Parliamentary Debates
(HANSARD)

THIRTY-FIFTH PARLIAMENT
THIRD SESSION
1999

LEGISLATIVE COUNCIL

Tuesday, 14 December 1999

Legislative Council

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THE PRESIDENT (Hon George Cash) took the Chair at 3.30 pm, and read prayers.

BILLS - ASSENT

Messages from the Governor received and read notifying assent to the following Bills -

1. Prisons Amendment Bill 1998.
2. National Rail Corporation Agreement Repeal Bill 1999.
3. Railway (Northern and Southern Urban Extensions) Bill 1999.
4. State Trading Concerns Amendment Bill 1999.
5. New Tax System Price Exploitation Code (Taxing) Bill 1999.
6. New Tax System Price Exploitation Code (Western Australia) Bill 1999.
7. State Entities (Payments) Bill 1999.
8. Nuclear Waste Storage (Prohibition) Bill 1999.

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Community Based Midwifery - Report

Hon M.D. Nixon presented the forty-eighth report of the Standing Committee on Constitutional Affairs on a petition requesting that community based midwifery be included in state health services, and on his motion it was resolved -

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

[See paper No 566.]

NATIVE TITLE (STATE PROVISIONS) BILL 1999

Second Reading

Resumed from 7 December.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [3.37 pm]: If this Bill is enacted, it will survive at law only if it is successful in gaining the approval of the federal processes - that is, the federal Attorney General and the Federal Parliament - and is not disallowed by the federal Senate. The Australian Labor Party has place on the Notice Paper amendments which, in our view, if carried, would ensure that the legislation would be protected from certain disallowance in the Senate. Since 1993 this Parliament has been arguing the native title issue in convoluted debates. In many ways the debate upon which we embark today is a repeat of many of those earlier debates - in particular, the debate on this Bill's predecessor. Had the amendments that were passed in this place on that occasion been enacted, they would have guaranteed that Bill's survival as law by being able to win the approval of the Federal Attorney General and surviving any attempt to disallow it in the federal Senate.

The Court Government has refused to accept our amendments which passed through this House previously, and has refused to accept those amendments which we believe are the minimum basic requirement for ensuring this Bill becomes law, stays law and provides the certainty and fairness to which all Western Australians, including Aboriginal Western Australians, are entitled. Were the Bill with which we are faced to become law, there would be significant ramifications for a number of different stakeholders in the community. That would be the case particularly if the Bill were to pass unamended.

The Labor Party is on record for having adopted a position in support of the goal of establishing a state-based regime for dealing with native title in this State. We simply want a system that works, is certain and is fair for everyone. Our amendments again endeavour to put in place at state level a regime that reflects the requirements of the national legislation, as amended by the Howard-Harradine package, and to thereby ensure that the legislation currently before the state Parliament survives the federal processes of which we have spoken, and any wholesale assault by litigation. To the extent that our package of amendments is not accepted by the Parliament and, in turn, the Government, this legislation will fall short of achieving the goals of fairness and certainty. Despite many hours of discussion of these issues in not only the Parliament but also the wider community, the Government of Western Australia has proceeded with inadequate legislation on native title. This Bill is yet another chapter in the sorry story of how the Government has handled this issue.

We need to look at this legislation in the context of the full history of the way in which Aboriginal land and native title issues have been handled in Western Australia, but also, and more precisely, in the context of the Court Government's track record on native title. We know that this State Government has waged a campaign against the implications of the High Court's Mabo decision, politically exploiting the issue and, in our view, fostering community fear and opposition to that decision. The State Government's purported attempt to solve native title issues was initially embodied in the Land (Titles and Traditional Usage) Act 1993, which as we all know was found by the High Court in a seven-nil decision to be an unconstitutional attempt to extinguish native title, and to substitute for it statutory so-called rights of traditional usage which

are subject to being overridden by ministerial notice and to all other land titles, and thereby fall substantially short of the rights and entitlements of native title.

This Government has spent millions of dollars and has wasted a lot of time on what we consider to be an ill-fated attempt to extinguish native title; and history has found that to be the case. The Court Government sought to extinguish native title in Canberra through the 10-point plan, which resulted in the Howard-Harradine compromise, thereby allowing the States to set up alternative procedures to the right to negotiate on pastoral leases. It was made absolutely clear at the time that any state legislation would be subject to a review, first by the federal minister, and second by the Federal Parliament.

The Court Government then introduced the Native Title (State Provisions) Bill 1998, and for the first time in this State's history, this House subjected native title issues to serious scrutiny, passing a series of amendments to that 1998 Bill. However, faced with a choice of whether to reject or accept those amendments, the Government chose instead to adopt an adversarial approach and to lay the legislation aside, and it has now embarked upon passing the Bill before the House. When the Native Title (State Provisions) Bill was introduced, we were told that no change could be made to it and it had to be passed in the form in which it was presented to the Parliament. However, on the very day the Bill was initially brought on for debate, the Government, not the Opposition, introduced the first raft of amendments, apparently due to commonwealth intervention that indicated the Bill was deficient in some respects. If the Opposition had supported the first legislative draft, the legislation that would have been passed then would have been deficient. The Government subsequently agreed to a number of other changes during debate on the Bill. Now, the second major version of the legislation, produced two years later, incorporates even more changes, again, no doubt due in part to commonwealth intervention.

The Premier, in his reply on this Bill, stated -

> . . . we had to bring in a lot of amendments the last time around. However, members will notice that we are not bringing in any amendments on this occasion. We have had some time to discuss these matters with the Federal Government.

More than anything else, this legislation shows that the first legislative attempt was a rushed, bodgie job. If the Government were to consult, one would have expected that the consultations would have preceded the introduction of the legislation into the State Parliament; that clearly was not the case. Unfortunately, on this occasion, although the Government at least got the Commonwealth's sign off, it failed to consult with virtually every other stakeholder, including not only the Opposition and indigenous groups, but also the mining industry. Despite all the changes to both the previous Bill and this Bill, it still fails in the Opposition's view.

The Government's biases and prejudices are on display. This Government cannot provide a proper framework of certainty, principle, practicability and fairness in legislation dealing with native title. One of the best examples of this is the Government's apparent acknowledgment that it has a problem - but not being able to address it properly and provide a solution - when dealing with the consultation definition which was effectively changed in the other place. The Labor Party will again try to ensure that this Parliament carries out its role responsibly by ensuring the legislation is so watertight that it will be acceptable not only to the Commonwealth Government, but also the Commonwealth Parliament, that it is free from potential wholesale, legal challenge, and that it provides essentially for enacting those principles with equity and fairness.

Three features of the Government's ill-fated Land (Titles and Traditional Usage) Act solution persist in the State Government's current attempts to deal with those issues. The first feature is the State Government's hostility to federal legislation, including the Howard-Harradine compromise. Secondly, it continues to hold out promises of state solutions to native title issues which in the past proved to be illusory, and in our view will prove to be illusory if the Government persists with that attempt without the amendments that the Australian Labor Party recommends. Holding out apparently plausible, populous solutions to native title matters, which when put to the test cannot survive, does not serve the interests of anyone in this State. Thirdly, the Bill before us demonstrates the Government's belief in, and a reliance on, extinguishing as much native title as possible. It does not regard it as a right of indigenous people but as a problem for all other title holders. The best example of that is the Premier's repeatedly reaffirmed belief that his original legislation - which the High Court ruled unconstitutional, as we all only too well and truly recollect - was good legislation with the best solution to native title. However, this was not a solution as it was found to be invalid and unconstitutional.

These three features have led to three major weaknesses in the Government's legislation that is before us today. First, the Government still has not consulted with the major stakeholders in the native title legislation. It is also an area of great importance to particular interests in our community. The first thing that any Government should do in considering yet another legislative approach is to consult widely with all the stakeholders and ensure they are incorporated in the decision-making process. Secondly, the Government still appears not to understand what is necessary to make a state native title regime acceptable for both procedural and substantive fairness. Thirdly, still obsessed with the legislative approach that it first embarked upon in reference to native title, rather than an agreement-based approach on the ground and in the regions, the Government embarked upon efforts to significantly diminish the rights of native title holders and persists with the belief that this somehow holds the solution to the problems.

While the Government attempts to bring about that so-called legislative solution, the important matters that must be dealt with on the ground and in the regional communities are not tackled. The legacy of this is seen in the large backlog of claims in the regions, where some of the necessary preliminary work to get an agreement between the various stakeholders has not been commenced. A clear problem exists. The Government unfortunately is not showing an interest in the reality that for this legislation to be successful it must meet three tests: The Commonwealth Government, possible judicial review and the Commonwealth Parliament. The Labor Opposition has sought all along to ensure that any state provisions are watertight against those three potential challenges.

While the State Government has been trying to legislate away native title, it has also had to work within the framework of the federal Native Title Act. Unfortunately for Western Australia, it has failed to do so by issuing titles without going through the proper processes, as discussed in relation to the Titles (Validation) and Native Title (Effect of Past Acts) Amendment Bill, and, crucially, has frustrated the working of the right-to-negotiate clause in the federal legislation. In continually claiming that the commonwealth Native Title Act is unworkable, as it has, the State Government is ignoring its own failure to act in good faith in accordance with the provisions of that legislation and conveniently ignores the fact that it has embarked upon a deliberate policy and strategy of ensuring that the federal Native Title Act cannot work in this State.

An article was published by the Australian Institute of Aboriginal and Torres Strait Islander Studies - Issues paper No 26 - entitled "Engineering unworkability: The Western Australian State Government and the right to negotiate". That article details how the government strategy was deliberately aimed at frustrating the operation of the NTA by relying on legal form rather than substance, particularly with respect to its obligations regarding the right to negotiate. A summary of the article points out that it examines the operations of the right to negotiate in Western Australia prior to the amendments in relation to the granting of titles under the Mining Act 1978. It is argued that any unworkability of the right to negotiate was the product of a deliberate strategy by the State Government to frustrate the operation of the NTA. Further, had the State Government approached negotiations with native title claimants in good faith, the NTA would have provided the opportunity for achieving certainty for resource developers and other interest holders, while also protecting the rights of Aboriginal people.

The Government first tried to comply with its obligations by merely holding itself ready and willing to participate and to sit out the negotiation period; it was prepared to convene meetings but not to actively engage in negotiations aimed at resolution of these issues. As a matter of practice, it applied for arbitral decisions by the National Native Title Tribunal straight after the expiry of the six-month negotiation period.

The Federal Court in Walley v The Government of Western Australia, handed down on 20 June 1996, criticised the approach. In his decision, Justice Carr held that Parliament had dictated in the clearest mandatory terms that a certain process or activity should take place as part of the procedure leading to the possible doing of a future act. He stated that that process - negotiating in good faith - was of central importance. He rejected the Government's argument that negotiating in good faith was not a condition precedent to applying to the National Native Title Tribunal for a determination. He further commented that it is almost unthinkable that the government party might not obey such a mandatory command. He stated that there must have been a strong presumption that the government party would comply with its obligations under section 31(1)(b). He concluded that, if the government party had not complied with its obligation under section 31(1)(b) to negotiate in good faith with the other negotiation parties then none of the parties could move to the next stage of making an application under section 35 for a determination.

These decisions of the courts have been handed down since we last debated many of these issues; therefore, they are relevant to this debate. This decision was agreed with by Justice O'Loughlin in Risk v Williamson in 1998. The decision in Walley forced the State Government to draw up a set of procedures by which it could fulfil its obligation to negotiate in good faith. However, in a number of ways it still took a restricted approach; that is, the procedures limit the scope of negotiations to only matters relating to the grant of a tenement - they do not allow site protection issues to be considered.

The Government's continued failure to carry out its obligations was highlighted in Coppin v WA, handed down on 8 July 1999. The decision confirmed the decision in Walley that good faith negotiations must take place before the tribunal can become involved. In this decision, Justice Carr stated -

> I reject the Government party's submission that its obligation to negotiate in good faith does not have a commencement date. I think it does. I think that the obligation probably arises, at the latest, at the expiration of the period of two months from the giving of the notice under s 29, because at that time all of the native title parties will have been identified - see s 30. The obligation may arise forthwith upon the giving of the s 29 notice to the extent that native title parties are already identifiable at that stage.

The Coppin case showed that the Government took no notice of the Walley case, and tried to rely on the loophole that no starting time was specified for negotiations in good faith. It clearly shows the bad-faith approach of this Government to native title negotiations. Many members in this House, particularly those who participated in the Select Committee on Native Title Rights in Western Australia No 1 that I chaired and that studied the Canadian situation, were anticipating many of these court judgments as a result of their study of the British Columbian experience. They understood what had taken place in consideration of Delgamuukw and where things would go when people started to get into litigation dealing with the question of consultation, in the absence of the Parliament fleshing out what was meant by consultation when that word was included in law.

As recently as July this year, the National Native Title Tribunal ruled that the State failed to negotiate in good faith on three mining leases in the northern goldfields, forcing further talks. In July, the Federal Court of Australia ruled that native title negotiations on applications in Western Australia were taking too long, with delays stretching up to two and a half years. As at 30 June 1999, 3 210 separate mineral title applications were awaiting negotiation with native title parties and mining companies, 367 of which were applications for exploration licences. Mining companies had identified 1 080 as priority applications, but the Department of Minerals and Energy had only five case managers at that time negotiating on 245 of those priority applications.

The Department of Minerals and Energy has not been resourced to carry out its own responsibilities. The Government has failed to provide sufficient staff to handle the responsibility for matters requiring negotiation, adding to the delays and difficulties experienced. That deliberate strategy has been embarked upon. Figures revealed in Parliament for the end of

the past financial year clearly show that the Government is frustrating the granting of mineral titles, including exploration licences, while trying at the same time to exploit native title fears. Three thousand two hundred and ten matters need to be negotiated, 367 of which are applications for exploration licences. One thousand and eighty priority matters have been identified by mining companies. The Department of Minerals and Energy has only five case managers and can deal with only 245 priority matters. Six hundred and fourteen exploration licence applications, which had completed Mining Act processes, have not even been submitted by the Government for Native Title Act consideration. If the Government were serious about trying to make the Commonwealth Native Title Act work, it would provide the necessary resources for the department to carry out and meet these responsibilities.

In a letter from the Government to the tribunal dated 10 August 1999, the Government states -

> When a claim includes claims for offshore rights, involves extensive other interests and/or seeks native title rights equivalent with those recognised in the 1998 Federal Court Miriuwung Gajerrong determination, the State considers that the prospects of a negotiated outcome are limited

In relation to south west and goldfields claims, the letter states -

> The State does not support mediation of these claims.
>
> Based on assessment of the history since European settlement, the anthropology, the number of other valid interests, disputation in the Aboriginal community and the diversity of Aboriginal interests within the claim areas, the State does not believe it is in the position to reach definitive decisions on whether native title rights and interests have been preserved or not. Therefore the State has concluded that it is the public interest for these claims to be referred to the Federal Court for determination.

The letter further states that it should also be noted that the registration of four claims "are subject to challenge by the Western Australian Government under the Administrative Decisions Judicial Review Act. Any application subject to ADJR action will not be mediated by the State."

Many of the claims about the unworkability of the Native Title Act because of the Wik amendments have effectively been proved to be spurious. The very political second reading speech that was utilised to introduce this legislation constantly referred to the Labor Party's regime of federal native title legislation. It conveniently ignored the fact that we are responding to the Howard-Harradine package of amendments, which effectively now envelops that legislation and provides us with a number of amendments to which we must respond, and which are having an impact on the way native title issues are now handled in this State. The second reading speech does not mention that the federal legislation is altering the situation on the ground, particularly through amendments to the registration test and how it is applied retrospectively. We believe that the second reading speech was inappropriate and inaccurate in what it did not say, as well as in what it said.

The application of a new registration test has already reduced the number of claims in Western Australia. The National Native Title Tribunal released information showing that the number of claims in this State has been reduced by 45 per cent because of amalgamations and withdrawals of claims. A number of members today attended a significant gathering in Perth. The conference titled "Reaching Agreements" was convened by sections of the native title working party and mining interests. We heard from people associated with the goldfields, specifically the Executive Director of the Goldfields Land Council, Brian White, who detailed the success the goldfields has had in reducing the number of claims in the area. Those claims motivated so much of the national legislative change. The demand for amendment of the national legislation was based on the overlapping claims which once existed. By and large, those claims have been reduced to a single claim. That does those claimants and that organisation enormous credit.

Despite this, the Government is not supporting the new test because the Government continues to appeal against registration of some of the amalgamated claims such as the Wongatha claim. In relation to that claim and the Government's appeal, the Premier had the audacity to say that the sooner the claim gets to trial, the better - so we can begin to get some certainty in the process. If the Premier is on about certainty, he should not be advocating litigation. The constant cry of those of us who have been associated with the study of this issue through the Select Committee on Native Title Rights in Western Australia has been "Do not be preoccupied with litigation". We should instead be focused on sitting down and trying to reach agreement. Litigation will not produce certainty; agreements are the best prospect of our achieving that result. The Premier made the statement about the sooner the claim gets to trial the better just after saying that it may take four or five years to determine claims in the Kalgoorlie area. What kind of workability and certainty is the Premier offering to the people and businesses of Kalgoorlie with that time frame? By the Premier's own acknowledgment, his approach would put off certainty and resolution until 2004. There is another and better way but this legislation in its current form is not it, although, if amended, the Bill might have some prospects.

If the Government genuinely wanted to speed up the granting of mining and exploration leases, it would increase the number of case managers and stop delaying title applications at the start of the native title process. In our view, these cases clearly show the lack of any good faith or goodwill on the part of the Government in its handling of these questions and its participation in native title negotiations. The Western Australian Government is trying, wherever possible, to remove this right to access to consultation and negotiation in good faith and to replace it with a remarkably inferior scheme. The Government's record is the greatest impediment to native title claims being resolved. How does the Government expect native title parties to participate in any negotiations to which it is a party given its abhorrent track record of trying to throw up obstacles at every step of the process? Yet from my observations the Aboriginal people are always the most willing to enter into those negotiations despite the Government's track record; there are two sides to that argument. Clearly the Government wants to use delays of the magnitude highlighted for its own narrow political purposes - to produce a solution

which is effectively a political solution for political purposes rather than a solution which will bring about resolution or certainty. The imbalance shows that the State Government's intention is to compound the backlog, not ease it.

The Federal Government has a responsibility to assist the situation by providing further resources to organisations charged with the responsibility of resolving these issues; organisations like the Goldfields Land Council, the other land councils and the working parties which are endeavouring to bring resolution and certainty to these issues.

Apart from the State Government refusing to accept any aspect of the native title issue, the main reason for the sluggishness being experienced on native title and the main cause of delays to the mining industry is, in our view, the failure of the Court Government to act in good faith and to properly resource government agencies. If the Court Government had put a different backdrop on these questions, progress, speed, resolution, fairness and certainty would be on the way for Western Australia in its handling of these issues. Instead, an alternative reality is around us.

This attitude is also apparent in the legislative process and could be the cause of the ultimate failure of this legislation. The Premier stated that the Opposition should realise that we are in a climate of litigation with this legislation. This should not be a surprise to any of us because the Government has spent, as detailed in an answer from the Premier last month, more than $9.3m on litigation in the past few years, not including its challenge to the original Native Title Act and its attempt to defend its unconstitutional, and eventually found to be illegitimate Land (Titles and Traditional Usage) Act, which cost between $4m and $5m. We should, however, be grateful for the one small advance that the Government at last agreed to during the consideration in detail stage of this Bill in the other place, which I referred to as the good faith amendment. The amendment affects both clauses 2.23 and 4.18.

Fortunately for this Government, indigenous people are more open, more willing to compromise and undoubtedly more forgiving than this Government could ever hope to be. As the member for Kalgoorlie has said, the Goldfields Land Council board wants to engage in negotiation and is as tired of the impasses that are occurring as is any other section of the community. A level of goodwill exists among indigenous people, and we must capitalise on it. I said to the working party yesterday when I met with it in Perth, that at the end of this process - and I suspect at the end of the Senate disallowance - if anything good is to come out of this whole sorry saga, it will be that eventually all of us, through of a process of exhaustion, will embrace the agreement process. That will not, of itself, be a solution to anything, but it will embrace the agreement strategy as the only way forward and recognise that all the other attempts have failed us all - I mean us all.

Opposition support for a state native title regime is conditional on its being fair, workable and consistent with High Court judgments and the commonwealth Native Title Act. Technically the legislation must be capable of surviving three possible disallowance mechanisms, which I previously detailed. We know that the Senate will essentially be making a broad political judgment and considering what will be effectively the Government's political and administrative record when handling native title issues. It will also consider the impact of the Titles (Validation) and Native Title (Effect of Past Acts) Amendment Bill 1999 and the extinguishment of native title. It will presumably consider the overall administrative context and the fact that this Government remains hostile to negotiation of agreements. It will have cognisance of the Government's reluctance to negotiate native title disputes and the State Government's failure to accept responsibility for negotiations on native title issues. If the State Government had taken a different approach to the question of native title there could be, and might even still be, an opportunity for a different resolution to the issue of this legislation going before the Senate.

Last time this was debated, the Opposition moved a number of amendments, the most significant of which we have given notice of again. I will leave to the committee stage of the debate detail of the specific relevance of each of those amendments. There is a difficulty because of the way the Notice Paper will be handled, as a result of which we might not reach some of the amendments. However, the Opposition's support for the second reading of the Bill is based on the hope that its amendments in committee, which essentially deal with these three issues, will be accepted by the Committee. This Bill would then meet with our support in the third reading. The amendments include the inclusion of all current vacant crown land in lands subject to the right-to-negotiate procedure. We believe that it is unfair to exclude this land from the RTN procedure simply because some expired historic tenure once applied to that land. It would also assist the workability of the legislation, by its being not productive for people to litigate over whether the land should be included in the RTN procedure or the alternative consultation procedure; that is, it is better if everything that looks like current vacant crown land be included in the RTN procedure. Our amendments also provide that the parties be required to consult in good faith with a view to reaching an agreement to minimise, and compensate for, the effect of the proposed act. This is again about fairness and workability. We are pleased that the Government has at last accepted the Opposition's argument with reference to good faith. We believe that a more specific definition is needed. It would provide greater certainty and workability and would avoid the courts defining it in a much slower manner. That is why we are persisting with the amendments. We believe the Senate will not approve this legislation if it is seen to be unfair to indigenous rights, if it is in conflict with the federal Native Title Act and if the rights enshrined in this legislation are inferior to the federal right-to-negotiate procedure. The Labor Party adopted a balanced approach when the original legislation was debated, and on this occasion it has placed on the Notice Paper amendments that, by and large, were carried by this House on the previous occasion.

We have consulted with not only representatives of indigenous people, but also people in the mining industry and many other sections of our community. We have met with the native title working party and mining interests. The native title working party indicated that it was contacted by representatives of all the land councils in Western Australia about the previous legislation, despite claims in the House to the contrary. On this occasion, its views remain clear: It opposes the legislation; it does not accept the strategy being embarked on by the Labor Party; and it does not want a state-based regime. Nonetheless, the Labor Party has considered the views from across the community in Western Australian and is proceeding down a path, knowing that it is a deliberate effort to try to strike a balance.

