forthcoming, I would have identified him.

Hon TOM STEPHENS: Given that it is not, I say that the Labor Opposition has been wrestling with these issues for a while. On balance, we will support the motion in the form I moved it; therefore, we will oppose the amendment supported by Hon Giz Watson and Hon Helen Hodgson. I suspect that not a lot might turn on the question of the clause being altered by changing the word "may" to the word "must". In that case members might ask why the Opposition does not support it. In reply, basically this place is giving the lead to the state commission by specifying who should be included. In its current form, the amendment by the Labor Opposition adequately encourages the Native Title Commission in that regard.

Amendment on the amendment put and a division taken with the following result -

Ayes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson	Hon Norm Kelly *(Teller)*
Hon J.A. Scott			

Noes (22)

Hon Kim Chance	Hon B.K. Donaldson	Hon N.F. Moore	Hon W.N. Stretch
Hon J.A. Cowdell	Hon Max Evans	Hon Ljiljanna Ravlich	Hon Bob Thomas
Hon M.J. Criddle	Hon N.D. Griffiths	Hon B.M. Scott	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon Ray Halligan	Hon Greg Smith	Hon Ken Travers
Hon Dexter Davies	Hon Barry House	Hon Tom Stephens	Hon Muriel Patterson *(Teller)*
Hon E.R.J. Dermer	Hon Murray Montgomery		

Amendment on the amendment thus negatived.

Hon N.F. MOORE: I again want to indicate the Government's opposition to this amendment. The Opposition is trying to turn the consultation process into a right-to-negotiate process. The criteria for making recommendations are lifted from part 4. Unfortunately, it is not an absolutely direct lift or we could have quickly compared the two a moment ago to see whether there is a "must" or a "may" in part 4. I have a sneaking suspicion that part 4 contains a "must" and not a "may"; we will soon find out. It is interesting to contemplate what is being done here. When a recommendation has been made by the commission, the criteria are listed as if we were talking about a right-to-negotiate situation when we are talking about land which is "an alternative provision area" to use the definition in the Bill. That is an area over which there is a coexistence of rights on a particular property. The Wik decision told us that more than one group of people have rights on pastoral leases. All of the criteria to which the Leader of the Opposition has referred relate to issues affecting the rights of the Aboriginal claimants. There is not a word about the rights of the pastoral leaseholder whose rights coexist. This set of criteria is appropriate in part 4 of the Bill because we are talking about land over which there is no coexistence of rights; it is essentially vacant crown land over which a native title claim and a determination can be made. In this case we are talking about pastoral leasehold land and land of that nature where there is a coexistence of rights. Regrettably, the criteria of the Leader of the Opposition has completely ignored the rights of the people whose rights coexist with potential Aboriginal native title holders. Again, it is inconsistent with the Native Title Act and our Act will probably be ruled out because of these inconsistencies.

Amendment (substitution of words) put and passed.

Point of Order

Hon N.F. MOORE: I heard only one voice for the ayes.

The CHAIRMAN: I heard more than one voice.

Hon N.F. MOORE: Your hearing is better than mine, Mr Chairman.

Debate Resumed

Clause, as amended, put and passed.

Clauses 3.35 to 4.3 put and passed.

Clause 4.4: Acts to which this Part applies -

Hon GIZ WATSON: I seek clarification before I move the amendment standing in my name at A4.4 on the Supplementary Notice Paper. A matter was discussed earlier and a decision was made to postpone consideration of clause 3.5. As my amendment substantially deals with the same issue, I seek some guidance from the Chair.

The CHAIRMAN: The member has a choice: She can either move the amendment and she will receive a ruling, or she can move to postpone the clause.

Hon GIZ WATSON: I move -

That consideration of the clause be postponed.

Hon N.F. MOORE: I seek your guidance, Mr Chairman. I wish to ask a question which I asked the Deputy Chairman of Committees earlier. I understand some concern has arisen about the validity of the proposed amendments on the high-water or low-water mark issue.

Hon Tom Stephens: What gave you that idea?

Hon N.F. MOORE: When we deal with the substantive amendments to those clauses which deal with the intertidal zone, I will ask you to rule whether they are in order. I believe they are not in order, and it is important to obtain a ruling on that point. Clause 3.5 has already been postponed, and the member seeks to postpone consideration of this clause. How will the postponement of these clauses affect your ruling? I will seek from you as Chairman of Committees a ruling on whether these amendments are in order. I can understand that you may wish to take further advice. If that is the case, you might indicate that this is the reason for the deferral or postponement. I do not know how the member moving for postponement knows whether the Chairman is in a position to make a ruling. Can you help me understand how a postponement can influence any determination you may make on other matters, Mr Chairman?

The CHAIRMAN: A postponement will in no way affect any ruling I will make on this matter; that is, not that I can see at the moment. The decision to postpone or otherwise is entirely within the hands of the Committee. The postponement is not done in any way at the behest of the Chair.

Hon N.F. MOORE: I appreciate that advice. Why does the member not deal with the matter now?

Hon HELEN HODGSON: Some issues in this clause are closely allied to those to be raised concerning clause 3.5. It is appropriate therefore to deal with the two matters at the same time. If some controversial discussion is likely, it will facilitate discussion to deal with the clauses together. I am unaware of the state of affairs leading to the postponement. We understand it is not at the behest of the Chair. The Australian Democrats believe it will be appropriate to handle the clauses together. For that reason, I support Hon Giz Watson's motion.

Hon N.F. MOORE: I gather that if we agree to postpone a clause, it is simply debated at the end of all other matters, including new clauses.

The CHAIRMAN: It is debated at the end of clauses as printed.

Hon N.F. MOORE: I accept that. I do not know why we cannot deal with this clause now. If we deal with clause 4.4 now, we will know where you stand, Mr Chairman, on this question of whether these considerations are out of order. Once we know the Chairman's position, we can apply the same rule to clause 3.5 when we reach it at the end of the night. We need not delay a decision on clause 4.4 because consideration of clause 3.5 is being delayed.

Hon GIZ WATSON: I urge my colleagues on this side of the House to support the proposition of a postponement of this clause.

Hon Tom Stephens: I propose to support the postponement.

Hon GIZ WATSON: They are the same reasons that we agreed to postpone clause 3.5.

Hon TOM STEPHENS: The Opposition will support the postponement.

Hon N.F. MOORE: As we were not given any reasons for the postponement of clause 3.5 it is ludicrous to suggest the same reasons apply to the postponement of clause 4.4. For the edification of the Committee, I ask the member to explain why we postponed clause 3.5, so I will know why we are to postpone 4.4.

Hon TOM STEPHENS: The answer I give to the Leader of the Government is the same answer that he gave to the questions asked by Hon Helen Hodgson.

Hon N.F. MOORE: The decision of the Chamber to postpone clause 3.5 was made in the context of there being some suggestion - and this was not clarified - that somebody needed more information. Mr Chairman, you have already explained to the Chamber that you have the information and are in a position to make a decision, so the reasons that applied in the postponement of clause 3.5 do not apply any more and we can easily deal with this clause.

Question put and a division called for.

Bells rung and the Committee divided.

Point of Order

Hon N.F. MOORE: Mr Chairman, you gave the call to the ayes, and the ayes called a division, which was unnecessary. Can we claim the amendment?

Ruling by the Chairman

The CHAIRMAN: I rule under Standing Order 202 that, despite Hon Giz Watson's having called for a division, she cannot be called to vote against her call. The member is at liberty to vote on either side.

The division resulted as follows -

Ayes (14)

Hon Kim Chance	Hon Helen Hodgson	Hon Christine Sharp	Hon Ken Travers
Hon J.A. Cowdell	Hon Norm Kelly	Hon Tom Stephens	Hon Giz Watson
Hon Cheryl Davenport	Hon Ljiljanna Ravlich	Hon Bob Thomas	Hon Ed Dermer *(Teller)*
Hon N.D. Griffiths	Hon J.A. Scott		

Noes (13)

Hon M.J. Criddle	Hon Ray Halligan	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Max Evans			

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon Tom Helm	Hon Simon O'Brien
Hon John Halden	Hon M.D. Nixon

Question (postponement of clause) thus passed.

[Continued on page 5513.]

Clauses 4.5 to 4.10 put and passed.

Clause 4.11: Further provision as to notices -

Hon HELEN HODGSON: I move -

Page 39, after line 4 - To insert the following new subparagraph -

(a) the location and details of the relevant land or waters;

This amendment picks up an issue similar to one I raised earlier in the context of the consultation provisions.

Hon N.F. Moore: We agreed then and we agree now.

Hon HELEN HODGSON: I thank the Leader of the House; I was hoping for that response.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4.12 to 4.15 put and passed.

Clause 4.16: Right to object to doing of act -

Hon HELEN HODGSON: I move -

Page 41, lines 14 to 16 - To delete the subclause.

I also addressed this question earlier in the context of the consultation provisions. It is the issue of objection as it affects native title body corporates and registered native title claimants. There is a difference, inasmuch as the federal legislation is rather more prescriptive in its right-to-negotiate provisions. The federal legislation provides that native title body corporates and native title claimants are entitled to a right to object. The effect of proposed subsection (2) is clearly to negate that requirement of the federal Native Title Act, because it provides that a particular registered native title claimant may be unable to object if a native title body corporate is registered in relation to the relevant land. I appreciate that it is a similar argument to the one raised earlier with respect to the right to consultation, but in this case it is even more valid because the right-to-negotiate provisions are more specific. If this is left intact, it will probably be contrary to the provisions of the Native Title Act.

Hon N.F. MOORE: For the same reasons as on a previous occasion the Government opposes the amendment. Under the Native Title Act it is not possible for a claim to be made over an area of land that is already the subject of a native title determination. An existing clause in the Bill simply restates the position. It is included to make sure that a claimant who has attempted to make such a claim is not entitled to object. Again, the Government hopes that the Committee will make the same decision as previously and not agree to the amendment.

Amendment put and a division called for.

Bells rung and the Committee divided.

Point of Order

Hon N.F. MOORE: I think it is necessary that there be more than one voice before a division can be called. You might refresh my memory, Mr Chairman.

The CHAIRMAN: I thought that there were two voices - Hon Helen Hodgson and Hon Giz Watson. I might have misheard, but that was my hearing.

Hon N.F. MOORE: Obviously I need to have my hearing tested.

The CHAIRMAN: My ruling is that the division will go ahead.

The division resulted as follows -

Ayes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson	Hon Norm Kelly *(Teller)*
Hon J.A. Scott			

Noes (23)

Hon Kim Chance	Hon B.K. Donaldson	Hon N.F. Moore	Hon W.N. Stretch
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Simon O'Brien	Hon Bob Thomas
Hon M.J. Criddle	Hon John Halden	Hon Ljiljanna Ravlich	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon Ray Halligan	Hon B.M. Scott	Hon Ken Travers
Hon Dexter Davies	Hon Barry House	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon E.R.J. Dermer	Hon Murray Montgomery	Hon Tom Stephens	

Amendment thus negatived.

Clause put and passed.

Clauses 4.17 to 4.23 put and passed.

Clause 4.24: Negotiations -

Hon TOM STEPHENS: I move -

Page 45, after line 2 - To insert the following new subclause -

(2) Without limiting the scope of any negotiations under this section —

(a) they may, if relevant, include the possibility of including a condition that has the effect that an objector is to be entitled to payments worked out by reference to —

(i) the amount of profits made;

(ii) any income derived; or

(iii) any things produced,

by a proponent as a result of doing anything in relation to the relevant land after the act is done; and

(b) the nature and extent of the following may be taken into account —

(i) existing rights and interests that are not native title rights and interests, in relation to the relevant land;

(ii) existing use of the relevant land by persons other than the objectors; and

(iii) the practical effect of the exercise of those existing rights and interests, and that existing use, on the exercise of any registered native title rights and interests in relation to the relevant land.

This amendment seeks to widen the scope of the matters which may be the subject of negotiation. The amendment is self-explanatory, and I commend it to the Committee.

Hon N.F. MOORE: I can understand why the Leader of the Opposition has not gone to some trouble to explain what he has in mind, because this is an extraordinary amendment. The Leader of the Opposition wants to put into the state law matters which relate to the sharing of profits and income. We do not support that under state law, because we believe that royalties are the prerogative of the Crown. The Native Title Act does not require that these provisions be included in state law. It also confirms the concept of crown ownership of minerals. This amendment is another example of the Labor Party's seeking to elevate native title to something even greater than freehold. In this State, freehold title holders are not entitled to any share of royalties or production if mining takes place on their land, yet the ALP wants to give native title holders that right. If such a provision were included in the Bill, it would create the expectation that native title claimants would receive such benefits, which is not and never has been the case. Native title holders who have established their native title rights are entitled to fair compensation for any loss or impairment they have incurred, just as any other landholder is entitled to compensation. The Leader of the Opposition is trying to elevate native title to something even more substantial than freehold title. That is quite outrageous.

This amendment is very concerning, and I hope that the Democrats and the Greens will oppose it on the ground that we need to have some certainty in respect of royalties and the laws that apply to the ownership of minerals, and that when we abrogate that fundamental position, the royalties that are received by the State are placed in jeopardy. We will get ourselves into a very difficult set of circumstances if we suggest that the holders of particular titles are entitled to benefit from the proceeds of mining in the same way that royalties are paid to the Crown. If that right were given to native title holders, it might be argued that we should also give it to the owners of freehold and leasehold land and they should also get a slice of the action if a mining operation, for example, were to take place on their land. We are absolutely opposed to this amendment, because it is a complete reversal of the underlying principles on which our mining industry operates and of the underlying principle that the Crown owns the minerals and should receive the royalties from the exploitation of those minerals.

Hon HELEN HODGSON: I draw the attention of the Leader of the House to section 33 of the Native Title Act, which deals with the right to negotiate. The words in that section appear to me to be substantially the same as the words that the ALP is proposing to insert. We have been hearing all night about the problems that we will face if the state legislation is not the same as the Native Title Act. I say "the same", because that seems to be the message that is coming from the Leader of the House, yet on this occasion, the Government does not seem to be willing to follow the outline of the Native Title Act. This is something, if left in the legislation as it was brought to us, that runs the risk of at least the Senate - if not the federal minister - looking at it and saying that the requirements to legislate in the same way as the Native Title Act have not been met. It is a convenient argument for the Government to use when it does not like the amendments, yet the Government ignores it when the amendments insert the provisions of the NTA into our state legislation.

Hon N.F. MOORE: The State Government has always opposed the concept that royalties could be paid to a native title holder. It believes that we should uphold the state law which says that royalties are payable to the Crown. Although there is a provision in the Native Title Act which allows for royalties to be paid, the State is not required to include it in this legislation. I suggest very strongly to the member that a fundamental aspect of our mining industry is crown ownership of

minerals. Many people would like to get their hands on the minerals, not just Aborigines. People who own freehold title or any other type of title would like to get hold of the minerals that are found on the land they own. This amendment would give Aboriginal native title holders a significant advantage over every other title holder in Western Australia. That is the reason why the Government has opposed it. Does the member not believe in equality? Does she not believe in equity? Does she not believe that the royalties obtained from the exploitation of our minerals should be available to all Western Australians? Obviously not.

The Aboriginal population of Western Australia is about 2 per cent of the total. They are entitled to lodge a native title claim over huge areas of Western Australia. However, on the right-to-negotiate provisions we are talking about now, it is about 50 per cent of the State. Most of that area is prospected for minerals and the member is now saying that those people, in the context of a native title claim, can have access to the profits or proceeds of a mining activity, a right that no other Western Australian has. This is the most short-sighted, worrying aspect of what members opposite have done tonight, because the principle of crown ownership of minerals, of royalties being payable to the Crown and of those royalties then being spent on all Western Australians is a principle which is fundamental to the way in which this State operates.

Amendment put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson
Hon J.A. Cowdell	Hon Norm Kelly	Hon Tom Stephens	Hon E.R.J. Dermer
Hon Cheryl Davenport	Hon Ljiljanna Ravlich	Hon Bob Thomas	*(Teller)*
Hon Tom Helm	Hon J.A. Scott	Hon Ken Travers	

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan			

Pairs

Hon N.D. Griffiths	Hon Max Evans
Hon John Halden	Hon Peter Foss
Hon Mark Nevill	Hon M.D. Nixon

Amendment thus passed.

Hon N.F. MOORE: I repeat that this is a complete change to the laws that apply in this State on mining and the crown ownership of minerals. For the life of me I cannot understand why the Labor Party is going down this path. It is completely changing the rules that apply to a significant number of dollars that are earned by the State of Western Australia and spent for the benefit of all Western Australians.

This amendment is virtually racist, Mr Chairman. I know that the racial discrimination legislation allows for discrimination of a positive nature, therefore I will not suggest that the amendment breaches that legislation. What I am saying is that if someone is entitled to make an application for native title, that person must be an Aboriginal person or belong to an Aboriginal group that is making the claim. By being able to make that claim by virtue of their race, they will now be entitled to royalties that are not available to any other Australian. That is racist. It is wrong. It is wrong in principle and it will be wrong in reality because it will frighten off potential investors and ensure that if any royalties are payable, they will no longer be payable for the benefit of all Western Australians.

Hon BARRY HOUSE: The Select Committee on Native Title Rights in Western Australia visited Canada. This amendment appears to be an idea brought back from Canada, where there were examples of agreements reached which gave the indigenous peoples in some cases not only land, not only money, but also mineral rights, timber royalties, fishing rights and many other subsurface rights. However, in Canada there is no crown ownership of minerals, unlike in Western Australia. Therefore, if the people who are promoting this concept brought that idea back from Canada, they must understand that it is like comparing apples with oranges. The two places have totally different systems, therefore there is no justice or logic for this change to the legislation.

Hon TOM STEPHENS: Hon Barry House does not have to look as far as Canada for the place from which this amendment is imported. It is from the Commonwealth's Native Title Act of 1993, section 33, page 104 of the reprint. Those exact words are now contained in the amendment before the Committee.

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

Ayes (14)

Hon Kim Chance	Hon Helen Hodgson	Hon Christine Sharp	Hon Ken Travers
Hon J.A. Cowdell	Hon Norm Kelly	Hon Tom Stephens	Hon Giz Watson
Hon Cheryl Davenport	Hon Ljiljanna Ravlich	Hon Bob Thomas	Hon E.R.J. Dermer *(Teller)*
Hon Tom Helm	Hon J.A. Scott		

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan			

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon John Halden	Hon Max Evans
Hon N.D. Griffiths	Hon M.D. Nixon

Clause, as amended, thus passed

Clauses 4.25 to 4.36 put and passed.

Clause 4.37: No duty to make determination -

Hon HELEN HODGSON: The clause deals with the minister making determinations. It says that he has no duty to do so. I have no problem with that because it should only be exercised when there is reason to do so. What does concern me is that subclause (2) lists a series of events that may happen. It reads -

> This is so despite -
>
> (a) the giving of any notice by the Minister;
>
> (b) the giving of any submission or other material to the Minister;
>
> (c) any request by a negotiation party for the responsible Minister to make the determination; and
>
> (d) any other circumstance.

These events may occur to trigger basically a request to the minister to make a determination. I do not see anything there to say that the minister must advise the parties of the outcome of their request. For instance, a press release might be issued with the minister giving notice of doing a particular thing. There could then be a hiatus in which nobody knows what will happen. The minister may decide that he will not exercise the power to make a determination. There needs to be some notification to the parties where that is the event, particularly where it may be in response to something initiated by the minister or either of the negotiation parties or, I understand, it could even be a submission from a third party. My proposal is that in the event that circumstances described in subclause (2) have occurred, the minister must give notice to the consultation parties and the commission that no determination will be made. It makes sense that if a party knows that a matter is under review, it has the right to be advised of the outcome. If the outcome is that the minister will not make a determination, a party has a right to be told that. I commend the amendment to the House and move -

> Page 52, after line 5 - To insert the following new subclause -
>
> (3) In the event that any of the circumstances described in subsection (2) have occurred, the Minister must give notice to the consultation parties and the Commission that no determination will be made.

Hon N.F. MOORE: The Government does not oppose the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4.38 and 4.39 put and passed.

Clause 4.40: Copy of determination to be laid before Parliament -

Hon TOM STEPHENS: I move -

> Page 53, after line 2 - To insert the following new subclause -

(3) A determination under section 4.31 is a regulation for the purposes of section 42 of the *Interpretation Act 1984*.

This amendment is to provide for the minister's determination to be disallowable. The amendment subjects the determination to the disallowance proceedings of the Interpretation Act. The policy intent on the part of the Labor Party went through a wide range of forms before it came to this form. We commend it to the House.

