

# Legislative Assembly

Tuesday, 9 May 1995

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

## PETITION - NORANDA PRIMARY SCHOOL, ASBESTOS ROOFS

**MR BROWN** (Morley) [2.02 pm]: I present the following petition -

To: The Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned petitioners, call on the Government to take immediate action to protect the safety and well being of children, parents and staff at Noranda Primary School by replacing the asbestos roofs at the school without further delay.

We call on the Government to recognise the health risks caused by deteriorating asbestos roofs as acknowledged by the Western Australian Advisory Committee on Hazardous Substances and honour the intent of the Education Department letter of December 5, 1990 which assured all parents that "all schools with asbestos cement roofs will be sealed by mid 1994."

Particularly we are concerned about the persistent leak from the asbestos roof that has been in a poor state of repair for years and roof ventilators which enable asbestos fibres to go into the class rooms, and an unsealed and inadequate drainage system.

Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

The petition bears 1 689 signatures of local constituents and I certify that it conforms to the standing orders of the Legislative Assembly.

**The SPEAKER:** I direct that the petition be brought to the Table of the House.

[See petition No 52.]

## PETITION - POLICE, SOUTH PERTH, ADDITIONAL PATROLS

**MR PENDAL** (South Perth) [2.04 pm]: I present the following petition -

To: The Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned citizens from the Electoral District of South Perth request the State Government to combat rising crime in the area, to increase police patrols to ensure greater visibility of that police presence, and to ensure that punishment imposed by the judiciary adequately reflect the seriousness of the crime.

Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

The petition bears 54 signatures and I certify that it conforms to the standing orders of the Legislative Assembly.

**The SPEAKER:** I direct that the petition be brought to the Table of the House.

[See petition No 53.]

## PETITION - VOLUNTARY FULL-TIME PREPRIMARY PROGRAM FOR 5 YEAR OLDS

**DR EDWARDS** (Maylands) [2.05 pm]: I present the following petition -

To: The Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We the undersigned strongly oppose the decision to defer the extension of the voluntary full-time pre-primary program for 5 year olds. We believe that a sound developmental program gives children a head start for their compulsory years of schooling and assists in identifying and overcoming learning difficulties.

Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

The petition bears six signatures and I certify that it conforms to the standing orders of the Legislative Assembly.

The SPEAKER: I direct that the petition be brought to the Table of the House.

[See petition No 54.]

#### **PETITION - SUPERANNUATION AND FAMILY BENEFITS ACT, AMENDMENTS**

**MR STRICKLAND** (Scarborough) [2.06 pm]: I present the following petition -

To: The Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned, seek amendments to the Superannuation and Family Benefits Act (1938) so as to preserve until retirement age earned pension entitlements, in a manner determined by the Government Actuary, for those contributors whose government employment is severed due to privatisation or outsourcing of government functions to the private sector.

Further, we the undersigned, seek amendments to the Government Employees Superannuation Act (1986) to leave open the transfer to lump sum offer to permit Superannuation and Family Benefit Scheme contributors, should they so elect, to commute their pension entitlements to a lump sum in accordance with the existing commutation formula.

Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

The petition bears 164 signatures and I certify that it conforms to the standing orders of the Legislative Assembly.

The SPEAKER: I direct that the petition be brought to the Table of the House.

[See petition No 55.]

#### **VISITORS AND GUESTS - KITTIGAN, DATU JOSEPH PARIN; MALAYSIAN PARLIAMENT DELEGATION**

**THE SPEAKER** (Mr Clarko): Members, in the Speaker's Gallery today we have Datu Joseph Parin Kittigan, who is the leader of a delegation from the Malaysian Federal Parliament. He is accompanied by eight members of that Parliament. We are pleased to have them here.

[Applause.]