Unlike the Government, we have engaged in consultation about the legislation with all the major stakeholders. We have discovered that the Government has not even sought the views of the representatives of the mining community. Indeed, we discovered it was up to the Opposition to pass a copy of this Bill to the Chamber of Minerals and Energy of Western Australia; that was the first time it had seen the Bill. The lack of sincerity of the Government to assist the mining industry is shown by its absence of any consultation with Department of Minerals and Energy about not only the Bill, but also how the legislation will affect the backlog of mining titles.

We note the transitional provisions. This Bill provides for regulations governing the transition to the new system. We have been advised that it is proposed that the titles within the national native title process will continue. Other titles will be phased in over two years, with titles being broken up on a regional basis and with caps being placed on the number processed. Clearly the State will not be making a vigorous attack on the backlog of mining titles being issued, and will allow the process to drag on for another two years. It is equally clear that this Government is not concerned with the thousands of unemployed geologists or others involved in the mining industry, or a fall off in mining exploration expenditure, or the impact on the Western Australian economy of mining companies not being able to access land speedily.

Instead the Government has been preoccupied with narrow, party-political considerations. If the Government were serious about resolving native title issues in Western Australia, it would not be appealing against the amalgamation of native title claims; it would not have legislation before this House which provides a scheme under which the backlog of mining titles will not be overcome for at least two years; and it would provide the additional resources to the Department of Minerals and Energy, about which I have spoken. The second reading speech is unmistakably empty rhetoric about the negative effects on exploration from the federal native title legislation. I will detail in committee the other amendments I will seek to move in this debate.

In our view the Government must acknowledge that there are problems with this Bill. The Government should be persuaded to rethink its approach in accordance with what the Opposition is trying to do with this legislation; that is, to assist the Government to set up a state-based regime. Unfortunately, the Government is obsessed with its attempts to legislate away the issues of native title, rather than to move into the communities and regions to negotiate a settlement which will allow all parties to get on with their lives. There is a need to shift the emphasis away from frustrating litigation, and to adopt a strategy of agreement and negotiation. We will vote for the second reading of this Bill; however, if our proposed amendments are not treated seriously in committee, we will have no alternative than to oppose the third reading of the Bill. The Opposition supports the proposals of the State native title regime. The administrative advantages that can be gained from having a State authority issuing titles and also handling native title matters are self-evident.

There is value in an integration between the State's other land management responsibilities, and the management of native title issues is possible. I was delighted to see that, these days, the Department of Land Administration in the Western Australian Land and Information Systems section of DOLA's Midland building is host or landlord to that section of the National Native Title Tribunal which deals with the mapping of the native title claims of Western Australia. In part, that is testimony to the advance technology, technical and professional competence and efficiency in dealing with mapping issues which exists within that organisation. There is a moral opportunity for this Parliament to legislate its native title regime, to continue the tradition of legislating against Aboriginal interests which, unfortunately, we have had in this State, to embark upon a new chapter in our history as a Parliament, and to embrace the processes of reconciliation between indigenous and non-indigenous Western Australians. A good way to do that would be to accept the approach suggested by the Labor Party on this occasion, which does not go as far as the indigenous leadership of this State would like, but which tries to strike a balance when we feel that balance can be struck fairly.

If the State Government proceeds to blindly ignore the realities, wilfully dismiss the validity of our amendments and persist with the Premier's much-vaunted native title solution, it will not survive the Senate disallowance procedures that await this legislation. Had the State Government taken the Opposition's amendments more seriously last time and been more willing to negotiate those amendments, both with us and with indigenous interests, this State could have had a state-based regime in place by now. Instead, the State Government's obstinacy, prejudice and stubbornness have put off the possibility of a state native title regime by at least a year. Regrettably, that lack of consultation and the refusal to be responsible and reasonable on native title issues and to give up long-held prejudices have shown themselves again in the development of this legislation. It is up to the Government to accept the necessary amendments if this Bill is to survive the federal process and become law. It is in the Government's hands.

As all members know, many of us can say many things at great length on native title.

Hon N.F. Moore: And you have.

Hon TOM STEPHENS: I will conclude now. We have said so much during this debate; however, it appears there is a risk that we will get it wrong yet again. I urge members, as we go through the second reading debate and eventually into Committee, to seriously consider embarking on an alternative strategy which produces certainty for Western Australia, but with equity and fairness for all Western Australians, including Aboriginal Western Australians.

HON HELEN HODGSON (North Metropolitan) [4.17 pm]: It will probably come as no surprise to people in this Chamber that the Australian Democrats will be opposing this Bill at the second reading stage. Looking at the shape of matters which are on the Notice Paper and which have been foreshadowed by the Leader of the Opposition, I fully expect that we will be unwilling to support the final outcome of this Bill. In detailing why we are not supporting this Bill, I will address three areas. We will not support the Bill because, first, we do not support the notion of a consultation regime; secondly, we question whether the regime should be transferred to a state-based native title commission in the first place; and, thirdly, we are not happy with the standards which are being imposed on the state-based commission under this legislation.

There is no doubt that the consultation regime is not as strong and does not give adequate protection to Aboriginal people when compared with the right to negotiate. People will remember that, when the 1993 Native Title Act was brought forward by the then Prime Minister, Paul Keating, there was a fairly prolonged discussion between indigenous leaders and other sectoral interests. The outcome of that Bill was that rights were guaranteed to Aboriginal people in exchange for validation. That was part of the negotiations which were undertaken at the time. That is formalised in the preamble to the Native Title Act, which 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.

Clearly, it was contemplated at that time that a special right to negotiate was necessary because of the form of rights to be given up by Aboriginal people.

I now digress a little. The legislation refers to "compensation on just terms", and a great deal of discussion has ensued about money in the context of native title. However, the appropriate form of compensation to many Aboriginal people is not financial, but cultural needs which dictate that other forms of security and other factors must be taken into account. It is inappropriate to simply talk about dealing with native title by way of monetary compensation. A monetary payment is acceptable is some circumstances, but not appropriate in many other circumstances.

Significant differences exist between the consultation and negotiation regimes. I note that the Bill before us today contains an amendment incorporated in the other place which deals with issues of good faith. However, that is only one of the issues drawn to my attention regarding the differences between negotiation and consultation regimes. A fundamental difference is the level of rights attached to the regimes. I refer members to the report of the Select Committee on Native Title which dealt with the 1998 legislation. The committee received a lot of evidence on the right to negotiate, as opposed to the right to consultation. Ms Tanya Heaslip gave evidence at the time of the committee's inquiry. I admit that the evidence is a year old, and that things have moved on; nevertheless, she stated -

> As to our general understanding of the word "consultation" compared with the court's definition of "negotiation," consultation invariably means the right to be advised, in this instance, of a mining tenement grant, and the right for the native title claimant to object, and to have the objection heard and for discussions to take place. The difference between that and "negotiation", as we see it, is that negotiation requires an outcome - an agreement - to be reached.

Ms Heaslip questioned - I am aware of no change in those interpretations in the last year - whether consultation had the same effect as negotiation. Mr Hoare, the Executive Director of the Noongar Land Council, said in evidence -

> By losing the right to negotiate, what do we have? The legislation would be totally empty. With the right to negotiate, we are able to sit with non-indigenous groups and they are able to sit with us and negotiate. It brings us together on a negotiating basis so that we can develop agreements and agree on issues of work, employment and training, and with our outback community harmony, move closer together.

Negotiation involves both parties coming together in a certain frame of mind to reach agreement. Consultation does not have the same meaning. Even if it is conducted in good faith, consultation does not mean that a view to reach an outcome will necessarily be involved. Questions arise on how consultation will work in practice in the legislation anyway.

My reading of the relevant clauses, with which we will deal in more detail in committee, is that parties will not be obliged to have a goal of reaching an agreement. People could go through a prolonged consultation process, yet they must still take the matter to some form of arbitration to reach an outcome. I question whether the consultation regime will achieve a great deal.

Another aspect of the consultation-negotiation issue is whether consultation must be carried out "in good faith" - that wording appears in the Bill before us. It is interesting to look at the way in which the tribunal has ruled on what should be taken into account in determining whether good faith has been met. The report of the Select Committee on Native Title Rights in Western Australia details a list of factors that are based on the findings in the Koara people case. They include issues such as 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 counterproposals, 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 the tribunal if negotiation breaks down. A number of those issues have been incorporated in the right-to-negotiate regime and, to a lesser extent, in the consultation regime. The requirements of that regime now include the words "good faith". However, one of the reasons that the Aboriginal people of this State are so reluctant to become involved in a consultation regime is that, in their experience, the good faith component has not always been complied with, particularly in their negotiations with this State Government. The State Government has a history of not acting in good faith. I note the number of cases before the tribunal in which the State Government has been criticised for its lack of good faith in negotiations.

Another aspect of why the Aboriginal people of this State are reluctant to move to a consultation regime is the definition of the term. Members might recall that a couple of weeks ago I asked a question about the involvement of the WA Aboriginal Native Title Working Group with the native title unit within the Ministry of the Premier and Cabinet in the development of this legislation. Since then I have been privy to correspondence which has been copied to me as it has passed between the unit and the native title working group. It is clear that at no time did the unit negotiate with the working group. The working group has been offered briefings, but it has not been asked for a genuine valid input on the outcomes

of a state-based tribunal. The reason given is that the State Government made it clear from the outset that it wants a consultation regime, and the native title working group has put on record that it does not support a consultation regime. However, correspondence from the working group which is dated 23 November 1999 reads -

> The Working Group would welcome a formal meeting with the Premier if the Government was prepared to develop a new policy approach to native title. Such an approach should be based on the recognition and protection of native title and the facilitation of economic development by agreement.

It is not that the native title working group has said that it is not prepared to negotiate. In fact, it has indicated that if different matters were on the table it would be happy to meet with the Ministry of the Premier and Cabinet. The working group has been offered briefings on legislation and proposals that were already under way. Is there any wonder they are reluctant to accept a consultation regime?

It is clear that the proposal to transfer to a state-based regime does not have the support of Aboriginal people in this State. Part of that stems from the history of their dealings with the State Government in native title matters. They feel that the federal tribunal at least offers a level of impartiality that they are not confident will be supported if the right-to-negotiate regime is state based.

However, my main concern is that we are developing a system of different standards across Australia, and the implementation of state-based tribunals will create more problems. For example, a number of native title areas exist in which the claims cross state boundaries. Western Australia shares borders with the Northern Territory and South Australia. Although people are presumed to be making claims in one State or another for legal and constitutional reasons, those reasons are not part of the Aboriginal culture. The areas that people consider to be their traditional areas often cross state borders. This will create a situation in which the same people may make two claims in two States under different rules in each State. That will lead to inconsistencies in final determinations and processes. All the matters we are trying to facilitate and streamline with respect to native title will be complicated due to the different regimes in both States. If there is to be a uniform regime, it should be administered federally through the National Native Title Tribunal, which is already doing the job. I note that the registration processes under this legislation will remain the function of the National Native Title Tribunal. That is a step forward. However, it needs to remain at the federal level to ensure consistency.

I understand that no proposal has been made in New South Wales, Tasmania or Victoria to move towards a state-based tribunal. I am sure everybody will understand why that is the case in Tasmania. Victoria and New South Wales have a different history. However, it looks as though they will work with only the national tribunal. The Northern Territory has already proposed a regime which was disallowed by the Senate. I think the discussions have stalled, but I do not think the Northern Territory has indicated it does not intend to proceed, so a second regime is under way there. An interesting situation has arisen in Queensland, because it has also proposed a state-based regime with different standards. That means we must be concerned about three regimes. I understand that proposals are currently before the South Australian Parliament. A tribunal of sorts has been in place there, and its operation has not caused any difficulties. However, some concerns about the form of the new tribunal will arise. We are already looking at standards varying between south eastern Australia, South Australia, Queensland, the Northern Territory and Western Australia. That will create a number of practical issues.

The federal regime applies to a number of issues. Someone told me there were about 39 different acts and regimes with which people must deal before they could be considered able to deal with all the native title issues. The more separate regimes are created in the States, the more likely this will become a practical problem for practitioners, mining companies and Aboriginal people alike.

The third area of concern to the Australian Democrats is the minimum standards to be applied. The technical detail of the Bill indicates that they comply with the federal standards. The only area that is not specifically covered is that of heritage protection legislation. I understand that the fact that heritage legislation exists is considered to be sufficient for Western Australia to pass that test. However, in view of the issues surrounding potential changes to the heritage regime, we must keep a fairly close eye on it. My query is whether the minimum standards are adequate, particularly as in 1998 the Wik amendments to the federal Native Title Act considerably watered down matters that could be covered by the right-to-negotiate regime. My notes indicate that the range of acts attracting the right-to-negotiate clause was vastly diminished last year. The right to negotiate no longer applies to approved exploration acts; approved gold or tin mining acts; approved opal or gem mining acts; acts relating to primary production on pastoral leases; low impact future acts; renewals, regrants or extensions of valid mining leases or those pursuant to pre-existing rights of renewal; renewals, regrants or extensions of certain leases; compulsory acquisition for the purpose of conferral of rights upon third parties; creation or variation of a right to mine for the sole purpose of the construction of an infrastructure facility; certain onshore acts consisting of the construction, etc of facilities for services to the public; acts consistent with a valid reservation; and acts affecting onshore places. I will not go into those issues and debate whether any should have been watered down. However, we are talking about minimum standards. A commitment was made, through negotiation with the Aboriginal people in 1993, whereby they were granted a specific right - the right to negotiate - over land affected by a future act. That commitment has already been significantly diminished. If we are to keep good faith with the Aboriginal people of this State, we should not further diminish the range of acts that attract the right to negotiate but restore that right to the areas from which it has been removed. I appreciate that it is not within the power of this House to do so, otherwise I would move amendments to try to make some changes. The fact that the legislation complies with minimum standards does not mean it complies with just, fair and equitable standards. The way this issue has been handled over the past three or four years is quite shameful. There has been a continual erosion of rights rather than a protection of rights. As I heard this morning, the concepts of justice and rights exist on a continuum. The two do not always meet up and one will need to be traded off for the other. In this instance we are going too far. We should be restoring rights rather than taking them away.

Where does the legislation go from here? After two and a half years in this place, I am enough of a realist to be able to count the numbers and I know what form the legislation will take when it is passed. However, the Senate is still required to tick off on this legislation. The Government was given the opportunity to involve the Australian Democrats in the process in a far more detailed way to smooth the legislation's progress in the Senate. I have already commented on what the Government considers to be consultation with Aboriginal people, and a similar process applied in my own case. I was offered briefings and I must say that I was never denied a briefing when I asked for one; there was cooperation in that sense. However, this was not the case when it came to being involved, having input into drafting the legislation and being offered an opportunity to see the legislation. Like most members in this place and in the community, I did not see the legislation until it was tabled. We were given briefings on the expected changes. However, if a genuine intention existed to involve the Australian Democrats to try to obtain support when the legislation went to the Senate, the process of consultation and involvement needed to be far more extensive. I have had discussions with my Senate colleagues and am aware that in the absence of that involvement, the legislation stands a great risk of being disallowed. That will put the Government's situation back to that which existed before the time the legislation was passed. If there were a genuine intention to establish a state-based regime, it would have been more productive to have held off and had proper talks with the other parties which will be involved in the Senate process and with the Aboriginal community and to find a form of legislation that was more acceptable. This legislation in its current form is not acceptable. Having said that, I appreciate that the Australian Democrats are not the only vote in the Senate.

I have heard that the Australian Labor Party, while it is not happy with the current form of the legislation, is prepared to support it at the second reading stage and see what the outcome is with its amendments at the committee stage. I am aware also that there are matters that come into these decisions within the ranks of the Australian Labor Party, at the Senate level as well as at the state level, which mean that decisions made here may not necessarily be endorsed by its senators. I know that some factors may come into play in respect of commitments to Premiers in other States. I also know that the Australian Labor Party said in another place that it is not necessarily opposed to a consultation regime. My concern is that we could end up with a dog's breakfast that will make life even more difficult for people who are working through the native title quagmire as it currently stands. I do not pretend that it is perfect, but I think this will make it worse.

We could have a situation in which two determinations are before the Senate for approval - a section 43 determination and a section 43A matter. It would be a right-to-negotiate regime versus a consultation regime. If a decision were made to support the right-to-negotiate regime as a state-based commission - because the ALP has said it is not opposed to state-based commissions, although it said that it did not support a consultation regime - we would end up with even more of a dog's breakfast. My advice is that in that situation the federal regime would apply on land over which the State had tried to implement a section 43A regime and a state-based regime would apply when there is a section 43 regime in place. There would be even more procedural difficulties for people working in the area. I hope that members of the Australian Labor Party, who are influential in making these decisions, consider the implications of the action that they are undertaking. Essentially, whatever the form is, it is a matter of saying either that they will sell out Aboriginal people and allow the consultation regime to go through, or that they will try to retain a fully federal-based regime. The appearance of being able to separate the two would have an even more detrimental effect on the administration of native title in this State.

I finish on a more positive note. I was also at the meeting that Hon Tom Stevens referred to earlier today. At no point do I intend to imply that the mining industry, as a group, is not trying to work towards resolving some of the native title issues. It is interesting to note that they were not consulted on the form of the new legislation. This morning I attended the launch of a document called "Reaching Agreement: A better approach to native title in Western Australia". It was supported by not only the Western Australian Aboriginal native title working group, but also some of the prominent people in the mining industry in Western Australia. When industry and Aboriginal people come together and negotiate an agreement, we will move towards something that will provide mutual benefit. It is the way we should be proceeding. The more we try to legislate, the more of a problem we create for ourselves and for the people who are working with native title in this State.

I draw an analogy here with the early 1990s when I was working with the taxation of international transactions. It seems that every time the Government set up an international taxation regime problems were found with it and it had to bring in new amending legislation to backfill it. Then more legislation was needed to fill those holes, and then it would find another area which had not been covered. It seemed that the more one tried to deal with the issue through legislation, the more problems were created. Tax is a bit of a special case because essentially people will try to avoid paying tax whenever they can. However, in this case people are trying to work together to create a system of agreement that will produce mutual benefit for people within the industry and the holders of native title. We need the support and framework from the State Government to do so.

I asked a question in this place the other day about the Spinifex agreement, which is a framework agreement launched with great fanfare 18 months ago. It is clear from the response I received and from discussions with people involved that it has stalled. Essentially the progress of this framework agreement, which has been lauded as the way to go, has been so slow that the native title claimants have started the necessary proceedings under the Native Title Act to protect their interests because they are getting tired of talk with no resolutions and no outcomes. That is where the State Government should be coming in and setting up a framework to encourage and assist these sorts of discussions and negotiations. The more we set up a confrontational process through legislation that is focused on rights and entitlements, and eliminating those rights where they come into conflict with economic interests, the more problems we shall have. We need an attitude on the part of the State Government, industry and Aboriginal claimants whereby they can come together, sit down and say what is the preferred outcome for everybody. It is not always financial; often other issues must be taken into account. Although the issues are not always financial, there should be economic benefits for everybody. There is constant concern that the tribunal will not be able to award financial compensation as part of a determination. Sometimes that is the best way to get an agreement up

and running. Sometimes the people who own the area are entitled to some economic benefit, and I think that we should be approaching the whole issue of native title in a far more agreement-based way which would give more constructive outcomes.

Having said all that, it is not the hopeless mess that many people would have us think it is. Through all of this, industry and Aboriginal people are sitting down, working together and trying to get somewhere. Then they run into the nightmare of the legislation and procedures that are involved to actually achieve things. That is why we need to take a different approach at government level. We need to protect the right to negotiate because that was promised to the Aboriginal people as a form of justice back in 1993. Many of the amendments made to the Native Title Act last year were to get rid of some of the formalistic issues that were creating problems and backlogs in the native title area. I think it will be found that 80 per cent of the amendments put through at the federal level last year were accepted by everybody because they dealt with practical issues. The right to negotiate is a fundamental issue and I think we should be encouraging an agreement approach, which respects the right to negotiate and ensures a win-win outcome for everybody. The Australian Democrats will not be supporting the Bill at this stage.

HON GIZ WATSON (North Metropolitan) [4.50 pm]: The position of the Greens (WA) on the Native Title (State Provisions) Bill is fundamental and vigorous opposition. The second reading speech on this Bill is heavy on rhetoric. It makes numerous references to unworkability, and it labours that point. Parts of this Bill will require a determination by the commonwealth minister, and then a determination by both the House of Representatives and the Senate. That aspect is exceedingly significant in light of this Bill and the relatively recent change of numbers in the Senate, and I anticipate and hope that this iniquitous piece of legislation will be rejected when it reaches the Senate.

The Bill proposes to establish a state Native Title Commission to deal exclusively with future acts involving native title in this State. The issue of the registration and mediation of claims will remain a function of the National Native Title Tribunal. The second reading speech states that this Bill seeks to remove the failed right-to-negotiate regime on coexisting leasehold lands and replace it with a fair, constructive and workable consultation regime. We do not accept that the consultation regime that is proposed to replace the right to negotiate can be judged to be fair and constructive. Whether it will be workable will depend on whose point of view one is taking in assessing workability. It certainly will not be workable in the estimation of the Aboriginal people whom it will affect.

This Bill also proposes to replace the right to negotiate on pastoral leases and certain reserves. I will deal later with the issue of pastoral leases and why we argue that it is totally appropriate that the right to negotiate be maintained on those leases. The Bill also proposes to establish a new process for consultation for infrastructure titles and developments within towns and cities. We are pleased about the concession that was made in the other place to add the requirement to negotiate in good faith. I believe we can all agree that that is a positive advance in this Bill. However, the Bill remains fundamentally flawed.

The Bill provides that the minister may overrule the commission's recommendations in the interests of the State. We will no doubt talk about that in more detail in committee. However, it makes a mockery of the token offer of a consultation process if ultimately whichever minister is involved, whether it be the Minister for Planning or the Minister for Mines, has the right to overrule that determination. I also have concerns about the makeup of the commission.

I will now talk a bit about the argument which Hon Tom Stephens also raised; that is, the myth of unworkability. Hon Tom Stephens referred to a report which I found very interesting. That report is issues paper No 26 from the Native Title Research Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies and is entitled "Engineering Unworkability: The Western Australian State Government and the Right to Negotiate", by Anne De Soyza. The paper states -

> The right to negotiate (RTN) provided to native title claimants under the *Native Title Act 1993* . . . is the main right which accrues to native title claimants, prior to a determination confirming recognition of their title at common law.

The right to negotiate is absolutely at the core of native title rights and was an arrangement reached by Aboriginal people trading off other rights to achieve a right to have a say in future acts. That right is reflected in the right to negotiate.

I want to talk a little about the right to negotiate. I refer again to the paper by Anne De Soyza, who talks about the State's passive resistance to native title rights, in which she says -

> The first follows a decision in *WA v The Commonwealth* and ends in mid-1996 when the good faith decision of the Federal Court in *Walley & Ors v WA* was handed down. 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.

That served to frustrate the processing of those claims.

I refer also to an article entitled "casenotes" by Richard Bartlett which was a comment on that Federal Court case. The concluding paragraph of the paper, entitled "The State's duty to negotiate in good faith: Walley v WA & WMC & NNTT; Taylor v WA & Ors; Collard v WA & Ors; Smith v WA & Ors", states -

> The workability of the NTA is currently under examination. The decision in *Walley v WA and WMC and NNTT* emphasises that the problems the *NTA* presents the State of Western Australia are largely of the State's own making, and reflect its ongoing determination to deny, and as far as possible discount, native title. The mining industry has

> already significantly changed course in its opposition to native title but the State of Western Australia has yet to do so. The State prefers to engage in a general refusal to negotiate with respect to the granting of mining tenements, thus causing difficulties for the mining industry, rather than sincerely striving for consensual settlement of native title questions.