Hon N.F. MOORE: This is another example of the members of the Opposition wanting to be the Government while they have the numbers in the Parliament. The Native Title Act and this Bill require that any determinations made under this clause are tabled in Parliament. The member wants to give the Parliament the right to make the decision. A time will come when members of the Labor Party understand that Parliament is not the Government. These determinations in these processes are rightly the prerogative of ministers. By having a disallowance proposal for Parliament, as the Labor Party always seeks to do, is to give the Parliament the power to govern in a sense. For those reasons and on the basis that the minister must be able to make these determinations by virtue of the fact that he is a minister, and must make them public, it is unnecessary for Parliament to be involved in a disallowance.

Amendment put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Helen Hodgson	Hon Christine Sharp	Hon Ken Travers
Hon J.A. Cowdell	Hon Norm Kelly	Hon Tom Stephens	Hon Giz Watson
Hon Cheryl Davenport	Hon Ljiljanna Ravlich	Hon Bob Thomas	Hon E.R.J. Dermer *(Teller)*
Hon Tom Helm	Hon J.A. Scott		

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan			

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon John Halden	Hon Max Evans
Hon N.D. Griffiths	Hon M.D. Nixon

Amendment thus passed.

Clause, as amended, put and passed.

Clauses 4.41 to 4.45 put and passed.

Clause 4.46: Making of determination -

Hon HELEN HODGSON: I move -

Page 56, lines 13 to 20 - To delete the subclause.

We have just had some debate on the conditions that can be included in negotiations. This amendment deals with the same issue. It says that we should delete the proviso that the commission cannot take these things into account. That does not mean the commission must order anything along those lines. It is inconsistent with the amendment just passed to leave in the legislation any provision that would bar any determinations on this basis, when we have just said that under the negotiations it is permitted that this take place.

Hon N.F. MOORE: The Government opposes this amendment for the same reasons it opposed the previous one.

Hon TOM STEPHENS: The Labor Opposition will join with the Government in opposing the amendment, but for different reasons. Our understanding of the requirements of the national native title legislation in the earlier amendment is that we simply allowed for the inclusion of those things within negotiations as countenanced by the national Native Title Act. In its determinations, the National Native Title Tribunal is not permitted to include these provisions; therefore, a state body would not be equivalent if this amendment were carried. To that extent, we will join with the Government in opposing this amendment.

Amendment put and negatived.

Clause put and passed.

Clause 4.47 to 5.7 put and passed.

Clause 5.8: Notification of acts by Government party -

Hon TOM STEPHENS: I move -

Page 68, after line 28 - To insert the following new subclause -

(2) Before a Part 5 act is done, public notice of the act must be given by advertisement —

(a) in a newspaper circulating generally throughout the State; or

(b) in a newspaper that satisfies any requirements prescribed by the regulations for the purposes of this paragraph.

Members heard a previous explanation for this amendment, so I need not repeat it. I commend the amendment to the Chamber.

Hon N.F. MOORE: The Government opposes this amendment. The previous one was called *The West Australian* clause, but this one could be called the *Sunday Times* clause.

Hon Tom Stephens: Or *The Kimberly Echo* clause.

Hon N.F. MOORE: Whatever. It imposes a financial burden on people for no apparent purpose.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5.9: Further provision as to notices -

Hon HELEN HODGSON: I move -

Page 69, after line 4 - To insert the following new subparagraph -

(a) the location and details of the relevant land or waters;

This is the same as the amendments moved relating to parts 3 and 4 to do with notices. The Government accepted it on both those occasions.

Hon N.F. Moore: It does on this occasion as well.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5.10 put and passed.

Clause 5.11: Right to object to doing of act -

Hon HELEN HODGSON: I move -

Page 70, lines 4 to 10 - To delete the subclauses.

These are the same deletions I moved previously regarding part 3, which relates to the consultation provision acts. There are two reasons for deleting each of these subclauses. The first deals with the grounds of objection and whether the grounds listed are sufficiently broad. The second reason is that subclause (3) deals with the issue of denying native title claimants their rights to object if there is a registered native title body corporate in relation to the land. I do not propose to go into these in any great detail, because the arguments are the same as those previously canvassed.

Hon N.F. MOORE: The Government opposes this amendment. It would make the Bill inconsistent with section 24MD(6B)(d) of the Native Title Act which specifies that parties may lodge objection in relation to relevant future acts.

Amendment put and negatived.

Clause put and passed.

Clauses 5.12 to 5.18 put and passed.

Clause 5.19: Consultation -

Hon TOM STEPHENS: I move -

Page 73, lines 5 to 11 - To delete the lines and substitute the following lines -

In the case of any Part 5 act, the consultation parties must consult with each other in good faith with a view to reaching an agreement about -

(a) minimizing the effect; and

(b) compensating for the effect,

of the act on the enjoyment of the registered native title rights and interests in relation to the relevant land and waters.

This amendment would require consultation parties to consult in good faith about the matters specified, with a view to reaching an agreement about minimising and compensating for the effect of the act on the enjoyment of native title rights and interests. Members will be familiar with the debate on this matter.

Hon N.F. MOORE: For all the reasons I vigorously opposed this last time, I vigorously oppose it this time.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 5.20 to 5.22 put and passed.

Clause 5.23: Commission may notify intention to hear -

Hon HELEN HODGSON: I move -

Page 75, after line 5 - To insert the following subparagraph -

(b) that the consultation parties have consulted with each other in good faith; and

Once again, this relates to matters that have been previously canvassed in other parts of the Bill. The intention is that when determining whether the commission grants an application, before the expiry of the consultation period it must consider whether the consultation parties have consulted with each other in good faith. It is consistent with the amendment just passed and it is a way of ensuring that the parties talk about things before going to the commission saying that discussions have broken down.

Hon N.F. MOORE: The Government opposes the amendment for the same reasons that it opposed it last time.

Amendment put and negatived.

Clause put and passed.

Clauses 5.24 and 5.25 put and passed.

Clause 5.26: Time for making recommendation -

Hon HELEN HODGSON: I move -

Page 76, line 18 - To delete the word "may" and substitute "must".

Once again, this matter has been canvassed in some detail. It is equivalent to the clause in part 3 which deals with the commission and whether the minister is required to grant extensions of time. For the reasons put forward earlier, it is considered appropriate that the commission be sufficiently independent from the minister to have that request complied with.

Hon N.F. MOORE: For the same reasons I outlined last time the Committee debated this issue, the Government is opposed to the amendment.

Amendment put and negatived.

Clause put and passed.

Clauses 5.27 and 5.28 put and passed.

Clause 5.29: Criteria for making recommendations -

Hon TOM STEPHENS: I move -

Page 77, line 13 to page 78, line 4 - To delete the lines and substitute the following lines -

(1) In making its determination in respect of a Part 5 act, the Commission must take into account the effect of the act on -

(a) the enjoyment by the objectors of their registered native title rights and interests;

(b) any area or site on the relevant land of particular significance to the objectors in accordance with their traditions; and

(c) the economic or other significance of the act to -

(i) Australia;

(ii) this State;

(iii) the area in which the relevant land is located; and

(iv) Aboriginal peoples who live in that area.

(2) In taking into account the matters mentioned in subsection (1), the Commission may also consider the effect of the act on -

(a) the way of life, culture, traditions and economic interests of any of the objectors;

(b) the freedom of access by any of the objectors to the relevant land;

(c) the carrying out, by any of the objectors, of rites, ceremonies or other activities of cultural significance, on the relevant land in accordance with their traditions; and

(d) any other matter that the Commission considers relevant.

(3) While taking into account the effect of a Part 5 act as mentioned in subsection (1)(a), the Commission must also take into account the nature and extent of -

(a) existing rights and interests that are not native title rights and interests, in relation to the relevant land;

(b) existing use of the relevant land by persons other than the objectors; and

(c) unless it recommends that the act not be done, consider ways in which the impact of the act on registered native title interests of the objectors in relation to the relevant land can be minimized.

(4) Taking into account the effect of a Part 5 act on an area or site mentioned in subsection (2)(d) does not affect the operation of any law of the Commonwealth or the State for the preservation or protection of those areas or sites.

This would have the effect of extending the matters which the commission must or may consider, depending on the matters the act affects. The commission is obliged to take into account only the matters specified. It may consider the other matters at its discretion, as not all those matters will be relevant to all objectors or those persons with existing rights or uses of the land.

Hon N.F. MOORE: The Government opposes this amendment and I will again explain why. The amendment wants the commission, when deciding if an act can take place, to take into consideration all the criteria prescribed in relation to the right to negotiate over vacant crown land. It is another attempt to reinstate the right to negotiate processes through the state law. The Australian Labor Party's amendment is entirely inconsistent with the Native Title Act, which does not prescribe any criteria. Section 39 of the Native Title Act sets out criteria which are to be applied to determinations under the right to negotiate process. The ALP under this amendment wants the same criteria applied to the consultation process. This is the clearest possible evidence that the ALP is attempting to reinstate the right to negotiate on pastoral leasehold land. The criteria in section 39 of the NTA are applied where native title could be equated with full beneficial ownership; they are totally inappropriate where native title is a coexisting right along with other interests in the land. We are dealing with part 5 aspects of the legislation. It is totally inappropriate and it demonstrates that the Labor Party is trying to put in place a pseudo right-to-negotiate process with regard to these matters, and the Government opposes it vigorously.

Amendment put and passed.

Hon GIZ WATSON: I move an amendment to the clause as amended by the ALP; that is to delete the word "may" in subclause (2) and insert the word "must".

The CHAIRMAN: I am afraid the member is too late. The clause can now only be accepted or rejected.

Clause, as amended, put and negatived.

Hon TOM STEPHENS: Mr Chairman -

The CHAIRMAN: The clause no longer exists.

Hon TOM STEPHENS: What happened? What question was put?

The CHAIRMAN: That clause 5.29, as amended, be agreed to. That question was defeated.

Hon TOM STEPHENS: It is my intention to seek to have the clause recommitted.

Clauses 5.30 to 5.35 put and passed.

Clause 5.36: Consultation before making of determination -

Hon TOM STEPHENS: I move -

Page 80, line 25 - To insert after the word "applies," the following words -

then subject to subsections (3), (4), (5) and (6)

Amendment put and passed.

Hon TOM STEPHENS: I move -

Page 81, after line 5 - To insert the following subclauses -

(3) The responsible Minister must give written notice to the Commission requiring it, by the end of the day specified in the notice, to give to -

(a) the Minister; and

(b) each consultation party,

a summary of material that has been presented to the Commission in the course of the Commission making a recommendation under section 5.28 in respect of the act concerned.

(4) The responsible Minister must give written notice to each consultation party that the Minister is considering making the determination and that each consultation party -

(a) may, by the end of the day specified in the notice, give the Minister any submission or other material that the consultation party wants the Minister to take into account in deciding whether to make the determination and, if so, its terms;

(b) if the consultation party does so, must also give each of the other consultation parties a copy of the submission or other material; and

(c) may, within 7 days after the specified day, in response to any submission or other material given by -

(i) any other consultation party; or

(ii) the Commission,

give the Minister any further submission or other material that the consultation party wants the Minister to take into account as mentioned in paragraph (a).

(5) The day specified under subsection (3) or (4) must -

(a) be the same in all of the notices given under the subsections; and

(b) be a day by which, in the responsible Minister's opinion, it is reasonable to assume that all of the notices so given -

(i) will have been received by; or

(ii) will otherwise have come to the attention of,

the persons who must be so notified.

(6) If the responsible Minister complies with this section, there is no requirement for any person to be given any further hearing before the responsible Minister makes the determination.

This amendment is to enable relevant parties to make submissions to the minister before he makes a determination under clause 5.34 and for specified notices and material to be provided to the parties. The amendment imposes these obligations on the minister in addition to the obligations for the minister to consult with the Minister for Aboriginal Affairs and take into account any recommendation or advice from that minister. The obligation to do so is set out in the Native Title Act.

Subclause (2) is proposed to be amended so that the minister can make a determination only after such consultation, provided that he or she has also carried out the requirements and allowed for the appropriate processes contained in subclauses (3) to (6). These proposed new subclauses require the commission to provide a summary of its material to the minister and each consultation party and to give the consultation parties the opportunity to make submissions to the minister for consideration, including submissions in response to any submission or other material given by any other consultation party or the commission. Provided the minister complies with these requirements, he does not have to give any further hearing. These amendments ensure that prior to the minister overruling the commission, the minister must comply with the requirements of natural justice and allow parties to consider all relevant material and to make submissions. To do otherwise would be to deny natural justice and leave open the possibility of judicial review of any determination made. These provisions are not included in part 3; however, that part specifically provides for judicial review of the minister's determination overruling the commission, meaning parties can object to such a determination using the statutory procedure available. I commend the amendment.

Hon N.F. MOORE: Amendments AJ5.36 and J5.36 relate to each other so I will comment on both. The Government opposes the amendment. It proposes that the minister, before making decisions in regard to infrastructure, towns, cities and the intertidal zone, must provide parties with an opportunity to make submissions. There is no such requirement in the Native Title Act, and the state Bill is consistent with the Native Title Act. The minister, when exercising the override power, must give all parties an opportunity to make their views known under existing common law and natural justice principles, which the courts have already established in such cases and the Government thinks that it is adequate in this case. The Government opposes the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 5.37 to 6.5 put and passed.

Clause 6.6: Requests for non-monetary compensation -

Hon HELEN HODGSON: I move -

> Page 85, after line 22 - To insert the following new subclause -
>
> (2) The Commission must not recommend the transfer of property or the provision of goods and services if the terms of the request would require the State, as the person liable to give compensation, to provide fresh drinking water, medical facilities, medical equipment or some other essential service.

I addressed the issue of compensation when we considered the previous Bill, although we agreed that it was not appropriate to move a substantive motion at that stage to deal with the problem. Part 6 relates to principles to be applied in the determination of compensation, and clause 6.6 deals with requests for non-monetary compensation. The clause makes it clear that if a person claims to be entitled to compensation he or she can request -

> that the whole or part of the compensation should consist of the transfer of property or the provision of goods or services . . .

The clause states that the commission -

> (a) must consider the request; and

may make a determination on those grounds. My concern relates to the case to which I referred earlier, the Jarwyn case in the Northern Territory. A group of native title claimants traded off their native title rights in exchange for a kidney dialysis machine. I feel strongly that it is the Government's obligation to provide a basic level of essential services such as medical equipment and medical facilities to every citizen of the State. I do not care whether they are Aboriginal, non-Aboriginal, or where they live. A certain level of services should be provided without people having to trade off their rights in order to get them.

It was suggested to me that Aboriginal people should be able to make those decisions. I do not say that they are incapable of making such decisions for themselves, but it would be very easy for a powerful Government to use principles of undue influence in contract law which should not be part of entering into a contract but which are inherent in a relationship between government parties and Aboriginal people. We have only to look at the history of the way in which the Government has treated Aboriginal people to be aware of how some power imbalances have occurred. Therefore, it is important that the transfer of property should not be recommended by the commission if the State Government trades off one of its obligations to its citizens in exchange for native title rights.

If it is a case in which facilities are not available in any other way, once the native title determination has been made and compensation is payable it is up to the community to decide how to deal with that compensation if it is appropriate at that stage for the community to choose to invest it in a certain way. That is a decision that the community can make, but the

decision must clearly be beyond the scope of any influence by the government party. We are considering terms which require the State to provide those facilities. If it is part of an agreement between the native title party and another consultation or negotiation party, the prohibition will not apply. It applies only to a situation in which the State is abrogating its responsibility to provide services to its citizens. With that in mind, it is important to ensure that to prevent any possible appearance of undue influence there should be no encouragement of such deals.

Hon N.F. MOORE: The amendment is totally unnecessary. Again, it will leave us subject to argument about what is an essential service. It is interesting in the context of essential services, as I mentioned the other day, that the longest filibuster that I have seen in the House was when Hon Roy Claughton spoke all night and into the next day about essential services. He went to great lengths to describe essential services. He spent much time telling us how essential the delivery of bread and milk was to the wellbeing of the human body. Again, it just confirms that when we insert words such as "essential services" we leave a very broad interpretation indeed. It is a put-down amendment. In effect, it says that Aboriginal people cannot negotiate for something that they would like to have. Perhaps they will want some things to be provided in addition to what they already have. The member is saying that they are incapable of negotiating a good deal.

Hon Barry House: Paternalism again.

Hon N.F. MOORE: It is paternalism. In effect, Hon Helen Hodgson says that because it happened in the Northern Territory in respect of the dialysis machine, Aboriginal people will trade off their land for essential services that the Government should provide. We should rely on Aboriginal people being capable of negotiating a deal without having to be told by Parliament what they can and cannot do. Governments of all persuasions seek to provide essential services to Aboriginal communities, bearing in mind that they have multiplied rapidly in recent history, and the cost of providing such services is extraordinary in some cases. Every Government that I know of is seeking to provide essential services as quickly as possible. The amendment is unnecessary.

Amendment put and negatived.

Clause put and passed.

Clauses 6.7 to 7.3 put and passed.

Clause 7.4: Membership of the Commission -

Hon TOM STEPHENS: I move -

Page 92, line 1 - To delete the word "other" and substitute "ordinary".

The amendment ensures consistency between clauses 7.4(1)(b) and 7.4(4).

Hon N.F. MOORE: The Government supports the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 7.5: Eligibility for appointment as Chief Commissioner -

Hon TOM STEPHENS: I move -

Page 92, lines 8 to 14 - To delete the clause and substitute the following clause -

7.5. Eligibility for appointment as Chief Commissioner

(1) A person is not eligible to be appointed as the Chief Commissioner unless the person —

(a) is a Judge of the Supreme Court or District Court of the State or any other State or Territory or a Judge of the Federal Court;

(b) is a former judge of any court of the State or elsewhere in Australia or a former Justice of the High Court; or

(c) a person who is, and has been for at least five years, enrolled as a legal practitioner of the Supreme Court of the State or any other State or Territory, or of the Federal Court of Australia or the High Court.

(2) Notwithstanding any other provision of this Act the Chief Commissioner shall be appointed by the Governor and shall hold office in accordance with this Act.

(3) Before an appointment is made under subsection (2), the Premier shall consult the parliamentary leader of each party in the Parliament.

This amendment specifies the eligibility criteria for appointment as Chief Commissioner of the Native Title Commission. It also requires the Premier to consult with the leaders of each parliamentary party before recommending any person for appointment.

Hon N.F. MOORE: The Government opposes this amendment. The amendment proposes that the chief commissioner must be a legal practitioner or a judge of the Supreme Court, Federal Court or High Court. The Native Title Act no longer requires that the President of the National Native Title Tribunal be a judge; therefore, this amendment is inconsistent with the Native Title Act. Commonwealth officials have also advised that to require the chief commissioner to be a judge would mean that the security-of-tenure requirement would not be met. The Leader of the Opposition may want to contemplate that for a moment. The requirement to consult with the leader of each parliamentary party takes away from the Governor the capacity to appoint people to particular positions. The leaders of political parties are involved in appointments only on rare occasions. The only appointment I can think of is the appointment of the Electoral Commissioner, and there is probably a good reason for that, because the Electoral Commissioner may have a significant impact on the future of all political parties. The position of chief commissioner is no different from other positions of a similar nature, which do not require consultation with the parliamentary leaders of each political party in the Parliament.

Hon HELEN HODGSON: Section 110 of the Native Title Act contains a table dealing with the membership of the National Native Title Tribunal. The key difference is that under the Bill, the chief commissioner must be a legal practitioner, whereas under the amendment, the chief commissioner must be a judge. Given that the membership of the National Native Title Tribunal does require a judge, a former judge or a person who has been for five years enrolled as a legal practitioner, this amendment is more consistent with the composition of the National Native Title Tribunal, although the drafting is not as clean as it is in the federal act. In order to make it as consistent with the National Native Title Tribunal as possible, allowing for the fact that this is a different jurisdiction, I will support the amendment.

Amendment (deletion of clause) put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Tom Helm	Hon J.A. Scott	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson
Hon Cheryl Davenport	Hon Norm Kelly	Hon Tom Stephens	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Ljiljanna Ravlich		

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan			

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon John Halden	Hon Max Evans
Hon N.D. Griffiths	Hon M.D. Nixon

Amendment thus passed.

Hon HELEN HODGSON: I would like to address the issues raised in proposed new subclause (3) which says that before an appointment is made under proposed subsection (2), the Premier shall consult the parliamentary leader of each party in the Parliament. First of all, by what yardstick is the proponent of the clause measuring a parliamentary party? It is my understanding that there is currently a ruling in the other place which indicates that it is five members and therefore would make no reference to other members in this place. Secondly, on what precedent has that been included in this proposed subsection? This amendment refers to an appointment to a tribunal which will operate in what could be an administrative or quasi-judicial role. I have already discussed the problem of the separation of powers. What is the motivation behind requiring consultation with the political arm of government?