#### **MINISTERIAL STATEMENT - PREMIER**

*World War II, VE Day, "Australia Remembers" Program*

**MR COURT** (Nedlands - Premier) [2.11 pm]: Fifty years ago this week the guns of war finally fell silent over Europe. Although the war in the Pacific continued until August 1945, the world was able to celebrate the end of war in Europe after six years of massive bloodshed that saw the death of more than 30 million people. Although Western Australia did not suffer in the same dreadful way as many nations of the world, it did not

escape the conflict unscathed by any means. Western Australia was threatened with invasion - some cities in our north were bombed and serious casualties were suffered. Few Western Australian families were not touched by tragedy in some way during the war years. More than 61 000 Western Australian men and women went to war during the 1939-45 conflict, out of a total state population of just 475 000. More than 2 000 were killed. Many more came back either injured or maimed.

I am pleased to be able to announce today, on behalf of the people of Western Australia, the Government's support for the "Australia Remembers" program. This year gives every Australian the opportunity to remember those who served in the armed forces and civilian support roles, those who lost their lives and the huge efforts made by many who fought the war at home.

In addition to the efforts already under way, the Government will initiate specific programs that will concentrate on the significant contribution made by the people of Western Australia to the victory. This year's program will pay tribute to those who fought; it will remember the benefits of peace; it will teach young people about the contribution of many thousands of Australians and it will attempt to leave some permanent memory for future generations. On behalf of the people of Western Australia, the Government has made a donation of \$125 000 to the Australian War Memorial and is joining other States and Territories in establishing a state gallery at the memorial.

I recently announced that all Western Australian schoolchildren will receive a poster highlighting the State's involvement in the war at home. The Government's initiative will provide young people with a much greater understanding of what happened during the Second World War and how today's society was shaped and influenced by it. I plan to launch the poster formally in a few weeks, along with complementary curriculum material for use in schools.

In addition to these initiatives, the Government is working with the Australian Army to relocate all memorabilia held by the Army Museum in this State to one site at the artillery barracks in Fremantle. A feature of the new museum will be a large scale map of Western Australia exhibiting the State's war effort.

I am also pleased to announce that negotiations are under way to resolve the management of land surrounding the Leighton artillery battery on Buckland Hill. When completed, the tenancy will be held by the Royal Australian Artillery Historical Society, allowing the society to proceed with plans to open the site for regular public inspections. The Royal Australian Artillery Historical Society is yet another example of Western Australians who are willing to contribute something that will help preserve valuable historical material and benefit the tourism industry in this State.

During the year I will announce additional activities and events that will serve to commemorate the sacrifice of many Western Australians during World War II. I ask for the Opposition's full support for a bipartisan approach to these initiatives. This is a year in which all Western Australians should join together to celebrate their freedom and remember how that freedom was protected - through the willingness of thousands of people to confront evil. I also encourage all members of Parliament to participate with their local communities in commemorative activities.

#### **MINISTERIAL STATEMENT - MINISTER FOR PLANNING**

##### *Metropolitan Region Scheme, Eastern Corridor Omnibus Amendment No 958-33*

**MR LEWIS** (Applecross - Minister for Planning) [2.14 pm]: I present today finalised plans for a major amendment to the metropolitan region scheme which will update MRS zonings and reservations in Perth's eastern corridor. The amendment is one of a series of omnibus amendments which are being introduced for each of the district planning committee areas of the metropolitan region. The omnibus amendments are intended to incorporate the smaller scale changes to zones and reservations arising out of decisions made by the Western Australian Planning Commission or Government or, generally, to advance planning of the metropolitan region.

The eastern corridor omnibus amendment was advertised in the *Government Gazette* on 16 September last year and people were invited to lodge written submissions in relation to the proposed changes. The major amendment involves 31 changes to parks and urban, industrial and central city zones spread throughout the Shires of Swan, Mundaring and Kalamunda, the City of Bayswater and the Town of Bassendean. Many of the changes will update the MRS to reflect the land uses already permitted.

The Avon Valley national park is an example of one area which is not zoned according to its land use and recognised environmental and recreational value. Until now the park has been zoned for rural use, despite the fact that it is owned by the State Government and managed by the Department of Conservation and Land Management. The park is part of more than 6 500 hectares of land reserved for parks and recreation in the amendment and is included in the 16 000 hectares added to the conservation estate by the coalition Government.