Hon Tom Stephens has referred to the Government's under-resourcing the Department of Minerals and Energy and creating a bottleneck when dealing with native title claims. The Greens (WA) are of the same opinion that there has been a deliberate attempt to create a bureaucratic bottleneck when dealing with claims for future acts, most of which are mining applications.

My final reference on the issue of workability, which is very much at the core of the Government's argument about why we need to deal with this piece of legislation, is a booklet entitled "NativeTtitle, Mining and Mineral Exploration" by Ian Manning of the National Institute of Economic and Industry Research. The executive summary of the booklet states -

> A key finding is that contrary to industry claims, there is very little evidence for depressed exploration activity in Australia following the historic High Court Mabo native title ruling in 1992. In fact, mineral exploration expenditures revived in 1993 after a lull during the recession of the early 1990s, and since then have been running at levels to rival the boom of the late 1980s.

He also makes the point that as many as 95 per cent of notices issued under the Native Title Act for exploration licences have been granted without objection from native title claimants.

[Questions without notice taken.]

Hon GIZ WATSON: Before question time I referred to the issue of workability and claims of unworkability of native title legislation in this State. I referred to a document titled, "Native Title, Mining and Mineral Exploration" by Ian Manning of the National Institute of Economic and Industry Research. After making the observation that 95 per cent of exploration notices issued under the Native Title Act have been granted without objection from native title claimants, Ian Manning states -

> The Australian Bureau of Statistics reports that mineral exploration expenditure rose by $11.9m, to $188.2m, in the June quarter 1997, more than any other state or territory.

The conclusions in that document read -

> The right to negotiate underlies significant new opportunities in remote area economic development. The potential benefits to remote indigenous people from agreements reached using the right to negotiate are considerable.

I emphasise the words "using the right to negotiate". To continue -

> These include provision of jobs, opportunities for indigenous enterprises, investment in projects which may provide incomes once mining has ceased, and environmental protection; all in addition to the protection of the rights to traditional indigenous activities.
>
> There are also potential benefits to the mining industry. In return for their investment in negotiation and their setting aside of a small share of cash flow for local people, mining companies gain:
>
> > guaranteed legal access to the resource
> >
> > an improvement in the social environment in which they operate, with potential to reduce costs and
> >
> > an opportunity to develop a local labour force and contracting enterprises, and perhaps eventually to reduce their reliance on very high cost labour recruited in the cities.
>
> Governments potentially gain:
>
> > a reduction in indigenous dependence on social security and welfare payments,
> >
> > a reduction in the demand for government-financed development projects in remote areas and
> >
> > an improvement in the social environment in remote areas, with potential to reduce the costs of social problems.

Manning makes the point that all those potential gains are linked to maintaining the right to negotiate. The Bill that we are contemplating will replace that right to negotiate with the mere obligation to be consulted.

The Bill is another attempt by the Government to erode native title rights in this State. It is a continuation of what I would call "death by 1 000 cuts", which has been the history of attempts by Aboriginal people in this State to have their rights recognised in law.

The Bill will also create problems for our international obligations. In particular, I alert members to its incompatibility with the United Nations International Convention on the Elimination of all Forms of Racial Discrimination. Members may be aware that recently Australia became the first western nation to be called to account under the procedure of warning. We joined an unenviable list of countries that have been called to account under that convention. They include the Czech Republic, the Democratic Republic of the Congo, Rwanda, Republic of the Sudan and the Federal Republic of Yugoslavia. We now find ourselves lumped with countries such as these that have unenviable records in human rights. That will be an enduring shame to Australia, and the Western Australian Government is adding to that shame.

With reference to the accountability issue, mention was made of four specific provisions in the Bill that discriminate against indigenous title holders, among which are restrictions concerning the right to negotiate. The United Nations commented that this would further wind back protection to indigenous title rights and it called into question Australia's compliance with articles 2 and 5 of the UN convention on the elimination of all forms of racial discrimination.

The United Nations also noted the lack of participation of indigenous people in the legislative process. Mention has been made by both previous speakers that this Bill has not been discussed with either native title parties or mining interests.

I refer to the comparison between the right to negotiate and the consultation process. The national indigenous working group on native title fact sheet No 4 titled "The Right to Negotiate" reads -

> The right to negotiate in the Native Title Act is a statutory expression of an essential part of indigenous traditional law. It reflects the right to control access to and use of country. The right to negotiate contained within the Native Title Act is a core right necessary for the protection of native title. It is **not** a concessionary grant on the part of government - **it is an intrinsic right of native title**.
>
> The statutory right to negotiate provisions of the Native Title Act provide a process to deal with compulsory acquisition of land for the benefit of a third party.

In a paper dated 21 November 1997 titled "Negotiating Regional Settlements of Native Title: Perspectives from the Goldfields of Western Australia" Kado Muir says -

> Sections 31(1) and 32(5) relate to the granting of interests in land by the State to third parties and set out the conduct and subject matter for negotiations. The government party is required to negotiate with the native title party in good faith to reach agreements as to whether the grant of interests in land to a third party;
> (a) cannot occur,
> (b) can occur without conditions or
> (c) can occur subject to conditions.

The essential difference with the proposed consultation process is that it does not allow native parties to insist that a future act cannot occur. The consultation process merely requires, as the word implies, that the native title party be consulted. Those of us who have been involved with community activism over the years are well aware what "consultation" often means when it comes to dealing with government departments and ministries.

This Bill does not provide a definition of consultation; therefore it is very clear to me that this Bill is about removing the right of native title holders to sit around a table and have a say as equal parties.

Hon Mark Nevill: They are not native title holders; they are native title claimants.

Hon GIZ WATSON: Yes. The requirement that they be consulted is different from having an equal say in negotiations.

I also refer to the first report of the Select Committee on Native Title Rights. A chapter of the report focused on the right to negotiate. The issue of the difference between consultation and the right to negotiate was raised by Mr Greg McIntyre in his submission. I quote from page 78 of the report -

> 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; we have created a different one which will need to be addressed.

Therefore, there will be a substantial shift in the rights of native title claimants. The objective of the consultation process is to minimise the impact of a future act on registered native title rights and interests. No provision in the legislation prevents those acts from occurring. The other point is that the right to negotiate is falsely claimed to be a right of veto. The right-to-negotiate provision in the Native Title Act requires that if an agreement has not been made within six months, the National Native Title Tribunal must make a determination. It is not accurate to say a right of veto exists. This illustrates some of the crude politics that are played out around the issue of what the right to negotiate is. Section 35 of the Native Title Act says that if no agreement is reached then that National Native Title Tribunal can make a decision. There is also a ministerial override provision in the Act.

I will not say any more during the second reading debate, except that the Greens (WA) totally oppose the Bill. It will consider amendments during the committee stage; however, it does not believe any of the amendments it has seen will make the Bill acceptable. The Greens (WA) urge all parties, particularly the Government, to seek another way of resolving the issues of native title rights in this State so as to not continue to bring this State into disrepute internationally through human rights issues and the abuse of rights of Aboriginal people. Also, this Government should seriously put resources into meaningful work on regional agreements and consult with Aboriginal people in a meaningful way, and desist from obstructing the existing processes, which are there to resolve native title issues, that in our opinion are working. This further attempt to legislate away rights is to be roundly condemned by all fair-minded Western Australians.

HON MARK NEVILL (Mining and Pastoral) [5.51 pm]: The Bill that is before the House is quite different from the previous Bill. I think it has been improved significantly. It no longer contains the registration and mediation of native title claims provisions which the previous Bill had. They have now been removed. That makes the job of a state commission

a much cleaner, simpler task. That is an improvement. This Bill will cause the commission that is formed to focus on future acts and get a system that is as workable as possible. This Bill will not solve all the problems of native title - I do not think anyone ever claimed that it will - but hopefully it will allow the State to get more control over the issue so that matters can be resolved without the interminable delays and doubt that currently exist in many areas.

The right-to-negotiate provisions in this Bill have been brought into line with the federal Native Title Act, so I do not expect the Senate to disallow this legislation on the basis of the right-to-negotiation provisions in the Act. The Senate cannot disallow the provisions that set up or register the indigenous land use agreement or the provisions relating to public infrastructure. It can disallow only the right to negotiate and the right to consult provisions for alternative areas. The Bill has been constructed in such a way that if the Senate does disallow the right to consult provisions, the rest of the Bill will stand alone. I am not suggesting that the Senate should strike out the right to consult provisions. We can almost assume that the Australian Democrats will seek to do that, but I hope that the federal Labor Party in the Senate will adopt a more reasoned view. They will be faced with a similar Act from the Queensland Parliament which will be seeking the endorsement of the Senate. In my view, if this legislation complies with the federal Native Title Act and it satisfies the federal Attorney General - which it has to do - the Senate should not unreasonably disallow it. If that occurs I certainly will take on the federal Labor Party on that issue in my electorate and probably in the federal leader's electorate of Brand. If the Federal Opposition does support the disallowance of this measure, I think it will indicate that the State Labor Party has a clear intention to replace the right to consult after the next state election if it is in government and replace it with the right to negotiate. Alternatively, if it has had a change of heart about setting up a state native title commission, it will repeal this legislation. I say that because I think the State Opposition is in two minds as to whether to support a state native title commission. It half-heartedly endorses it, yet at the same time hopes that it will get knocked off in the Senate. Those events are yet to be played out and I certainly will hold the Labor Party to account if that does occur. The reason for two regimes is that the right to negotiate will apply over vacant crown land and Aboriginal reserves and the right to consult will apply to non-exclusive possession leases, such as pastoral leases where native title co-exists with the rights of the leaseholder. In the case of exclusive possession leases, obviously native title rights no longer exist.

I shall now talk about the amendments I will move in the committee stage. They were based on a compromise worked out by the member for Eyre and me in January of this year. They were worked out with the Premier's consultant, Mr John Clarke, in an effort to resolve the deadlock which had occurred. At the end of the day, in politics people must be prepared to come to some resolution and that often involves giving ground and making an acceptable compromise. The amendments I have put on the Supplementary Notice Paper are a reasonable and fair way to deal with the problems. I have had very little criticism of these amendments from anyone. There are aspects of them that the mining industry does not like, and aspects that the representative bodies do not like; however, these proposed amendments to the Bill will provide a far better outcome for Aboriginal people than they have had previously. I think they would be more satisfied with this Bill than with the Bill that was originally introduced.

Much has been said about negotiation, especially by Hon Tom Stephens, but before people can negotiate there must be a framework for negotiation. That has been part of the problem and that is why we need legislation that is workable, fair to all sides and allows these matters to come to some resolution.

Sitting suspended from 6.00 to 7.30 pm

Hon MARK NEVILL: Most people do not understand the technicalities of the Native Title Act, and for that reason it is very difficult to have a debate in the media. People can skim glibly over the technicalities of the Act, but it is very difficult to tie people down about what are their views on certain issues. Hon Tom Stephens referred to the agreements that were sought by the Goldfields Land Council. The Goldfields Land Council has improved dramatically since it was overhauled about a year ago, when the Registrar of Aboriginal Corporations put in an administrator, and it is now functioning far better than it was prior to that time, when it had all sorts of problems which I would rather not go into. The agreements that the Goldfields Land Council is seeking are, to my understanding, voluntary agreements. They are not enforceable and are not binding on anyone, and they are good only until the first objector appears or someone wants to break away from the group and be treated separately. They are not indigenous land use agreements which are registered and are binding on people. Therefore, I do not see much point in the voluntary agreements that the Goldfields Land Council is talking about, because what is the point in mining interests and Aboriginal people reaching an agreement if they cannot make it stick?

The other issue that arises is that to my understanding, the Goldfields Land Council does not want the Government to be a party to those agreements. It is rather difficult to imagine that the Government would not want to be a party to those agreements, because they involve a lot of issues in which the Government has a legitimate interest in acting on behalf of all Western Australians. Nothing prevents the making of agreements between individual companies, but they are good only if the people who enter into those agreements hold together and do not seek to change them.

Some mention was made of consultation. During the debate on the Titles (Validation) and Native Title (Effect of Past Acts) Amendment Bill, I undertook quite a lot of consultation. I was certainly available to anyone who wanted to contact me, and I made the effort to disseminate information. I have circulated my proposed amendments to this Bill and have tried to keep people informed. There has been a dearth of feedback on the amendments I moved. Not many suggestions have been made about how I could improve the amendments nor have I been asked to move other amendments. I circulated two amendments tonight on the negotiation procedure which were suggested by the Chamber of Minerals and Energy; however, I have not had much feedback on this Native Title (State Provisions) Bill. One can put different interpretations on that. People may not be interested, may think I am a lost cause or may believe that the Bill is now a fairly reasonable piece of legislation and not draconian in any sense.

I provided my amendments to the Australian Labor Party before it dealt with the Bill in another place, and I am pleased to

see that some of the amendments in relation to "in good faith" were incorporated there. As part of the compromise, I agreed to leave out the words to consult in good faith "with a view to reaching an agreement". However, the Government incorporated in the relevant sections the words that the parties -

> must consult with each other in good faith . . . with a view to bringing about the withdrawal of the objections.

Those words have been added to the "in good faith" requirement. The whole purpose of consultation is to have objections withdrawn and provision has been made for that. Many people would prefer that those words not be there but it strengthens the consultation requirement. Some people will never agree to any amendments, other people offer everything. When one party has everything, the other party will say, "What more do you want?" A balance therefore must be struck and I believe that has occurred.

It does not matter whether members are opposed to a consultation regime or a state commission; there will be a state commission because the majority of people support it. I did not realise until a fairly late stage that all the representative bodies were against a state commission. That point had not been driven home to me until I had a meeting with the Goldfields Land Council. I believed the council was ambivalent about having a state commission provided it was reasonable and complied with the federal Act. However, there will be a state commission and the consultation regime is part of the national Native Title Act. It is part of the law of the land and the Government will be at liberty to use that regime in the alternative provision areas. Earlier I referred to the right to negotiate process on vacant crown land and Aboriginal reserves and the right to consult where native title coexists. In the former case, it may not have been extinguished.

I will leave my other comments until the committee stage and indicate that I will be supporting the Bill.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [7.39 pm]: I thank members for their contribution to this debate. It is not the first time we have had this debate, as everybody knows; therefore I do not intend to spend much time summing up as most of the issues have been raised on a number of occasions. Everybody knows where we are coming from and, hopefully, where we are going to with this matter. The Government is pleased that the Labor Party is prepared to support the second reading in order to discuss its amendments. Hon Mark Nevill's support is also appreciated. We understand that he has a number of amendments, all of which I think the Government is prepared to support. I look forward to a situation developing tonight where we pass this legislation, and I hope that it will survive into the future.

It is interesting to listen to the various parties talking about the native title legislation. When I listened to Hon Tom Stephens, I got the impression that the Australian Labor Party is happy for the Senate to make decisions for Western Australia on this matter.

Hon Tom Stephens: No, I want us to do it.

Hon N.F. MOORE: I did not get the impression that Hon Tom Stephens was altogether unhappy about that. I have the view that if the Senate thinks it can tell this Parliament what it should do on this matter, we should tell the Senate to try it. This Parliament will do what it can to prevent it succeeding. The Australian Democrats want the federal law to prevail and nothing to happen in Western Australia. Therefore, I suppose they are happy for the Federal Government, via the Federal Parliament, to run native title in Western Australia. The Greens (WA) want the United Nations to run it, and I guess the other group, the coalition, is happy for Western Australians to make decisions about Western Australia. There is a variation in views about who should be running native title.

The Government strongly believes that Western Australia, through its Parliament and its laws - laws based upon what we are permitted to do under the native title legislation - should manage native title in Western Australia. That is why the Government is trying again to get this Bill passed. We recognise that it may have a tortuous path from hereon in, but it should be made clear to the Senate that this is the view of the Western Australian Parliament, which comprises people from all sides of politics. That is what Western Australians want, and senators will take a different view at their own risk.

What should be said is that we are here dealing with the rights of claimants, rather than the rights of native title holders. The tortuous events we have been going through on the native title legislation are to get from who is a claimant to who is a holder. It has taken all this time and energy to try to reach that point. It is amazing the sorts of rights that some people would like claimants to have. They are merely claimants; they are not native title holders until it has been determined that they are native title holders; yet we have an argument about the rights of claimants as if in many cases they were holders of native title. The Government's view is that we should try to get from the position of making a claim to the position of its being determined whether native title exists as quickly as possible, and put in place a process that is workable, understandable and relatively quick. That is what we are seeking to do in this legislation. The Government is as anxious as anybody to have native title claims determined. Then we can work out what native title means when someone has native title and it persists. This Bill is about trying to achieve that.

A number of other issues were raised. I am told there was a meeting today to discuss this whole matter. The Government is supportive of people trying to reach agreements which are binding on all those involved. However, I am told that the mining company about which somebody spoke so glowingly earlier is Rio Tinto Exploration Pty Ltd, which has reached an agreement on Aboriginal issues in the Pilbara, at great expense to the company. I think the amount involved is more than $60m over 25 years, which is a very large sum of money. Not many companies in the world, let alone in Western Australia, can afford those sorts of dollars. I am told that Woodside Energy Ltd also reached an agreement in respect of Burrup for vastly more than that. Again, not many companies in Western Australia can afford those sorts of dollars. We are not trying to establish some process whereby, if people have enough money, they can get an agreement, but if they do not have enough money, they must go away and try something else for a living. That is not on. It is important that people, regardless of their resources and finance, be able to reach agreement on and find solutions to these matters.

We heard about the Wongatha claim. I mentioned in question time today that the Wongatha claim involved a group of claimants coming together to pass the registration test, and by coming together they were able to achieve that. The moment they reached that stage of the process, they split up into different groups which are seeking to achieve the maximum benefits for themselves from that proposal. If members do not believe me, they should ask Placer Pacific Pty Ltd, which is seeking to run the Granny Smith mine out of Laverton, and it will tell them of the problems it is facing at the present time.

It is all very well to come in here and talk in platitudes as the Greens (WA) and Democrats in particular have done today. It is not an easy issue. It is not just about goodwill because goodwill does not prevail on all sides of this issue. It is not just about affinity with the land; in many cases it is about money. That is what these issues regularly come down to. It is important that we put in place legislation which will work and the quicker we do that and the quicker the Senate understands that the Western Australian Government is operating under a law passed by the Senate, the better. The Senate not liking the law does not mean the Government has any obligation other than to operate under the law which has been passed by the federal Parliament of Australia. The change in the numbers in the Senate does not give it the right to say it does not like the law and will therefore toss out everything that goes before it. I hope the Labor Party understands that; as the alternative Government it must also live with the consequences of what it does. We live with the Labor Party's native title legislation which did not work. We now have what members call the Howard-Harradine legislation - which in many cases is not what we would want either but at least it is a start in the right direction. The State Government is now legislating pursuant to that legislation as it is entitled to do. In my view, the new numbers in the Senate do not mean it is entitled to ignore the law and reject on a political whim what this Parliament decides to do. I hope the Australian Democrats understand that. I thank members for their contributions and look forward to the speedy passage of this legislation through the committee stage.

Question put and a division taken with the following result -

Ayes (22)

Hon Kim Chance	Hon Max Evans	Hon Murray Montgomery	Hon W.N. Stretch
Hon J.A. Cowdell	Hon Peter Foss	Hon N.F. Moore	Hon Bob Thomas
Hon M.J. Criddle	Hon N.D. Griffiths	Hon Mark Nevill	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon John Halden	Hon M.D. Nixon	Hon Ken Travers
Hon Dexter Davies	Hon Tom Helm	Hon Tom Stephens	Hon Muriel Patterson *(Teller)*
Hon B.K. Donaldson	Hon Barry House		

Noes (4)

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

Question thus passed.

Bill read a second time.

SITTINGS OF THE HOUSE - EXTENDED AFTER 10 PM

Tuesday, 14 December

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [7.49 pm]: I move -

That the House continue to sit beyond 10.00 pm.

It is my intention to seek to conclude this debate tonight, and I ask that the House sit beyond 10 o'clock for that purpose. It is not the intention to deal with any other legislation after 10.00 pm.

Question put and passed.

NATIVE TITLE (STATE PROVISIONS) BILL 1999

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.

Clauses 1.1 to 1.8 put and passed.

Clause 2.1: Definitions -

Hon MARK NEVILL: I propose to move the amendment standing in my name; that is, to insert "(a)" after the word "include" on page 8, line 7 of the Bill. I have a problem because of the overlapping amendments. The word "or" is required to be inserted in amendment 26/2.1 because it relates to an Aboriginal reserve "or" unallocated crown land.

The CHAIRMAN: It may be better to consider the amendment of Hon Tom Stephens first. Then we can consider the substantive amendment proposed by Hon Mark Nevill, and what appears as his first amendment on the Notice Paper will become a Clerk's amendment.

Hon TOM STEPHENS: I move -

Page 8, after line 12 - To insert the following lines -

or

(c) that is current vacant Crown land;

"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;

That exchange demonstrates a difficulty with which we will be faced in the committee debate, to which the Leader of the House alerted me earlier. The Labor Party understands the problem, but wants to persist with these amendments. We understand that it may leave us in a situation, if not on this amendment, down the track, of moving through the committee report, recommittal and return for reconsideration in the committee to deal with amendments proposed to be moved by Hon Mark Nevill. I am sorry that may be the case, and I will try to limit the number of occasions when that might happen. However, the Australian Labor Party is keen for its amendments to be considered again by the Chamber. This is one of our most critical amendments. The crux of the Bill is to apply an inferior consultation regime to leasehold land in the State and a right-to-negotiate regime to vacant crown land. The definition of vacant crown land is deficient. As it stands any current vacant crown land which had a tenure of non-exclusive possession over it is included not in the right-to-negotiate procedures, but in the consultation procedures. The Labor Party recognises that Hon Mark Nevill will move an amendment to partially rectify the situation. However, it does not go far enough, and in some ways would have the effect of making the legislation worse.

It is the Opposition's view that all vacant crown land should be included in the right-to-negotiate procedures for both fairness and workability reasons. From the perspective of fairness, land which looks like vacant crown land with no current interest other than the State's should not be dealt with in the same way as land with competing private interests. The rationale for a consultation regime for alternative provision areas is the existence of competing private interests, and expired leases - possibly never taken up - should not remove the right to negotiate. From the perspective of workability, it is possible that disputes between people will arise about whether future acts on a piece of land should be covered by part 2 - the consultation procedure - or part 3 - the right-to-negotiate procedures. It is our view that indigenous interests will prefer the latter and developers the former, and the only way to resolve which one will apply will be by referring to historical records as far back as the last century to ascertain any previous tenure. It may not be easy to discover whether a tenure operated on a piece of land in days before computerised records. Litigation may arise, which would be an unproductive development for those involved. Litigants may face the possibility of searching through the dusty records of the Department of Land Administration for evidence of things that occurred earlier this century, and then arguing in the courts about what they have discovered. In our view that will negatively affect the workability of the legislation and add an element of uncertainty. Members will be familiar with these arguments, as they were put in the previous debate. I commend the Labor amendment to the Chamber.