Hon TOM STEPHENS: The Opposition relies on the requirement in the Electoral Act which obligates the Government, specifically the Premier, to consult with the Leader of the Opposition. We believe that for this Government in particular, the statute should contain some additional safeguards on native title than would otherwise be considered necessary because of the track record of this Government in handling these issues. We are keen for there to be an obligation on the Government, specifically the Premier, to consult the parliamentary leader of each party in the Parliament. The member is right, there is nothing upon which this is based in terms of that precise phraseology. It is the first time that the concept will appear in law if this Bill, as amended by this amendment, is enacted. How it will be interpreted, I guess to some extent runs the risk of the vagaries of the way it is currently written. However, it is the Labor Party's view that the amendment should be read as requiring the Premier to consult with the leaders of each party in the Parliament. It would mean that the Labor

Party, when in government, would consult with the Liberal Leader of the Opposition, the leader of the National Party and with the leader of the Democrats if there is one within the Parliament. That would leave us with the task of consulting with the senior Green.

Hon Simon O'Brien: How do you work out which one it is?

Hon TOM STEPHENS: The one who has been in the Parliament the longest. That is the way we would encourage anyone to read this clause. I appreciate that there is a statute in place - I think it is the Salaries and Allowances Act.

Hon N.F. Moore: That is right. You actually changed it to satisfy your requirements a few years ago.

Hon TOM STEPHENS: Yes, but the Salaries and Allowances Act was amended to accommodate the significance that the National Party has in this Parliament.

Hon N.F. Moore: As the party with the balance of power.

Hon TOM STEPHENS: On that basis quod erat demonstrandum, I rest my case.

Hon N.F. MOORE: I move -

That proposed subclause (3) be deleted.

There are many appointments of this nature made by Governments from time to time which do not require the Premier to consult with the political leaders of the day. As I said in my previous comments, the only one I can think of is the Electoral Commissioner. There may be others but I cannot think of any. If the Leader of the Opposition can think of any others, he might inform me. I am intrigued by the word "consult". We have just spent a deal of time on part 3 of this Bill dealing with what "consult" means. We were told that under that part of the Bill we had to turn "consult" into "agreement" and then compensation had to be paid once agreement had been reached. The next thing the Leader of the Opposition will say is that "consult" should mean "reach agreement" with the parliamentary leaders, if he wants to be consistent in respect of the word "consultation".

I remember very well when the Electoral Act was amended to require the consultation process between the Premier and the Leader of the Opposition - I think they were the two parties, not the other parties - when the then Premier Brian Burke approached the then Leader of the Opposition, Bill Hassell, and said, "I am here to tell you the next commissioner will be Joe Blow. Count that as consultation" and off he went. That was the sum total of Brian Burke's version of consultation. I am sure that it is not the view of other Premiers. Again, one can make an absolute mockery of this legislation if one interprets consultation in the narrow sense.

There was also a definition from the Leader of the Opposition that it does not mean to include the Australian Democrats and the Greens (WA). However, if he is the Premier he will talk to them, but he does not have to. This is a silly clause. Governments are capable of making appointments to all positions, as they do, and of course they are appointed by the Governor in Executive Council, and that should be enough. Nothing about this provision makes it any more special than the appointments of vast numbers of commissioners, chairs and other statutory authorities in Western Australia and for which we allow the Governor to make appointments. It is, therefore, a totally unnecessary addition to the Bill and I move that we delete subclause (3).

Hon HELEN HODGSON: My main objection to this amendment is not that we probably would not have been consulted in the process because we are not qualified as a parliamentary leader or the party in Parliament. It has more to do with the potential for political influence being seen. The argument being put by the proponent of the clause, the Leader of the Opposition, is that by ensuring that everybody has a say, it will prevent political bias. However, the only way to guarantee independence is to move outside of the political process.

Hon M.D. Nixon: Consult the Democrats!

Hon HELEN HODGSON: Let me finish what I am saying. I did not say consult us. I said this provision would probably not include consulting us. I was going to say that a couple of weeks ago there was a proposal in this place concerning the Gas Pipelines Access (Western Australia) Bill, when I went to great pains to put forward a suggestion that there be an independent appointment process by involving the Commissioner for Public Sector Management. I am not saying that is appropriate in this instance either. However, my concern is that there should be something that is seen to be non-political in view of the nature of this type of tribunal.

Hon N.F. Moore: You actually made the point that Hon Tom Stephens would appoint judges.

Hon HELEN HODGSON: At the time I was working through the Gas Pipelines Access (Western Australia) Bill and I had concerns about the gas appellate tribunal. I was told that that was one thing with which we could not interfere because it was in the hands of the Governor. I suppose that is the point: The chief commissioner would be appointed by the Governor in holding office in accordance with the Act. I have had correspondence on the appointment of a new Electoral Commissioner under the Electoral Commission Act within the last 18 months since I have been in this place. However, that

is in a different category because the whole essence of the role of the Electoral Commissioner is to administer the Electoral Act which involves a close working relationship with the working parties in their roles as political parties. That is different from this position where we would be asked to comment on the role of a person in a judicial position as we would be wearing political hats in the process.

That is why I am not sure that this is the right solution. I am afraid that at this stage, it is probably a little difficult to come up with any creative thinking to find other ways of ensuring that the appointment is independent. I am not sure that proposed new subsection (3) confirms the independence of the appointments. It lends itself more to accusations of political meddling, with everybody jostling to recommend or to speak against an applicant or nominee for the position. In this case we may have to rely on the fact that if we have judges or practitioners of at least five years enrolment and the appointment is made by the Governor, which I understand means as advised by the Executive Council, that is probably as much as we can hope for, unless we can find a person completely external to the political process as part of these appointments. I will be supporting the Government's amendment to delete proposed subsection (3).

Hon TOM STEPHENS: I understand Hon Helen Hodgson's argument. In this area of native title we have come to the conclusion that an additional check is needed, most especially with this Government's -

Hon N.F. Moore: That is outrageous.

Hon TOM STEPHENS: By the Government's track record we know it.

Hon B.K. Donaldson: Ask Brian Burke what he did.

Hon TOM STEPHENS: Just settle down. We know the member's game.

Hon B.K. Donaldson: You want to go back to the pastoral station and ask people about yourself. If you want to have some good stuff, I can drop some in.

The DEPUTY CHAIRMAN: Order!

Hon TOM STEPHENS: I am always entertained by that. The day I arrived here that interjection was made on my maiden speech. It came direct from a high source in the Liberal Party and was never substantiated in the entire period I have been here. I thank Hon Bruce Donaldson for confirming my estimate of him.

Hon B.K. Donaldson interjected.

The DEPUTY CHAIRMAN: Order!

Hon TOM STEPHENS: It continues to slink.

I understand Hon Helen Hodgson's concerns. Nevertheless, some safeguards are needed here for this Government especially. If the Government were concerned about consulting the parliamentary leader of each party in each Parliament and it wanted that replaced by "shall consult the Leader of the Opposition", I would certainly accommodate that amendment if it would attract the support of the Leader of the House. I thought that this version might be a more attractive alternative to the Leader of the House. The Labor Party's decision is to press on with this amendment.

Amendment put and a division taken with the following result -

Ayes (15)

Hon M.J. Criddle	Hon Helen Hodgson	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Norm Kelly	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan	Hon Murray Montgomery	Hon Greg Smith	

Noes (12)

Hon Kim Chance	Hon N.D. Griffiths	Hon J.A. Scott	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon Christine Sharp	Hon Giz Watson
Hon E.R.J. Dermer	Hon Ljiljanna Ravlich	Hon Tom Stephens	Hon Bob Thomas *(Teller)*

Pairs

Hon Peter Foss	Hon Mark Nevill
Hon Max Evans	Hon J.A. Cowdell
Hon M.D. Nixon	Hon John Halden

Amendment thus passed.

Amendment (substitution of clause, as amended) put and passsed.

Clause, as amended, put and passed.

Clause 7.6 put and passed.

Clause 7.7: Qualifications for appointment -

Hon HELEN HODGSON: I move -

Page 92, after line 24 - To insert the following new subparagraph -

(a) has expertise in matters relating to Aboriginal peoples; and

The amendment provides for a slight reconstruction of the qualifications for appointment to ensure that a person appointed as an ordinary member has expertise in matters relating to Aboriginal peoples as one of the mandatory requirements rather than as an optional requirement. The Bill requires that a person has been enrolled for at least five years as a legal practitioner or has expertise in one or more of the following: Matters relating to Aboriginal peoples, land and resource management, dispute resolution, or any other class of matter considered to be relevant. Matters relating to Aboriginal peoples is so relevant that it should be a mandatory requirement. I therefore propose that we should have expertise in matters relating to Aboriginal peoples elevated from an optional requirement to a firm requirement. My amendments when taken together would have that effect.

Hon N.F. MOORE: The Government does not support a mandatory provision that a person have expertise in matters relating to Aboriginal people. It is almost like saying that when a judge is appointed to a court, he must have some expertise in matters relating to crime, having being involved in some way or other. We are seeking to appoint people to the commission who are capable of making the judgments that must be made by this organisation. They will be people of significant capacity; for example, ordinary members must have been enrolled as legal practitioners for at least five years or have other areas of expertise. It is not necessary to make this a mandatory requirement. I do not know how many people have expertise in matters relating to Aboriginal people. In our society I guess there are quite a few. It potentially limits the ability to appoint to the commission people who can make a significant contribution, but who may not be regarded as having expertise in matters relating to Aboriginal people. There might also be a definitional problem: How do we meet the mandatory requirement, if this amendment is agreed to? If it is an optional requirement, we need not be so constrained in respect of what the definition means. If it is to be an absolute requirement that people have expertise in matters relating to Aboriginal people, there may well be some dispute about the level of expertise, and what that word means. We think it is unnecessary, and unnecessarily constraining on the capacity of the Government of the day to appoint some people to this commission.

Hon HELEN HODGSON: I notice that we have not yet had the comments of the Leader of the Opposition on this. For the record, I would like to hear them.

Hon TOM STEPHENS: Labor members are of the view that the amendment is unnecessary. We already provide for the possibility of a member having expertise in matters relating to Aboriginal peoples. By making this mandatory, we believe it would severely limit the people who could be appointed to the commission when many others could provide expertise in other relevant matters and would fail on this ground. In addition, there would seem to be some incongruity between requiring members to have this expertise when the chief commissioner is not required to have it. If this were such an important requirement, there would be a degree of inconsistency by not moving it in relation to the chief commissioner. That being the case, there is no reason that it be mandatory.

Amendment put and negatived.

Clause put and passed.

Clauses 7.8 and 7.49 put and passed.

Clause 7.50: Annual report of Commission -

Hon TOM STEPHENS: I move -

Page 111, after line 13 - To insert the following new subclauses -

(3) The report required under this section must include, but is not limited to, the following things —

(a) a detailed table of contents;

(b) a description of the Commission's functions in the relevant period;

(c) details of any decisions of any court or tribunal in the State or elsewhere having a significant impact on the Commission's operations and details of any remedial action taken in response to those decisions in the relevant period;

(d) particulars of any consultants engaged by the Commission and amounts paid to those consultants in the relevant period; and

(e) a table setting out particulars, in the relevant period, of certain operational data identified in schedule 4.

(4) In subsection (3) —

"the relevant period" means the period referred to in subsection (1).

This amendment is to specify the data required in the annual report of the Native Title Commission. It will ensure Parliament and the public are provided with relevant information on the performance and activities of the commission each year. Proposed schedule 4 specifies the data to be published.

Hon HELEN HODGSON: I find this an interesting amendment, in view of some of the accusations laid in this place against the Greens (WA) and the Australian Democrats - I think the phrase has been "to develop procedural manuals for government". I am not sure why we must specify what the annual report should include. Can the Leader of the Opposition indicate the precedent on which he is basing this requirement?

Hon TOM STEPHENS: No, I do not have any way of helping the member with a precedent for this requirement. Nonetheless it is consistent with our concerns about this Government and all Governments in the future. We want this Government to proclaim this legislation as amended. In this area we want there to be a statutory manual for the way in which the commission should operate and report on its activities; therefore, we have come up with this amendment. I hope that is adequate for the member's needs and to convince her why she might join the Labor Party in supporting the amendment.

Hon N.F. MOORE: The Government does not support this amendment. As Hon Helen Hodgson said, it is a bit unusual. I have not seen a Bill in this place which sets out the detail that will be required in the commission's annual report as is set out in this amendment. At this time of the night, I am getting a little irritated to hear the snide comments by the Leader of the Opposition about this Government not being able to be trusted. Coming from a member of the Labor Party, and from a former minister of the WA Inc Labor Party, I find it unbelievable that he could in any way be critical of this Government.

Hon N.D. Griffiths: It's lies; it's deceit.

Hon N.F. MOORE: I think the member should go away and have another quiet lie down. That would be a very good idea and do him the world of good. He should not interfere with this. He knows better than that. He knows that as well as I do.

Hon N.D. Griffiths: I think you should have one of your valiums.

The DEPUTY CHAIRMAN (Hon W.N. Stretch): Hon Nick Griffiths will come to order.

Hon N.F. MOORE: If the Leader of the Opposition wants me to desist from these comments, he should also desist from making his snide remarks about this Government's capacity to do the right thing. By way of comparison, we are white and pure; we are unbelievably good. I do not think it is necessary to include all of this in the annual report. I suspect most of the things the Leader of the Opposition wants included by statute will be included in the annual report anyway. I know the Standing Committee on Government Agencies used to make recommendations on how annual reports could be improved. I suspect that sort of process still happens. From time to time the Auditor General comments about the quality of annual reports. There is no doubt this information should be included, but it should not be a requirement in the Act.

Hon KEN TRAVERS: I have refrained from commenting until now, but I could not resist on this occasion. One of the first debates of this place that I read about including things in annual reports occurred prior to the 1993 state election. The now Leader of the Government, the Attorney General, and a number of other conservative members sought to insert those provisions into the Electoral Act. One related to the engagement of consultants, which is included in paragraph (d) of the amendment. This is a very good example of where precedent has occurred. This is not the first time prescriptive measures have been required to be included in annual reports. We now have in the Electoral Act some specific requirements, dealing in particular with consultants, which were put in place by then Opposition members who are now in Government. From my view from this side of the Chamber, I know where most of the snide remarks in this debate have come from.

Hon HELEN HODGSON: During the two previous contributions, I had the opportunity to look at the equivalent provision in the Native Title Act. It merely requires the provision of financial statements and an audit report on those statements, and then their tabling. At this stage it is probably excessive to put these sorts of requirements into the legislation, particularly in view of the schedule. The new schedule referred to in this amendment sets out 22 different items that need to be reported on specifically. This report is prepared by the commission and the chief commissioner will sign off on it. At this stage it is inappropriate to require this amount of detail, and I will not support the amendment.

Hon TOM STEPHENS: Before I complete my remarks on this amendment, I indicate that schedule 4, insofar as it requires the commission to do anything at all, requires that the actions be enumerated, reported and detailed. That is why the amendment to clause 7.50 is before the Committee. It is a useful addition to the provisions for the state Native Title Commission, particularly in view of the way it must operate under this Government.

Amendment put and a division taken with the following result -

Ayes (12)

Hon Kim Chance	Hon N.D. Griffiths	Hon J.A. Scott	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon Christine Sharp	Hon Giz Watson
Hon E.R.J. Dermer	Hon Ljiljanna Ravlich	Hon Tom Stephens	Hon Bob Thomas *(Teller)*

Noes (15)

Hon M.J. Criddle	Hon Helen Hodgson	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Norm Kelly	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan	Hon Murray Montgomery	Hon Greg Smith	

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon J.A. Cowdell	Hon Max Evans
Hon John Halden	Hon M.D. Nixon

Amendment thus negatived.

Clause put and passed.

Clause 7.51: Review of Act -

Hon TOM STEPHENS: I move -

Page 111, after line 24 - To insert the following new subclauses -

(3) In carrying out a review under this section the Minister must —

(a) ensure that a notice in accordance with subsection (4) is published in —

(i) the *Government Gazette*; and

(ii) a daily newspaper circulating generally throughout the State,

within 1 month of the commencement of the review; and

(b) consider any public comments or submissions made to the Minister within the period specified in such notice.

(4) A notice must —

(a) state —

(i) the fact of;

(ii) the reasons for; and

(iii) the objectives of the review; and

(b) invite public comments or submissions within 2 months from the publication of the notice.

This requires the minister to give notice of any review undertaken and to invite public submissions. In the view of the Opposition, it is desirable that the public and those affected by the operation of the Act be notified of any review and invited to make submissions. A wide range of views and responses may assist the minister and the Parliament to ascertain if the purposes of the legislation are being achieved. I commend the amendment to the Committee.

Hon N.F. MOORE: This amendment is similar to the previous amendment. It is unnecessary and prescriptive. I do not know of any other review clause passed since I have been a member of this Parliament that has this sort of thing hanging off it. The Parliament passes many review clauses and the Government has included the clause for the review of the Act. Governments go through certain processes when they review an Act. It is unnecessary to include in the law that a notice of the review be published in the *Government Gazette* and the newspapers, or to include all the other things that Hon Tom Stephens has proposed. Anyone is entitled to criticise a process of review, but I have never heard that sort of criticism because all reviews of Acts are done in a way that everybody knows about. These additional subclauses are unnecessary.

Amendment put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon Tom Helm	Hon J.A. Scott	Hon Ken Travers
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson
Hon E.R.J. Dermer	Hon Norm Kelly	Hon Tom Stephens	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Ljiljanna Ravlich		

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan			

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon John Halden	Hon Max Evans
Hon J.A. Cowdell	Hon M.D. Nixon

Amendment thus passed.

Clause, as amended, put and passed.

Clause 8.1 put and passed.

The DEPUTY CHAIRMAN (Hon W.N. Stretch): Clause 8.2 refers to schedule 4. We logically must consider the schedule before we can consider clause 8.2. Therefore, that will be deferred until after consideration of the postponed clauses.

Postponed clause 3.5: Acts to which this Part applies -

Resumed from an earlier stage.

Hon TOM STEPHENS: The Labor Opposition would like the clause to be amended by including the amendment standing in my name on the Supplementary Notice Paper. The amendment has not yet been moved. As it may well be that if I were to move the amendment there could quickly be a ruling, I might canvass some of the reasons in advance as to why I might want to move that way. The argument that we would advance if we decided to move it would be that including the intertidal zone in part 3 has come up against some preliminary commentary that suggests that it might go beyond the policy of the Bill. The long title of the Bill specifically refers to alternative provisions in accordance with section 43A of the Native Title Act. The amendment is part of those alternative provisions. It should be considered in line with the argument put forward by Peter Johnston that was referred to in the No 2 native title select committee report as to what constitutes an alternative provision. The heading of section 43A specifically refers to -

> Exception to right to negotiate: satisfactory State/Territory provisions.

The clause goes on to refer to a law of a State providing for alternative provisions. The state provisions Bill, or at least part of it, is about the acknowledgment and protection of native title. Section 3, which relates to objects, states -

> (a) to provide for the acknowledgment and protection of native title . . .

We intend to move similar objects by virtue of a new clause 1.2A on the Supplementary Notice Paper to those of the Federal Native Title Act. The amendment is not identical but similar. The Government argued previously that it is relying on the objects in the federal Native Title Act in any event, therefore there is no need to set out those objects in the state Bill. The amendment recognises and protects native title in the intertidal zone, at least to the extent that native title can exist in relation to a tenure which included the intertidal zone. Thus the application of a part 3 consultation procedure for native title holders to the intertidal zone is clearly within the policy and scope of the Bill. The Government on several occasions has already stated that part 5 covers the intertidal zone. Our objection to that is that part 5 is limited in its operations to mining, construction and other matters. Mining per se is not covered by part 5; if it were there might not be the need for the amendment. Considering that the Government's own Bill also encompasses the intertidal zone, although it is limited as to the future acts that it incorporates, there should be no reason that other future acts to which the Bill relates that take place in the intertidal zone should also not be encompassed.

Section 26(3) of the Native Title Act, which refers to the high-water mark, does not state that it applies to all sections of the Act other than section 24MD(6B), on which part 5 is based. Therefore, if part 5 can apply to the intertidal zone, logically part 3 should also be able to if Parliament decides that it should. That reinforces our argument against the argument that the policy of the Bill does not incorporate the intertidal zone. The Government is setting up a Native Title Act section 207A(b) body - that is, the Native Title Commission. The state body can take over all the functions that federal bodies do, including approving determinations of native title compensation. That opens the way for the Government to provide a complete alternative to the Native Title Act as long as it meets minimum standards.

I am conscious that at an early opportunity we will be asked by the Government, in reference to the Occupational Safety and Health (Validation) Bill, to accommodate a government amendment that might be outside the policy constraints of the legislation. The Opposition intends to accommodate the Government in that way, although, obviously, for the purpose of this debate it is not appropriate that I go into that now.