I am pleased that some of the new reservations will further assist in achieving conservation goals, particularly in recognised Environmental Protection Authority System 6 areas. Eight hundred and fifteen hectares of System 6 reserves and state forests have been identified in Chidlow and Mt Helena surrounding Lake Leschenaultia. An additional 275 hectares has been set aside for the conservation of flora and fauna in the restricted access Beechina nature reserve. This area is an important A class reserve and is intended to be appropriately zoned to be protected in perpetuity in the MRS. The amendment also recognises the importance of the Morley regional centre, now in a central city zone, which is consistent with zonings at Midland, Fremantle and Rockingham.

It is also important to note the short time frame in which the amendment has been processed. From the advertising stage to tabling, this amendment has taken only eight months, which is considerably shorter than the average two years it took the previous Labor Government to complete a major amendment. I table the eastern corridor omnibus amendment No 958/33 to the metropolitan region scheme, which includes the report on submissions, submissions and a map.

[See papers Nos 248 A,B and C.]

[Questions without notice taken.]

#### **MOTION - TIME MANAGEMENT SESSIONAL ORDER (GUILLOTINE)**

**MR C.J. BARNETT** (Cottesloe - Leader of the House) [2.47 pm]: In accordance with the sessional order on time management, I move -

That the following items of business be completed up to and including the stages specified at 5.30 pm on Thursday, 11 May -

Bank of Western Australia Bill - all remaining stages

Alumina Refinery (Worsley) Agreement Amendment Bill - all remaining stages

Forrest Place and City Station Development Amendment Bill - all remaining stages

Land, Parks and Reserves Amendment Bill - all remaining stages

By way of a brief explanation, I had hoped that debate on the Bank of Western Australia Bill would be concluded last week. There was a lengthy and good debate about some clauses of that Bill. Accordingly time management was not applied. I hope that later this evening we will conclude the debate on the Bank of Western Australia Bill. In addition to those Bills subject to the sessional order, it is proposed that this week the House deal with all stages of the Titles Validation Bill. It was inappropriate to make that Bill subject to the sessional order, given the controversial nature of the legislation that preceded it. I also hope that on Thursday we will be able to start the debate on the Security and Related Activities (Control) Bill.

**MR THOMAS** (Cockburn) [2.50 pm]: I oppose the motion. Hitherto the Opposition has opposed motions such as the one the Leader of the House has just moved mainly on the grounds that they limit the time of debate. The effects of this motion on the BankWest legislation and other Bills foreshadowed by the Leader of the House for consideration this week will be to limit debate on some very important matters.

One aspect of this motion has been overlooked; that is, it will limit not only time for debate but also matters which the Parliament is able to consider. I was elected to this House to represent my constituents. In the past couple of days a number of constituents have brought matters to me which I would like to be able to raise in this House. However, I have been forced to say to those people that I do not have the opportunity to do so because of the way in which the Government is running the House. One of the most important matters which we should have the opportunity to debate is redundancies in government departments. I understand that today it was announced that 1 300 workers from Westrail would be made redundant. My office is next to a Commonwealth Employment Service office, and only last week a constituent came to see me who had been made redundant when Robb Jetty was closed during the early days of this Government. He asked me to raise that matter in Parliament because, for the best part of two years, he has been unable to find employment. I drew his case to the attention of a local newspaper, which gave it some publicity this week. That prompted a call I received in my office this morning, as I was leaving for Parliament, about another worker who was also one of the Robb Jetty workers made redundant, but who had been redeployed into a similar classification at Sir Charles Gairdner Hospital. That very worker faces redundancy again under the aegis of the Minister for Health as he storms his way through the health system. In the space of two or three working days two people who have had their lives ruined have asked me to raise their concerns in Parliament. One poor fellow has been unemployed for two years, is over 45 years of age and has no great prospect of finding employment and another has obtained further employment through redeployment within the public sector, but is again facing the threat of unemployment as the Minister for Health rampages his way through the hospital system. When constituents come to me and say their lives have been ruined, they are under stress, if not broke, and they want their concerns raised in Parliament, I can only agree that the matters are very important, but unfortunately must advise them that the opportunities to raise their concerns in Parliament are limited.