Hon HELEN HODGSON: I have considered the two versions and the key difference is that the Nevill proposition, which is not formally before us, applies only to historic leases in which a pastoral lease has been in force for not more than two years and over which no other tenure has ever been granted; whereas the amendment that is currently before us refers to the land being vacant at 23 December 1996, which is the date of the Wik decision. The Nevill proposal is too limited, and deals only with land that is vacant where the lease was not in force for more than two years. It is too restrictive, and of the two options the Australian Democrats will support the ALP version.

Hon MARK NEVILL: My proposed amendment is a compromise. Last year we had a deadlock between the Government and the Opposition over expired non-exclusive possession leases. My amendment will not change the legal effect of granting these leases. The Opposition's amendment is trying to extend the right to negotiate to all of these leases. The Government wants the right to consult to apply to all pastoral leases, and the Opposition wants the right to negotiate to apply to all expired pastoral leases. The Government will accept my amendment, which is a compromise between those two positions. I oppose the ALP amendment.

Hon N.F. MOORE: The Government will not support the amendment moved by Hon Tom Stephens for the reasons I gave when we debated the previous native title Bill. The Government will support the amendment to be moved by Hon Mark Nevill.

Amendment put and a division taken with the following result -

Ayes (12)

Hon J.A. Cowdell	Hon John Halden	Hon Norm Kelly	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon N.D. Griffiths	Hon Helen Hodgson	Hon Tom Stephens	Hon Bob Thomas *(Teller)*

Noes (13)

Hon M.J. Criddle	Hon Peter Foss	Hon N.F. Moore	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon Mark Nevill	Hon Derrick Tomlinson
Hon B.K. Donaldson	Hon Murray Montgomery	Hon M.D. Nixon	Hon Muriel Patterson *(Teller)*
Hon Max Evans			

Pairs

Hon E.R.J. Dermer	Hon B.M. Scott
Hon Ljiljanna Ravlich	Hon Simon O'Brien
Hon Kim Chance	Hon Ray Halligan
Hon Christine Sharp	Hon Greg Smith

Amendment thus negatived

Hon MARK NEVILL: I move -

Page 8, after line 12 - To insert the following -

(b) an area that is unallocated Crown land within the meaning of the *Land Administration Act 1997* and is land -

(i) over which, under a written law relating to the administration of Crown land -

(I) a non-exclusive pastoral lease was granted that continued in force for not more than 2 years; and

(II) no other tenure has ever been granted; and

(ii) that has never been reserved under a written law referred to in subparagraph (i);

This amendment will alter the definition of alternative provision areas and changes the definition of the area to which part 2 consultation procedures will apply. An examination of the pastoral lease register shows that a number of leases were not taken up, especially in the early years following settlement. In some cases, the fees were not paid and many leases were forfeited or surrendered within the first two years of the grant for nonpayment of rent. There is no evidence that the grantees ever took up those leases and no record of any improvements having been undertaken. Much of the land under the pastoral leases that do not fit into this category has been worked on for 30 or 40 years. At some stage those leases were fairly active. While the law is clear that native title is affected at the time leases are granted, there is a strong moral argument that where an inconsistent title is granted, the lease never had any effect on the ground. In many of those cases, the Aboriginal people would not have been aware a lease had been granted. The area in the Spinifex Desert claim, south of Warburton, is extensively covered by pastoral leases that were never taken up. A similar amendment, which has already been passed, allows for the right to negotiate to continue to operate on Aboriginal land in a similar situation to those leases. That amendment allows the right to negotiate to continue in the Spinifex Desert claim.

The Department of Land Administration has assisted me by preparing a map outlining affected pastoral leases in Western Australia. The area involved is some 46 790 sq m and represents 1.9 per cent of the total area of the State. It is equivalent to about five per cent of the current pastoral leasehold land. It is a fairly significant area of land and the Aboriginal people will be given the right to negotiate over it as a result of this amendment. It contrasts with the one-hundredth of one per cent of the land that was at issue during the debate on the Titles (Validation) and Native Title (Effect of Past Acts) Amendment Bill, which was recently dealt with in this place.

My amendment is a compromise between two very different positions. If this compromise had not been reached there would be a deadlock and continuing uncertainty with the native title regime in this State. I urge members to support this amendment because it is an improvement on the Government's position. It does not cover the area that would be covered by the Australian Labor Party's amendment; however, it is a compromise.

Hon TOM STEPHENS: It is the Australian Labor Party's view that the amendment moved by Hon Mark Nevill does not adequately solve the problems that were alluded to during the debate over its earlier, defeated amendment. In reference to issues of workability, if that is the preoccupation of this Government, this amendment makes it more uncertain and less workable than that which would otherwise have been the case if it had accepted our amendment. We can read the lie of the land. We accept that this represents a small step in making the situation more equitable for native title interests at lease, if not more workable. The issue of whether the relevant lease falls within the criterion referred to in the amendment relating to the area of lands identified in the proposed amendment currently before us can only make the whole issue more complex. It has to be established not only whether a non-exclusive pastoral lease was granted but also whether it did not continue in force for more than two years. Indeed, the Government has indicated that it will accept this amendment. We will support it also but it does not leave the Government well bolstered in its arguments that have criticised the Australian Labor Party's position on the workability principles when it comes to considering this legislation.

Without doubt, even the Government would have trouble denying this, but relying on the current computerised DOLA records on what is currently vacant crown land, it is the simplest and most equitable means of deciding when the right to negotiate should apply and whether the consultation process should apply. The only reason for the Government's approach to this amendment is that it wants to effectively constrict the right to negotiate as much as possible and it will accept an offer from Hon Mark Nevill in that regard. This is confirmed by the Premier's comments, who, on this particular issue said that about 12.5 per cent of the State would be added to a right-to-negotiate regime via this amendment. Epitomising the approach of the Premier, he does not want to allow the compromise of the right to negotiate even to apply to the 12.5 per cent of the State which has no other interest in it other than as the Crown. In dealing with the Titles (Validation) and Native Title (Effect of Past Acts) Amendment Bill 1999 the Government was prepared to restrict the extinguishing effect of scheduled interests to those in force at 23 December 1996. However, it has not been ready to move towards the adoption of a similar principle on vacant crown land. Hon Mark Nevill points out that less of the State is subject to the right to negotiate as a result of his amendment. However, this is effectively moving back from the constrictions that the Premier has been determined to put on that applicable regime.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 2.2 to 2.11 put and passed.

Clause 2.12: Notification of acts -

Hon MARK NEVILL: I move -

Page 14, line 10 - To insert after the word "done" the following words -

, public notice of the act must be given by advertisement in a newspaper circulating generally throughout the State.

(2)

This amendment is another compromise. Originally the Australian Labor Party's amendment required advertisement in both a state and Aboriginal newspaper. Under the current situation, the information must be provided to representative bodies, registered native title claimants and registered native title body corporates, in writing, and provision is made for the information to be electronically downloaded to the land councils and representative bodies. My amendment will ensure that public notification of every part 2 act is given by way of a newspaper advertisement and, under the other provisions with regard to the giving of notice, it will be possible for the native title notification to be combined with the notification that is required under the Mining Act. This will enable the notices to be placed in the newspaper at little additional cost and will be an improvement on the present process, where two separate notices must be given. That is not a matter that we should ignore, because it is very expensive to advertise in newspapers, and we can save people a lot of money by combining mining notices and native title notices. The simple fact of the matter is that in most areas of the State, the average person, whether he or she be Aboriginal or non-Aboriginal, does not get a newspaper, and that is not the medium by which information is shared. Most Aboriginal people in the State do not get an Aboriginal newspaper. It would be better for people involved in the mining and exploration industry and for Aboriginal people if the two types of notices were combined, because they would not need to cross-reference to find out where the mineral claim was and what the native title notifications were.

Hon N.F. MOORE: The Government accepts the amendment.

The CHAIRMAN: I indicate to the Leader of the Opposition that this amendment with regard to general circulation impinges upon the proposed amendment standing in his name at 2/2.12, and that if he wishes to persist with paragraph (b) of his amendment - that is, "in a newspaper that satisfies any requirements prescribed by the regulations for the purposes of this paragraph" - he should move it as an amendment to this proposed amendment.

Hon TOM STEPHENS: I appreciate the advice of the Chair. The Labor Party would prefer that paragraph (b) be included, because we regard it as a safety clause that would improve the Bill. Therefore, I move -

That the amendment be amended by adding the words -

and in a newspaper that satisfies any requirements prescribed by the regulations for the purposes of this paragraph

Hon N.F. MOORE: The Government does not support the amendment moved by Hon Tom Stephens which provides for advertisements in newspapers prescribed by regulations. I do not know what he has in mind but it could involve advertising in hundreds of different newspapers, publications and so on which would incur large expenditures in advertising costs. The amendment moved by Hon Mark Nevill satisfies the requirements of the Native Title Act and should satisfy the requirements of those people taking an interest in this matter. The Government therefore opposes the amendment moved by Hon Tom Stephens.

Amendment on the amendment put and negatived.

Amendment put and passed.

Hon MARK NEVILL: I move -

Page 14, line 10 - To insert after the word "must" the word "also".

Amendment put and passed.

Hon MARK NEVILL: I am not sure the clause is complete. The amendment moved by Hon Tom Stephens referred to "Before a Part 2 act is done, public notice of the act must be given by advertisement".

The CHAIRMAN: That has been covered essentially by your amendment and therefore no further amendment is needed.

Clause, as amended, put and passed.

Clause 2.13 put and passed.

Clause 2.14: Who gives notice -

Hon MARK NEVILL: I move -

Page 15, line 25 - To delete all words after the word "party".

The purpose of moving this amendment is to ensure that all notifications of future acts are made by the Government or, more particularly, one body. This amendment is important for both native title interests and the proponents of these future acts. I have no problem with the Government contracting out that function, provided it is done by one group and not fragmented. There is a possibility under the Government's amendment that it could be fragmented, although I am told that that is not the intention. If it were ever to be fragmented, it would be difficult to keep a database of all the relevant people. One might have a situation in which a tenement is granted and then one finds it has been granted invalidly, or that native title claimants have not been properly notified, or the wrong people have been notified, or some people have been missed out. There is a concern that it be kept together, and I think that is the intention of the Government. However, the amendment could be interpreted differently. As I said, if the Government wanted to contract out that function, I would not have a strong objection to that, as long as it was kept together and there was one coherent database of who should be alerted. My amendment would retain the words "The notices required by section 2.12 are to be given by the Government party." The rest of that clause would be deleted. I ask the Chamber to support the amendment.

Hon TOM STEPHENS: This issue has also been raised with the Labor Opposition by the Chamber of Minerals and Energy. It is a reasonable request that is made in the committee debate for the notification process to be done in this way, therefore we support the amendment moved by Hon Mark Nevill.

Hon N.F. MOORE: The Government does not support this amendment. Hon Mark Nevill is a little concerned about something which it is not intended will happen in respect of there being a coherent database and keeping the information collectively together. What is envisaged is that further down the track the delivery of these notices may well be contracted out to Australia Post or to any other organisation that may wish to do it. It may even be done over the Internet. Therefore, it is the Government's view that what is in clause 2.14 gives some flexibility down the track for anybody who wishes to change the way in which notices are issued, bearing in mind that the government party is still required to ensure that it is managed properly and correctly and that there is no fear of anybody not receiving the required notice. I do not think it is necessary to agree to Hon Mark Nevill's amendment because the Government is aware of his concerns, and it is not intended to do anything that would in any way cause his concerns to persist.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 2.15 and 2.16 put and passed.

Clause 2.17: Requirements for objections -

Hon MARK NEVILL: I move -

Page 17, after line 17 - To insert the following subclause -

(2) The objector must give a copy of the objection to any proponent in relation to the act.

This amendment will require objectors to notify the proponent - that is, the applicant for a title - as well as the government party of their objection. This is being done to enable the consultation process to start at the earliest possible time so that the full four months is available. Without this amendment, it could take up to 14 days before the applicant would know an objection had been lodged. With the change proposed, the proponent would know immediately that an objection had been made, and the proponent would have all the details required to start the consultation process without having to wait for the government notification. It is designed to speed up the process but does not prejudice the rights of the objector. I urge the Chamber to support the amendment.

Hon TOM STEPHENS: The Opposition is opposed to this amendment on the basis that it is an unnecessary burden on the objectors. It should be up to the Government to provide copies of objections to proponents. Our arguments are similar to the grounds on which we supported the amendments to clause 2.14 which have just been carried; that is, notice should be given by the government party, not the proponent of the particular future act. There is a level of inconsistency between what the Committee just did with clause 2.14 on the recommendation and motion of Hon Mark Nevill - and will presumably subsequently do to clause 3.13 - and the amendment now before the Chamber. One amendment tries to protect the proponent from giving notice and keeps the obligation on the Government, while the other amendment moves the obligation from the Government to the objector. We need to be consistent and have the proponents and objectors or the Government obliged to provide the relevant documents in both cases. Labor supports the Government doing so in both cases. In our view, it is inconsistent for the Chamber to agree to this amendment.

Hon MARK NEVILL: There is still a requirement for the objector to notify the government party of the objection as well; the proponent would still get that notice. However, this amendment allows for a short circuiting of that process if the objector notifies the proponent directly. The other process referred to by Hon Tom Stephens would still occur.

Hon N.F. MOORE: The Government supports the amendment. As Hon Mark Nevill said, the government party must be advised by the objector and it would make sense for the proponent to also receive a copy of the objection, to facilitate the process. It is an eminently sensible amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 2.18 put and passed.

Clause 2.19: Government party to notify the Commission of objections -

Hon TOM STEPHENS: The next amendment on the Supplementary Notice Paper is in the name of Hon Mark Nevill - this is an example of what I was referring to at the beginning of the debate - and it seems that the drafting provided by Hon Mark Nevill is more appropriate and I will not proceed with my foreshadowed amendment.

Hon MARK NEVILL: I move -

Page 18, after line 18 - To insert the following subclause -

(2) The Government party must also notify an objector of particulars of all such objections lodged by other objectors.

This amendment achieves the same objective as the previously foreshadowed amendment. It has the effect of making all objectors aware of who else is lodging an objection. That can facilitate the resolution of the matter, and will avoid a situation in which people find out one by one down the track that the next-door neighbour is also an objector. The amendment is designed to put a bit of grease into the system and keep the process moving. I urge members to support the amendment.

Hon N.F. MOORE: The Government supports the amendment. I thank Hon Tom Stephens for allowing the process to move more quickly than otherwise would be the case.

Amendment put and passed.

Hon MARK NEVILL: I move -

Page 18, line 19 - To insert after "subsection (1)" the passage "or (2)".

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 2.20 to 2.22 put and passed.

Clause 2.23: Consultation -

Hon TOM STEPHENS: I move -

Page 20, lines 2 to 15 - To delete the lines and substitute the following lines -

In the case of any Part 2 act, the consultation parties must consult with each other in good faith with a view to reaching an agreement about -

(a) minimizing the effect including about -

(i) any access to the relevant land; or

(ii) the way in which any thing authorized by the act may be done; 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.

This amendment deals with the consultation. Despite the amendment moved by the Government and passed in the other place to insert the words "good faith" - a modest advance in this legislation in which the Opposition was pleased to have participated - there is still merit in this amendment. Given that good faith is now included, we want to expand the substance of the matters about which the parties can expect to be consulted. There is a view that Aboriginal people might receive monetary compensation for an act done on land in which they have a native title interest, despite the fact that it is happening on the ground as we speak. Apparently it alarms people on the conservative side of politics.

I remind members of the alarm shown by Hon Barry House in the debate on the previous Bill with reference to a similar amendment we moved. At that time Aboriginal people were not included in either the consultation or the negotiation parts of the Bill. For the record, I say that at some stage Hon Barry House might like to cast his eye over clause 3.22 of the present Bill, which deals with the issues of negotiation; however, I would be jumping ahead of myself in this debate. The idea that these questions of negotiation should not be included has already been conceded by the Government. Matters regarding compensation, in particular monetary compensation, are established as proper subjects for the right to negotiate.

These provisions were not in the 1998 version of the Bill; yet they have appeared magically in the Bill in a form virtually identical to the amendment introduced and passed in this Chamber last year. I guess there is no magic to them; they are straight out of the national legislation, which is what we did in relation to the negotiation issues. These provisions were put into the Bill to protect the legislation. We do that again for all the same reasons. The objections of the Government to negotiation have now disappeared and, in our view, they should now disappear in relation to consultation. It is relevant to repeat some of the comments made by the Leader of the House about our proposed amendment to the previous Bill, because the same principles applying to that clause relate to this one. In the debate on the section 33 criterion of the Native Title Act as to what the parties can negotiate about, the Leader of the House stated -

> . . . 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. . . . This amendment is another example of the Labor Party's seeking to elevate native title to something even greater than freehold. . . . 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 . . . The Leader of the Opposition is trying to elevate native title to something even more substantial than freehold title. That is quite outrageous.
>
> . . . 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. . . . 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.
>
> . . . 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.
>
> . . . 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.

I am sure that the Leader of the House understands my argument. It is the same argument he used against me when I dealt with these issues previously about the consultation regime and the negotiation regime. The Government has now accepted the argument in the right-to-negotiate regime, and it is the view of the Opposition that it is relevant to this clause. Obviously the Native Title Act requires that these right-to-negotiate provisions be included in state law. If the amendment to section 33 of the Native Title Act was the "most short-sighted, worrying aspect" of what the Opposition was doing, and the Government has made a complete about-face on that provision, by definition one would think the Government would have no problem in accepting the rest of the Labor Party amendments.

The ALP believes that a similar requirement exists with the consultation provisions, whether by the legal requirements or the pragmatic requirements of the Native Title Act. The spirit of the Native Title Act demands it, and I suggest that will also be the will of the Senate. The Government's arguments against the insertion of the section 33 criteria are not applicable in the right-to-negotiate provision and equally do not apply to any references to monetary consultation in the consultation process. However, the bargaining position for native title parties under this proposed consultation regime is nowhere near as strong as the bargaining position of south west freehold property owners who have a veto on mining. An amendment will provide that native title parties are able to discuss compensation. However, if discussions were unsuccessful the matter would go fairly quickly before the proposed native title commission, which will not have the power to award compensation. This is a fair incentive to reach agreement and a fair weakening of the bargaining position of native title parties, especially when compared with that of south west freehold property owners.

The Premier's argument for not supporting the compensation proposals is that the amendment says that the parties must reach agreement about compensation before the grant can proceed, which basically is a right to negotiate through another means. The Premier said that the amendment requiring consultation to be conducted in good faith with a view to reaching agreement is the same thing as requiring agreement to be reached. He seemed to acknowledge that the parties can talk about compensation but he will not accept a provision that says they must reach agreement.

Hon Mark Nevill: Does compensation come into this amendment?

Hon TOM STEPHENS: Effectively, by implication.

Hon N.F. Moore: You are moving to include compensation.

Hon TOM STEPHENS: The Premier's old and completely fallacious argument relies on the words "with a view to". The Leader of the House is right, and compensation relates to consequent amendments.

Nothing else in the amendment could be construed to suggest that they must reach an agreement. That was completely undone by the change to the consultation procedure and no doubt forced by the Commonwealth, which now states that the parties must consult with a view to bringing about the withdrawal of the objections. We do not assume that the Government is arguing that the parties must withdraw the objections. It is absurd to suggest this would be the case, and the words "with a view to" in our amendments cannot be viewed as being mandatory. The Government cannot have it both ways. There is no logical argument for interpreting the same phrase in two different ways. The amendment is only encouraging the parties to reach agreement and not requiring them to do so. The Government cannot argue against this amendment, given that monetary compensation is part of the right-to-negotiate provisions. I see no reason that that should not also be part of what parties discuss prior to the matter going to the commission.

I have jumped ahead, as the Leader of the House pointed out. However, it was to try to interweave two points into this process. Arguments were raised about what should be included in the consultation regime and whether it should include the words "in good faith". We believe those words should be inserted in the amendment to section 33, as well as where the Government has previously agreed to include them, and we persist with the amendment now before the Chamber.

Hon HELEN HODGSON: The Australian Democrats will support the amendment. Hon Tom Stephens pointed out the difference between the words in the Bill and the words in the amendment. It is not just a matter of semantics. Essentially,

the two key differences are a view to reaching agreement, as opposed to a view to bringing about the withdrawal of objections. The two are not the same thing. I am sure that agreement will result in withdrawal of the objections, but withdrawal of the objections will not necessarily result in agreement being reached.

It is appropriate to incorporate compensation in the discussions. There seems to be a belief that compensation is outside the tribunal's jurisdiction. However, it should be on the table in the process of the discussions.

A third point that is not addressed by the Australian Labor Party is that the clause does not refer to the possibility of consultation resulting in the act in question not being done. I note under clause 2.32 the tribunal can recommend that an act not be done. However, there is nothing in the Bill indicating that is one of the potential outcomes of the consultation.

Hon N.F. MOORE: The Government will not support the amendment moved by the Opposition. It is inconsistent with the Native Title Act, which requires consultation only 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 lease land. The national Native Title Act does not require that compensation be addressed through consultation. It is premature to talk about compensation at the consultation stage of the process.

In essence, the ALP's amendment would reinstate the right to negotiate over pastoral leasehold land. It is an area that has caused significant difficulty in the past and we are trying to resolve it with this Bill. In a sense the parties must consult each other with a view to reaching an agreement which in effect is the right-to-negotiate process. The amendment refers to compensating for the effect, which the Government feels is unacceptable.

The point of consultation is to bring about the withdrawal of the objections. The consultation process will be undertaken with a view to removing the objections, not with a view to achieving nothing. In the event that the objection cannot be overcome and agreement is not reached through consultation, the matter will be determined by the Native Title Tribunal.

Hon MARK NEVILL: It is far too early to refer to compensation at this stage in the Bill. If the objector is the holder of a pastoral lease, compensation will be provided under the Mining Act through the Warden's Court for any disturbance or effect on the station or whatever is the operation. That compensation is available to every pastoral leaseholder under the Mining Act. I cannot support this amendment, which I think is designed to set up some compensation regime at the very start of the consultation process.

Amendment put and a division taken with the following result -

Ayes (12)

Hon J.A. Cowdell	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Tom Stephens	Hon Bob Thomas *(Teller)*
Hon N.D. Griffiths	Hon Norm Kelly	Hon Ken Travers	
Hon John Halden			

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon M.D. Nixon	Hon B.K. Donaldson
Hon Dexter Davies	Hon Murray Montgomery	Hon Greg Smith	*(Teller)*
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	
Hon Peter Foss	Hon Mark Nevill	Hon Derrick Tomlinson	

Pairs

Hon E.R.J. Dermer	Hon B.M. Scott
Hon Ljiljanna Ravlich	Hon Simon O'Brien
Hon Kim Chance	Hon Ray Halligan
Hon Christine Sharp	Hon Muriel Patterson

Amendment thus negatived.

Clause put and passed.

Clauses 2.24 to 2.32 put and passed.

Clause 2.33: Criteria for making recommendations -

Hon MARK NEVILL: I move -

Page 25, lines 7 to 9 - To delete the lines and substitute -

(a) take into account the impact of the act on -

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

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

The Australian Labor Party amendment goes a lot further than this amendment, which picks out the most important parts of the ALP amendment and proposes to insert them in the Bill. This is a compromise. There was a stand-off between the

Government, which did not want any extra criteria to be considered in making recommendations, and the ALP which had a fairly extensive list of criteria, some of which I think were not really relevant. I refer to consideration of the economic or other significance of the act to Australia, the State, the area on which the relevant land is located and the Aboriginal people who live in the area. Many of those things would be taken generally into account by the commission.