In reference to the part 3 intertidal zone issue, we note that section 43A is the provision of the Native Title Act upon which one might rely for consideration as to whether the Bill can be amended in the way that we have outlined. Our amendment does not amend the definition of the Act. It does only what section 26(3) does, which is set out where those types of acts apply. In no way does the amendment destroy the definition of the acts as derived from the Native Title Act. It does not touch that definition in any way, shape or form; it affects only where the acts can be carried out. The question comes down to whether we can extend beyond the limits set out in section 26(3), and that is the question that is raised in the opinion of Peter Johnston, who says that we can, so we do.

Point of Order

Hon N.F. MOORE: I seek your ruling, Mr Deputy Chairman, in respect of the validity of the amendment. I suggest that it is probably ultra vires the federal Act, and I think that it is totally inconsistent with the federal Act. We are required to comply with that Act. Is the amendment in order?

Ruling by the Deputy Chairman

The DEPUTY CHAIRMAN (Hon W.N. Stretch): Fortunately, I have a ruling at hand, which I will read -

> The amendment is out of order because it conflicts with subclause (1) which relies on the provisions of section 43 of the Native Title Act. That section permits state legislation to make alternative provision in relation to state acts dealt with under subdivision P of the NTA. Section 26(3) of the NTA restricts the operation of subdivision P to an act that is on the landward side of the mean high water mark - subclause (3) reflects that restriction. If the amendment were to be adopted, it would destroy the effect of subclause (1). In other words, subclause (1) itself would have to be amended to redefine the "acts" provided for in the relevant provisions of sections 26(1A) and (1) of the NTA. In making that redefinition, the "acts" cease to be section 26 "acts" and become something else outside the purview of section 26. The scheme of the clause is to make alternative provision for certain state "acts", and those "acts", as defined in the NTA, exclude state acts to the seaward side of mean high water mark. The amendment destroys the definition of the "acts" as it is derived from the NTA and is therefore out of order.

Hon TOM STEPHENS: Mr Deputy Chairman, in order to avail myself of that section of the standing orders that would allow me to move for the suspension of the standing orders that would prohibit the inclusion of the amendment that has just been ruled out of order, should I move that we report progress, or could I do it now in committee? I understand that the Government will avail itself of the suspension of standing orders later before the House rises. How can I do what the Government is proposing to do?

The DEPUTY CHAIRMAN: The amendment has been ruled out of order, and the matter should be settled now. Therefore, the Leader of the Opposition should move that I do report progress and ask leave to sit again.

Progress

Hon TOM STEPHENS: I move -

> That the Deputy Chairman do now report progress and ask leave to sit again.

Hon N.F. MOORE: Mr Deputy Chairman, I am little confused. The Leader of the Opposition keeps talking about some deal that will be done tomorrow. I do not know about any deals that are being done. My understanding is that you have just ruled this amendment out of order. I thought that was it. I do not know why we need to report progress. I do not know what the Leader of the Opposition is seeking to do here. I do not think that by reporting progress and returning to the House we will in any way make this amendment in order.

The DEPUTY CHAIRMAN: The Leader of the House has moved the motion, as can any member of the House move the motion. It is a non-debateable motion. Therefore, I put that question.

Question put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon John Halden	Hon J.A. Scott	Hon Ken Travers
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson
Hon E.R.J. Dermer	Hon Norm Kelly	Hon Tom Stephens	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Ljiljanna Ravlich		

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan			

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon J.A. Cowdell	Hon Max Evans
Hon Tom Helm	Hon M.D. Nixon

Question thus passed.

Progress reported.

[Continued on page 5513.]

Standing Orders Suspension

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [1.31 am]: I move -

> That so much of standing orders be suspended as would allow me to move the following amendment which was previously ruled out of order -
>
> Page 11, line 12 - To delete the words "high-water" and substitute "low-water".

Is that adequate for the purpose of the vote?

The PRESIDENT: Yes, it is. However, it might be handy if the member explained the reasons why the House should vote for it. As I understand it, the Deputy Chairman of Committees has ruled that your new clause 3.5 as it stands on the Supplementary Notice Paper, and as it was discussed in committee, is out of order. I understand that you want now to move a motion to have the House agree that, notwithstanding your new clause is outside the scope of the Bill, as is dictated by the long title and the second reading, it should be considered to be within the scope of the Bill. If that is the reason for this motion, perhaps I have saved the member some time.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [1.32 am]: Thank you very much, Mr President. You have highlighted to the House the advantages of not having gone through the long and protracted committee debate on this Bill, as you are fresh enough to find the right words to explain the motion that stands in my name.

I want to add only one thing: I am conscious of the fact that the Aboriginal community in particular has made the most heartfelt and passionate pleas to try to get this provision contained within the legislation. I recognise that the suspension of standing orders would require an additional vote to come across to this side to vote with the non-government parties to provide the opportunity for our doing that. If that opportunity arises by virtue of this motion, I will be serving well the entire community of Western Australia by placing something in this legislation that is much sought after by the indigenous community and has potential to provide considerable benefits for them. I commend the motion to suspend standing orders to achieve that result. However, in view of the hour I will not spend more time on it.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [1.33 am]: We have just heard the Leader of the Opposition explain that his reason for going down this path and for adopting this public position is that it will meet the aspirations of Aboriginal people. I will tell the House why the Government will be opposing this motion very strongly. I will explain also the rationale behind the Leader of the Opposition's move.

As members know, this legislation must basically be approved by the federal minister and the Federal Parliament. It will not go to the Federal Parliament unless the federal minister certifies that the legislation is consistent with the federal Native Title Act. This proposal in respect of the intertidal zone is so inconsistent with the Native Title Act that it will almost certainly result in the federal minister not certifying that it is in conformity with the Native Title Act. Indeed, the Deputy Chairman of Committees' ruling which ruled it out of order is the type of reason that would be used, I suspect, by the federal minister. This is a motion by the Labor Party to have the Government's legislation ruled out by the federal minister before it even gets to the Federal Parliament. I do not know why the Labor Party is doing that. I can understand the Australian Democrats and the Greens (WA) doing it because they have been opposed to the Bill all the way through. However, the Labor Party has led us to believe that it is supportive of the legislation, albeit that it has amended it in such a way that it is almost unrecognisable.

We are going through a charade, Mr President, with this legislation. The charade is that the Labor Party is trying to tell the world, particularly the people in the remote parts of Western Australia, who have a particular interest in this Bill, that it is

in some way supportive of this legislation, albeit with some minor amendments. The bottom line is that, after tonight's debate, it has severely amended the legislation to the point that I do not think it will be acceptable to the Government. I will not make a judgment because it is not my job to do so; however, at first blush, it is clearly not acceptable. The Labor Party is seeking to add to the Bill a clause which has been ruled out of order and which will ensure absolutely that this Bill will not be acceptable to the federal minister. The Labor Party gives the impression to the world that it supports the Bill but it wants to put in a clause which will see the Bill killed off by the federal minister if, for some reason, the State Parliament agrees eventually to the amended Bill and sends it off to the federal minister for his approval.

Let us not be mistaken about this motion: It is part of an attempt by the Labor Party to get rid of this Bill. All we have seen in the last few weeks on this Bill is so much window dressing, so much claptrap, so much hypocrisy and, quite frankly, so much rubbish. I wish the Labor Party would be honest occasionally and say that it does not agree with the Bill and just toss it out instead of trying to give the impression that somehow or other it thinks there may be some merit in passing it. The only reason it has gone down this path so far is that it is trying to crawl and to ingratiate itself with some members of the community who want it to do something about the legislation to ensure that it is passed.

Hon John Halden: Aren't you doing the same? Wouldn't you call that hypocrisy?

Hon N.F. MOORE: We are trying to pass legislation which will be -

Hon Ljiljanna Ravlich: Stop acting up. Get on with the job.

Hon N.F. MOORE: The member should just mind her own business.

Hon Ljiljanna Ravlich: It is my business.

Hon N.F. MOORE: The member does not know what she is talking about.

The PRESIDENT: Order! Would everyone slow down for a moment. All I want to know is the reason why we should or should not agree to the suspension of standing orders to enable a motion to be moved. We are dealing with a two-pronged matter. If everyone would just take it easy, we could make some progress.

Hon N.F. MOORE: I do not believe the House should suspend standing orders in order to add this new amendment because it will make the Bill so inconsistent - it is very inconsistent already - that it will not be acceptable at the federal level and will be thrown out - which is what the Labor Party is seeking to achieve.

HON GIZ WATSON (North Metropolitan) [1.38 am]: I support the motion for the suspension of standing orders in the same vein as the Leader of the Opposition put his arguments. The amendments to include the intertidal zone are critical amendments and I have an indication that they will not be ruled out of order. As members would be aware also, I moved a similar amendment, therefore I support the suspension of standing orders to deal with this matter as it is a critical aspect of this Bill.

HON BARRY HOUSE (South West) [1.39 am]: It is important that the House understand the status of the legal advice on which the Leader of the Opposition seems to have based his argument. If I heard correctly, he was portraying the advice from the lawyer, Peter Johnston, as being the advice to the Select Committee on Native Title Rights in Western Australia. The Select Committee on Native Title Rights in Western Australia rejected that lawyer's advice because it was paid for by the Labor Party and provided for the Labor Party. The Leader of the Opposition presented it to the select committee which refused to accept it and to include it in the committee's report. It ended up in the committee report only as a result of the minority report submitted by Hon Tom Stephens. He attached that advice to it. Therefore, the status of the advice from the lawyer, Peter Johnston, is nothing more than Labor Party advice, pure and simple. If we dig a little deeper following the line that the Leader of the House has run, we may well find that this amendment is nothing more than an amendment to be put into the Bill at the instigation of some highly paid lawyers sitting in the gallery and elsewhere who want to see this Bill sabotaged, who want to see confusion reign and who want to see the gravy train of taxpayers' dollars continue to flow to them.

Hon Tom Stephens: That is an offensive remark.

Hon BARRY HOUSE: It is offensive, and it is meant to be.

HON HELEN HODGSON (North Metropolitan) [1.42 pm]: I indicated in the second reading debate that I was aware of the importance of the intertidal zone to Aboriginal people. It is important that this House consider the issue properly. The suspension of standing orders appears to be the best avenue of doing that. Given the ruling that has been handed down, it is clear there is some dissent in legal opinion. In the committee we heard legal opinion on one side orally and on the other side I think we had a verbal submission as well as a couple of written submissions. The committee specifically did not deal with the submission to which Hon Barry House referred because of the lateness at which it was received as much as anything.

Hon Barry House: That was not the reason at all. It was advice that was sought by the Labor Party for Labor Party purposes.

Hon HELEN HODGSON: That may have been the motivation of Hon Barry House not accepting it but in my motivations

in saying that it should not be accepted, the lateness of receiving it was a very significant factor. Members who have read the committee's report would be aware of the submissions put to it about the importance of the intertidal zone. I have with me the Croker Island case and an analysis of it. It discusses the importance of the intertidal zone and its significance to Aboriginal people. It is significant that grants of land made under the Aboriginal Land Rights (Northern Territory) Act 1976 were made to the low-water mark because of the importance of this zone to Aboriginal people.

The PRESIDENT: Order! I understand what the member is getting at but I did say earlier that there are two motions: One is to suspend standing orders for the purpose that was earlier discussed, and if the majority of 18 is there and that motion gets up, the second motion is moved. What the member is now talking about is relevant to the second motion.

Hon HELEN HODGSON: Thank you for your assistance, Mr President. I indicate the urgency of dealing with this matter because urgency is also a relevant factor in determining whether we should be suspending standing orders. The urgency is illustrated by the fact that we will have to make a decision tonight on something that affects the rights of Aboriginal people and about which the committee received evidence and about which people have very strong feelings. The issue is arguable in the courts but it will be some time before that arises. It is up to this House to decide now on whether we can accept this. Given the fact that it is arguable, this House should be ensuring that the court is able to hear those arguments. That is why the matter should be considered by way of the suspension of standing orders and recognising the urgency of this whole issue. I suppose that is a bit of a contradiction because I have been saying all along that I do not consider the Bill urgent. However, if we are to consider the Bill, we should be considering this aspect as part of the matter before the House. We should be supporting the suspension of standing orders in order to ensure that the issue is dealt with thoroughly and properly. Given the ruling that has been handed down - and I do not dispute the grounds for the ruling - the House should allow full debate on the issue.

Question put and a division taken with the following result -

Ayes (14)

Hon Kim Chance	Hon John Halden	Hon J.A. Scott	Hon Ken Travers
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson
Hon E.R.J. Dermer	Hon Norm Kelly	Hon Tom Stephens	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Ljiljanna Ravlich		

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan			

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon J.A. Cowdell	Hon Max Evans
Hon Tom Helm	Hon M.D. Nixon

The PRESIDENT: Because the motion did not gain a constitutional majority, it is not carried.

Question thus negatived.

Committee

Resumed from an earlier stage. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon N.F. Moore (Leader of the House) in charge of the Bill.

Postponed clause 3.5 put and passed.

Postponed clause 4.4 put and passed.

New clause 1.2A -

Hon TOM STEPHENS: I move -

Page 3, after line 2 - To insert the following new clause 1.2A -

1.2A. Objects of Act

The main objects of this Act are -

(a) to provide for the acknowledgement and protection of native title;

(b) to establish ways in which future dealings affecting native title may proceed and to set standards for those dealings; and

(c) to ensure that Western Australian law is consistent with standards set by the Commonwealth Native Title Act for future dealings affecting native title.

This new clause will assist in interpreting any ambiguous or obscure provisions within this legislation. It will establish the principles on which the legislation is based and assist in the interpretation of other provisions where there is ambiguity. As we know, the Bill establishes a new state-based mechanism for dealing with certain native title matters. The inclusion of those objects will help in the future interpretation of the legislation to be judged against them.

Hon N.F. MOORE: The Government does not see the necessity for this, but will not vote against it.

New clause put and passed.

New clause 3.44A -

Hon TOM STEPHENS: I move -

Page 29, after line 22 - To insert the following new clause 3.44A -

3.44A. Copy of determination to be laid before Parliament

(1) The responsible Minister must cause a copy of a determination under section 3.40, together with reasons for the determination, to be laid before each House of Parliament.

(2) Subsection (1) is to be complied with as soon as is practicable after the determination is made and in any case, in relation to a House of Parliament, within 15 sitting days of that House after the determination is made.

(3) A determination under section 3.40 is a regulation for the purposes of section 42 of the *Interpretation Act 1984*.

This new clause provides both Houses of Parliament with the opportunity to examine or disallow the minister's determination using the processes provided in the Interpretation Act.

Hon N.F. MOORE: The Government does not support this amendment. I have already argued in a previous clause about Parliament being involved in allowing or disallowing determinations that have been made. I do not propose to go into the arguments again, other than to say that this process could add a significant amount of uncertainty to the determinations made. It can take quite a long time for a disallowance to occur in this place, as members well know. It could add many months, in some cases, to the process that has been put in place by this legislation. I can see no reason that the Parliament should consider itself to be the Government in these issues; therefore, we oppose the new clause.

New clause put and a division taken with the following result -

Ayes (14)

Hon J.A. Cowdell	Hon John Halden	Hon J.A. Scott	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon Christine Sharp	Hon Giz Watson
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Tom Stephens	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Norm Kelly		

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan			

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon Ljiljanna Ravlich	Hon Max Evans
Hon Kim Chance	Hon M.D. Nixon

New clause thus passed.

New clause 4.57A -

Hon TOM STEPHENS: I move -

Page 63, after line 7 - To insert the following new clause 4.57A -

4.57A. Copy of declaration to be laid before Parliament

(1) The responsible Minister must cause a copy of a declaration under section 4.53, together with reasons for the declaration, to be laid before each House of Parliament.

(2) Subsection (1) is to be complied with as soon as is practicable after the declaration is made and in any case, in relation to a House of Parliament, within 15 sitting days of that House after the declaration is made.

(3) A declaration under section 4.53 is a regulation for the purposes of section 42 of the *Interpretation Act 1984*.

Hon N.F. MOORE: Again we are opposed totally and absolutely to this new clause.

New clause put and passed.

New clause 5.39A -

Hon TOM STEPHENS: I move -

Page 82, after line 12 - To insert the following new clause 5.39A -

5.39A. Copy of determination to be laid before Parliament

(1) The responsible Minister must cause a copy of a determination under section 5.34, together with reasons for the determination, to be laid before each House of Parliament.

(2) Subsection (1) is to be complied with as soon as is practicable after the determination is made and in any case, in relation to a House of Parliament, within 15 sitting days of that House after the determination is made.

(3) A determination under section 5.34 is a regulation for the purposes of section 42 of the *Interpretation Act 1984*.

Hon N.F. MOORE: The Government is again opposed to this. It will add more uncertainty and is designed to make sure the legislation will not work.

New clause put and passed.

New clause 5.43 -

Hon HELEN HODGSON: I move -

Page 82, after line 24 - To insert the following new clause 5.43 -

5.43. Application Fee may be waived

The Executive Director may waive payment of whole or part of a fee payable under section 5.42 where -

(a) having regard to the income, day to day living expenses, liabilities and assets of the person liable to pay the fee, in the Executive Director's opinion, payment of the fee would cause financial hardship to the person; or

(b) for any other reason the Executive Director considers it appropriate to do so.

When working through the legislation yesterday, I found the equivalent provision was inserted in both parts 3 and 4. It is to do with the ability of the executive director to waive payment of whole or part of the fee, but it seems to have been omitted here.

Hon N.F. Moore: The Government agrees with this.

Hon HELEN HODGSON: That is fine by me.

New clause put and passed.

New clause 7.3A -

Hon TOM STEPHENS: I move -

Page 91, after line 25 - To insert the following new clause 7.3A -

7.3A. Public consultation on directions for procedure

(1) Subject to this section, the Commission may issue directions as to the procedures to be followed in respect of the performance of its functions.

(2) Before issuing any direction under subsection (1), the Chief Commissioner must -

(a) cause a draft of the procedure or procedures to be publicly exhibited for a period of at least 2 months in such manner as may be prescribed by the regulations; and

(b) consider any written submissions made within the specified public exhibition period in relation to the draft procedure.

(3) The Chief Commissioner need not comply with the requirement of subsection (2) where -

(a) the Chief Commissioner certifies that, in the Chief Commissioner's opinion, it is necessary for the direction to be made expeditiously; and

(b) a copy of the Chief Commissioner's certificate is published in the *Government Gazette* along with the direction.

(4) Where a direction is made in reliance on subsection (3), the Chief Commissioner must consider any written submissions concerning that direction that are made to him or her within 2 months after the date of the publication of the direction in the *Government Gazette*.

(5) Any procedures adopted by the Commission are to be applied by the Commission as guidelines only.

(6) In making any direction under this section the Commission must have regard to the procedures adopted for the time being by the National Native Title Tribunal.

Hon HELEN HODGSON: This clause requires public consultation on directions for procedure. Again, this is an unusual clause because I am not aware of a precedent in any other legislation. It is my recollection that rules of the court are subject to tabling and disallowance. The Parliament has debated changes to rules of the Supreme Court, but I am not aware of any public consultation procedure. I appreciate the sentiment behind the proposal, which is to ensure that the commission widely involves people affected by these procedures, but I am yet to be convinced of the need for this new clause.

Hon TOM STEPHENS: I commend the new clause to the Committee. Its object is to provide that the Native Title Commission must seek and consider submissions on the development of its internal procedures and must have regard for the procedures of the National Native Title Tribunal before it issues its own procedures. It is desirable that the internal procedures and rules of the Native Title Commission take account of the persons and organisations that will be participating in its processes and that they be consistent with those adopted and applied by the NNTT. The requirement to seek submissions on these matters reflects similar provisions in section 78 of the public consultation and rule review of the Administrative Decisions Tribunal Act 1977 of New South Wales. The ALP has gone through an exhaustive process to work out the best new clause. We feel it does the job and I commend it to the Committee.

Hon N.F. MOORE: The Government does not support this new clause. It is a quite extraordinary proposition. When the commission is set up and works out its procedures, it is proposed that it must ask for public comment. Why can members opposite not accept that the people on this commission will have the capacity to determine their own procedures, just as has every other commission that has been created? Members opposite have a strange view that this creature is somehow different from every other commission established by this Parliament or Governments of any persuasion in Western Australia. I cannot understand what members opposite are getting at. I can envisage this commission running around in circles and never getting started because some people will not like the procedures it may put in place. It is absolutely ridiculous.