The member for Thornlie intends to introduce a private members' Bill which will receive some private members' time later this week, but it will be nowhere near enough for the important subject matter it contains. The Parliament should have the opportunity to debate these very important matters. Perhaps the best way these matters could be raised is through grievances, but they are held only once a fortnight and the Opposition has two chances at those. I tell my constituents that I am only one of a number of members in the Opposition, many of whom have concerns, and I have the opportunity only every now and then to express the concerns of my constituents through grievances. The motion which the Leader of the House has moved will not only limit the time for debate on the very important matters within the motion, but also effectively limit matters for consideration in Parliament to those which only the Government will wish to raise. That is most inadequate.

**MRS ROBERTS** (Glendalough) [2.54 pm]: I also oppose this guillotine motion because it is one of a number of strong arm tactics, euphemistically called "time management" used by this Government. In the same way today it announced the future sacking of approximately 1 300 Westrail workers under the guise of "Right Track". Getting rid of 1 500 workers at the Water Authority was called "Streamline '95". These strong arm tactics are used by people who cannot command control, who have no natural authority, who cannot rationalise their actions and who need to resort to that kind of power play. The Government holds the guillotine over us on a weekly basis. It is a very paternalistic approach and one sometimes adopted unsuccessfully by parents attempting to control their children and by teachers in a classroom. My experience of those situations is that such teachers are not in control of the class, nor are those parents in

control of their children because they do not reason or rationalise; they use the strong arm tactic. They want to be the boss; they offer no carrot, just the stick. It is also the kind of tactic used in dictatorships where the masses are kept under control and must do as they are told, "or else".

I am further concerned that the Government has chosen to introduce this as a weekly measure at this early stage of the year. It would have some excuse if it had experienced difficulties this year and had it perhaps not adopted such a measure as a matter of course. It could have waited to see how things panned out. It could have seen how reasonable the Opposition was prepared to be. However, it has not done that; it went straight for the strong arm tactic. It is not for the Government to judge how the Opposition conducts itself; it is up to our electors. If we filibuster and waste time and involve ourselves in tedious repetition, it is up to the people to judge us. It is not up to the Government to enforce measures to prevent that. It could gain much more from a cooperative approach.

Several members interjected.

Mrs ROBERTS: The interjections of members opposite only indicate their type of bully boy tactics. They can yell a bit louder; they have the numbers. They are not prepared to listen to voices of reason or to act in a reasonable way. Such a use of the guillotine indicates contempt for the parliamentary processes, especially for Opposition members and their role in this Parliament. This guillotine is just one of a number of indications to Opposition members of the contempt the Government has for them. There is no better example of that contempt than the interjections in this very short five minute speech.

Another example of the kind of contempt in which we are held is in the answers to questions from government members. I received answers during April from the Minister for Water Resources which were completely misleading. In one instance I was told that PA Consulting had done no work for the Water Authority, when, in fact, it had undertaken five jobs listed in the Premier's own report. I was then told the misinformation was my fault because the question originally referred to PGA Consultants, despite the fact that the typographical error was corrected on that day. The answer that came back from the Minister's office was in reference to PA Consultants. It was handed into the Hansard office, and is on the *Hansard* record. That Minister should apologise to the Parliament. Further, I asked questions based on the information in the annual report of the Water Authority.

The SPEAKER: Order! I am having some difficulty aligning to the motion what the member is saying. If she is making transitory comments, so be it; otherwise she should return to the motion.

Mrs ROBERTS: Certainly, Mr Speaker. This guillotine motion is another example of the contempt we are shown by the Government. I asked for an explanation of why the Minister had said that the country and metropolitan waste water plans had not failed to meet water discharge criteria when page 11 of the Water Authority's annual report showed that they had. Either way, some explanation must be made. Time should be given for the Parliament and not just for the priority of Government business.