The proposed amendment preserves the best parts of the ALP amendment and essentially provides the native title commission with some guidance as to the matters which should be taken into consideration when it is hearing an objection to a part 2 matter. Both amendments provide that the commission must take into account the registered native title rights and interests of the objectors and any area or site of particular significance on the relevant land. The amendment then goes on to provide that the commission may, when considering ways in which the impact of native title rights can be minimised, take into account the way of life, culture, traditions and economic interests of the objectors, their future access to the land and their ability to carry out ceremonies and other cultural activities on the land. It is a compromise and it picks up most of the ALP amendment. I urge the House to support this amendment.

Hon TOM STEPHENS: In order for my more extensive clause to be considered by the Committee, must I either move to amend the amendment moved by Hon Mark Nevill to include the ALP amendment or defeat Hon Mark Nevill's amendment and move mine?

The CHAIRMAN: The Leader of the Opposition has either option.

Hon TOM STEPHENS: I suspect the simpler and cleaner way is to simply indicate that I will oppose the amendment moved by Hon Mark Nevill. The ALP has an amendment listed on the Notice Paper, in a prior position, but because of the way things are done in this Chamber, in accordance with standing orders, its amendment will be considered subsequently. Nonetheless, we are of the view that our amendment is a better way of phrasing the criteria that the native title commission must take into account when making its recommendations. We will oppose the amendment moved by Hon Mark Nevill in order to seek a vote on our amendment. The ALP's amendment is a version of the criteria contained in section 39 of the Native Title Act. In part the amendment now before the Committee adopts some of those provisions. In fact, it partly reflects the amendments moved by Labor last time around, and it is rather odd that we have heard from the Government that it proposes to accept the amendment this time around, when there was rather vitriolic criticism of the Labor Party when this amendment was last before this place, albeit at that time in a more extensive form, on the basis that it was entirely inconsistent with the Native Title Act, when the opposite was the case. Here we have just part of it before the Committee and the Government is accepting it.

The ALP's amendment contains strengths that the Government will reject if it accepts the amendment moved by Hon Mark Nevill, because our amendment requires the commission to take into account the economic or other significance of the act to Australia, Western Australia and the relevant locality. Our amendment is a pro-development consideration, which surprisingly the Government is proposing to reject. I will oppose the amendment moved by Hon Mark Nevill, with a view, if we are successful, to providing the Chamber with the opportunity of considering our better amendment.

Hon HELEN HODGSON: There does not appear to be much to choose between in the two amendments. As Hon Tom Stephens has mentioned, the ALP's amendment refers to economic development issues, but other than that, the differences between the two amendments are minor. I have a more fundamental concern, which is that in both of the amendments, the way of life, culture, traditions and economic interests of any of the objectors is no more than a discretionary issue that the commission may take into account. My preference is that it be a mandatory consideration. However, I know what the numbers in this place are like, and I have not endeavoured to complicate matters any further by putting on the Notice Paper an amendment on the amendment on the amendment. My support for either of these versions is qualified, and I do not see much to choose between.

Hon N.F. MOORE: I thank members for their enthusiasm for progressing this legislation; I am grateful for that. Politics, as the Leader of the Opposition will know, is very much to do with the art of compromise. The Government brought legislation into this place last year to deal with all these issues. We made our position very clear at that time. It has subsequently been necessary for the Government to try to reach a compromise that it can live with and that will ensure the ultimate passage of this legislation. The amendment moved by Hon Mark Nevill is an amendment to the Government's Bill. It is not our preferred position, but it is a compromise, and we are prepared to accept it. However, we are still vigorously opposed to the amendment moved by the Leader of the Opposition, because we believe it goes well beyond what is required in this clause.

Hon MARK NEVILL: Both the Native Title Act and the two amendments require the commission or arbitral body to take into account those factors. It is not discretionary.

Amendment put and passed.

Hon TOM STEPHENS: I take it that because Hon Mark Nevill's amendment has been carried, the more extensive amendment that we would have preferred be included, which could have been woven around Hon Mark Nevill's amendment, will not be supported by the Chamber, and on that basis we will not proceed with it.

Hon MARK NEVILL: I move -

Page 25, after line 24 - To insert the following subclauses -

(4) In taking into account the impact of the act as mentioned in subsection (1) (a), and in considering the ways in which that impact can be minimized as mentioned in subsection (1) (b), the Commission may take into account the impact 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; and

(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.

(5) Taking into account the effect of a Part 2 act on areas or sites mentioned in subsection (1) (a) (ii) does not affect the operation of any law of the Commonwealth or the State for the preservation or protection of those areas or sites.

I have already given the reasons for this amendment in previous comments.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 2.34 to 3.12 put and passed.

Clause 3.13: Who gives notice -

Hon MARK NEVILL: I move -

Page 41, line 5 - To delete all words after the word "party".

This amendment is similar to the previous amendment which was carried by the Chamber and relates to the notification process for part 3 matters in the Bill. I ask the Chamber to support the amendment for the reasons I put forward previously.

Hon N.F. MOORE: The Government does not support the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 3.14 and 3.15 put and passed.

Clause 3.16: Requirements for objections -

Hon MARK NEVILL: I move -

Page 42, after line 19 - To insert the following subclause -

(2) The objector must give a copy of the objection to any proponent in relation to the act.

This is an identical amendment to that moved in part 2 of the Bill and the same reasons apply. It requires the objector to provide a copy of the objection to any proponent in relation to the act. The aim of this amendment is to speed up the process of resolving objections.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 3.17 put and passed.

Clause 3.18: Government party to notify the Commission of objections -

Hon TOM STEPHENS: I do not intend to proceed with amendment 6/3.18 standing in my name on the Supplementary Notice Paper. The amendment proposed by Hon Mark Nevill does virtually the same thing, is probably better drafted than our amendment and should proceed as it has the support of the Government.

Hon MARK NEVILL: I move -

Page 43, after line 20 - To insert the following subclause -

(2) The Government party must also notify an objector of particulars of all such objections lodged by other objectors.

Page 43, line 21 - To insert after "subsection (1)" the passage "or (2)".

It is nice that Hon Tom Stephens has deferred to my better drafting. However, it was done by Crown Law, so that is probably the reason for the better drafting, therefore I would not worry too much about that. Again, this is similar to the previous amendment, which requires the government party to notify any other objector that a further objection has been received. The purpose of the amendment is to ensure that all parties know who will be involved in the consultation process. As I said when speaking on the previous amendment, it will speed up the process and enable the consultation process to begin earlier when there is more than one objector to a part 3 act. There are still areas in Western Australia where multiple claims are made, despite the application of the registration test. There are also cases in which individual claimants lodge separate objections, even though they belong to an amalgamated claim group. The amendment will assist the management of such cases by ensuring all parties are aware of who else is involved. I urge the Chamber to support the amendment.

Hon N.F. MOORE: The Government supports the amendments.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 3.19 to 3.37 put and passed.

Clause 3.38: Copy of determination to be laid before Parliament -

Hon TOM STEPHENS: I move -

Page 55, after line 8 - To insert the following new subclause -

(3) A determination under section 3.29 is a regulation for the purposes of section 42 of the *Interpretation Act 1984*.

This amendment would provide for a ministerial determination under the right to negotiate procedure to be subject to a parliamentary disallowance. As members will have noticed, we intend that a similar procedure should apply under new clause 2.44. This amendment is similar to that which was moved and passed last time when the 1998 Bill was before the Chamber. I put the amendment before the Chamber on this occasion for all of the good reasons that it was agreed to previously.

Hon N.F. MOORE: The Government is opposed to this proposition, which is to put in place a parliamentary disallowance of a determination made under this clause. I point out that the Native Title Act requires the tabling of such determinations, but it does not require that they be the subject of disallowance. Therefore, I argue strongly against the amendment moved by Hon Tom Stephens.

Amendment put and negatived.

Clause put and passed.

Clauses 3.39 to 4.7 put and passed.

Clause 4.8: Notification of acts by Government party -

Hon TOM STEPHENS: As I understood it, the amendment I foreshadowed would have caused the Committee some inconvenience if it were defeated. However, in the past, this sort of amendment was dealt with differently. It is now in the reverse order. It makes for logical consistency in the Bill that I sit down and leave it to Hon Mark Nevill. The Labor Party would prefer it if its amendment were being dealt with. Clearly, we will not be successful at the end of the day, so I do not suppose there is any point.

Hon Mark Nevill: You are getting half a loaf of bread instead of a whole loaf.

Hon TOM STEPHENS: I am not sure of that.

Hon MARK NEVILL: I move -

Page 70, lines 21 and 22 - To delete the lines and substitute the following -

(1) Before a Part 4 act is done, the Government party must give public notice of the act by advertisement in a newspaper circulating generally throughout the State.

(2) The Government party must also give notice in writing of the act to -

This amendment is similar to the previous amendment to clause 2.12. As I said before, the purpose of the amendment is to ensure that there is public notification, by way of a newspaper advertisement, of every part 4 act. Most of this information can be provided electronically or in writing to the land councils, the Aboriginal communities and the individual native title claimants. The amendment foreshadowed by the Australian Labor Party required advertisement in two newspapers - I presume the second one was an Aboriginal newspaper. However, I do not think that would assist in disseminating the information to the Aboriginal community. There is no doubt in my mind that the information will get to the people who will be aware of the significance of the act and, by way of compromise, I will require the act to be advertised in one newspaper circulating generally throughout the State. I urge the Chamber to support the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4.9 to 4.11 put and passed.

Clause 4.12: Requirements for objections -

Hon MARK NEVILL: I move -

Page 73, after line 6 - To insert the following subclause -

(2) The objector must give a copy of the objection to any proponent in relation to the act.

The reasons for this amendment are identical to those for the previous similar amendments and I urge the Committee to support the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4.13 put and passed.

Clause 4.14: Government party to notify the Commission of objections -

Hon TOM STEPHENS: I defer to the parliamentary draftman's amendment.

Hon MARK NEVILL: I move -

Page 73, after line 22 - To insert the following subclause -

(2) The Government party must also notify an objector of particulars of all such objections lodged by other objectors.

Page 73, line 23 - To insert after "subsection (1)" the passage "or (2)"

The reasons for these amendments have already been explained. I urge the Committee to support the amendments.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 4.15 to 4.17 put and passed.

Clause 4.18: Consultation -

Hon TOM STEPHENS: I move -

Page 75, lines 6 to 13 - To delete the lines and substitute the following lines -

In the case of any Part 4 act, the consultation parties must consult with each other in good faith with a view to reaching an agreement about -

(a) minimizing the effect including about -

(i) any access to the relevant land; or

(ii) the way in which any thing authorized by the act may be done; 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 is similar to that in clause 2.23, which was passed during the debate on the previous Bill. The arguments could be run again; they are identical. The amendment is to expand on the matters about which consultation can occur. Despite the fact that I do not want to repeat the arguments, they are as important now as they were on the previous occasion. The amendment is self-explanatory as to what we believe should be included in the consultation process. I commend the amendment to the Committee again, and hope it will be adopted. I believe the Bill is better protected from its potential fate in the Senate by the inclusion of this amendment.

Hon N.F. MOORE: For all the reasons I gave when we argued about this matter previously, the Government does not support the amendment.

Amendment put and a division taken with the following result -

Ayes (12)

Hon J.A. Cowdell	Hon John Halden	Hon Norm Kelly	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon N.D. Griffiths	Hon Helen Hodgson	Hon Tom Stephens	Hon Bob Thomas *(Teller)*

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Murray Montgomery	Hon Greg Smith	Hon B.K. Donaldson
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	*(Teller)*
Hon Peter Foss	Hon Mark Nevill		

Pairs

Hon E.R.J. Dermer	Hon B.M. Scott
Hon Ljiljanna Ravlich	Hon Simon O'Brien
Hon Kim Chance	Hon Ray Halligan
Hon Christine Sharp	Hon Muriel Patterson

Amendment thus negatived.

Clause put and passed.

Clauses 4.19 to 4.27 put and passed.

Clause 4.28: Criteria for making recommendations -

Hon TOM STEPHENS: I propose to move the amendment that stands in my name on the Supplementary Notice Paper to delete existing clause 4.28 and substitute a new clause.

The CHAIRMAN: The Leader of the Opposition must argue for the defeat of the clause before he can move a substitute clause.

Hon TOM STEPHENS: I oppose the clause in order to move the amendment that stands in my name. This would provide the opportunity to insert the criteria for making recommendations that are contained in section 39 of the Native Title Act, which the commission must take into account following the failure of consultation procedures. The arguments for this amendment are the same as those I put for the amendment to clause 2.33, and there is no need to repeat them. I stress the importance of the amendment.

Hon N.F. MOORE: The Government will not support the amendment for the reasons that I outlined in the amendment as previously discussed. It is another attempt to reinstate the right to negotiate in this set of circumstances and the Government does not support that.

Clause put and passed.

Clauses 4.29 to 4.34 put and passed.

Clause 4.35: Consultation before making of determination -

Hon TOM STEPHENS: I move -

Page 83, lines 14 to 24 - To delete the subclauses and substitute 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 4.27 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.

The purpose of the amendment is to establish a process for the minister's decision making should he or she propose to overturn a commission decision, so that due process would exist to require parties to provide information and, in an orderly and fair way, to answer arguments put by others before the minister makes a decision. We do not believe that the Government should consult itself, which is effectively what will occur. It is not sufficient when the relevant minister consults the Minister for Aboriginal Affairs. People fear that the Government will arbitrarily use the power of the minister to override a commission decision. The Government should consult outside of the Government to give people a fair go and to ensure equity. The Opposition seeks to impose a further check and balance on the ministerial decision by providing for parliamentary disallowance. This amendment is an associated measure aimed at allaying fears that this process ultimately will be about the Minister for Mines overriding indigenous interests to allow mining to proceed regardless of the objection of native title parties. If consultations and commission decisions are to have any meaning, a few limitations must apply on what ministers can do. The Government should not reject a due process when the minister makes a decision on these matters, therefore I ask the Chamber to support the amendment.

Hon N.F. MOORE: This amendment proposes that before making decisions on infrastructure, towns, cities, the intertidal zone and so on, the minister must provide parties with an opportunity to make submissions. There is no such requirement in the Native Title Act. When exercising his override power, the minister must give all parties an opportunity to make their views known under existing common law natural justice principles. The courts have established this in similar cases in the past. This amendment is unnecessary.

Amendment put and a division taken with the following result -

Ayes (12)

Hon J.A. Cowdell	Hon John Halden	Hon Norm Kelly	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon N.D. Griffiths	Hon Helen Hodgson	Hon Tom Stephens	Hon Bob Thomas *(Teller)*

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Murray Montgomery	Hon Greg Smith	Hon B.K. Donaldson
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	*(Teller)*
Hon Peter Foss	Hon Mark Nevill		

Pairs

Hon E.R.J. Dermer	Hon B.M. Scott
Hon Ljiljanna Ravlich	Hon Simon O'Brien
Hon Kim Chance	Hon Ray Halligan
Hon Christine Sharp	Hon Muriel Patterson

Amendment thus negatived

Clause put and passed.

Clauses 4.36 to 4.42 put and passed.

Clause 5.1: Definition -

Hon TOM STEPHENS: I oppose the clause. It is of concern to the Opposition that compensation may not be determined or payable until a determination of native title has been made. It means that compensation may not be determined or payable until years after a decision has been made to allow an act to proceed and possibly with certain conditions. The Opposition was advised in a briefing that the Commonwealth Government wants the determination of native title to be made by the Federal Court and not by a state tribunal making a decision in a de facto way through awarding compensation. However, it should be possible for the amount of compensation to be determined when the decision to approve the act is made. That is the best time to do so, particularly if the decision allows the act to go ahead on the basis of certain conditions. If the Opposition's amendment is accepted, it will not mean that compensation is payable immediately; the money will be placed in a trust until a determination of native title has been made. This amendment is consistent with the proposed amendments to the consultation process in parts 2 and 4 which, unfortunately, the Government did not accept. Not allowing the Native Title Commission of Western Australia to deal with compensation issues because there has been no determination of native title will detract from the attractiveness of the process for the parties. There is also concern about what might happen to the compensation payable to native title parties if a company goes out of existence during the time it takes for a determination on native title to be made. The legislation provides for the Crown to pay compensation in those circumstances, but that is a matter of concern for taxpayers. A decision should be made on the amount of compensation which would be placed in trust and paid out when the determination of native title is made. However, under the Government's scheme, compensation will be paid by taxpayers if a company collapses while that compensation is still payable. The amendment I will move, if this clause is defeated, improves the scheme through its relevance to the decision and the protection of the taxpayers.

The Premier has said on behalf of the Government that it will not support the Opposition's amendment because it does not meet the Commonwealth's requirement. The Premier said he had received specific advice to that effect. I would appreciate it if the Commonwealth's advice could be tabled in the Chamber now or if the Leader of the House could advise whether that advice will be tabled at the earliest opportunity. If that advice cannot be tabled, will the Leader of the House explain why? I oppose the clause.

Hon N.F. MOORE: I will need to discuss the question of making that advice available to the Committee with the Premier. However, the Leader of the Opposition knows it is not a tradition in Parliaments for legal advice to be made public in that sense. That tradition has been around for as long as I can recall, and I suspect the same thing will apply in this particular instance. However, I will discuss it with the Premier to obtain a definitive position. The Government does not support the foreshadowed amendment which the Leader of the Opposition has described in some detail. The words in the Bill are very precise and designed to meet commonwealth requirements for compliance. They are comparable with the words used in the Northern Territory and the Queensland legislation. It is interesting to note what the Leader of the Opposition is seeking to do: He wants to include "a registered native title claimant" under the definition of native title holders. That is quite contradictory. How can a native title holder be a claimant? The claimants are the people lodging claims. They do not become native title holders until a determination has been made. For those reasons the Government does not support the deletion of the clause and the proposed subsequent amendment.

Clause put and passed.

Clause 5.2: Commission to determine compensation for certain acts -

Hon TOM STEPHENS: The purpose of opposing this clause is the same as for the previous amendment; that is, to allow for the insertion of the lines contained in the Supplementary Notice Paper. The amendment has the same purpose as the previous one. It will allow the Native Title Commission of Western Australia to approve compensation, which the native title holder is to receive when there has been an approved determination of native title. If there is no determination, the compensation shall be held in trust. Clause 5.8(2) clearly contemplates the situation of the commission making a decision on compensation when it makes the decision about the conditions governing the act. Given that the Commonwealth has accepted this part of the legislation, I would be surprised if it knocked back the legislation on the basis of this amendment. Why would clause 5.8(2) be acceptable and proposed amendments regarding the compensation issues be not acceptable? I ask the Chamber to delete the clause to provide me with the opportunity of moving my amendment.

The CHAIRMAN: The amendment is in order because only part of the clause is being deleted.

Hon TOM STEPHENS: I move -

Page 87, lines 7 to 9 - To delete the lines and substitute the following lines -

(4) The Commission, on application made by the native title holders -

(a) is to determine the amount of any such compensation and, where there has been an approved determination of native title, the native title holders entitled to receive it; and

Hon N.F. MOORE: The Government does not support this amendment for the same reasons as outlined before.

Amendment put and a division taken with the following result -

Ayes (12)

Hon J.A. Cowdell	Hon John Halden	Hon Norm Kelly	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon N.D. Griffiths	Hon Helen Hodgson	Hon Tom Stephens	Hon Bob Thomas *(Teller)*

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Murray Montgomery	Hon Greg Smith	Hon B.K. Donaldson
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	*(Teller)*
Hon Peter Foss	Hon Mark Nevill		

Pairs

Hon E.R.J. Dermer	Hon J.A. Scott
Hon Ljiljanna Ravlich	Hon Simon O'Brien
Hon Kim Chance	Hon Ray Halligan
Hon Christine Sharp	Hon Muriel Patterson

Amendment thus negatived.

Clause put and passed.

Clauses 5.3 and 5.4 put and passed.

Clause 5.5: Compensation principles to be as for ordinary title -

Hon TOM STEPHENS: I move -

Page 89, line 12 - To insert after the word "sections" the passage "5.2(2),".

Hon N.F. MOORE: This amendment does not make sense in view of the fact that we have made a previous decision about this matter.

Hon Tom Stephens: The Leader of the House may be right.

The CHAIRMAN: The Chair believes it may still make sense. Perhaps the Leader of Opposition can convince the Leader of the House.

Hon TOM STEPHENS: All of my amendments make sense, including this one. I support the amendment and urge the Chamber to do likewise.

Amendment put and negatived.

Clause put and passed.

Clause 5.6 put and passed.

Clause 5.7: Requests for non-monetary compensation -

Hon N.F. MOORE: I move -

Page 89, line 22 - To delete the word "claiming" and substitute "applying for".

Page 90, line 6 - To delete the word "claiming" and substitute "applying for".

These are technical amendments which have been suggested by parliamentary counsel.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 5.8: Conditions for payment of amounts to be held in trust -

Hon TOM STEPHENS: I move -

Page 90, after line 21 - To insert the following paragraphs -

(a) a recommendation by the Commission under section 2.32;

(b) a determination by the responsible Minister under section 2.39;

Proposed subclause (1) applies to a condition in some instruments and refers to determinations and declarations by the commission and the responsible minister in part 3 of the legislation, the right-to-negotiate provisions. There should be a provision in the legislation for the payment of compensation in trust arrangements to apply to decisions under part 2 of the Bill, the consultation procedures. The commission might make a recommendation that an act be allowed to proceed on certain conditions, one of which is the payment of a monetary amount. The Premier tried to argue that clause 2.32 prohibits the commission from making those decisions. He acknowledged that there would be a payment, but not a compensation payment. That would appear to be a strange and somewhat arbitrary distinction. The commission cannot make a decision on a condition relevant to profits or income. However, it is not precluded from making a decision for the payment of a monetary amount. The clause provides that the commission may specify conditions under subclause (1)(b) only if they relate to the doing of the act as it affects native title rights and interests with regard to the relevant land. One condition may be the payment of a monetary amount, which may not be described as compensation, but there is no indication that the commission is prohibited from making a decision involving the payment of money. The payment in trust arrangements should be applicable to such a decision. I commend the amendment to the Chamber.

Hon N.F. MOORE: The Government does not support the amendment. Part 2 acts, which are acts that relate to the consultation process, are about minimising the impact of native title and not about compensation. Clause 5.8 was designed to apply only to part 3 acts. That remains the Government's position.

Amendment put and negatived.

Clause put and passed.

Clauses 5.9 to 6.4 put and passed.

Clause 6.5: Eligibility for appointment as Chief Commissioner -

Hon TOM STEPHENS: I move-

Page 96, after line 11 - To insert the following subclauses -

(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 making a recommendation under subsection (2) the premier must consult the parliamentary leader of each party in the Parliament.

The CHAIRMAN: I bring to the attention of the Leader of the Opposition the fact that proposed subclause (2) is out of order because it is already provided for under clause 6.4(2), which states that all of the members are to be appointed by the Governor.

Hon TOM STEPHENS: That appears to be the case, Mr Chairman, and therefore I accept your ruling.