New clause put and a division taken with the following result -

Ayes (12)

Hon J.A. Cowdell	Hon N.D. Griffiths	Hon J.A. Scott	Hon Ken Travers
Hon Cheryl Davenport	Hon John Halden	Hon Christine Sharp	Hon Giz Watson
Hon E.R.J. Dermer	Hon Tom Helm	Hon Tom Stephens	Hon Bob Thomas *(Teller)*

Noes (15)

Hon M.J. Criddle	Hon Helen Hodgson	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Norm Kelly	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan	Hon Murray Montgomery	Hon Greg Smith	

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon Kim Chance	Hon Max Evans
Hon Ljiljanna Ravlich	Hon M.D. Nixon

New clause thus negatived.

New clause 7.52 -

Hon TOM STEPHENS: I move -

Page 111, after line 24 - To insert the following new clause 7.52 -

7.52. Special report

(1) The Commission may at any time make a special report to the Minister on any matter arising from or in relation to the exercise of its functions.

(2) The Minister is to cause a report prepared under this section to be laid before both Houses of Parliament as soon as is practicable after its receipt by the Minister.

Hon N.F. MOORE: I cannot work out what this is all about. Obviously, the commission will report if it thinks it is necessary to do so, without some legislative requirement. The amendment provides that it may make a report to the minister on any matter arising from or in relation to its functions. I do not know why it is necessary to put that into law.

Hon TOM STEPHENS: This is to allow the commission to make special reports to the Parliament. The first time I saw this type of provision deployed was when the Chief Justice utilised section 144 of the Sentencing Act to acquaint the Parliament with certain matters recently. Matters may arise affecting the Native Title Commission or its functions during the reporting period, of which the minister and the Parliament should be made aware. This amendment provides that special opportunity. Following the establishment of this commission, one hopes that the Government's handling of the matter will not lead to the need for the commission to make a special report, but one never knows.

New clause put and passed.

New clause 7.53 -

Hon TOM STEPHENS: I move -

Page 111, after line 24 - To insert the following new clause 7.53 -

7.53. Restriction on publication

The Commission must not in any annual or special report disclose any matters known to the Commission to be of sacred, ritual or ceremonial significance to Aboriginal persons or a particular community or group of Aboriginal persons.

The intention of this new clause is to restrict the matters which the Native Title Commission may disclose in its report. This provision would require the commission not to disclose in its report matters of Aboriginal sacred, ritual or ceremonial significance. I commend the new clause to the Committee.

Hon HELEN HODGSON: I agree totally with the sentiments expressed in this amendment. It is important to ensure that the confidentiality of items of significance is preserved. It is a matter of great sensitivity to Aboriginal people. Why has the Leader of the Opposition specified annual or special reports? Is that not too specific? It means that an interim report might not technically have the status of an annual or special report. Would protection extend to that? It is a bit of a technicality or a fine point because I suspect that, given that we have just inserted special reports, all of them would come under one of those headings, but a report might be prepared not for the purpose of being tabled in this place. For example, the National Native Title Tribunal prepared a report for tabling at the joint standing committee, but it was not tabled because of the impact of prorogation so it was released publicly, but it was entitled an interim report. I caution against being so specific that we limit it to annual and special reports.

Hon TOM STEPHENS: I appreciate that caution. It is my intention that the words be read in the way that Hon Helen Hodgson suggested. That would cover the circumstances which she has considered insofar as the new Native Title Commission is relying upon the intention of the committee when the motion was moved. That was my intention and I hope that there is an obligation to act in that way.

New clause put and passed.

The CHAIRMAN: We are now considering requests to the Legislative Assembly to make amendments.

Hon TOM STEPHENS: I move -

Page 111, after line 24 - To request the Legislative Assembly to make the following amendment -

To insert the following new clause 7.54 -

7.54. Parliamentary Joint Committee on Native Title

(1) As soon as practicable after the commencement of this Part and after the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Parliamentary Joint Committee on Native Title, must be established.

(2) The Parliamentary Joint Committee's duties are -

(a) to consult extensively about the implementation and operation of this Act with -

(i) groups of Aboriginal peoples;

(ii) industry organisations;

(iii) local governments; and

(iv) other appropriate persons and bodies;

(b) to inquire into and report to both Houses on the implementation and operation of this Act as soon as practicable after the end of the period of 24 months from the establishment of the Commission and every eighteen months thereafter;

(c) to examine each annual report that is prepared by the Commission under this Act and of which a copy has been laid before a House, and to report to both Houses on matters -

(i) that appear in, or arise out of, that annual report; and

(ii) to which, in the Parliamentary Joint Committee's opinion, the Parliament's attention should be directed; and

(d) from time to time, to inquire into and, as soon as practicable after the inquiry has been completed, to report to both Houses on the effectiveness of the Commission.

The reason for the motion is that we are unable to amend legislation in such a way that involves appropriation. If agreed to, the new clause would enable the establishment of a parliamentary joint committee on native title with specified duties. The Native Title Act established a similar committee for the Commonwealth Parliament which has provided the Parliament and the public with a number of detailed reports on the operation of the Act. It is desirable that the Parliament of Western Australia has its own committee to inquire into and report on similar relevant matters affecting the State. We have been advised that to establish a parliamentary joint committee by statute is different from moving by resolution to appropriate or cause the expenditure of funds. It is necessary for the new clause to be moved as a request to the Legislative Assembly. I commend the new clause to the Committee.

Hon N.F. MOORE: I oppose the measure for several reasons. Relatively recently the committee system was reassessed. A proposition was put forward by the Leader of the Opposition that we should have a Legislative Council standing committee on Aboriginal affairs. Interestingly, the recommendation of the review committee was that any issue involving or relating to Aboriginal affairs can be considered by each committee in the normal course of an inquiry. In other words, the proposition that was put forward by Hon Tom Stephens to have a committee on Aboriginal affairs was not accepted. It was the view of members at that time that any issues relating to Aboriginal affairs should be sent to the appropriate committee dealing with the issues that were being considered. There is no need for a parliamentary committee on native title or for a joint committee. We have often argued the point about joint parliamentary committees. Again, a basic principle that has been agreed to over a long time is that the Legislative Council should retain its own system of standing committees and that joint committees are only a last resort when, perhaps, there is a common interest and a compelling need for such a committee. I oppose the need for a committee on native title and I oppose the need for a joint committee on native title for those reasons.

Hon HELEN HODGSON: I sought a copy of last year's select committee report in which the issue of a standing committee on Aboriginal affairs was raised. The recommendation was that any issue involving or relating to Aboriginal affairs should be considered by each committee in the normal course of an inquiry. I note that the Leader of the Opposition tabled a minority report in which he expressed his view that there should be a dedicated standing committee on indigenous issues. I am aware that there is an attempt to implement a similar provision in the Federal Parliament. However, I am torn on the matter because I can see the intention of the Australian Labor Party in moving in that direction, but, for several reasons, I am not sure how well it will work to transfer that mechanism out of the Federal Parliament into this Parliament. One reason is the significantly smaller number of members available to serve on committees in Western Australia, and another is the fact that we already have a committee system which is structured on a totally different basis - that is, themes rather than subjects, as the Clerk of the Legislative Council has repeatedly told us. It is appropriate to have a system that is consistent with that of the Federal Parliament. It has merits and it should be considered carefully.

Given those considerations, the final factor that I have taken into account is that it is a request for the Legislative Assembly to consider. It is appropriate to ask the Legislative Assembly to consider it and to see what response we get. For those reasons I will support the measure, although I have some reservations about how well it will work in this Parliament compared with the Federal Parliament. We should ask the Legislative Assembly to consider the matter and deal with it when we get the appropriate response.

Requested amendment put and passed.

New clause 8.3 -

Hon TOM STEPHENS: I move -

Page 112, after line 10 - To request the Legislative Assembly to make the following amendment -

To insert the following new clause 8.3 -

8.3. Assistance from Attorney-General

(1) A person who is, or intends to be -

(a) a consultation party; or

(b) a negotiation party,

to a consultation or negotiation, as the case may be, or a mediation or hearing in relation thereto, may apply to the Attorney-General for the provision of assistance under this section in relation to the consultation, negotiation, mediation or hearing.

(2) Subject to subsection (3) the Attorney-General may authorize the provision by the State to the applicant, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance as the Attorney-General determines.

(3) The Attorney-General shall not authorize assistance under this section unless the Attorney-General is satisfied that -

(a) the applicant is not eligible to receive assistance in relation to the matter concerned from any other source (including from a representative Aboriginal body);

(b) the provision of assistance to the applicant in relation to the matter concerned is in accordance with the guidelines (if any) determined under subsection (4); and

(c) in all the circumstances, it is reasonable that the application be granted.

(4) The Attorney-General may, in writing, determine guidelines that are to be applied in authorizing the provision of assistance under this section.

(5) In this section -

"the applicant" means the person referred to in subsection (1).

Section 183 of the Native Title Act contains a similar provision in respect of the Commonwealth Attorney. The amendment provides discretion to the Attorney to provide assistance if he or she is satisfied with the specified matters. I commend the new clause.

Hon N.F. MOORE: I understand that the Commonwealth provides assistance in respect of participants in the commonwealth native title process but I am not so sure whom the Leader of the Opposition has in mind as the people who might seek assistance from the Attorney General. Does he mean -

Hon Tom Stephens: Everybody.

Hon N.F. MOORE: Does he mean a pensioner whose block of land is in doubt? Does he mean small prospectors in the goldfields who are at the end of their tether because of native title? Does he mean Aboriginal groups? Does he mean Western Mining Corporation? Who does he mean? Perhaps he will indicate which people will receive assistance.

Hon TOM STEPHENS: This amendment means what it says. It will provide the opportunity for not only indigenous interests but also other people to apply to the Attorney General for this assistance. The Leader of the House has pointed out that such an application should be equitable. Some pastoral interests are not exactly cashed up, yet they have to tackle some of these issues of native title. In those circumstances, the opportunity for assistance from the Attorney General should be available to non-indigenous interests as well as to indigenous interests.

Requested amendment put and passed.

New clauses 9.1 to 9.6 -

Hon TOM STEPHENS: I move -

Page 112, after line 10 - To request the Legislative Assembly to make the following amendment -

To insert the following new Part —

PART 9 - SCRUTINY OF REGULATIONS

9.1. Interpretation

In this Part —

"committee" means the Joint Standing Committee on Delegated Legislation constituted by resolution of both Houses or such other committee of one or both Houses of Parliament constituted for the purpose of reviewing or scrutinising regulations;

"exemption certificate" means a certificate issued by the Minister under section 9.6;

"regulation" means a regulation made under this Act; and

"statement" means the statement required under section 9.2.

9.2. Duty on Minister to table statement

The Minister shall cause to be tabled a statement describing the reasons for and objectives of the regulation within 7 sitting days of the date on which a regulation is published in the *Government Gazette*.

9.3. Public comments and submissions

(1) The Minister shall ensure that within 48 hours of the tabling of a statement under section 9.2 a notice in accordance with subsection (2) is published in a daily newspaper circulating generally throughout Western Australia.

(2) A notice must —

(a) identify the regulation to which it relates;

(b) publish the statement tabled under section 9.2;

(c) specify where a copy of the regulation and the statement can be obtained; and

(d) invite public comments or submissions within 14 days from the publication of the notice.

(3) The Minister must ensure that a copy of —

(a) the regulation;

(b) the statement;

(c) the notice required in subsection (2); and

(d) all comments and submissions,

is forwarded to the committee within 17 days of the publication of the notice required by this section.

9.4. Committee may report

(1) The committee may prepare a report on any regulation with reference to the statement and any public comments or submissions relating to that regulation as soon as practicable after that committee receives the documents referred to in section 9.3 (3).

(2) A report of the committee under this section may contain any recommendations that that committee considers appropriate, including a recommendation that the regulation should be —

(a) disallowed in whole or in part; or

(b) amended as suggested in the report.

(3) A copy of any report prepared under this section shall be presented to both Houses.

(4) The committee shall have the power to hold a public hearing and to call for oral submissions for the purposes of preparing a report in accordance with this section.

9.5. Member may move notice to disallow

Notwithstanding any standing order of either House a member may move a notice of motion to disallow a regulation on or before the 18th sitting day after a report of the committee relating to that regulation is tabled in accordance with section 9.4.

9.6. Minister's exemption certificate

(1) This Part does not apply if the Minister certifies in writing that in his or her opinion the regulation is of a fundamentally declaratory or machinery nature.

(2) An exemption certificate under subsection (1) must specify the reasons for the exemption.

(3) The Minister shall cause to be tabled in each House a copy of the exemption certificate within 7 sitting days from the date on which the regulation is published in the *Government Gazette*.

Hon N.F. MOORE: The Government does not support this amendment. It is an extraordinary set of affairs to propose that public comments and submissions should be called in respect of regulations. All sorts of things are being put into this Bill which do not apply in any other law of which I know. I do not know what is so extraordinary and special about this Bill that it should have all these unusual and basically unique provisions which are not found in a range of other Bills.

Hon HELEN HODGSON: I have a copy of the rules of the Joint Standing Committee on Delegated Legislation. I have been trying to work out the difference between this proposal and what that committee already does. One obvious difference is the requirement to seek public comments and submissions. Other than that, most of the things that are requested in this proposal are things that the committee does already. For example, it states that the minister must ensure that a copy of the regulation, the statement, the notice, and all comments and submissions, is forwarded to the committee within 17 days of the publication of the notice. My understanding of the operations of that committee, although I am not a member of that committee, is that it routinely seeks an explanatory memorandum in respect of regulations. The only significant issue here is the public comment and consultation.

Regulations are advertised in the *Government Gazette*. We commented earlier on the number of people in Aboriginal communities who read *The West Australian* or *The Kimberly Echo*. I imagine a significantly smaller number read the *Government Gazette* every week. However, the committee process ensures that people are given the opportunity to comment on these issues. At this stage, it would not be helpful to impose a set of rules for regulations in respect of native title that was different from the regulations and the procedures that are already followed in respect of delegated legislation under every other piece of legislation before this Parliament. For those reasons, not a great deal will be gained from this new clause; therefore, I do not support it.

Hon SIMON O'BRIEN: New clause 9.5 refers to the moving of a notice of motion to disallow regulations on or before the eighteenth sitting day after a report is tabled. Putting to one side the reference to standing orders of the House, because I may have another comment to make about that in a moment, this appears to conflict with section 42(2) of the Interpretation Act, which states that, "Notwithstanding any provision in any Act to the contrary, if either House of Parliament passed a resolution disallowing any regulations", etc. If new clause 9.5 were to become law, which would take precedence? Or would the proposed clause be out of order?

The CHAIRMAN: It is not out of order, and I am not in a position to give advice on this clause.

Requested amendment put and negatived.

Schedule 1 put and passed.

Schedule 2 -

Hon TOM STEPHENS: I move -

Page 116, line 5 - To delete the line and substitute the following lines -

(1) The Executive Director shall be appointed by the Governor on the recommendation of the Minister, and shall hold office in accordance with this Act.

(1A) Before making a recommendation under subsection (1), the Minister shall consult the parliamentary leader of each party in the Parliament.

(1B) A person is not eligible to be appointed as the Executive Director unless —

(a) the person is enrolled, and has been for at least five years, as a legal practitioner of the Supreme Court of the State or any other State or Territory, or of the Federal Court of Australia or the High Court; and

(b) the person has substantial experience in relation to —

(i) Aboriginal societies;

(ii) relevant law;

(iii) administration; or

(iv) any other activities relevant to the duties of the Executive Director.

This amendment provides the eligibility criteria for the appointment of the executive director. The executive director's role is similar to that of the registrar of a tribunal. He or she will be required to understand the Native Title Act and the state native title legislation, and it is desirable that he or she be legally qualified and have a substantial experience of one or more of the matters specified. I commend the amendment to the Committee.

Hon HELEN HODGSON: I have an amendment to the amendment moved by the Leader of the Opposition. I move -

In (1B)(a) - To insert after "Court; and" the words -

(b) has substantial experience in relation to Aboriginal societies; and

In (1B)(b) - To delete "(i) Aboriginal societies".

These amendments are similar to one I moved earlier. The intention is once again to make it a compulsory rather than optional that the executive director have substantial experience of Aboriginal societies. The executive director will have the day-to-day dealings with Aboriginal claimants and people who are proceeding through the processes of the commission. Therefore, it is important that the executive director have an understanding of the way in which Aboriginal societies work, and that should not be just an optional criterion.

The CHAIRMAN: I will take that as a foreshadowed amendment on the basis that what is currently before the Chair with respect to schedule 2 is that at page 116, line 5, the words to be deleted be deleted. Then we will get on to the substitution.

Hon N.F. MOORE: I also foreshadow an amendment to delete proposed subclause (1A), which relates to the recommendation about consultation with the parliamentary leader of each party. I am not sure which amendment to deal with first. Will it be in order of clauses or whoever gets in first? I suggest that my foreshadowed amendment comes before Hon Helen Hodgson's.

The CHAIRMAN: We will take them in order of clauses. The question before the Chair is that at page 116, line 5, the words proposed to be deleted be deleted.

Hon N.F. MOORE: We want to delete the line which says that the executive director is to be appointed by the Governor and to substitute the words "the Executive Director shall be appointed by the Governor on the recommendation of the Minister, and shall hold office in accordance with this Act". I do not know why we need the words "on the recommendation of the Minister" in the amendment because the fact is that the Governor does not appoint someone of his own volition. The Governor appoints people on the basis of a recommendation made to Executive Council.

Hon Tom Stephens: Has that always been your experience? I will leave that as it is beside the point.

Hon N.F. MOORE: I do not know anybody who has been appointed by the Governor except on the advice of Executive Council; and Executive Council would not submit a name unless it had been recommended by the minister. What the Opposition is wanting to put in there is unnecessary.

Amendment (words to be deleted) put and passed.

The CHAIRMAN: Taking the amendments in order, the question is now that the words proposed to be added be added to which the Leader of the House has moved an amendment to delete proposed subclause (1A).

Hon N.F. MOORE: For the same reasons that I gave on a previous occasion on this type of issue, it is not appropriate for parliamentary leaders to be consulted on the appointment of the executive director. We are reaching ridiculous levels when it is suggested that that should happen. Countless executive directors are appointed to a whole range of government agencies in Western Australia, none of whom require the consideration of the Leader of the Opposition or any other parliamentary party leader before they are appointed. I am opposed to the amendment.

Amendment on the amendment put and passed.

The CHAIRMAN: Members, we are considering now the second amendment as moved by Hon Helen Hodgson; that is, a substitute subparagraph (b).

Hon HELEN HODGSON: I have been able to locate the equivalent provision in the Native Title Act which deals with the Native Title Registrar. I note that it requires not only the legal qualification but also substantial experience of Aboriginal and Torres Strait Islander societies. It is important that that be a compulsory rather than an optional requirement.

Hon TOM STEPHENS: I do not agree with Hon Helen Hodgson. I would commend the clause unamended. I believe that the way the clause is drafted currently is the best way to accommodate the relevant experience of the executive director. I commend the clause to the Committee in that form.

Amendment on the amendment put and negatived.

Amendment, as amended, put and passed.

Schedule, as amended, put and passed.

Schedule 3 -

Hon TOM STEPHENS: I move -

Page 130, lines 14 to 21 - To delete the lines.

With this provision the Government wants to give the Native Title Commissioner exemption from the scrutiny of a parliamentary commissioner. That is inappropriate. I understood that the Government was offering to agree to that in advice given in the other place. I am surprised that the Government has not rushed to do that in this place.

Hon N.F. MOORE: The Government offered to consider this matter further. However, it does not support the amendment moved by the Leader of the Opposition. The amendment would delete the exclusion of the Native Title Commissioner from the Parliamentary Commissioner Act 1971. We believe that the exclusion from that Act is necessary because the commissioner will be fulfilling a delegated federal government function and undertaking also a quasi-judicial function. It is standard practice to exclude such bodies from the Parliamentary Commissioner Act 1971. For those reasons the Government opposes this amendment.

Hon HELEN HODGSON: I have been caught unawares by this amendment. It is not something on which I have any notes. This is one of the areas where the greyness between what is an administrative function and what is a quasi-judicial function becomes a problem. I appreciate the difficulties in excluding the commission from review by the Parliamentary Commissioner. At the same time, it is inappropriate to have a quasi-judicial function reviewed through that mechanism because the role of the Parliamentary Commissioner is to review administrative decisions. This provision provides a mechanism whereby the Government is seeking to exclude all administrative and quasi-judicial decisions from review, and the Leader of the Opposition has moved to have all decisions open to review, including administrative and quasi-judicial functions.

I do not agree with the original reason given by the Leader of the House that the commission will operate as a delegated federal function, because the whole point of this legislation is to set up a commission with its own powers based on the federal function. However, it could not be said reasonably that those functions are delegated from the federal commission. I have difficulty supporting the view that the Parliamentary Commissioner should be reviewing judicial decisions. As I said, I have been caught a bit short because I do not have the Act with me to see exactly by the wording of schedule 1 what is excluded. It is appropriate to say that administrative decisions of the commission should be subject to review. I would want to clarify that and to see exactly the scope of that exemption. The attendant may have gone to fetch me a copy of that Act. Perhaps someone else wishes to comment and give me an opportunity to check that Act to satisfy myself of the wording.