The Australian Labor Party believes it is appropriate for commissioners, including chief commissioners, to be appointed by the Governor. This will enhance the concept of independence and the status of the commissioner and help to ensure that it is not just a political appointment of the Premier. Nonetheless, I persist with the amendment to insert subclause (3). There is logic in the Government accepting the amendment on the basis that the chief commissioner shall be appointed by the Governor and shall hold office in accordance with the Act. We require a bolstering of the status and independence of the commission in this way.

Hon N.F. MOORE: Not surprisingly, the Government does not support this amendment. I am trying to think of the other appointments that have this requirement; I think the only one is the Electoral Commissioner. The first time that provision was applied, the Leader of the Opposition, who happened to be on our side at the time, was confronted by the Premier of the day and told, "The Electoral Commissioner will be Joe Blow and I am just consulting you." The "consultation" was telling the Leader of the Opposition who would be appointed. I do not know what this amendment hopes to achieve nor the point that is to be made, when consulting parliamentary leaders of other parties does not give them a say in the matter. "Consultation" in the past has been to tell the other parties who will be appointed to the position. It is ridiculous to suggest that the appointment of people to various positions should be on the basis of consultation with the various parties in Parliament. Governments make appointments which must be approved by the Governor. Therefore, it must go through the Executive Council. It is appropriate for Governments to make these appointments and because it is a public process, if the person appointed is seen to be political, he or she will be criticised roundly. However, I have no doubt that Governments of all persuasions will seek to appoint the right person to perform the job properly, efficiently and effectively. The Government has no intention of appointing a political hack to the position.

Amendment put and negatived.

Clause put and passed.

Clauses 6.6 to 7.1 put and passed.

Clause 7.2: Review of Act -

Hon TOM STEPHENS: I move -

Page 113, after line 20 - To insert the following new subclauses -

(4) In carrying out a review under this section the Minister must -

(a) ensure that a notice in accordance with subsection (5) 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.

(5) 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.

In dealing with a review of the Act, we seek to add to the substance of the review and the extent of the consultation in its preparation by including requirements for advertising the review and inviting public comments and submissions. I commend the amendment to the Chamber.

Hon N.F. MOORE: The Government does not support the amendment moved by Hon Tom Stephens. It requires public notification about the review of the Act and requires the minister to consider comments or submissions made. There is no requirement for these detailed notices to be issued or for submissions to be considered when conducting such a review. The amendment is unnecessary. Representative bodies and interested parties will know about the review and why it is to be held.

Amendment put and negatived.

Clause put and passed.

Clauses 7.3 and 7.4 put and passed.

New clause 1.3 -

Hon TOM STEPHENS: I move -

Page 3, after line 4 - To insert the following new clause -

1.3 Principles of Act

The principles underlying this Act are -

(a) to provide for the acknowledgment 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 amendment deals with what we consider to be the principles of the Act. We have had this debate before. This amendment was moved successfully in the previous debate on this Bill's predecessor. The legislation in its current form lacks a genuine objects clause. Some clauses purport to be objects clauses - for example, clause 1.3 - yet these purported objects clauses are extremely technical and legalistic. We believe that there should be a declaration of the principles stating what the Bill is about; that is, that it acknowledges and protects native title, that it establishes standards for future dealings affecting native title and that it should be consistent with the commonwealth Native Title Act.

Given the Premier's approach to native title - not as an indigenous right but as a non-indigenous problem - it is important for the Parliament to endorse the acknowledgment and protection of native title, and this Bill should assist native title holders to exercise their native title rights. We are talking effectively about property rights. It is true that the starting point in this debate is that we should not assume that the right to negotiate is a benefit generously conferred on Aboriginal people but, rather, that it is just a compromise that has been accepted by the Aboriginal people. At the outset of native title, every indigenous person who thought he or she had a claim to land could have attempted to resolve that claim, as Eddie Mabo did, through the courts. It would have taken decades to resolve, presumably costing billions of dollars, including millions of dollars on legal fees. That process would have delayed development in Australia enormously. Instead, the way things developed was by way of a compromise, whereby indigenous people accepted the extinguishment of native title by past acts and the validation of titles, and the development could proceed pending the resolution of native title issues, and in return they were offered the right to negotiate. If compromise had not been offered and accepted, lengthy and expensive commonwealth processes would have remained

The Premier tried to argue that the Native Title Act provides for the acknowledgment and protection of native title. That is true. However, it is also the case that providing for processes to deal with native title by definition means that this Bill also recognises the existence of native title. This Bill sets up alternative processes which have effect, rather than the provisions under sections 43 and 43A of the NTA. These processes, both in the NTA and in this Bill, recognise that the relevant native title exists and are supposed to protect those interests by providing those people with the opportunity to negotiate or consult in relation to future acts.

This also clearly justifies the inclusion of paragraph (b). This Bill is about establishing how future dealings affecting native title may proceed. Dealing with paragraph (c), the Premier stated that this Parliament cannot ensure the legislation is consistent because Western Australia does not make that determination; the federal Attorney General does. The federal Attorney General makes a determination about whether the state legislation is consistent. If it is not, the legislation will be disallowed and therefore the Parliament will have the opportunity, if it chooses, to revisit the legislation to make it consistent with the expectations of the federal Senate. An underlying principle of the Bill is that it seeks to ensure it is consistent with standards set out in the commonwealth Native Title Act. This Parliament is the body that ensures that consistency, and all the federal Attorney General does is to determine whether it has done so. If it has not, the legislation will come back to us for amendment so that it is consistent, if we want a state-based regime.

A further reason to include a declaration of principles is to assist in the later interpretation of the detail. Nothing else sets out the principles by which this Parliament seeks to approach native title issues. This amendment gives the Bill a more substantial image and embodies a more appropriate approach to the handling of native title issues. I commend this objects clause.

Hon N.F. MOORE: The amendment seeks to insert principles of the Act similar to the objects of the Native Title Act into the legislation. There is no requirement in the Native Title Act for state legislation to include such a provision. The principle of ensuring consistency between the Native Title Act and state law is superfluous. The state legislation must be consistent or it will not receive the approval of the commonwealth minister.

Paragraph (a) of the proposed new clause deals with the role of the Native Title Act and it is not the role of this legislation. It talks about the acknowledgment and protection of native title. It does not properly reflect the purpose of this legislation which is to provide a state-based mechanism for dealing with native title as provided for in the Native Title Act. The acknowledgment and protection of native title are matters dealt with in the Native Title Act itself. Paragraph (b) of the proposed new clause reflects what this legislation does, as set out in its preamble. Therefore, this paragraph is unnecessary. Paragraph (c) of the proposed new clause is a requirement of the Native Title Act and it is unnecessary and inappropriate to specify that in this proposed new clause. Compliance is a matter for the Commonwealth, and nothing in this legislation will add to or assist in ensuring that it is compliant. I do not see any purpose in adding this clause to the Bill.

New clause put and a division taken with the following result -

Ayes (12)

Hon J.A. Cowdell	Hon John Halden	Hon Norm Kelly	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon N.D. Griffiths	Hon Helen Hodgson	Hon Tom Stephens	Hon Bob Thomas *(Teller)*

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Murray Montgomery	Hon Greg Smith	Hon B.K. Donaldson
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	*(Teller)*
Hon Peter Foss	Hon Mark Nevill		

Pairs

Hon Ed Dermer	Hon Barbara Scott
Hon Ljiljanna Ravlich	Hon Simon O'Brien
Hon Kim Chance	Hon Ray Halligan
Hon Christine Sharp	Hon Muriel Patterson

New clause thus negatived.

New clause 2.43 -

Hon MARK NEVILL: I move -

Page 30, after line 16 - To insert the following new clause -

2.43. Copy of determination to be laid before Parliament

(1) The responsible Minister must cause a copy of a determination under section 2.38, 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.

This proposed new clause provides that whenever a minister uses the power to override or vary a recommendation made by the Native Title Commission, a copy of the determination, together with the reasons, must be tabled before both Houses of Parliament. The tabling is required within 15 sitting days of the determination being made. This amendment does not provide for disallowance of the determination, because it would be unworkable and would result in political interference with an executive decision making process. There are enough protections in the legislation if the minister overrules a determination where he does not have grounds, and he must table the reasons. The minister will wear the public odium of it, and the Government of the day will suffer as a result of that. That process is perfectly adequate. I do not believe the Legislative Council should sit as a House of Review for every decision a minister makes. The proposed new clause is identical to the previous amendment, except for the disallowance part of the determination. In that sense, it was another compromise between the Opposition's view and the Government's view that there is no need to table a determination in Parliament. It makes the minister more accountable. I urge the Committee to support the amendment.

Hon TOM STEPHENS: As members would anticipate, from both the reading of the Notice Paper and the comments by Hon Mark Nevill, I propose to move the amendment I have just circulated which would have the effect of requiring a determination to be laid before the Parliament so it could be treated as a regulation for the purposes of section 42 of the Interpretation Act. The proposed new clause moved by Hon Mark Nevill does not include that provision. We are grateful that the Government and Hon Mark Nevill have adopted the previous amendment, but we see the absence of this provision as a deficiency.

We regard the commission's decision as being akin to a judicial decision. We are concerned the minister has the power to override the decision and to make a political judgment about the interests of the State without any check or balance. Any political process should be subject to the possibility of a check and balance, and the Parliament is the appropriate place for that to occur. If we had a strong and independent Native Title Commission, perhaps the argument would be weaker, as that, of itself, would be a political check and balance. The minister would have to take into account the political impact of overturning one of the commission's decisions, and may be deterred politically by the commission's status. The notion of parliamentary disallowance has arisen because of the Opposition's fear about the possibility of a weak, low status commission, which is barely independent, being established by this Government, one for which it appeared to have no appetite from the outset. This proposed new clause could cut both ways. Under a future Government the commission might make a ruling to allow an act and the minister might make a determination to override that recommendation. It might then be disallowed, perhaps, by a coalition majority in the upper House, which in the life of this Chamber is no rare event, and go ahead. I commend the disallowance provision in the form of my amendment. I move -

That the new clause be amended by inserting the following new subclause -

(3) A determination under section 2.38 is a regulation for the purposes of section 42 of the *Interpretation Act 1984*.

Hon N.F. MOORE: We debated a disallowance provision this evening on a previous clause. It is not the Government's view that these determinations should be disallowed, and I do not want to go into a long debate about that. It is the view of the Government that it is perfectly satisfactory to have in place a capacity for the minister to overrule a commission's determination. The minister must go through the proper processes. The Government has agreed to the amendments proposed by Hon Mark Nevill requiring that the minister's decision be tabled before both Houses of Parliament within 15 sitting days of the determination being made. It is important for Parliament to be aware of these things, but it is not appropriate for Parliament to have the right to disallow these determinations. The Government will support new clause 2.43 as moved by Hon Mark Nevill, not the amendment to new clause 2.43 moved by Hon Tom Stephens.

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

Ayes (12)

Hon J.A. Cowdell	Hon John Halden	Hon Norm Kelly	Hon Ken Travers
Hon Cheryl Davenport	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon N.D. Griffiths	Hon Helen Hodgson	Hon Tom Stephens	Hon Bob Thomas *(Teller)*

Noes (13)

Hon M.J. Criddle	Hon Barry House	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Murray Montgomery	Hon Greg Smith	Hon B.K. Donaldson
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	*(Teller)*
Hon Peter Foss	Hon Mark Nevill		

Pairs

Hon E.R.J. Dermer	Hon B.M. Scott
Hon Ljiljanna Ravlich	Hon Simon O'Brien
Hon Kim Chance	Hon Ray Halligan
Hon Christine Sharp	Hon Muriel Patterson

Amendment on the amendment thus negatived.

New clause put and passed.

New clause 3.55 -

Hon MARK NEVILL: I move -

Page 65, after line 16 - To insert the following new clause -

3.55. Copy of declaration to be laid before Parliament

(1) The responsible Minister must cause a copy of a declaration under section 3.51, 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 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.

Hon TOM STEPHENS: I move -

That the new cluse be amended by inserting the following new subclause -

(3) A declaration under section 3.51 is a regulation for the purposes of section 42 of the *Interpretation Act 1984*.

Amendment put and negatived.

New clause put and passed.

New clause 4.38 -

Hon MARK NEVILL: I move -

Page 84, after line 22 - To insert the following new clause -

4.38. Copy of determination to be laid before Parliament

(1) The responsible Minister must cause a copy of a determination under section 4.33, 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.

This new clause is similar to the previous one and applies to determinations made under part 4.

Hon TOM STEPHENS: I move -

That the new clause be amended by inserting the following new subclause -

(3) A determination under section 4.33 is a regulation for the purposes of section 42 of the *Interpretation Act 1984*

Amendment on the amendment put and negatived.

New clause put and passed.

New clause 5.3 -

Hon MARK NEVILL: I move -

Page 88, after line 8 - To insert the following new clause -

5.3. Parties may agree on compensation

Nothing in section 5.2 prevents -

(a) the native title holders entitled to compensation under that section for an act, or a registered native title body corporate acting on their behalf; and

(b) the party from whom the compensation is recoverable,

from settling the amount of compensation by agreement without invoking the jurisdiction of the Commission.

This new clause will enable native title holders, and a party that is liable to pay compensation, to make an agreement about the amount of compensation prior to the commission making a determination. It is similar to provisions in the Land Administration Act that enable a dispute about the amount of compensation to be settled by agreement prior to determination by the Supreme Court sitting as a compensation court. It is a practical provision that will save time and the expense of a hearing in cases in which the parties know with certainty who holds the native title and what rights that involves. I urge the Chamber to support the amendment.

Hon N.F. MOORE: The Government supports the amendment.

New clause put and passed.

New clauses 7.3 and 7.4 -

Hon TOM STEPHENS: I move -

Page 113, after line 20 - To insert the following new clauses -

7.3 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.

7.4 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.

Members will be familiar with these amendments from debates on the previous native title Bill. I believe they were previously agreed to by the Chamber and I commend them to members yet again.

Hon N.F. MOORE: The Government does not support the new clauses.

New clauses put and negatived.

Schedule 1 put and passed.

Schedule 2 -

Hon N.F. MOORE: I move -

Page 123, lines 11 to 20 - To delete the lines and substitute the following -

(1) Section 162(2) is amended by deleting "In" and inserting -

" Subject to subsection (3), in ".

(2) After section 162(2) the following subsection is inserted -

" (3) Subsection (2) does not apply if the interest taken is a native title right or interest. ".

Page 123, lines 22 to 28 - To delete the lines and substitute the following -

Section 163 is amended by deleting "of the Minister or of the principal proprietor of the land" and inserting -

" of -

(c) the Minister;

(d) the principal proprietor of the land; or

(e) if there is a registered native title body corporate or registered native title claimant in relation to the land, that body corporate or claimant. ".

Page 125, after line 28 - To insert the following new clause -

25. Section 206 amended

Section 206(1) is amended by inserting after "interest in land" -

" , other than a native title right or interest, ".

The amendments are technical amendments recommended by parliamentary counsel and I commend them to the Chamber.

Amendments put and passed.

Hon TOM STEPHENS: I move -

Page 136, line 23 to page 137, line 4 - To delete the lines.

This is my final amendment. It involves deleting the provision that the Native Title Commission is no longer subject to the jurisdiction of the Ombudsman. The State Native Title Commission's administrative arrangements should be subject to his jurisdiction. Again, there is the question of the legitimacy of these arrangements and their acceptance by the indigenous community. There will be considerable scepticism about the way the commission operates and whether it will be a body that is fair to indigenous interests. Making the commission's administrative arrangements subject to the Ombudsman is one assurance that can be offered to the indigenous community. Instead, this Bill will remove the potentially controversial body from the Ombudsman's jurisdiction.

The Premier stated this clause will result in only quasi-judicial matters, not administrative matters, being excluded from review by the Parliamentary Commissioner. His comments were based on advice from parliamentary counsel. His assurance and the distinction is not apparent in the Bill. The Opposition disputes that it is the case. If it is intended that only quasi-judicial matters be removed from the Ombudsman's jurisdiction, it should be stated explicitly within the legislation. The Deputy Leader of the Opposition in the other place offered the Premier the solution of tabling in this House the advice of parliamentary counsel to provide the assurance that the Premier was correct. The Premier said: "I will get Mr Greg Calcutt to talk with the Deputy Leader of the Opposition to explain this".

Unfortunately for both the Opposition and the Government, the Premier failed to do that. If the Leader of the House can provide parliamentary counsel's advice, then, although it is late in the piece, the Opposition will probably not need to proceed with its amendment. Given the Premier's failure to provide the advice, if the Leader of the House cannot provide it, the Opposition is left with no option but to proceed with its amendment. The Opposition was offered that advice and it was not forthcoming; therefore, it persists with the amendment. The Opposition disputes the Premier's view.

Hon N.F. MOORE: I am not familiar with the situation the Deputy Leader of the Opposition in the other place found himself in, but I am advised that the offer was made for him to talk to parliamentary counsel and he did not take it up.

Hon Tom Stephens: He was told that Mr Calcutt would speak to us, and he has not.

Hon N.F. MOORE: I think there may have been a communication problem. My advice is that Mr Ripper was advised that Mr Calcutt would be happy to talk to him. The Premier's view is that Mr Ripper did not take up the offer. Maybe somebody did not tell somebody who was supposed to meet with whom and where. If that is the case, I will see if I can arrange for that meeting to take place soon. However, it will not be soon enough for us to make a decision on this clause. The Government's view is that this commission is a quasi-judicial body and it does not believe that it should be reviewed by the Parliamentary Commissioner. In a sense it is like having the Ombudsman review court decisions and that is not the appropriate role for the Ombudsman and so the Government does not support the proposed deletion of the lines.

Amendment put and negatived.

Schedule, as amended, put and passed.

Title put and passed.

Bill reported, with amendments, and the report adopted.

ADJOURNMENT OF THE HOUSE

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [10.26 pm]: I move -

That the House do now adjourn.

Kwinana Motorsports Complex - Adjournment Debate

HON J.A. SCOTT (South Metropolitan) [10.27 pm]: Tonight I want to speak about a matter of life and death. I refer to the decision today to approve the motorplex sports facility in Kwinana. I have been given a copy of a document released under the freedom of information process which is headed "Western Australian Planning Commission Meeting Date 23 November 1999". This documentation has been very hard to get hold of. In fact, this has been a very secretive process from the beginning where we have had to drag every bit of information out of the Government under duress, even to the point of its threatening to go to the Supreme Court so as not to hand over documents when the Information Commissioner found that it should.

This document is absolutely stunning. The Government has made the decision to go ahead with this complex which will have a capacity of 15 000 people even though the Government has the following advice from the Department of Environmental Protection to the Western Australian Planning Commission -

> The Department of Environmental Protection does not support the currently proposed location for the Motorplex Sports Facility in the Kwinana Industrial Buffer Area on the following grounds.
>
> 1. The existing risk studies do not adequately demonstrate that there would be acceptable levels of societal risk to spectators.
>
> 2. Based on advice from the Department of Minerals and Energy, Fire and Emergency Services, DNV and the Kwinana Industries, it is not possible for any emergency response plan to adequately protect spectators at the Motorplex from unplanned industrial releases, or to ensure their safe evacuation or sheltering.
>
> 3. Establishment of the facility in the industrial buffer zone is likely to constrain the expansion of future industry.

It would seem that the Government is going ahead with putting in place a motorplex complex which will put at risk the lives of 15 000 people, according to the advice it has received.

The document states at page 2, under the heading "Advice" -

> A peer review carried out by DNV Technica, a world accredited risk consultant with 10 years of experience in the Kwinana area, concluded that the societal risk report by the proponent considerably underestimated the level of risk at the proposed Motorplex site. DNV also established that the Motorplex would not probably satisfy the current Kwinana Industrial Area societal risk criteria, as it proposed for the Kwinana area in 1990.
>
> The motorplex will not meet societal risk criteria in NSW or Victoria or in other developed countries in the World (Hong Kong, Netherlands, Switzerland, UK). The proponent did not identify any other planning authority in the world which would accept a proposal which put 15 000 people within 700m of a classified major hazard facility.

What we have here is world's worst planning practice. It is the type of planning that one would find only in a third world country, and it is abominable that the Government would even consider it.

The document states also -

> The DEP considers MFP response to the advice provided by the EPA in Bulletins 949, as being cursory and misleading.

Not only is the Government prepared to hide information and not reveal that it is proposing to put people's lives at risk, but also it is prepared to be misleading about that information and try to lessen its effect. The document continues -

> The MFP case is based on the modelling conducted by AEA Technology for the 2020 scenario, which shows that the individual risk is borderline for the Motorplex site, and then goes on to assume that the risk of the current situation could not be unacceptable.
>
> It has been clearly pointed out by DNV that the AEA work was for 'far field' effects and is only to be used as a macro planning tool. The use of the AEA work by the proponent as the sole input in decision making, is therefore not adequate. A specific site assessment is required to evaluate all 'nearer-field' events which can affect the site. These events would have a higher frequency.

This report outlines a lot of issues which show that the risks of this proposal were underplayed by the proponent and that no complex should be built in that area. The document states at page 3 that -

> The types of events which can affect the Motorplex site are a toxic cloud release, a toxic fire (like Coode Island), a flammable cloud (LPG) explosion, and explosions and projectiles (BLEVE as at Sydney). Looking at the type of incident, the close proximity of major hazard facilities (700m), and the time it takes for the Motorplex site to be affected, there is very little warning (0 to 10 minutes) for emergency response actions to be undertaken.
>
> The Fire and Emergency Services Authority of Western Australia, the Department of Minerals and Energy, DNV

> and the Kwinana Industries all agree that it is not possible for an effective emergency response plan to be put in place to either evacuate or shelter the 15 000 spectators. Apart from a major event (at low frequency), there are frequent (six in 1998 and four so far in 1999) lower level offsite impacts from unplanned releases of hazardous substances.
>
> In spite of evidence of past releases, some of which came very close to major releases, and the fact that the summer evening breezes blow from the industry towards the Motorplex site, MFP still asserts that 'smaller less severe events from fugitive incidents are unlikely to present a problem at the Motorplex'.

Clearly this motorplex is a human risk. I believe the Government is probably more dangerous to the citizens of Western Australia than the cyclone that is approaching our coast. This is fairly close to corruption. Government departments have been hiding information that must be extracted under freedom of information legislation which shows that people could be severely damaged by incidents such as those described in this report. Why is the Government so hell-bent on putting this project into this area? It is totally nonsensical. Apart from a risk to the human population, it will cause a real problem for industry as, on its own, it will double the societal risk that already exists in the industrial area. The Government must remember that the noise of 92 decibels that will come from this project to the people of Medina will be three times the normal acceptable level. It is not only entirely inappropriate and against planning policies to erect a complex like this in a buffer zone, but also it will endanger people who attend the complex. It is a disgrace that this Government is going ahead with this project. The Government is saying now that it will go ahead with the project in January, although these issues have not been dealt with. The Government will spend millions of dollars of taxpayers' money on a project which will not only put people at risk, but also mean that this State could be liable for billions of dollars in compensation if a major accident were to occur. Some people in government and in government departments will be in very serious trouble because of the way in which the project has been handled. I question the real motive for this project. Will there be a large sell-off of the Royal Agricultural Society showgrounds, in which the other speedway was located.

Question put and passed.

House adjourned at 10.37 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

GOVERNMENT CONTRACTS, CHAMBER OF COMMERCE AND INDUSTRY

584. Hon KEN TRAVERS to the Minister for Transport representing the Minister for Family and Children's Services:

(1) Have any of the Government agencies for which the Minister for Family and Children's Services is responsible had contracts with, or made payments to, the Chamber of Commerce and Industry in each of the following years -

(a) 1996/97;
(b) 1997/98; and
(c) 1998/99?

(2) If yes, what was the nature of each of the contracts and what was/were the payments made?

Hon M.J. CRIDDLE replied:

Family and Children's Services
(1) (a)-(c) Yes.

(2) (a) Service to assist with management and implementation issues surrounding the Western Australian Social and Community Services Award 1996, Aboriginal Communities and Organisations (Western Australia) Award 1996 and the Crisis Assistance Supported Housing Award, and particularly to provide advice on industrial relations and award issues relevant to the Community Services Industry.

(b) Payments made in respect of this contract are -

1996-97	$44 654.18 (part year)
1997-98	$247,647.56
1998-99	$318,358.06

Office of Seniors Interests
(1) (a) No.
(b) Yes.
(c) No.

(2) There was a payment of $775 made in July 1997 made for the launch of a publication called "Breaking the Ice - A Guide to Marketing to Maturity".

Women's Policy Development Office
(1)-(2) No.

WA Drug Abuse Strategy Office
(1) No.

(2) Not applicable.

Family and Children's Police Office
(1) No.

(2) Not applicable.

MINING, MT CHARLOTTE, WILLIAMSTOWN

840. Hon TOM HELM to the Minister for Mines:

I refer to letters of complaint from Mr Hounslow dated August 25 1999, August 30 1999 and September 21 1999 sent to the Minister for Mines -

(1) Will the Minister or his department prosecute either KCGM, Normandy Mining Ltd or Homestake Gold of Australia Ltd for breaching section 20(5) of the *Mining Act 1978* in not obtaining written permission from the owner of 7 Williamstown Road in breaching the "or otherwise interfere with" Crown Land provision on August 11 1999 in removing a large transportable building and operating a large Kato crane with hydraulic jacks pushing down onto the ground well within 100 metres of the property as outlined in the letter of August 30 1999?

(2) If not, why not ?

(3) Will the Minister or his department prosecute either KCGM, Normandy Mining Ltd or Homestake Gold of Australia Ltd for breaching section 20(5) with the "or otherwise interfere with" Crown Land provision for any or all of the incidents from July 27 1999 through to August 6 1999 referred to in detail in the letter of August 25 1999?

(4) If not, why not?

Hon N.F. MOORE replied:

(1)-(4) Advice from the Crown Solicitor's Office in relation to the letters of complaint by Mr Brian Hounslow dated 25 and 30 August 1999 and 21 September 1999 and reports by the Regional Mining Registrar Kalgoorlie and a District Inspector of Mines is to the effect that prosecution of KCGM is not justified in the circumstances. The alleged activities in contravention of section 20(5) do not amount to offences liable to prosecution pursuant to section 154 of the Mining Act, but may amount to unauthorised mining activity which may be subject of a prosecution pursuant to section 155. The advice however was that in the circumstances the conduct complained of did not justify prosecution.

TRANSPERTH, COST OF SENIORS TICKET

852. Hon CHERYL DAVENPORT to the Minister for Transport representing the Minister for Seniors:

I refer to the recent Government announcement regarding a 'Seniors Ticket' which allows all Seniors Card Holders in WA to travel free on Transperth services each Sunday and every public holiday from October 3 1999 and ask -

(1) What figures were used to estimate the cost of approximately $1.8 million?

(2) Does the estimated cost of $1.8 million include administrative costs to deliver the cards to all current Seniors Card Holders?

(3) If not, what additional costs are anticipated for the delivery and distribution of the new Seniors Ticket?

(4) Who has been contracted to provide the printing and packaging of the tickets and at what costs?

(5) Given that the card is valid for 12 months only, what costs will be incurred annually by the Government to cover the continued cost of distribution of the card?

(6) Why has the Government chosen to issue a new card when eligibility for the ticket is extended to all seniors in WA who currently hold a Seniors Card?

(7) Will the Government be monitoring the number of seniors using this service?

(8) If so, how?

(9) What initiatives are planned for seniors residing in the outer metropolitan areas and regional Western Australian who do not have access to public transport on a Sunday or public holidays?

Hon M.J. CRIDDLE replied:

(1) Approximately 1.9 million Seniors per annum board Transperth services on Sundays and Public Holidays. An average cost of $0.97 each boarding equates to $1.8 million in revenue forgone by Transperth.

(2) No.

(3)

	Office of Seniors Interests	Dept of Transport	Total
	$	$	$
Software changes	7 145.00	6 090.00	13 235.00
Design		5 000.00	5 000.00
Ticket production (inc freight and storage)		50 000.00	50 000.00
Packaging and distribution	104 421.28		104 421.28
Advertising	13 730.13	50 269.87	64 000.00
Launch		8 000.00	8 000.00
Totals	125 296.41	119 359.87	244 656.28

(4) Salmat Laser Printing and Mailing Services
(Envelopes, collating, folding and inserting, postage and courier costs $85 760.47

Sands Print Group (Overprint letterheads) $12 220.00

Magnetic Tickets and Tags (Printing of Transperth tickets) $50 000.00

(5) The Department of Transport will arrange production of the ticket at an approximate cost of $55 000 plus inflation. The Office of Seniors Interests will administer its distribution through existing mail outs to Seniors Card members and it is expected that no additional costs will be incurred.

(6)-(7) The electronic ticket provides Transperth with statistical information about the number of trips taken by Seniors.

(8) The electronic ticketing equipment installed on all Transperth services and facilities.

(9) For residents residing in the outer metropolitan areas, the Circle Route will be extended to include Sunday services from late 1999 or early 2000. As part of their strategic planning process, Transport is progressing plans to enhance public transport services and infrastructure in regional Western Australia.

MINING ACTIVITIES, WILLIAMSTOWN

903. Hon TOM HELM to the Minister for Mines:

I refer to question on notice number 621 of September 23 1999 and the Minister's answers -

(1) Can the Minister state on what date "Advice was sought from the Crown Solicitor as to whether or not the activities referred to in correspondence dated August 25 1999, August 30 1999 and September 21 1999 from Mr Brian Hounslow constitute a breach of section 20(5) of the *Mining Act 1978* by interfering with Crown Land without his written consent"?

(2) If not, why not ?

(3) Can the Minister indicate when Mr Hounslow can expect to know the outcome of all his complaints made in letters dated August 25 1999, August 30 1999 and September 21 1999 given that quite a period of time has elapsed since these letters were sent to the department?

(4) If not, why not?

Hon N.F. MOORE replied:

(1)-(2) Advice from the Crown Solicitor on the complaints made by Mr Brian Hounslow in his letter of 25 August was sought on 26 August 1999. The letters 30 August and 6 September which requested that Departmental officers contact Mr Hounslow before legal advice was sought, were referred to the Crown Solicitor's Office on 13 September 1999. Mr Hounslow's letter 21 September 1999 and the report by the Regional Mining Registrar on his meeting with Mr Hounslow on 20 September 1999 were referred for advice on 1 October 1999.

(3)-(4) Mr Hounslow has been informed of the outcome of the Crown Solicitor's Office advice by letter dated 6 December 1999.

MINING LEASE 27/164, FORFEITURE

904. Hon TOM HELM to the Minister for Mines:

I refer to question on notice number 622 of September 23 1999 and the Minister's answers -

(1) Can the Minister state how the amount of "$2 000 fine in lieu of forfeiture" was arrived at?

(2) If not, why not?

(3) Can the Minister explain the rationale as to why "The failure of the company to consult with and obtain prior permission from the Department of Minerals and Energy and the local government authority was not of sufficient gravity to warrant forfeiture of the lease"?

(4) If not, why not?

Hon N.F. MOORE replied:

(1)-(4) The information requested by the honourable member was provided in part (5) of my answer to Question on Notice No. 622 asked on 23 September 1999.

MINING, MT CHARLOTTE

905. Hon TOM HELM to the Minister for Mines:

I refer to question on notice number 58 of August 11 1999 -

(1) Can the Minister state on what date "Advice was sought from the Crown Solicitor as to whether or not section 20(5) of the *Mining Act* is being breached as a consequence of the activities referred to by myself in the question?

(2) If not, why not?

Hon N.F. MOORE replied:

(1)-(2) I would refer the honourable member to the answer to Question No. 903 asked on 11 November 1999.

MINING, PROSPECTING LICENCES 26/2458, 26/2471 AND 26/2483

922. Hon TOM HELM to the Minister for Mines:

I refer to a note to the Minister dated November 3 1998 titled "Parliamentary Questions - Hon Giz Watson - Re Evidence given at the Hearing of Application for Prospecting Licence 26/2458" signed by a person for Mr L C Ranford Director General.

(1) Can the Minister state on what date the Warden had his car accident which caused according to the department "Delay as a result of Warden's car accident" to the decision of P26/2471 and P26/2483?

(2) If not, why not?

(3) Can the Minister explain why the department has stated - "Delay as result of Warden's car accident" in relation to the "Date of Decision" stated for P26/2471 and P26/2483 being "06.02.98"?

(4) Can the Minister state whether there was a delay in the decision of P26/2458 and P26/2510 due to the Warden having a car accident?

(5) If not, why not?

(6) Can the Minister state what is the name of the departmental officer who has signed this note to the Minister dated November 3 1998 "for LC Ranford Director General"?

(7) If not, why not?

Hon N.F. MOORE replied:

(1)-(2) Warden K Boothman was involved in a car accident on 27 September 1994.

(3) The statement was provided as an explanation of the Department's understanding for the reason for the time difference between the decision to refuse application for Prospecting Licence 26/2510 and applications for Prospecting Licences 26/2471 and 26/2483

(4)-(5) Application for Prospecting Licence 26/2458 was lodged on 8 June 1993 and granted by the Warden on 24 February 1995. Application for Prospecting Licence 26/2510 was lodged on 21 July 1993 and refused by the Warden on 28 April 1995. The hearing of these applications took place on 2 and 20 September 1994. Warden K Boothman was injured on 27 September 1994. In his absence his decision regarding application for Prospecting Licence 26/2458 was handed down on 24 February 1999 by another Warden. Application for Prospecting Licence 26/2510 was refused by Warden G. Cicchini on 28 April 1995.

(6)-(7) I see no need to name the officer involved.

MINING, FIMISTON TAILINGS DAMS

923. Hon TOM HELM to the Minister for Mines:

I refer to a note to the Minister dated December 15 1998 signed by Mr L C Ranford Director General concerning KCGM Fimiston Tailings Dams.

(1) Is the statement - "The DEP has rejected point 1 above" truthful and correct?

(2) If not, why not?

(3) If so, can the Minister substantiate, with documentation, on what basis the "The DEP has rejected point 1..."?

(4) Can the Minister state how the "DEP is encouraging KCGM to develop a pro- active groundwater pumping program rather than the current approach of reactive pumping"?

(5) If not, why not?

(6) Can the Minister state why the department believes "...at present they only develop production bores when the monitoring bores indicate a rise in the water table"?

(7) If not, why not?

Hon N.F. MOORE replied:

(1) It is my advice that the Department of Environmental Protection (DEP) has made a decision not to take any action on this point as it is not considered an environmental impact.

(2) Not applicable.

(3) Yes, I understand the documentation is held on DEP files.

(4) The DEP is encouraging KCGM to construct more production bores ahead of any need indicated by current monitoring bores. It is expected that the additional bores will assist in lowering the water table.

(5) Not applicable.

(6) It is standard practice to monitor an environmental issue and manage any changes identified by the monitoring with the appropriate techniques.

(7) Not applicable.

MINING LEASE 24/189, STOP WORK ORDER

925. Hon GIZ WATSON to the Minister for Mines:

I refer to a Stop Work Order signed by Jim Boucaut Regional Mining Engineer and Senior Inspector dated August 27 1999 on Mining Lease 24/189.

(1) Can the Minister state why the "loss of hypersaline water and containment liquor to the environment due to failure of and seepage from the evaporation pond embankment" is considered so important to have a stop work order placed on the operations?

(2) If not, why not?

(3) Can the Minister state what specific "significant impact on a natural drain line and fringing vegetation" actually occurred?

(4) If not, why not?

(5) Can the Minister detail and state why for what specific reasons "Contamination of stockpiles" warranted a stop work order being placed on the operations?

(6) If not, why not?

(7) Can the Minister explain more clearly what the department means when it has stated "significant impact on a natural drain line and fringing vegetation" and "contamination of topsoil stockpiles"?

(8) If not, why not?

(9) Can the Minister confirm whether Mr Jim Boucaut or the Environmental Officer Mr Eugene Bouwhuis has the power under the Mining Regulations to issue a stop work order?

(10) If not, why not?

Hon N.F. MOORE replied:

(1) Work at the operation was ordered to stop following uncontrolled discharge of hypersaline mine dewatering from a failed water holding structure that was impacting on a natural drainage line and its fringing vegetation and also causing contamination of stockpiled topsoil.

(2) Not applicable.

(3) Death of vegetation from salts and sediments contained in the discharge material.

(4) Not applicable.

(5) Salt contamination of topsoil reduces its biological activity and ultimate value for rehabilitation.

(6) Not applicable.

(7) See my answers to parts 1, 3 and 5 of this question.

(8) Not applicable.

(9) Yes, Environmental Inspectors are authorised to issue Stop Work Orders under Regulation 120L of the Mining Regulations 1981.

(10) Not applicable.

MINING LEASE 24/189, STOP WORK ORDER

926. Hon GIZ WATSON to the Minister for Mines:

I refer to a letter dated August 27 1999 signed by Eugene Bouwhuis, Environmental and Rehabilitation Officer concerning a "Stop Work Order" on Mining Lease 24/189.

(1) Can the Minister state why "...the discharge of hypersaline water and sediment to the environment" is so important and relevant for a stop work order to be placed on the operations?

(2) If not, why not?

(3) Can the Minister state and explain what does the department mean by "impacted upon by sediment..."?

(4) If not, why not?

(5) Can the Minister explain why "a rehabilitation plan for the area impacted upon by sediment and hypersaline water, the evaporation pond and contaminated topsoil stockpiles" is required by the Department of Minerals and Energy?

(6) If not, why not?

(7) Can the Minister state why the officer recommended a further condition be imposed on M24/189 where the "Recommended further condition 14 calls for an unconditional performance bond of $60 000. ($20 000 additional bond)"?

(8) If not, why not?

Hon N.F. MOORE replied:

(1) Continued discharge of hypersaline mine dewatering would have led to a greater area of land being affected and further reduce the effectiveness of rehabilitation. The Stop Work Order was placed to prevent further discharge until such time as the mine dewatering was effectively managed.

(2) Not applicable.

(3) Death of vegetation from salts and sediments contained in the discharge material.

(4) Not applicable.

(5) A rehabilitation plan is required that will describe the rehabilitation work that will be carried out by the company to ameliorate the impact of the spill.

(6) Not applicable.

(7) The additional bond secures rehabilitation of the area on the tenement affected by the spill. The area was estimated at four hectares and a bond rate of $5,000 per hectare was used.

(8) Not applicable.

REGIONAL CABINET FUNCTIONS, INVITATION LIST POLICY

931. Hon TOM STEPHENS to the Leader of the House representing the Premier:

(1) Will the Premier table the policy that determines the invitation list for regional Cabinet functions such as community luncheons and other community functions?

(2) If there is no written policy as such, how is it determined who is invited to these functions?

Hon N.F. MOORE replied:

Regional Cabinet functions are designed to enable exchange of information and interaction between government and the local community. Invitations are issued on this basis. The invitation lists are usually compiled by a working group, made up of representatives from the local community and government. Typically the breakfast functions are working breakfasts involving representatives from local government and local business associations. The community luncheons recognize people who have made a contribution to the community either in a voluntary capacity, through business or as service providers. Typically these functions include representatives from:

- Government agencies
- Local Government
- Community service groups
- Small business/major industry
- Sporting groups
- Schools (Principals/P&C/student reps)
- Media
- Religious groups
- Youth groups
- Health industry groups
- Arts

In addition it has been the practice to also include local government members of Parliament and local opposition members of the Legislative Assembly. Following the member's request to attend the Derby Regional Community Luncheon this practice has been amended to include opposition Upper House members in the future.

FAMILY AND CHILDREN'S SERVICES, EMERGENCY RELIEF FUNDING

967. Hon CHERYL DAVENPORT to the Minister for Transport representing the Minister for Family and Children's Services:

(1) Could the Minister for Family and Children's Services advise the amount of money provided by the Department of Family and Children's Services for emergency relief money which has been paid to clients of Family and Children's Services for the past three years (excluding salaries paid to staff)?

(2) If not, why not?

Hon M.J. CRIDDLE replied:

(1)

	Expenditure
1996-97	$2 544 812
1997-98	$2 783 329
1998-99	$2 947 483

An additional $202 411 was spent in 1998-99 as a result of the Exmouth and Moora disasters.

(2) Not applicable.

MYELOID LEUKAEMIA

969. Hon J.A. SCOTT to the Minister for Finance representing the Minister for Health:

(1) What was the incidence rate of acute myeloid leukemia in Western Australia over each of the past 10 years?

(2) What was the incidence rate of acute myeloid leukemia in the Perth metropolitan area over each of the past 10 years?

(3) What was the incidence rate of acute myeloid leukemia in non-metropolitan areas of Western Australia over each of the past 10 years?

(4) What was the incidence rate of acute myeloid leukemia in Australia over the past 10 years?

(5) What are the incidence rates of acute myeloid leukemia for males and females in the Perth metropolitan area over the past 10 years?

Hon MAX EVANS replied:

(1) The incidence rate of acute myeloid leukemia in Western Australia for Western Australian residents, for each of the last 10 years has been:

Western Australian Rates

Year	*1988*	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*
Male Rate	2.7	2.7	3.8	3.0	3.3	1.7	3.4	2.3	2.7	2.9
Female Rate	2.3	2.1	2.5	2.6	2.2	2.9	2.0	1.5	2.0	2.1

Note: Rates age-standardised to the 1991 Australian Population per 100,000 persons
Source: Western Australian Cancer Registry, Health Department of Western Australia

(2) As the incidence rate of acute myeloid leukemia is different between males and females, both sets of figures have been provided. The incidence rate of acute myeloid leukemia in the Perth metropolitan area for Western Australian residents, for each of the last 10 years has been:

Perth Metropolitan Rates

Year	*1988*	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*
Male Rate	2.7	2.9	3.8	3.3	3.5	1.9	3.7	2.3	2.7	3.0
Female Rate	2.2	2.3	2.4	2.6	2.4	2.7	2.0	1.2	1.9	2.3

Note: Rates age-standardised to the 1991 Australian Population per 100,000 persons
Source: Western Australian Cancer Registry, Health Department of Western Australia

(3) The incidence rate of acute myeloid leukemia in non-metropolitan areas of Western Australia for Western Australian residents, for each of the last 10 years has been:

Non-Metropolitan Rates

Year	*1988*	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*
Male Rate	2.8	2.2	3.9	2.1	3.0	1.1	2.5	2.1	3.3	2.6
Female Rate	2.1	1.3	3.3	2.8	1.4	3.1	1.9	2.3	2.7	1.3

Note: Rates age-standardised to the 1991 Australian Population per 100,000 persons
Source: Western Australian Cancer Registry, Health Department of Western Australia

(4) Information on Australian rates of acute myeloid leukemia has been obtained from the Australian Institute of Health and Welfare in Canberra. Data is only available up to 1996.

Australian Rates

Year	*1988*	*1989*	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*
Male Rate	3.8	3.8	3.6	3.9	3.9	3.6	4.2	3.9	3.7
Female Rate	2.6	2.5	2.6	2.3	2.6	2.5	2.6	2.8	2.9

Note: Rates age-standardised to the 1991 Australian Population per 100,000 persons

(5) As rate data is gender specific this question is covered by answer 2.

GOVERNMENT DEPARTMENTS AND AGENCIES, CONTRACTING OUT

1009. Hon J.A. COWDELL to the Leader of the House representing the Minister for Parliamentary and Electoral Affairs:

In what areas will there be increased contracting out as outlined by the Electoral Commissioner in the Commission's 1998/99 Annual Report?

Hon N.F. MOORE replied:

As preparations for the next State General Election intensify, the Western Australian Electoral Commission is likely to make greater use of outside Returning Officers for Local Government and other non-Parliamentary elections. These Returning Officers would operate under close supervision of senior officers at the Commission.

QUESTIONS WITHOUT NOTICE

BELL GROUP, RECOVERY ACTION FUNDING ARRANGEMENTS

735. Hon N.D. GRIFFITHS to the Minister for Finance:

I refer to the corporate recovery action taken by the liquidators of Bell Group and funded by the Insurance Commission of Western Australia, and ask -

(1) Is it the case that when the action commenced in 1995, the funding arrangements were as follows: ICWA, 37.5 per cent; Bell Group NV, 55 per cent; and the Australian Taxation Office, 7.5 per cent?

(2) Is it now the case that the funding arrangements are: ICWA, 83.33 per cent and the Australian Taxation Office, 16.67 per cent? If not, what are the current funding arrangements?

(3) What are the reasons for the current funding arrangements?

(4) What is the basis for the minister's statement of 7 December 1999 that "there is a concern that the 20 banks are pursuing a policy of maximising costs to eventually make ongoing funding of a liquidator politically unpalatable"?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1)-(3) As I responded previously, the Insurance Commission of Western Australia does not have a material balance sheet exposure to the future funding of the liquidators as a result of the placement of the world's largest ever legal costs insurance package. Given that, these questions are redundant.

(4) There are always concerns in a large litigation that defendants with deep pockets will seek to drag out the case and pursue a policy of maximising costs to eventually make ongoing funding of a liquidator politically and commercially unpalatable. The liquidators' placement of a ground-breaking insurance policy has overcome this prospect and should allow them to send a strong message to the 20 banks that they will not be frustrated by funding concerns from carrying out their statutory functions and duties. Neither the Government nor the Insurance Commission has made the decision to pursue the action against the 20 banks. The court-appointed liquidators approached all creditors for funding of an investigation into the conduct of the banks and, following that investigation, have pursued the banks for the money they took.

EDUCATION DEPARTMENT, GST ADMINISTRATION

736. Hon TOM STEPHENS to the Leader of the House representing the Minister for Education:

I refer to the article at page 37 of *The West Australian* of 26 November 1999, and ask -

(1) Will the minister table the Education Department's analysis which shows that the GST preparation will cost $7.3m?

(2) Has the department been provided with additional moneys to fund the GST preparation?

(3) If not, why not and from where will this money come?

(4) What are the estimated continuing annual costs to the Education Department to administer the GST?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The estimate of $7.3m was a preliminary estimate only based on the South Australian model to enable a comparison between the two States. This model included hardware, software and training - some of which is already provided in Western Australian schools. The Education Department is conducting its own analysis of the impact of the GST and more accurate costings will be available when the Australian Taxation Office clarifies a number of issues relating to registration and reporting.

(2)-(3) No. This will be examined when firm cost estimates are available and the impact of removing the wholesale sales tax is calculated.

(4) It is expected that ongoing training and support for schools could be between $350 000 and $500 000.