Hon TOM STEPHENS: I will make a couple of comments not only to oblige the request of Hon Helen Hodgson but also in the process to see whether I can persuade her further to support my amendment. The member raises a legitimate concern in the need to distinguish between the two functions of the hybrid body. It may be that at this late hour it is not easy to accommodate her concerns quickly. However, to keep the issue alive for it to be further considered by the Parliament and refined in the way which she might eventually want, it is clear that carrying my amendment will lead to a request going to the other place. If the Government is unhappy with the amendment as carried by the Legislative Council, it is left with the opportunity of requesting reconsideration of the issue by the Legislative Council to see whether there is some way to amend the amendment to have the Ombudsman deal only with administrative functions rather than functions involving determinations. If my amendment is not carried, the problem would be that there would be no opportunity for further consideration of this issue. In those circumstances the issue would be gone from the purview of this Chamber. There is no way for the issue to be considered further by us if my amendment is lost. I appreciate that the member still wants to have access to a statute that is still to come her way. I do not know whether anybody else is proposing to speak on this amendment.

Hon N.F. MOORE: As I indicated earlier, the role of this commission is multiple, as it were. It involves some federal administrative matters, some state administrative matters and a quasi-judicial role as well. In that sense it is inappropriate that the federal administrative arrangements and matters involved and its quasi-judicial role should be subject to the Parliamentary Commissioner. It is probably appropriate that the state administrative role of the commission should be subject to the Parliamentary Commissioner. I suggest that we do not agree with the Leader of the Opposition's proposal because that would simply mean that all of the commission's functions would be subject to the Parliamentary Commissioner. That is inappropriate. I will suggest that we do not agree with the Leader of the Opposition's amendment; that we leave the Bill as it is printed; and that I give an assurance that the Government will look at this further and bring in an amendment if

it is necessary. The Government has already had a look at this and found it is a very complicated issue. It was unable to reach a conclusion about it other than to say that it does not agree that the organisation should be placed completely under the jurisdiction of the Parliamentary Commissioner, simply because of its commonwealth role and its quasi-judicial role. May I suggest to the Chamber, unless somebody has a better idea, that we do not agree to the Leader of the Opposition's amendment, and that I request the Premier, who is responsible for this legislation, to take on board the matter raised by members and see whether there is a way of ensuring that the State's administrative functions of the commission come under the purview of the Parliamentary Commissioner.

Hon HELEN HODGSON: I now have a copy of the Parliamentary Commissioner Act. There is a way round this, which I do not feel capable of drafting at this hour of the morning. Section 13(2)(n) sets up the authority for schedule 1. It authorised the extent to which an act does not apply in respect of a department or authority. It allows that to be set out in schedule 1. If it were the reverse, I would be quite happy to move immediately to the extent that it is exercising an administrative function. Unfortunately, because the section is framed in the negative, I am unable at this hour of the morning to frame an alternative which I think would pass muster. I have decided that I will adopt the recommendation of the Leader of the Opposition and say that we will ask the other place to have another look at this. There is a viable solution. It will require identifying those functions which it is inappropriate for the Ombudsman or Parliamentary Commissioner to be reviewing and restricting the amendment to those functions. The outcome is quite achievable when somebody with a little more experience in drafting and who has had a little more sleep than we have is able to look at the issue: We have identified the issue; that we want a review of administrative decisions, but we do not want to tie up the quasi-judicial function in that process.

Amendment put and a division taken with the following result -

Ayes (14)

Hon J.A. Cowdell	Hon John Halden	Hon J.A. Scott	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon Christine Sharp	Hon Giz Watson
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Tom Stephens	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Norm Kelly		

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon Dexter Davies	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon N.F. Moore	Hon Greg Smith	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan			

Pairs

Hon Mark Nevill	Hon Peter Foss
Hon Ljiljanna Ravlich	Hon Max Evans
Hon Kim Chance	Hon M.D. Nixon

Amendment thus passed.

Schedule, as amended, put and passed.

New schedule -

Hon TOM STEPHENS: I move -

Page 130, after line 24 - To insert the following new Schedule -

SCHEDULE 4 - PARTICULARS OF OPERATIONAL DATA

[Section 7.50 (3) (e)]

The total number respectively of —

(a) notices given by the Commission under section 3.28;

(b) objections dismissed by the Commission under section 3.30;

(c) recommendations made by the Commission under section 3.33;

(d) Commission recommendations overruled by Minister under Part 3 Division 6;

(e) application fees waived under section 3.48;

(f) appeals brought under Part 3 Division 8;

(g) notices received by the Commission under section 4.19;

(h) objections withdrawn by notice to the Commission under section 4.26;

(i) copies of agreements given to the Commission under section 4.27;

(j) notices received by the Commission under section 4.34;

(k) Minister's determinations disallowed by Parliament as advised to the Commission under section 4.40A;

(l) notices issued by the Commission under section 4.41;

(m) objections dismissed by the Commission under section 4.43;

(n) determinations made by the Commission under section 4.46;

(o) Commission determinations overruled by the Minister as advised to the Commission under Part 4 Division 6;

(p) application fees waived under section 4.61;

(q) notices given by the Commission under section 5.23;

(r) objections dismissed by Commission under section 5.25;

(s) recommendations made by the Commission under section 5.28; and

(t) Commission recommendations overruled by Minister under section 5.34.

This new schedule provides for the operational data required for the annual report.

Hon Helen Hodgson: I believe this schedule relates to an earlier clause which was not accepted by the Committee. I refer the Chair to clause 7.50.

Hon TOM STEPHENS: What did we do there?

Ruling by the Deputy Chairman

The CHAIRMAN: The proposed new schedule is not in order, given the defeat of clause 7.50.

Hon TOM STEPHENS: My notes tell me that a consequential amendment is to be inserted.

The CHAIRMAN: The amendment is out of order, but clause 8.2, as printed, must be carried, although the amendment is no longer in order because schedule 4 does not exist.

Amendment ruled out of order.

Postponed clause 8.2 put and passed.

Title put and passed.

Bill reported, with amendments.

Recommittal

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [2.55 am]: I move -

That the Bill be resubmitted for the purposes of reconsidering clause 5.29.

A situation emerged where, because of the lateness of the hour -

Hon N.F. Moore: That was at about 10 o'clock last night.

Hon TOM STEPHENS: As it currently stands, clause 5.29 does not reflect the will of the Committee.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [2.55 am]: I am happy to agree to this. The bottom line is that the Leader of the Opposition made a mess of it. He did not have enough of his members in their seats when the vote was put. No member said aye; many said no. The Committee's view was that the clause should be agreed to. That is what the Committee did at the time. It was not at three o'clock in the morning, but at 10 o'clock last night. I can count; so I will not call a division.

Question put and passed.

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon N.F.Moore (Leader of the House) in charge of the Bill.

Clause 5.29: Criteria for making recommendations -

Hon TOM STEPHENS: I move -

Page 77, line 13 to page 78, line 4 - To delete the lines and substitute the following lines -

(1) In making its determination in respect of a Part 5 act, the Commission must take into account the effect of the act on —

(a) the enjoyment by the objectors of their registered native title rights and interests;

(b) any area or site on the relevant land of particular significance to the objectors in accordance with their traditions; and

(c) the economic or other significance of the act to —

(i) Australia;

(ii) this State;

(iii) the area in which the relevant land is located; and

(iv) Aboriginal peoples who live in that area.

(2) In taking into account the matters mentioned in subsection (1), the Commission may also consider the effect of the act on —

(a) the way of life, culture, traditions and economic interests of any of the objectors;

(b) the freedom of access by any of the objectors to the relevant land;

(c) the carrying out, by any of the objectors, of rites, ceremonies or other activities of cultural significance, on the relevant land in accordance with their traditions; and

(d) any other matter that the Commission considers relevant.

(3) While taking into account the effect of a Part 5 act as mentioned in subsection (1)(a), the Commission must also take into account the nature and extent of —

(a) existing rights and interests that are not native title rights and interests, in relation to the relevant land;

(b) existing use of the relevant land by persons other than the objectors; and

(c) unless it recommends that the act not be done, consider ways in which the impact of the act on registered native title interests of the objectors in relation to the relevant land can be minimized.

(4) Taking into account the effect of a Part 5 act on an area or site mentioned in subsection (2)(d) does not affect the operation of any law of the Commonwealth or the State for the preservation or protection of those areas or sites.

Amendment put and passed.

Clause, as amended, put and passed.

Further Report

Bill again reported, with a further amendment, and the report adopted.

The PRESIDENT: For the information of members, I advise that Standing Order No 272 now requires that the requested amendments be sent to the Legislative Assembly with the Bill. In due course this House will hear whether those requested amendments are agreed to. The amendments made by this House do not go anywhere for the time being.

ACTS AMENDMENT (LAND ADMINISTRATION, MINING AND PETROLEUM) BILL

Second Reading

Resumed from 1 December.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [3.01 am]: The Labor Party recognises that this Bill is largely a consequential Bill dealing with amendments to various Acts, principally the Land Administration Act. The Labor Party raised the Bill with both mining and indigenous interests, and no major objections were raised by either sector.

The substitution of section 83 of the Land Administration Act 1997 does not appear to be a consequential provision on the passage of the Native Title (State Provisions) Bill. This Bill does not appear to require the redrafting of section 83 of the Land Administration Act. It appears that the Government has taken advantage of the fact that it has an amendment Bill to

the Land Administration Act, to include this amendment. Despite those reservations, the Labor Party does not intend to oppose this provision.

The Labor Party did have a number of doubts about this Bill, which were raised at the committee stage in the other place. In particular, there was doubt about the insertion of section 125A into the Mining Act 1978, dealing with liability for payment of compensation to native title holders. The liability is passed to the person holding the mining tenement or, if someone is no longer holding the mining tenement, to the last person to hold the mining tenement. The minister handling the Bill at the committee stage in the other place assured the Opposition that the State would be liable if, for some reason, the mining company or the holder of the tenement was not in a position to pay the compensation; for example, if the last holder of the tenement was a $2 company that had become insolvent.

The Opposition would appreciate it if the minister could provide more clarity, indicating the section of the Native Title Act pursuant to which the State would have a residual obligation and final liability to pay the compensation which is owing, due to the fact that the compensation had not died with the person or corporation which should pay but is unable to do so. The Labor Party does not envisage any particular problems with passing this clause, given the assurances of the minister in the other place, but would appreciate this information just to clarify the situation during this debate. Other than this issue, the Labor Party's doubts were sufficiently answered to allow it not to raise any objections or to propose any amendments to the Bill.

HON HELEN HODGSON (North Metropolitan) [3.03 am]: I feel inadequate discussing the Bill at this time because, apart from the lateness of the hour, the select committee did not receive any evidence on this Bill. The second select committee commented on it, but no submissions were received on this Bill. A few points have been raised with me and I will place them on the record. The first point is that under the Native Title Act there is a requirement for the State to pay compensation. The effect of this third Bill, among other things, is to transfer that liability to the person seeking to have the act done, whether it is the mining or petroleum industry. A suggestion has been put to me that by the legislation the Government abrogates its legislative responsibility by requiring the mining and petroleum industry to pay compensation, instead of the Government. Therefore, these clauses appear to be inconsistent with the federal Act. Although that suggestions has been put to me, and I can appreciate the logic of it, it is important that the people who benefit from these arrangements pay compensation. Therefore, I will not push that issue too hard, apart from commenting on it.

The next point made to me relate to questions about the potential lack of transparency as a result of the payments being made through the mining and petroleum industry; in other words, because those payments will not be made by the Government does that mean there will be a veil over what is happening and what the public hears and knows about? The first Select Committee on Native Title Rights in Western Australia took evidence on this and there was discussion about the payments being made under the right to negotiate. Often comment was made to the committee that the agreements were confidential and the amounts involved could not be disclosed. If this were handled by the Government, provisions under the Financial Administration and Audit Act would ensure that the amounts were made public. The next part of this concern is the requirement under the Native Title Act that compensation be made on just terms. It is difficult to assess whether payments are made on just terms if people do not know what the payments are and the nature of the agreements made. It is basically a problem of transparency, not just of the amounts paid, but also in the ability to determine whether the federal Native Title Act is being complied with and whether the compensation is on just terms.

The third point was made in the committee in response to a question I asked about whether the mining industry was happy with this transfer. It is self-evident that people are not happy with legislation that places a financial burden on them, because nobody enjoys paying extra amounts. My recollection of the response received in evidence from George Savell on behalf of the Association of Mining and Exploration Companies, is that although the mining industry accepted it, it felt that it was in double jeopardy because not only was it paying royalties to the Government for access to the resources, but also it had to pay compensation to native title holders. The industry suggested, although not strongly, that it was being hit twice for access to the same resource. I remind members of the debate yesterday in the context of the validation Bill, about the extent of compensation and the fact that no-one knows what the compensation bill will be, because of the current lack of clarity about how much native title has been extinguished subject to validation provisions. Prior to the recent court decisions, people thought native title did not exist but there is now a real possibility that it does. It is probable that the final financial bill to the mining and petroleum industries and the State could be far greater than anticipated several months ago. Those are the main points that have been made to me.

This Bill, which has received very little public debate, makes a fallacy of some of the rhetoric members have heard about the cost to the taxpayers and the State of native title, because a significant proportion of the compensation costs will be transferred to the mining and petroleum companies through these provisions. It is quite clear that, although there will be additional costs to taxpayers where the compensation burden is not transferred, at the same time a significant proportion of the cost will be transferred to the industry. The effect of that on the viability of future ventures has yet to be seen.

HON GIZ WATSON (North Metropolitan) [3.09 am]: The Bill facilitates proposals within the Native Title (State Provisions) Bill. Therefore, we are dealing with consequential amendments which are required for the Land Administration Act, the Mining Act, the Petroleum Act and the Petroleum (Submerged Lands) Act. As we said, the Greens (WA) oppose

the package of native title Bills. Therefore, in that context we oppose this Bill as part of that package. The second reading speech states -

> The Bill also contains amendments to the Mining Act, the Petroleum Act and the Petroleum (Submerged Lands) Registration Fees Act. These amendments shift the compensation liability for future Acts to the holder of the mining or petroleum title.

We support that approach. If compensation is to be paid, it should be transferred to holders of the title rather than be a burden on the taxpayer. We have not had much debate on the Bill or heard much evidence either way, and that has meant that I have paid less attention than I would like to what is involved in the Bill.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [3.11 am]: I thank members for their most enthusiastic support for the Bill. It does what the Leader of the Opposition said - it puts into several other Acts new provisions that are required as a result of legislation we have already passed. A couple of issues were raised. One related to the Mining Act - that is, clause 16 - where we are requiring that any compensation payable in respect of native title holders will be paid by mining companies. As I understand it, if there is no reference in the Bill to a particular body or group of people paying compensation, by default the State will pay the compensation. The Government decided that the beneficiaries of the mining operations are indeed mining companies. In the event that there is native title compensation to be payable, it should be paid by beneficiaries rather than the State of Western Australia.

Also, Hon Helen Hodgson talked about compensation and asked whether it will be transparent. I understand that compensation is to be determined by the Federal Court or by the Western Australian commission when it is put in place. The decisions that are made about compensation will be public, totally transparent and clear to everybody. The shonky deals that she talked about are those with respect to the right-to-negotiate process that has been around for so long and with which members opposite seem to be so much in love and have sought to extend to the new legislation. The shonky deals in which money changes hands and nobody knows about it are not through compensation; they are through the right-to-negotiate process in which people can put their hand out and ask for money even before they have had native title over any land granted to them. That is a fundamental problem with the native title legislation. Opposition parties have done nothing today to improve that situation in Western Australia. I thank members for their support for the Bill. I now seek their support for the second reading.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and passed.

ADJOURNMENT OF THE HOUSE

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [3.15 am]: I move -

> That the House do now adjourn.

In moving the motion I indicate that the normal sitting time on Wednesdays is 2.00 pm, and under this motion the House will resume at 2.00 pm. It is my intention that we deal with Orders of the Day Nos 8 and 9 on today's Notice Paper - I am not sure what numbers they will be on tomorrow's Notice Paper: The Occupational Safety and Health (Validation) Bill and the Commercial Tenancy (Retail Shops) Agreements Amendment Bill. I expect that we will finish by 10.00 pm tomorrow at the very latest. There is no intention on my part to go beyond that time.

Hon Tom Stephens: Is there a reason that the legislation cannot be finished now? Will it involve protracted debate?

Hon N.F. MOORE: I have no idea. In view of the requested amendments and matters of that nature, we need to be here tomorrow to deal with them, so I suggest that now would not be a bad time to knock off and that we return tomorrow afternoon to complete the business of the House before 10.00 pm tomorrow.

Question put and passed.

House adjourned at 3.16 am (Wednesday)

QUESTIONS ON NOTICE

Answers to questions are as supplied by the relevant Minister's office.

RAILWAYS, MINISTER'S BRIEFING ON EXTENSION OF NORTHERN LINE

650. Hon KEN TRAVERS to the Minister for Transport:

I refer to his answer to question 327 of September 15, 1998 and ask -

(1) Is there any reason why the Minister did not answer part (2) of this question?

(2) If not-

(a) when did he receive the preliminary briefing;
(b) who provided the preliminary briefing; and
(c) when does he expect to receive a full briefing?

Hon M.J. CRIDDLE replied:

(1)-(2) I received a preliminary briefing on the Northern Suburbs railway line shortly after my appointment as Minister for Transport. The briefing was provided by the Department of Transport and my office. A full briefing is imminent.

POLICE, SECONDMENT TO NATIONAL CRIME AUTHORITY

725. Hon MARK NEVILL to the Attorney General representing the Minister for Police:

(1) Which police officers from the WA Police Service have been seconded to the National Crime Authority ("NCA") since July 1, 1990?

(2) For what period was each seconded?

(3) To what position were they appointed at the NCA?

Hon PETER FOSS replied:

(1)-(3) According to the WA Police "Personnel Information Management System", the following detective staff were seconded to the NCA since 1 July 1990:

(1) OFFICER	(2) PERIOD	(3) POSITION
Insp S SYME 4692	06.05.96 to Present	Manager
Insp K TAYLOR 3796	11.04.93 to 05.05.96	Manager
D/S/Sgt I SEFTON	23.09.91 to 26.09.93	Investigator/Chief Investigator
Supt W DUNLOP 3888	29.07.91 to 10.04.93	Investigator/Chief Investigator
D/S/Sgt D PICTON-KING 4768	27.09.93 to 10.04.96	Chief Investigator
Det/Sgt A McCAGH 5887	27.09.93 to 13.11.94	Investigator
Det/Sgt A ALBRECHT 5349	29.07.91 to 08.08.93	Investigator
Det/Sgt P COOMBS 5946	03.05.93 to 15.09.96	Investigator
Det/Sgt D CONGDON 5352	04.01.92 to 02.05.93	Investigator
Det/Sgt M VOYEZ 5888	24.12.90 to 02.01.94	Investigator
Det/Sgt S QUARTERMAINE 6054	01.08.94 to 30.11.95	Investigator
Det/Sgt S QUARTERMAINE	01.12.95 to 27.11.97	Investigator
Det/Sgt G BOWEN 5507	28.06.92 to 02.03.94	Investigator
Det/Sgt G MASLIN 6047	15.02.98 to Present	Investigator
Det/Sgt H LOK 6053	19.11.97 to Present	Investigator
Det/Sgt F GERE 4821	24.08.89 to 23.12.90	Investigator
Det/Sgt J LONGDEN 4948	25.08.89 to 13.02.92	Investigator
Det/S/Const D BREWER 6269	01.12.93 to 09.06.96	Investigator
Det/S/Const A RITCHIE 7197	06.01.97 to Present	Investigator
Det/S/Const C HUSH 6832	02.01.95 to 11.03.97	Investigator
Det/S/Const D BERSTON 6472	28.05.97 to Present	Investigator
Det/S/Const V SORGIOVANNI	14.02.94 to 17.07.95	Investigator
Det/S/Const A MORGAN	17.08.98 to Present	Investigator
Det/S/Const P FOLEY	09.11.98 to Present	Investigator

It should be noted that:

this list does not include any undercover uniform staff who may have worked in joint operations with the NCA (due to operational security); and that

during 1994/95, the NCA position of "Director" was reviewed and retitled "Manager".

ABORTION, BREACHES OF LEGISLATION

742. Hon N.D. GRIFFITHS to the Attorney General representing the Minister for Police:

With respect to the answer to question on notice 560 of 1998 -

(1) Was any investigation carried out by police?