TIDAL POWER, JOINTLY-FUNDED STUDY

737. Hon TOM STEPHENS to the Leader of the House representing the Premier:

I refer to a letter the Prime Minister has written to the Premier proposing further study of the potential for tidal power in the Kimberley and ask -

(1) Can the Premier confirm that the Prime Minister has proposed a jointly-funded study?

(2) If yes, what funding has or will the State Government commit to such a study? If no decision has been made, when will that occur?

(3) Will the Premier table the letter; and if not, why not?

(4) Given the Government's commitment to re-evaluate the tidal power bid against the successful gas power tender, will the Premier explain why the Energy Equity Corporation Ltd web site refers to, "A detailed agreement with Western Power Corporation is currently being finalised"?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Yes.

(2) Any funding commitment by the State will only occur after further discussions with the Commonwealth and consideration by State Cabinet.

(3) The Premier will not table the letter, but I will. I seek leave to do so.

Leave granted. [See paper No 567.]

(4) The material referenced from the Energy Equity web site reflects that the power procurement process conducted by the Regional Power Procurement Steering Committee is currently at the stage of negotiation of a power purchase agreement with the single preferred bidder, Energy Equity Corporation Ltd-Woodside Energy Ltd, as previously announced. The committee is to provide its recommendation on power supply procurement in the west Kimberley to government and to Western Power. The Government will then give consideration to that recommendation compared with the "best deal" that is offered by the proponents of the Derby tidal project.

KWINANA MOTORSPORTS COMPLEX - WESTERN AUSTRALIAN PLANNING COMMISSION

738. Hon J.A. SCOTT to the Attorney General representing the Minister for Planning:

(1) What role did the Western Australian Planning Commission play in selecting the site for the Kwinana motorsports complex?

(2) If the WAPC is involved in setting up the complex, how can it carry out its role as a regulator?

(3) If the motorsports complex is to be operated by a private operator for a profit, how is this project a public works?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The Western Australian Planning Commission had no role in selecting the site for the motorsports facility.

(2) The WAPC is not a regulator in this case.

(3) The motorsports facility is to be operated by the WA Sports Centre Trust.

NATIVE TITLE, FRAMEWORK AGREEMENTS

739. Hon HELEN HODGSON to the Leader of the House representing the Premier:

(1) How many regional or framework agreements has the Government negotiated in the past or is it currently negotiating on native title?

(2) How many of these agreements have been finalised?

(3) Will the Government grant secure title to the land as a part of these agreements?

(4) In how many of these instances have claims been registered or proceedings instituted under the Native Title Act?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. I regret that I do not have an answer and ask that the question be placed on notice.

NATIONAL NATIVE TITLE TRIBUNAL, WONGATHA CLAIMS

740. Hon GREG SMITH to the Leader of the House representing the Premier:

(1) Is the minister aware that with the Wongatha native title claims, some claimants are seeking separate representation before the National Native Title Tribunal in relation to future act hearings?

(2) Will the minister advise what this means in relation to the effectiveness of the right to negotiate and the registration processes under the Native Title Act?

Hon Tom Stephens: He would not have an answer to this question. The officers would have been too busy.

Hon N.F. MOORE replied:

I thank the member for some notice of this question, and I am pleased to be able to provide an answer.

Hon Tom Stephens: I am sure you are.

Hon N.F. MOORE: It will save us a bit of time during the second reading debate of the Bill that is currently before the House, because I was going to give members all this information anyway. If they are happy for me to do that now, that is fine by me.

(1)-(2) When this matter was referred to the National Native Title Tribunal, four of the combined claimants sought separate representation before the tribunal, even though these same people were applicants in the Wongatha combination. The tribunal considered it had no choice but to grant separate representation, noting a clear conflict between the parties.

In a letter to the State, among other things, a Native Title Tribunal case manager said that after combination, the Wongatha claim passed the registration test, and the applicants on the combined claim retained the right to negotiate. In ordinary circumstances it is a strange result for claimants to agree to combine their claims to enhance their prospects of passing the registration test and then conduct themselves as though they were individual claimants. However, this does appear to be permitted by the Native Title Act.

This clearly demonstrates that Labor's right to negotiate and the registration test have both failed. Evidence is now emerging that the mining industry has been subjected to the most extraordinary behaviour in negotiations. Combined claimants are seeking individual side deals and there are suggestions of secret commissions. This is why the Government considers a new approach is needed before the existing system completely collapses.

REGIONAL FOREST AGREEMENT FACTS SHEET

741. Hon JOHN HALDEN to the minister representing the Minister for the Environment:

I refer to the Regional Forest Agreement facts sheet entitled "RFA and the Timber Industry", which was released when the RFA was signed, and ask -

(1) Has an independent consultant been contracted to work with the industry to identify and confirm priority areas and the most effective mechanisms for using the industry development funds for maximum gain?

(2) If yes, was a final report available within three months as stated in the fact sheet?

(3) If not, when will the independent consultant be contracted and when will the report be available?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1)-(3) As part of the Regional Forest Agreement timber industry restructuring package, independent consultants will be appointed to work with the industry to assist with industry restructuring and redevelopment.

WARRANTS, FINES ENFORCEMENT AGENCIES

742. Hon KIM CHANCE to the Attorney General:

Some notice of this question has been given. The Attorney General may even recognise the question; it is 710.

(1) Is the Attorney General aware of the difficulties contracted Sheriff's officers in country regions are experiencing in having orders processed through the fines enforcement agencies?

(2) Is it correct that neither the Geraldton nor Northam region received a warrant from the Sheriff during the period May to November this year? If not, how many warrants were received?

(3) Is it correct that the Fines Enforcement Registry does not have sufficient staff and funds to process orders?

(4) If that is the case, why did the Attorney General tell the House on 25 November that since the Government gave the enforcement of warrants to private collection agencies "we have gotten rid of the backlog"?

(5) Has the failure of this initiative led to people losing their drivers licences for minor offences due to the nonpayment of fines?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) There is no difficulty with the processing of fines enforcement actions at the fines enforcement agencies.

(2) No. From May to November 1999, 144 warrants were issued for Geraldton and 271 for Northam. Limited numbers of warrants have been issued to all regions pending the letting of new contracts in January 2000.

(3) No.

(4) The backlog has been forwarded to, and is currently being processed by, the contractor. The reference was specifically to the metropolitan area.

(5) At the stage a warrant of execution is forwarded to a contractor, a licence suspension is either uplifted or was not able to be imposed.

CONTRACTS, TABLING OF DETAILS

743. Hon LJILJANNA RAVLICH to the minister representing the Minister for Works:

I refer to the Minister for Works's comments in *The West Australian* yesterday that "We've published all our contracts on the Internet. We table our contracts and any information that's required".

(1) Will the minister table details of -

(a) the number of contracts detailed in full; and

(b) the Internet sites at which they can be located?

(2) How many contracts have been tabled in Parliament in their entirety since 1996?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) (a) The Government of Western Australia Contracting Information Bulletin Board is the central site for government agencies to advertise tenders above $50 000 and publish awarded contract information above $20 000. Most "contracts in full" are made up of a request for tender, an offer from the successful tenderer and a letter of acceptance. In some complex situations, the letter of acceptance is replaced by a contract signed by both parties, usually under company seal. The requests for tender and details of acceptances are already publicly available over the bulletin board.

The following contract information is available in summary form on the bulletin board: The title and description of the tender; the region and category of the tender; the closing date of the tender; the contract award date; the successful tenderer's name; the contract value; the commencement date; the expiry date without extensions; the expiry date including all extensions; and the number of submissions received.

The existing conditions of contract already provide for full access by the Auditor General. There are currently 181 recently awarded contracts which were awarded in the past 30 days, and 3 328 archived - awarded - contracts displayed on the bulletin board.

In the vast majority of cases, full contract information is freely available from the relevant agency. The provisions of the Freedom of Information Act 1992 sometimes limit the amount of information available due to matters which are commercial-in-confidence. The Department of Contract and Management Services is examining the idea of making it a condition of tender that tenderers agree to the release of their offer as a matter of routine. Alternatively they would be required to justify why this should not be the case. A public benefit test similar to that which operates under the freedom of information process is envisaged. It is expected that there would be relatively few cases in which full disclosure would not be possible.

(b) The government contracting information bulletin board is located at the website address of www.contracting.wa.gov.au.

(2) Various aspects of contracts have been tabled at the request of Parliament or parliamentary committees. There is no central record of this. Considerable research through *Hansard* and other means would be necessary to answer this question.

MOORE RIVER SOUTH OUTLINE DEVELOPMENT PLAN

744. Hon GIZ WATSON to the Attorney General representing the Minister for Planning:

I refer to correspondence from the Western Australian Planning Commission to Mr P. Pawluk of Masterplan Consultants Pty Ltd dated 29 November 1999, ref 808-3-8-2 PV2, which discusses the commission's resolve to approve the Moore River south outline development plan, subject to modification of the outline development plan.

(1) Will the minister table the revised Moore River south outline development plan which was submitted on 23 September 1999?

(2) If not, why not?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) No.

(2) The Moore River south outline development plan has been submitted to the Western Australian Planning Commission for approval in accordance with the requirements of the Shire of Gingin town planning scheme No 8. As the Western Australian Planning Commission has not completed its deliberations on the outline development plan, it would not be appropriate to table the document until such time as it has been approved by the commission. Once approved by the Western Australian Planning Commission, copies of the approved Moore River south outline development plan will be available for inspection at both the offices of the Shire of Gingin and the Ministry for Planning.

MOWEN ROAD, SEALING

745. Hon NORM KELLY to the Minister for Transport:

(1) What are the planned commencement and completion dates for the sealing of Mowen Road from Nannup to Margaret River?

(2) From where will funding be derived for this project?

(3) Is the minister aware of the concerns of local shires and residents that this project has been consistently delayed?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) Clearing works commenced in March 1999. The road will be progressively upgraded, with sealing being completed in 2007-08. This is an arrangement with the local shire which will stand.

(2) Funding for this project is being provided by Western Australian road users through the Transform WA program.

(3) I understand both the Nannup and Augusta-Margaret River councils are pleased with the current funding arrangement which has been agreed between the councils and Main Roads Western Australia. Originally this project was unfunded. However, the state coalition Government recognised the importance of this road and included its construction in the Transform WA program announced in April 1998. Work was planned to commence in 2004-05 and be completed over four years. Bringing forward the funding and utilising the resources of the Augusta-Margaret River shire has enabled the upgrading to commence earlier than originally planned.

ADOPTION SERVICES UNIT, OUTREACH SERVICE FACILITY

746. Hon CHERYL DAVENPORT to the minister representing the Minister for Family and Children's Services:

(1) Is the minister aware that it is the intention of the adoption services unit to abolish its outreach service facility?

(2) What will occur to the approximately 250 people who are currently on the waiting list for assistance, some having been waiting for over two years?

(3) How will people now access such a service in the future?

(4) Is this how the minister intends to provide service to prospective adoptive parents of international adoptees?

(5) If not, what is the rationale for abolishing this service to people seeking information?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) No. The post adoption services will continue to provide outreach services.

(2) The demand for this service has reduced since the time of the proclamation of the Adoption Act 1994 on 1 January 1995. At that time, there were 1 600 applications for outreach on the waiting list awaiting processing. Currently there are only approximately 200 people on the waiting list, who will be either processed through the post adoption service in Family and Children's Services or be referred to Adoption Jigsaw (WA) or the adoption research and counselling service. Based on experience over the past five years, not all people continue with the outreach request once offered the service.

(3) People will access through Adoption Jigsaw, the adoption research and counselling service and the post adoption service in Family and Children's Services. There are also individuals licensed to carry out contact and mediation services.

(4) The post adoption services have never been available to people who adopt from overseas, as the information they would be seeking is not accessible from Western Australia. The access to records does not exist and our laws do not apply to foreign jurisdictions.

(5) The demand for this service has now decreased. The adoption services unit is reducing a service which was intended as a short-term service when it was introduced. The department retained extra staff for three and a half years to manage the demand following the introduction of the new Adoption Act 1994.

REGIONAL POWER PROCUREMENT PROCESS, SUBSIDIES

747. Hon TOM STEPHENS to the Leader of the House representing the Minister for Energy:

I refer to the final paragraph of the minister's answer to question on notice 469.

(1) Does the statement that "the overall cost of generation will still exceed the revenue received from customers" mean that the supply of electricity at the larger unconnected locations will still require subsidies?

(2) If so, will the minister table information advising, firstly, which locations; secondly, the subsidies expected to be required; thirdly, if these subsidies are different from those in the first part, what subsidies will be provided; and, finally, to whom the subsidies be available?

(3) If not, what is meant by this statement?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(3) The Government has established the regional power procurement process to minimise the cost of generation at the major locations that are not connected to the Western Power grid systems. To date, bids have been sought for the west Kimberley and mid west regions, and a similar process will be put in place for Esperance and Exmouth. Although the process should lead to least-cost generation at these locations, there is no guarantee that the costs will be reduced to levels below the current prices paid under the uniform tariff policy. Accordingly, it is likely that some subsidies will still be required to cover the losses incurred by customers who receive uniform tariffs at the locations covered by the regional power procurement process. It will not be possible to specify the amount of losses involved, if any, until new contracts have been put in place for supply.

MOTOR VEHICLE WRECKING INDUSTRY, ILLEGAL OPERATIONS

748. Hon J.A. COWDELL to the minister representing the Minister for Fair Trading:

I refer to the question without notice asked by Hon Ken Travers regarding the destruction of the motor vehicle wrecking industry.

(1) What action is being taken by the Ministry of Fair Trading to uncover illegal unlicensed motor vehicle operations?

(2) Is the Ministry of Fair Trading prepared to check the names of purchasers of vehicles sold by insurance companies since 1 May 1999, to identify possible unlicensed operators?

(3) If not, why not?

(4) Is the ministry aware that it appears some insurance companies are selling vehicles or vehicle wrecks to individuals who are not licensed operators?

(5) Is the Ministry of Fair Trading also aware that the volume of vehicles or vehicle wrecks being sold to some individuals shows that such people are not buying them for their own use?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1)-(3) Enforcement of unlicensed motor vehicle operations is undertaken by the traffic investigations section of the Western Australia Police Service.

(4)-(5) No.

LOGGING IN KERR FOREST BLOCK

749. Hon CHRISTINE SHARP to the minister representing the Minister for the Environment:

I refer to the remaining 132 hectares of Kerr forest block that have not been intensively logged.

(1) Is this area to be logged during 1999-2000?

(2) If not, is it to be logged prior to the completion of the forthcoming jarrah forest review?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) As at December 1999, it is not planned to harvest this coupe during 1999-2000. It is noted that the area was logged intensively earlier this century, and any operations will be in regrowth forest.

(2) The harvesting of Kerr block will be considered as part of the jarrah strategy process.

COLLEGE ROW SCHOOL, THERAPY SERVICES

750. Hon BOB THOMAS to the minister representing the Minister for Health:

I refer to question without notice 710 regarding the College Row School.

(1) Since when has the Disability Services Commission had responsibility for funding school age therapy services at the College Row School or any other non-metropolitan special schools?

(2) Did the letter from the minister to the member for Bunbury dated 5 February 1999 state, in part, that the "Ministry of Health is responsible for funding therapy services at College Row School. However the Minister for Disability Services is responsible for service provision and supplementary funding through the School Age Therapy Service"?

(3) Which is correct - the minister's letter to the member for Bunbury, or the answer to question on notice 710 of 8 December 1999?

(4) Why has the Government breached its commitment to provide occupational and speech therapy services to the College Row School?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) A review of the arrangement agreed to by the Health Department of Western Australia and the Disability Services Commission, which established the school-age therapy services, was undertaken in August-September 1999. That review identified that the responsibility for therapy services at special schools lay with the school-age therapy services established under the Disability Services Commission in 1994. On 24 August 1994, the Health Department transferred to the Disability Services Commission all funds then applied to these therapy services.

(2) Yes.

(3) The letter to the member for Bunbury specifically concerned the position with College Row School. The position illustrated in response to question without notice 710 was based on findings of the review which postdates the minister's letter of 5 February 1999.

(4) The Government has not breached its commitment to provide occupational and speech therapy services to College Row School. The Health Department and Disability Services Commission will meet to resolve how these services will be provided from the beginning of the 2000 school year.

INTERNET CREDIT CARD FRAUD

751. Hon E.R.J. DERMER to the Leader of the House representing the Minister for Commerce and Trade:

(1) Will the Minister for Commerce and Trade confirm the report in *The West Australian* of 18 November 1999 that legislation is being prepared to deal with Internet credit card fraud?

(2) If so, when does the minister anticipate that this legislation will be introduced to Parliament?

(3) What has been the role of the Police Service in the drafting of this legislation?

(4) Which consumer associations and Internet industry associations have been consulted in the drafting of this legislation?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(4) The report in *The West Australian* of 18 November 1999 stated, "Police had drafted their own legislation to put to Parliament . . ."

This matter should therefore be raised with the minister representing the Minister for Police. However, on a broader issue, the Office of Information and Communications is working with relevant agencies to remove barriers to on-line services and electronic commerce. The OIC is working, in an advisory capacity, with the Ministry of Justice in progressing a Western Australian electronic transactions Bill, which is modelled on the Federal Government's Electronic Transactions Bill. These Bills focus on the legitimacy of electronic transactions. Consumer and Internet industry associations are being consulted in the drafting of the Western Australian electronic transactions Bill.

CHRISTMAS ISLAND, MINES INSPECTORS' VISITS

752. Hon TOM HELM to the Minister for Mines:

(1) Can the minister confirm that mines inspectors visited Christmas Island 27 times from 4 February 1997 to 14 August 1999?

(2) Will the minister table the names of the inspectors and the purpose of their visits?

(3) Will the minister table a list of any other mine sites visited as regularly as those on Christmas Island?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) A total of 57 entries in the Christmas Island Phosphates' mine record book have been made by inspectors of mines in the period 4 February 1997 to 14 August 1999. These relate to a total of 17 visits to the island by individual inspectors or groups of inspectors.

(2) I see no need to disclose the names of the inspectors. The visits related to general safety inspections, safety systems auditing and specific projects relating to the suppression of dust and the safety of plant and buildings.

(3) Preparation of such a comprehensive list would absorb significant staff resources which cannot be justified. However, as an illustration, the following operations, selected at random, received as many or more visits than did

Christmas Island Phosphates during that period: Tiwest Pty Ltd, Cooljarloo; Sons of Gwalia Ltd, Copperhead Pty Ltd; Equigold NL, Dalgaranga; Hamersley Iron Pty Ltd, Dampier; Alcoa of Australia Ltd, Del Park-Huntly; Normandy Mining Ltd, Scuddles; Newcrest Mining Group, Telfer; and WMC Resources Ltd, Three Springs. All mining operations under the jurisdiction of the mines safety inspectorate are subject to a comprehensive program of safety auditing and inspection.

In the past I have been criticised by Hon Tom Helm for not having enough inspections of mine sites. However, I intend to spend a little time finding out why Christmas Island seems to be so popular.

CLARKE, JOHN, CONSULTANCY SERVICES

753. Hon TOM STEPHENS to the Leader of the House representing the Premier:

(1) Will the Premier table information on the cost of John Clarke's consultancy to the Ministry of the Premier and Cabinet, and any other government ministry or agency, including a breakdown of which ministries and agencies, detailing the total cost, hourly rate, and the number of hours worked each month?

(2) To which companies or bodies in the mining sector is the Ministry of the Premier and Cabinet aware that consultancy services are provided?

(3) If (2) is unknown, how does the Ministry of the Premier and Cabinet ensure there is no conflict of interest between consultancy services provided to the Government and those provided to the private sector?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Regular and detailed reports relating to consultancies are tabled in Parliament. It is not proposed to provide details of individual consultancies other than in that manner.

(2) The ministry does not retain such information.

(3) The arrangements with Mr Clarke contain provisions requiring disclosure in relation to possible conflicts of interest.

BELL GROUP, INSURANCE COMMISSION OF WA

754. Hon N.D. GRIFFITHS to the Minister for Finance:

I refer to the corporate recovery action by the liquidator of Bell Group being funded by the Insurance Commission of Western Australia.

(1) Is it the Minister for Finance's policy to cause contracts to be published on the Internet and to table contracts and information as required?

(2) With respect to the ICWA legal costs insurance package, who are the insurers?

(3) Will the minister table the contract of insurance; if not, why not?

(4) Does the contract guarantee that there is no exposure on the part of ICWA to the future funding of the liquidator and any party-party costs?

Hon MAX EVANS replied:

(1) No; however, and in any event, the Insurance Commission of Western Australia is an independent statutory body.

(2) The Insurance Commission of WA has reported that the terms of placement limit disclosure; however, the Insurance Commission was able to report that the lead insurer provides a AAA security.

(3) No. Refer to (2). The Opposition must recognise that it is not in the best interests of the Insurance Commission and the State to make such a disclosure.

(4) This was answered in parts (1), (2) and (3) in previous question without notice 693. As I responded on 7 December 1999, the Insurance Commission does not have a material balance sheet exposure to the future funding of the liquidators as a result of the placement of the world's largest ever legal cost insurance package. As a result, these questions are redundant.

The Labor Opposition may not remember that the Insurance Commission of WA is a statutory authority with a board to make its own decisions. Of course, when members opposite were in government, they ignored that legal status and directed the SGIC to purchase from the Holmes a Court group the following: BHP shares costing $285m, properties costing $206m, and Bell shares costing $300m. The Labor Government gave $791m to Holmes a Court when the total investment funds at the beginning of that year were $790m, and it had to borrow $400m from other state banks to make the deal happen. The previous Labor Government got us into this mess with a $350m loss, which is the equivalent of the total cost of the Northbridge tunnel and the Graham Farmer Freeway. That amount was lost in one deal, and resulted in the compulsory third party levy of $50 a vehicle applied to recover losses from the bad management of members opposite. Why do members continue to raise this subject in Parliament? Why keep asking questions? The legal position with the liquidators suing the 20 banks is important for the Insurance Commission of Western Australia and the public of Western Australia.

Hon Tom Stephens: You're a professor of ancient history!

Hon MAX EVANS: I know, and I will drive it home to members opposite all the time - I will never let them forget! They should know what was done by the previous Labor Government. If the Opposition wishes to support the banks, so be it, but I will not allow any information to be made available to effect their legal case.

Several members interjected.

The PRESIDENT: Order! One question at a time, Leader of the Opposition. Let us hear this answer first.

Hon MAX EVANS: Imagine putting all one's dirty washing on the Internet and telling the banks what will happen! Members opposite are irresponsible for asking these questions when the board and the liquidator are suing the banks, which are not popular with the public. I can understand why the Labor Opposition may not want this matter to go to court, as it may show up its mismanagement in government. The board and liquidators will fight on for the benefit of the public of Western Australia.

I further remind members of the history of this matter. In addition to the Bell Group, the SGIC wrote off $310.87m, comprising $78m with Rothwells, $31m with Spedleys and $200m with the Bond Corporation. These losses all resulted from decisions of the Government of members opposite when they overrode the board.

Hon Peter Foss: Dr Gallop was the one who did it!

Hon MAX EVANS: That is right, and he claims to be pure!

The Government has recovered $16.561m from Spedleys, $27.75m from Rothwells and a further $15.3m from Spedleys, which is approximately a total of $60m. It will do well with the next deal. I do not know why members opposite carp on; they should be damned pleased that the Government is doing something worthwhile for the people of Western Australia!