(2) Did such investigation involve the interviewing of any person to ascertain the facts?

(3) If not, why not?

(4) When was the matter examined by the police?

(5) When was the matter discussed with the Director of Public Prosecutions and who was a party to that discussion?

(6) Who formed the view that "it is considered in view of the direction taken by Parliament, that it is not in the public interest to pursue the complaint"?

(7) Is such a view considered to be a precedent with respect to any further alleged breaches of the *Criminal Code* by doctors working at King Edward Memorial Hospital?

Hon PETER FOSS replied:

(1) Yes.

(2)-(3) No, not individually, general enquiries were made to ascertain the link between the allegations and the bringing in of the new legislation.

(4) The "matter" as such is not considered a police matter for examination, it is seen as a circumstance created by the introduction of new legislation and the technical difficulties that arise when establishing the practical working models that the legislation creates.

(5) Upon receipt of the complaint made in October 1998. Discussions followed between Assistant Commissioner Kucera and the Director of Public Prosecutions, Mr McKechnie.

(6) It was a joint decision made between the two above persons following research on the matter.

(7) No, the issue related to the introduction of legislation and procedures which are now in place.

ABORIGINAL AFFAIRS DEPARTMENT, FEES POLICY

759. Hon TOM STEPHENS to the Minister for Transport representing the Minister for Aboriginal Affairs:

(1) Does the Department of Aboriginal Affairs have a policy on the waiving of fees for indigenous people seeking information under the *Freedom of Information Act* relating to the forced separation of Aboriginal and Torres Strait Islanders from their families?

(2) If not, will the Minister for Aboriginal Affairs consider developing such a policy?

Hon M.J. CRIDDLE replied:

The Minister for Aboriginal Affairs has provided the following response:

(1) Yes, it is the policy of the Aboriginal Affairs Department to waive any fees for copying and labour costs for its Indigenous clients along with reductions to the mandatory application fee provided for under the legislation.

(2) Not applicable.

ABORIGINAL AND TORRES STRAIT ISLANDS, RECORDS TASKFORCE

761. Hon TOM STEPHENS to the Minister for Transport representing the Minister for Aboriginal Affairs:

(1) Has the Government established a "Records Taskforce" to assist indigenous Australians to locate and access records relating to the forced separation of Aboriginal and Torres Strait Islanders?

(2) If yes -

(a) who is on the Taskforce;
(b) where is the Taskforce located; and
(c) what is the role of the Taskforce?

(3) Is the Taskforce compiling and indexing information from the Departments of Family and Children's Services and Aboriginal Affairs?

Hon M.J. CRIDDLE replied:

The Minister for Aboriginal Affairs has provided the following response:

(1) Yes, a Records Taskforce has been established and met for the first time on 19 May 1998 and has been meeting regularly since that date.

(2) (a) Representatives of the Department of Family and Children's Services (FCS) Aboriginal Affairs Department, Library and Information Service and Health Department. There is also a historian and representatives of the Aboriginal community, various non-Government agencies and church organisations.

(b) The Records Taskforce is located at FCS, 189 Royal Street, East Perth.

(c) The role of the Records Taskforce is to -

conduct an audit of record collections (and their custodians) held by public and private organisations that contain information relevant to Aboriginal family history in Western Australia.

recommend storage mechanisms, taking account of opportunities for coordination and consolidation of records; and

establish principles, policies and guidelines for accessing information which address matters of privacy, confidentiality and culturally appropriate service delivery.

(3) Yes, FCS are currently completing specifications for a data base to be completed by the end of January 1999. Following this FCS will tender to have the family information recorded for easy access. All relevant records held by FCS and Aboriginal Affairs will be recorded onto the system.

EAST PERTH REDEVELOPMENT AUTHORITY, PROPERTY SALES

764. Hon KEN TRAVERS to the Attorney General representing the Minister for Planning:

Who handled the sales of the following properties on behalf of the East Perth Redevelopment Authority -

(a) Lot 8 Arden Street;
(b) Old Boans Warehouse, Brown Street;
(c) Lot 217 Royal Street;
(d) Lot 34 Brown Street;
(e) Lot 73, 75 and 76 Royal Street; and
(f) Lot 163 Brown Street?

Hon PETER FOSS replied:

(a) East Perth Redevelopment Authority;
(b) Colliers Jardine;
(c) Stanton Hillier Parker;
(d) East Perth Redevelopment Authority;
(e) Richard Ellis;
(f) Knight Frank.

EASTBROOK SUBDIVISION, SALE BY PRIVATE TREATY

765. Hon KEN TRAVERS to the Attorney General representing the Minister for Planning:

(1) Can the Minister for Planning provide the following information regarding the 9 lots in the Eastbrook subdivision released for sale by private treaty -

(a) the lot number;
(b) the name of purchaser;
(c) the date sold; and
(d) the sale price?

(2) Why was it decided to release these lots for sale by private treaty rather than by public tender?

(3) Who handled the sales of these properties?

(4) Did any other individuals, companies or consortia apply to purchase lot 217 Royal Street?

(5) If yes can the Minister for Planning name them?

Hon PETER FOSS replied:

(1) (a)-(d)

Lot No	Purchaser	Date of Settlement	Price $
200	Megamas Pty Ltd AS Gan KM & IB Ho	17 July 1996	322 500

201	AL Enterprises Pty Ltd Regal Construction Pty Ltd	10 November 1997	335 000
204/205	Bellridge Nominees Pty Ltd Crosscut Pty Ltd Schaffer Corporation Ltd Hawaiian Development Pty Ltd	25 November 1997	628 000
209	Bellridge Nominees Pty Ltd Crosscut Pty Ltd Schaffer Corporation Ltd Hawaiian Development Pty Ltd	29 October 1997	761 250
214/215	Fishook Bay Pty Ltd Skycastle Holdings Pty Ltd	30 June 1997	500 000
217	Superior Properties Pty Ltd Citi Fidelity Nominee Co Pty Ltd	15 July 1996	1 125 000
1007	Citi Fidelity Nominee Co Pty Ltd as Trustee for Royal Brook Project Group	20 May 1997	790 000

(2) As a new mixed use area it was considered that private treaty was the most appropriate method in conjunction with an active sales campaign.

(3) Stanton Hillier Parker.

(4) No.

(5) Not applicable.

QUESTION ON NOTICE 3417, CONTRACTS

766. Hon KEN TRAVERS to the Attorney General representing the Minister for Planning:

With regards to the Minister for Planning's answer to question 3417 of March 19, 1998 -

(1) Why does the Minister for Planning's answer to this question state that Lot 163, Brown Street was awarded to Bellridge Nominees Pty Ltd, whereas his answer to question 864 of September 17, 1998 states that the contract was awarded to Bellridge Nominees Pty Ltd, Crosscut Pty Ltd, Schaffer Corporation Ltd and Hawaiian Developments Pty Ltd?

(2) Why does the Minister's answer to this question state that Lot 73, 75 and 76 Royal Street was awarded to Bellridge Nominees Pty Ltd, whereas his answer to question 863 of September 17, 1998 states that the contract was awarded to Bellridge Nominees Pty Ltd, Crosscut Pty Ltd, Schaffer Corporation Ltd and Hawaiin Developments Pty Ltd?

Hon PETER FOSS replied:

(1) The tender was submitted in the name of Bellridge Nominees Pty Ltd. At contract stage this was amended to Bellridge Nominees Pty Ltd; Crosscut Pty Ltd; Schaffer Corporation Ltd and Hawaiian Developments Pty Ltd.

(2) The answer to Legislative Assembly question number 3417 of 18 March 1998 reflected the East Perth Redevelopment Authority's internal administrative abbreviation.

NORTHBRIDGE URBAN RENEWAL PROJECT

767. Hon KEN TRAVERS to the Attorney General representing the Minister for Planning:

(1) Have any contracts of a value of $500 000 or more been awarded as part of the Northbridge Urban Renewal Project?

(2) If yes, can the Minister for Planning provide the following details of those contracts -

(a) the name of the contractor;

(b) the project the contract was awarded for;

(c) the date the contract was awarded;

(d) the original contract cost;

(e) if completed, the actual final cost of the contract; and

(f) the names of any other companies which applied for the contract?

Hon PETER FOSS replied:

(1) No.

(2) Not applicable.

SUBIACO REDEVELOPMENT AUTHORITY, TUNNEL AND STATION WORKS CONTRACT

768. Hon KEN TRAVERS to the Attorney General representing the Minister for Planning:

With regards to the Subiaco Redevelopment Authority's contract to Multiplex Constructions Pty Ltd for completion of a railway tunnel and station works -

(1) When was the contract awarded?

(2) What was the original contract cost of the contract?

(3) What was the actual final cost of the contract?

(4) Were expressions of interest called?

(5) If yes, where and when was it advertised?

(6) Which companies submitted expressions of interest?

(7) Were Requests for Proposals (RFP) or Request for Tenders (RFT) called for the project?

(8) If yes, where and when was it advertised?

(9) Which companies submitted an RFP or RFT?

Hon PETER FOSS replied:

(1) 5/6/97.

(2) Original Contract award - $34,445,605.

(3) Contract not complete.

(4) Yes.

(5) The West Australian, 25 March 1995.

(6) Baulderstone Hornibrook.
Clough Engineering.
Consolidated Constructions.
Fletcher Constructions.
John Holland Constructions.
Leighton Contractors.
Multiplex Constructions.
Thiess Contractors.
Transfield/Barclay Mowlem Consortium.

(7) Yes.

(8) Not advertised. Selected from expressions of interest.

(9) Thiess Contractors.
Multiplex Constructions.
Transfield/Barclay Mowlem.
John Holland Constructions.

DIRECT DRAINAGE AND GEORGIOU CORPORATION, CONTRACTS

771. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Disability Services:

(1) Have any agencies or departments under the Minister for Disability Services' control awarded any contracts to Direct Drainage or Georgiou Corporation since July 1, 1996 -

(2) If yes, can the Minister provide the following details of those contracts-

(a) the name of the contractor;
(b) the contract number;
(c) the date it was awarded;
(d) the project the contract was awarded for;
(e) the cost of the contract;

(f) if the contract has been completed, the final cost of the contract; and
(g) the names of any other companies who tendered for the contract?

Hon MAX EVANS replied:

(1) No.

(2) Not applicable.

DIRECT DRAINAGE AND GEORGIOU CORPORATION, CONTRACTS

772. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Water Resources:

(1) Have any agencies or departments under the Minister for Water Resources' control awarded any contracts to Direct Drainage or Georgiou Corporation since July 1, 1996 -

(2) If yes, can the Minister provide the following details of those contracts-

(a) the name of the contractor;
(b) the contract number;
(c) the date it was awarded;
(d) the project the contract was awarded for;
(e) the cost of the contract;
(f) if the contract has been completed, the final cost of the contract; and
(g) the names of any other companies who tendered for the contract?

Hon MAX EVANS replied:

The Minister for Water Resources has provided the following response:

(1) Yes.

(2) (a) Direct Drainage (W.A.) Pty Ltd.
Georgiou Corporation Pty Ltd.

(b)-(d) [See paper No 680.]

(e)-(f) Commerical in confidence.

(g) [See paper No 680.]

QUESTION ON NOTICE 3417

776. Hon KEN TRAVERS to the Attorney General representing the Minister for Planning:

With regards to the Minister for Planning's answer to question 3417 of March 19, 1998 -

(1) Why do the Certificates of Title for Lots 73, 75 and 76 Royal Street state the registration date as June 29, 1998, whereas the Minister's answer states the date of sale as April 1998?

(2) Why does the Certificate of Title for Lot 163 Brown Street state the registration date as June 30, 1998, whereas the Minister's answer states the date of sale as April 1998?

Hon PETER FOSS replied:

(1) The Contract of Sale was finalised on 16 February 1998, with settlement on 29 June 1998. The April 1998 date provided by the East Perth Redevelopment Authority in the answer to Legislative Assembly question number 3417 of 19 March 1998 was an administrative error by the East Perth Redevelopment Authority.

(2) The Contract of Sale was finalised on 23 April 1998, with settlement on 29 June 1998.

QUESTION ON NOTICE 1140

791. Hon KEN TRAVERS to the Attorney General representing the Minister for Planning:

In relation to the Minister for Planning's answer to a question 1140 from Mr Riebling -

(1) Has the Minister authorised the use of his Ministerial car to other people for their private business?

(2) Did the Minister inquire as to the purpose of the private business before authorising use of the Ministerial car to other people?

(3) If not, why not?

(4) If yes to (3) above, was the Minister satisfied that the private use was an "appropriate" use of a Minsiterial car?

Hon PETER FOSS replied:

The answer to Legislative Assembly question 1140 referred to use of the vehicle for "private purposes" not "private business". However, the answer to this question is:

(1) Yes.

(2) No.

(3) Not necessary, as the vehicle may be driven for official use or at other times for private purposes by any person who is the holder of a valid driver's licence if authorised by me, or the Director General of the Ministry of the Premier and Cabinet.

(4) Not applicable.

LANDCORP DEVELOPMENT, LANDSDALE

806. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Lands:

With regards to LandCorp's joint venture development at Landsdale with North Whitfords Estates (NWE) -

(1) Can the Minister for Lands table a land title map of the development, showing the land contributed by LandCorp?

(2) Is this joint venture part of the NWE's Landsdale Gardens Estates?

(3) Has LandCorp's land been developed yet?

(4) If yes to (3) above, what residential stage was it, and how many of the released blocks have been sold?

Hon MAX EVANS replied:

(1) Yes. [See paper No 681.]

(2) Yes.

(3) The LandCorp land is currently under development.

(4) Residential Stage 15. However, none of the residential blocks have been released for sale. [See paper No 681.]

LANDCORP DEVELOPMENT, PORT KENNEDY

807. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Lands:

With regards to LandCorp's joint venture development at Port Kennedy with North Whitfords Estates (NWE) -

(1) What proportion of the land was contributed by LandCorp and NWE respectively?

(2) Can the Minister for Lands table a land title map of the development, showing the land contributed by LandCorp?

Hon MAX EVANS replied:

(1) LandCorp contributed 100% of the residential land with NWE to contribute 100% of the development costs for the land.

(2) Yes. [See paper No 682.]

ANNUAL REPORT, PRINTING CONTRACT

808. Hon KEN TRAVERS to the Minister for Transport representing the Minister for Local Government:

(1) Have the following 1997/98 annual reports been produced, or have contracts been awarded for their printing -

(a) Fremantle Cemetery Board; and
(b) Keep Australia Beautiful Council?

(2) If yes, for each report can the Minister for Local Government state -

(a) the name of the printer;
(b) how many copies have been, or will be, printed; and

(c) the cost of -

(i) artwork;
(ii) publication;
(iii) distribution; and
(iv) writing?

(3) Was the 1997/98 annual report produced wholly within the department or agency?

(4) If not -

(a) what services were provided by contractors; and
(b) at what cost?

Hon M.J. CRIDDLE replied:

In relation to the Fremantle Cemetery Board:

(1) (a) No.

(2) (a)-(c) Not applicable.

(3) Yes.

(4) Not applicable.

In relation to the Keep Australia Beautiful Council:

(1) (b) Yes.

(2) (a) Character Printing.
(b) 500.
(c) (i) Artwork; and
(ii) Publication $3,240.
(iii) Distribution; and
(iv) Writing $500.

(3) No.

(4) (a) Artwork and printing.
(b) $3,240.

"TIME ON OUR SIDE" PROGRAM

833. Hon CHERYL DAVENPORT to the Leader of the House representing the Minister for Employment and Training:

Page 14 of the document, "Time on Our Side", states that, 'The Government will . . . adapt employment programs to better meet the needs of older clients.'

(1) How will programs be adapted?

(2) Will older people be consulted?

Hon N.F. MOORE replied:

(1) The Western Australian Department of Training is examining all its employment programs including those developed under 'Access All Areas' to ensure they meet the needs of older clients whenever possible.

(2) Yes.

"TIME ON OUR SIDE" PROGRAM

837. Hon CHERYL DAVENPORT to the Leader of the House representing the Minister for Employment and Training:

Page 13 of the document, "Time on Our Side", states that, 'The Government will . . . support the establishment of a professional services agency to market the skills, knowledge and services of older workers on a fee-for-service basis.'

(1) How will this be facilitated?

(2) When will it commence operations?

Hon N.F. MOORE replied:

(1) A study has been commissioned by the Western Australian Department of Training to facilitate the development of a professional services agency.

(2) Yet to be determined.

"TIME ON OUR SIDE" PROGRAM

838. Hon CHERYL DAVENPORT to the Leader of the House representing the Minister for Employment and Training:

Page 13 of the document, "Time on Our Side", states that, 'The Government will . . . conduct research into barriers restricting mature aged employment in growth industries.'

(1) How will this research be conducted?

(2) What is the time frame for the research?

(3) Will it be publicly released?

Hon N.F. MOORE replied:

(1) The Western Australian Department of Training plans to conduct research into barriers restricting mature aged employment in growth industries, in two stages. The first stage will consist of research to identify mature aged employment issues. The second stage will pilot a number of projects designed to address the employment needs of mature aged job seekers.

(2) Stage one will commence in 1999 and conclude in 2000. Stage two will commence in 2001 and conclude in 2002.

(3) Yes.

"TIME ON OUR SIDE" PROGRAM

847. Hon CHERYL DAVENPORT to the Minister for Finance representing the Minister for Disability Services:

Page 9 of the document, "Time on Our Side", states that, 'The Government will . . . provide additional respite funding for people with disabilities and their carers.'

(1) When will this occur?

(2) How much funding will be allocated?

(3) Is this Commonwealth money?

(4) If not, is this money over and above existing 1998/99 Budget?

Hon MAX EVANS replied:

(1) Additional growth funding for respite services for carers for people with disabilities will be available over the four year period 1998/99 - 2001/02.

(2) It is anticipated that the Minister for Disability Services will be announcing full details regarding the level of funding available for new respite services over the next four years early in the new year.

(3) The majority of the additional funding is State Government funding.

(4) Yes.

QUESTIONS WITHOUT NOTICE

GOODS AND SERVICES TAX, IMPACT ON TOURISM

827. Hon TOM STEPHENS to the Minister for Tourism:

In the light of the comments made by Professor Dixon from Monash University to the Senate Select Committee on a New Tax System that the Howard Government's tax package is likely to harm tourism and the comments the minister made in the House on 18 August that he would argue that the tourism industry should be regarded as an export earner and, therefore, exempt from the goods and services tax, has the minister made a submission, or will he make one, to the Senate select committee? If not, why not?

Hon N.F. MOORE replied:

I have not read Professor Dixon's comments to anybody. I do not know who he is. I presume he has some credibility or the Leader of the Opposition would not have used his name in the House. I will look at what Professor Dixon has said. I do not think I should make a submission to the Senate committee. At times giving evidence to these committees is a waste of breath because, regrettably, some of them have preconceived ideas about things. I will look at what Professor Dixon has said and let the member know in due course.

REMOTE AND COUNTRY SCHOOLS, TEACHER VACANCIES

828. Hon TOM STEPHENS to the Leader of the House representing the Minister for Education:

In relation to the Minister for Education's decision to advertise in the eastern States for teachers to fill vacancies in remote and country schools, will the minister table the list of country schools which still have vacancies for 1999?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. The Minister for Education has advised that tabling current lists of schools with staffing vacancies for 1999 would serve no purpose. The number of vacancies at any one moment is fluid and no indication of the number which may ultimately not be filled. Further, the process of selecting teachers and filling vacancies is ongoing and advertisements were placed only recently; a school vacancy today may be filled tomorrow. It is anticipated that all schools will have a full staffing contingent by the beginning of the 1999 school year. It should also be noted that the advertisements called for experienced teachers in specialty areas. These subject areas have previously been identified as having potential for future staffing shortfalls.

MARITIME BILL

829. Hon N.D. GRIFFITHS to the Minister for Transport:

(1) Is a new maritime Bill being drafted on the minister's instructions?

(2) If so, when did the minister give those instructions?

(3) Is the minister in a position to comment on matters being considered in the Bill?

(4) If not, why do others seem to be able to?

(5) Who speaks for the Government on this proposed matter relating to the minister's portfolio?

Hon M.J. CRIDDLE replied:

(1)-(5) I received information this morning that the drafting of the maritime Bill will be finalised in the next two or three months. The Bill will bring together a number of other Bills. It is a massive project which has been going on for a few years. I am prepared to comment when I see the final drafting of the Bill. I would like to see the final result and justification of the current discussions.

JERVOISE BAY, NORTHERN BREAKWATER

830. Hon J.A. SCOTT to the minister representing the Minister for the Environment:

With regard to the existing northern breakwater at Jervoise Bay -

(1) Who was the proponent for the construction of the northern breakwater?

(2) Did the Environmental Protection Authority set any conditions or require any commitments of the proponent when the breakwater was constructed?

(3) Has the proponent met all of the required conditions or commitments?

(4) If not, what commitments have been met and what steps has the Department of Environmental Protection and the EPA taken to ensure compliance?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The Department of Commerce and Trade.

(2) A statement of conditions for the project was issued by the Minister for the Environment on 24 April 1997. This statement also included commitments made by the proponent.

(3)-(4) Under the Environmental Protection Act, the chief executive officer of the Department of Environmental Protection is responsible for monitoring the implementation of proposals and determining whether conditions are being met. The CEO has not recorded any noncompliance for the project.

AMBULANCE SERVICES

831. Hon HELEN HODGSON to the minister representing the Minister for Health:

Some notice of this question has been given. On 14 August 1998, my office received a letter from Mr Michael Pervan, Director of Executive Services at the Health Department of WA promising a full and prompt inquiry into a constituent complaint about ambulance services.

(1) Has such an inquiry begun? If so, on what date?

(2) If not, why not?

(3) If yes to (1), has the inquiry been completed? If so, when?

(4) If the inquiry has not been completed, when does the department anticipate it will be?

(5) If the inquiry has been completed, has the constituent who laid the complaint been informed of the outcome of the inquiry? If so, on what date?

(6) If not, why not?

Hon MAX EVANS replied:

(1) Yes, on 16 September 1998.

(2) Not applicable.

(3) No.

(4) On 31 December 1998.

(5)-(6) Not applicable.

MITCHELL FREEWAY, EXTENSIONS

832. Hon RAY HALLIGAN to the Minister for Transport:

How much width has been allowed for the transport corridor in the proposed extensions to the Northern Freeway north of Joondalup and does it include room for the railway line?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. The transport corridor varies from 120 to 220 metres in width and includes provision for a railway line.

EATON PRIMARY SCHOOL, PROPOSED

833. Hon BOB THOMAS to the Leader of the House representing the Minister for Education:

(1) Is the minister aware that the member for Mitchell attended the Eaton Primary School Parent and Citizens Association meeting on 22 June 1998 and guaranteed on two separate occasions that a new school would be built in Eaton before the commencement of the first school term in 2001.

(2) Is the minister aware that the member for Mitchell repeated this statement at a public meeting in Eaton on 30 July 1998 when he said that money would be made available for a purpose built primary school in Eaton by 1999-2000 if the local area education plan does not get in the way?

(3) Will the minister similarly guarantee the residents of Eaton that a new school will be built before first term of 2001?

(4) If yes, is it the minister's intention to approve the construction of the new school before the finalisation of the local area education planning process in the Bunbury school district?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(4) The minister is not aware of individual functions attended by the member for Mitchell. However, the minister has given a written commitment to the member that a new primary school will be funded in the East Eaton area in 1999-2000 to be opened in 2001 provided that its construction is consistent with the recommendations of local area education planning in the Bunbury district.

PIER 21, NORTH FREMANTLE

834. Hon KEN TRAVERS to the minister representing the Minister for Water Resources:

I refer to the article on page 63 of *The West Australian* on 9 December 1998 about the Pier 21 development in North Fremantle.

(1) What were the objections raised by the Swan River Trust?

(2) Why did the Minister for Water Resources choose to ignore these objections?

(3) On what date did the Swan River Trust receive the informal report from the Environmental Protection Authority on the impact of the development?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The Pier 21 development is on two separate land lots and, because of the relationship with the river, the development was submitted as two separate applications. The Minister for Water Resources, as recommended by the Swan River Trust, gave notice to the Minister for Planning that the development on one of the lots should be approved. The Swan River Trust advised the City of Fremantle that the majority of the development located on the other lot was not supported as the height and scale of the development would impact on the foreshore and river environment. That was only advice and was not binding on the City of Fremantle. Subsequently, the Minister for Planning requested the Minister for Water Resources to reconsider his determination and consider the development on both lots as one application. As a consequence, the Swan River Trust received a new application for the development of both lots with a revised set of plans.

(2) The Minister for Water Resources did not ignore the advice of the Swan River Trust. The Swan River Trust considered the revised set of plans and recommended approval as its earlier concerns had been satisfactorily addressed. The Minister for Water Resources accepted this recommendation and issued a notice of determination to the Minister for Planning for approval of the development.

(3) The Swan River Trust did not receive an informal report from the Environmental Protection Authority on the impact of the development.

REMEDIAL EDUCATION PROGRAMS

835. Hon CHRISTINE SHARP to the Leader of the House representing the Minister for Education:

(1) Is "Making the difference - students at educational risk" the main remedial program for Western Australian state schools?

(2) If not, what other remedial programs are operational?

(3) What is the current annual budget allocation for "Making the difference - students at educational risk"?

(4) How is this allocation apportioned to different schools?

(5) What are the policy guidelines for "Making the difference - students at educational risk"?

(6) Can the minister table the policy guidelines and other relevant documentation about the implementation of this program?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The "Making the difference - students at educational risk" strategy is designed to coordinate services and programs which will improve educational outcomes for all students, particularly those considered at risk of not achieving learning outcomes.

(2) Each school is required to develop its own plans over the next four years to meet the needs of individual students considered to be at risk. The Education Department of Western Australia continues to operate many other strategies to address the various remedial needs of thousands of Western Australian students. A few examples include: Literacy Net - an assessment tool to identify problems in early literacy development; Stepping Out - support materials and strategies to improve literacy for lower secondary students; and Deadly Ways to Learn - addressing Aboriginal literacy.

(3) The current annual budget allocation for the "Making the difference - students at educational risk" strategy is $3.1m.

(4) Funding is allocated to district education offices which distribute it according to identified district needs.

(5) The policy guidelines require each school to identify students at educational risk, plan for their improvement and be accountable for improved educational outcomes.

(6) I table the guidelines. [See paper No 679.]

FAIR TRADING ACT, UNCONSCIONABLE CONDUCT

836. Hon NORM KELLY to the minister representing the Minister for Fair Trading:

On 24 June 1998 the Minister for Fair Trading stated that the Government was considering changing the Fair Trading Act to incorporate unconscionable conduct.

(1) What is the membership of the project team established to look into this matter?

(2) With which retail organisations has the project team consulted on this matter?

(3) When did those consultations take place?

(4) When is the project team expected to present proposals to the minister?

(5) When is the amending legislation expected to be introduced to Parliament?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The membership of the reference group is Mr Harvey McLeod, Chairperson; Mr Allen Tenger, Director, Ministry of Fair Trading; Mr Brian Reynolds, Manager, Retail Traders' Association of Western Australia; Mr Nick Catania, Executive Officer, Western Australian Council of Retailers Association; Mr Scott Crabb, Property Council of Australia; and Ms Juliette Gisbourne, Director, Small Business Development Corporation.

(2)-(3) Extensive public consultation will commence after the release of a discussion paper in January 1999.

(4) A final report is scheduled for September 1999 and recommendations are to be made to the minister by December 1999. There is also a commitment by the minister to consult with stakeholders and evaluate a proposal to include harsh and unconscionable conduct provisions in the Commercial Tenancy (Retail Shops) Agreements Amendment Bill. The minister has asked for the proposal to be evaluated and presented to him for consideration not later than 30 May 1999.

(5) After the matters have been fully considered.

GREENS (WA) AND AUSTRALIAN DEMOCRATS VOTE, MINING AND PASTORAL REGION

837. Hon GREG SMITH to the Leader of the House representing the Minister for Parliamentary and Electoral Affairs:

Can the minister outline the level of support that the Greens (WA) and the Australian Democrats received at the last state election in the Mining and Pastoral Region?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. At the last state election the Greens (WA) ran no candidates in the Mining and Pastoral Region. The Democrats received 5.015 per cent of the total vote which was less than one-third of that required to reach the minimum quota.

SWANBOURNE PRIMARY SCHOOL RELOCATION

838. Hon JOHN HALDEN to the Leader of the House representing the Minister for Education:

In relation to the minister's decision to relocate Swanbourne Primary School -

(1) Was the Claremont Town Council consulted before this decision was made? If not, why not?

(2) Apart from the parents of children attending the school, what other groups in the community were consulted about this relocation?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) It is not usual to involve local government authorities in decisions to build or relocate schools. However, officers of the Education Department and the architectural consultants, Parry and Rosenthal Architects consulted with the Claremont Town Council and the Nedlands City Council on a number of planning matters following the decision to relocate the school.

(2) The teachers of the school and the parents and citizens association were also consulted.

TRUANTS, PEEL REGION

839. Hon J.A. COWDELL to the Leader of the House representing the Minister for Education:

(1) What is the estimated number of regular truants, by school, within the Peel education district?

(2) How many truant officers are allocated to the Peel education district?

(3) Are any vehicles reserved for the use of truant officers?

(4) Have there been vacancies during the past 12 months in the position of truant officer; and, if so, for what periods?

(5) What is the ratio of school welfare officers to students in the Peel education district?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Secondary schools

Rockingham Senior High School	7
Warnbro Community High School	4
Safety Bay Senior High School	6
Coodanup Senior High School	8
Mandurah Senior High School	6
Pinjarra Senior High School	8
Waroona District High School	3

Primary schools

Hillman Primary School	3
Bungaree Primary School	2
Mandurah Primary School	3
Dudley Park Primary School	4
Carcoola Primary School	3
East Waikiki Primary School	2
Pinjarra Primary School	3
Port Kennedy Primary School	2

Other primary and education support schools had no regular truants.

(2) One.

(3) Truant officers have access to the government vehicle pool.

(4) No. There has been no vacancy as there is an occupant of the position of school welfare officer. However, there has been a temporary vacancy created through the secondment of the current school welfare officer to the Perth education district, and the position has been filled in a temporary capacity.

(5) There are 20 000 students and one welfare officer. However, the school welfare officer is supported by district and school-based personnel who also assist with truancy. These include chaplains, school psychologists, year coordinators and pastoral care teams. The Peel district has a truancy mentoring program in cooperation with the Police Department.

DEPARTMENT OF COMMERCE AND TRADE REPRESENTATIVE IN CANBERRA

840. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Commerce and Trade:

I refer to a $200 000 contract awarded to a Mr Kevin Conlan to represent the Department of Commerce and Trade in Canberra.

(1) Why has the department contracted out one of its core functions?

(2) Was the department represented in Canberra before this contract was awarded?

(3) If yes to (2), who represented the department and what was the cost of that representation?

(4) Is the successful tenderer a former Western Australian public servant; if yes, for whom did he work?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The role of the Canberra representative is a specialised function designed to address the particular characteristics of international aid programs as a market for Western Australian industry. Australia's agency for international development, AusAID, is based in Canberra. The representative provides information and advice to assist Western Australian organisations to increase access to this market. The contract is for $67 000 per annum for three years.

(2) Yes.

(3) The previous contract was for a fee of $54 000 per annum over three years and was held by Conlan and Associates.

(4) No.

CONSOLIDATED GOLD NL, DEED OF RELEASE INDEMNITY

841. Hon GIZ WATSON to the Minister for Mines:

Some notice of this question has been given. In respect of the deed of release indemnity between the State of Western Australia and Consolidated Gold NL, and answers to question on notice 741 of 8 December 1998, I ask -

(1) Why has the minister misled Parliament in his answers to Parliament when my office has been advised by the external administrator of Consolidated Gold NL, B. Hughes, a partner in R. Norgard handling the external administration of Consolidated Gold NL, that tenements 30/131 and 30/132 have indeed been sold to Davey Hurst Mining?

(2) Is Davey Hurst Mining the nominee of Aberfoyle Gold Ltd?

(3) If not, is there any relationship between the existing indemnity between the State of Western Australia and Consolidated Gold NL and Davey Hurst Mining?

(4) If not, what is the resultant status of the indemnity on tenements 30/131 and 30/132?

Hon N.F. MOORE replied:

Before I answer the question, I make this point: I have been asked by the member on a number occasions whether I have misled Parliament on certain matters. I have endeavoured to indicate the facts of those matters. I do not carry around information in my head on the issues she often raises in questions; I rely on advice provided by the Department of Minerals and Energy, and I have no reason to believe that this department would seek to mislead the member. The information is provided in good faith.

(1) There is no evidence before me that Davey Hurst Mining has acquired the tenements. Consolidated Gold NL is the registered holder of mining leases 30/131 and 30/132. No transfer of title has been registered by the Department of Minerals and Energy. It is a statutory condition of grant that the lessee shall not assign, underlet or part with possession of the tenements without the prior written consent of the minister, or an officer of the department acting with the authority of the minister or an authorised officer of the department.

(2) I have no information which indicates whether Davey Hurst Mining is a nominee of Aberfoyle Gold Ltd.

(3) Not applicable, as no transfer has been registered in respect of the tenements.

(4) The deed continues to be valid and binding upon Consolidated Gold NL.

VACSWIM PROGRAM, SWIMMING POOL FEES

842. Hon KIM CHANCE to the Leader of the House representing the Minister for Education:

(1) Can the Minister confirm that swimming pools which currently host vacation swimming classes do not charge the Education Department lane hire fees and offer reduced pool entry fees to children who attend classes?

(2) If so, will the minister give an assurance that these savings will continue in the event that the Vacswim program is contracted out?

Hon N.F. MOORE replied:

There is no rest for the Minister for Education today, either! I thank the member for some notice of this question.

(1) Yes, the Minister for Education has confirmed that swimming pools which currently host Vacswim classes do not charge lane hire fees, and most swimming centres offer reduced pool entry fees.

(2) In the event of Vacswim being contracted out, if fees are charged, the Government will absorb these costs.

AUDITOR GENERAL'S REPORT - YEAR 2000 COMPUTER PROBLEM

843. Hon E.R.J. DERMER to the Leader of the House representing the Deputy Premier:

I refer to the Auditor General's December 1998 report on audit results in 1997-98, which stated that, among the sample state government agencies, contingency plans for the impact of the year 2000 computer problem have generally not been developed or tested.

(1) Is the Deputy Premier concerned at this finding of the Auditor General?

(2) What action does the Deputy Premier intend to take to ensure that all government agencies expeditiously develop and test such contingency plans?

Hon N.F. MOORE replied:

(1) Yes.

(2) The chief executive officer of each agency has responsibility to ensure the agency identifies and effectively manages year 2000 risks. The development and testing of contingency plans is the direct responsibility of each agency's CEO. The Deputy Premier's role with regard to contingency planning is to coordinate the development of adequate overall state contingency plans, of which agency contingency plans will form a part.

CHILD HEALTH CENTRES, CHRISTMAS CLOSURE

844. Hon CHERYL DAVENPORT to the minister representing the Minister for Health:

(1) Can the minister confirm that 33 child health centres operating between Cottesloe and Quinns Rock will be closed over the Christmas holiday period?

(2) If yes, can the minister give the House an assurance that the closure is not a cost-cutting exercise?

(3) Were these centres closed in previous years?

Hon MAX EVANS replied:

I ask that the question be put on notice.

CALM, DR TURNER'S ASSESSMENT OF METHODOLOGY

845. Hon NORM KELLY to the minister representing the Minister for the Environment:

Further to Legislative Assembly question on notice 855 in which the Minister for the Environment referred to Dr Brian Turner's assessment of the Department of Conservation and Land Management's methodology for assessing sustainable yields as being "adequate and appropriate", I ask -

(1) Is the Minister for the Environment aware that the only factor of which Dr Turner had been made aware was jarrah dieback?

(2) Do CALM's methodologies in calculating the sustainable yield of jarrah and karri take into account factors such as water logging, salinity, frost, *Armillaria lutebubalina*, brown wood and decreased rainfall?

(3) Has the basis of CALM's data and methodology been independently assessed to ensure that CALM is using appropriate and adequate data and systems?

(4) If yes to (3), who conducted the assessment?

(5) Will the minister table the results of such assessment?

Hon MAX EVANS replied:

(1)-(5) The independent assessment carried out by Dr Brian Turner of the Australian National University of methods and data used by CALM to compute the sustained yield of jarrah and karri included assessment of the models used to factor-in any impact caused by a range of agents which may have an effect on forest growth. This process was described in answer to Legislative Assembly question on notice 855. The report by Dr Turner has been widely circulated as a document in the Regional Forest Agreement process. In addition to his conclusion that "the system and procedures developed by CALM staff for estimating sustainable yields of jarrah and karri forests for the south west region are adequate and appropriate", he added that "they certainly rank among the best in Australia in terms of comprehensiveness of the database, monitoring and growth modelling".

The term "brown wood" is a used to describe discolouration of hardwood in karri. Brown wood is not a defect in the specification of any karri log product.

POLICE NUMBERS, BUNBURY

846. Hon BOB THOMAS to the minister representing the Minister for Police:

(1) Is the minister aware that police numbers in the Bunbury district are 42 per cent below the state average, and that this situation has resulted in patrols being stopped, only urgent jobs being attended to; single-officer patrols; and minimum staff being on duty?

(2) If yes, what action has the minister taken to address this acute shortage?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. The minister has provided the following answer -

(1) A total of 83 sworn police officers are stationed in Bunbury, which is the second highest number of police officers at any police station in the southern region. The ratio of police to population in the Bunbury district is 1:655. However, this must be contrasted with a much higher ratio in the Bunbury city itself, where the ratio is 1:406. The ratio reflects greater demand for policing services within the city. Patrols are being maintained and prioritised, with maximum staff availability for peak and busy periods. As from Monday, 21 December 1998, a full complement of staff will be available for the Christmas-New Year period. Prioritising of resources is a standard management practice.

Single-officer patrols are conducted during the hours of daylight, and at other times when it is considered that there is no imminent risk to the officer or the officer is conducting inquiry related matters. Generally, no single-officer patrols are conducted at night. The situation is no different from that which exists in other areas of Western Australia; in fact, it was agreed to by the Police Union of Western Australia at a meeting of 9 December 1998. The district office at Bunbury has the flexibility to move personnel from predominantly non-operational positions to predominantly operational positions as the need arises.

(2) Human resource allocation at Bunbury and other police stations is a matter of continuous monitoring and review by the regional commander, who has the flexibility and autonomy to redeploy resources throughout the region as circumstances demand.

GANTHEAUME POINT, APPROACH BY PEARL BAY RESORT DEVELOPMENTS

847. Hon GIZ WATSON to the minister representing the Minister for Lands:

In relation to the tourist development at Gantheaume Point, I ask -

(1) On what date was the Government/LandCorp approached by Pearl Bay Resort Developments expressing developmental interest in the Gantheaume Point site?

(2) Did LandCorp offer the tender the consultancy acquired by CB Richard Ellis?

(3) If so, when?

(4) If so to (2), how many applications for the consultancy were received?

Hon MAX EVANS replied:

I thank the member for some notice of this question. Providing the information in the time required is not possible, and I request that the member place the question on notice.

MARITIME MUSEUM, VICTORIA QUAY

848. Hon LJILJANNA RAVLICH to the Leader of the House representing the Premier:

(1) When will the development application be lodged for the Maritime Museum building at Victoria Quay?

(2) What processes will be followed for planning approval?

(3) Will the development application comply with the Fremantle town planning scheme?

(4) What role will the Fremantle City Council play in the planning approval process ?

Hon N.F. MOORE replied:

I thank the member for some notice of this question, which was asked on 15 December.

(1) A development application will be lodged when the schematic design of the Maritime Museum is completed, estimated to be in early 1999.

(2) The normal process for the construction of a public work on a metropolitan region scheme reserve.

(3) Yes.

(4) Given that the site is a metropolitan region scheme reserve, the Western Australian Planning Commission is the determiner. Under the normal process, the development application will be lodged with the City of Fremantle, which will pass this on to the commission and have the ability to comment on the proposed development.

YEAR 2000 RISK, AUDITOR GENERAL'S REPORT

849. Hon E.R.J. DERMER to the Leader of the House representing the Minister for Commerce and Trade:

I refer to the Auditor General's December 1998 recommendation that agencies should expedite the task of comprehensively and systematically addressing the year 2000 risk and then ensuring the appropriate contingency plans are developed.

(1) Why has the substance of this recommendation not previously been implemented?

(2) What action does the minister propose to implement this recommendation?

(3) By what date will the recommendation be implemented?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The role of the Department of Commerce and Trade is to monitor the progress of agencies in developing and implementing appropriate contingency plans which address the year 2000 risk. The department continues to impress upon agencies the urgency and gravity of this action. However, the responsibility for remediation resides with the chief executive officers of the agencies. This has been built into the performance agreements of the chief executive officers.

(2) The department will continue to monitor agency compliance and report progress to agencies and their ministers so they can take appropriate action.

(3) This recommendation has been implemented as agencies have been increasing their efforts to address the year 2000 issue. The December report from the Department of Commerce and Trade will be issued to agencies within days and this will further assist them to focus their efforts.