[The member's time expired.]

MR D.L. SMITH (Mitchell) [3.02 pm]: This kind of motion coming up every week is a clear indication of an attempt by the Executive to dominate the Parliament. It is entirely unnecessary. We have largely dealt with the Bank of Western Australia Bill, the subject of last week's guillotine, and yet the Government chooses to continue the guillotine over to this week. The three other Bills included in the guillotine are not likely to delay the House substantially. There is no reason this week to guillotine Bills. The only reason appears to be that the Leader of the House and the Government want to exert their executive power on the Parliament when determining the notice paper and how the business will progress. It is unfortunate they choose to do it in weeks when it is entirely unnecessary.

Question put and a division taken with the following result -

## Ayes (30)

Mr Ainsworth  
Mr C.J. Barnett  
Mr Blaikie  
Mr Board  
Mr Bradshaw  
Mr Court  
Mr Cowan  
Mr Day  
Mrs Edwardes  
Dr Hames

Mr House  
Mr Johnson  
Mr Kierath  
Mr Lewis  
Mr Marshall  
Mr McNee  
Mr Minson  
Mr Omodei  
Mrs Parker  
Mr Pandal

Mr Prince  
Mr Shave  
Mr W. Smith  
Mr Strickland  
Mr Trenorden  
Mr Tubby  
Dr Turnbull  
Mrs van de Klashorst  
Mr Wiese  
Mr Bloffwitch (*Teller*)

## Noes (19)

Mr Brown  
Mr Catania  
Mr Cunningham  
Dr Edwards  
Mr Graham  
Mr Grill

Mrs Hallahan  
Mrs Henderson  
Mr Kobelke  
Mr Marlborough  
Mr McGinty  
Mr Riebeling  
Mr Ripper

Mrs Roberts  
Mr D.L. Smith  
Mr Thomas  
Ms Warnock  
Dr Watson  
Mr Leahy (*Teller*)

## Pairs

Mr Osborne  
Mr Nicholls

Mr M. Barnett  
Mr Bridge

Question thus passed.

## TITLES VALIDATION BILL

*Second Reading*

Resumed from 4 April.

**MR MCGINTY** (Fremantle - Leader of the Opposition) [3.07 pm]: The Opposition supports this Bill as far as it goes. Our view is that the Bill is not really an adequate response to the High Court's three Mabo decisions and the legislation of the Commonwealth, but as far as it goes it is unobjectionable. The Bill is within the framework of the federal Native Title Act. It follows guidelines spelt out in the Act. To the extent that it is consistent with the provisions of the federal Act, we certainly raise no objection to it. As was pointed out in the course of the Minister's second reading speech, this Bill relates only to past acts; in other words, to those grants of title which occurred between the passage of the Racial Discrimination Act 1975 and the passage of the commonwealth Native Title Act on 1 January 1994. It deals only with those titles which would be valid but for the existence of native title; in other words, only titles subject to a valid native title claim are affected by this legislation.

Inconsistency with the Racial Discrimination Act does not of itself result in the issuing of an invalid title. It may well be that the issuing of a title which is inconsistent with or offends the provisions of the Racial Discrimination Act, because of the existence of a valid native title to the land, might result in an order from the court that compensation be paid rather than the title be declared invalid. This will be the case particularly if an innocent third party has acted in reliance of the issuance of a title. In those circumstances compensation will be paid in respect of the act which would otherwise be declared invalid.

One of the paradoxes of this piece of legislation is that the Act itself does not extinguish native title over the land the subject of a grant of title between 1975 and 1994. It is only if the title is ruled invalid because of the existence of native title that native title will be extinguished. It will not be extinguished if there has not been a declaration that the title issued is valid, in which circumstance native title survives. I have indicated that the Opposition will support this legislation but it is disappointed that it does not go far enough. This legislation must be coupled with two other acts by the Government to give a full and adequate response to questions relating to native title. The first of those actions must be to pass legislation of this nature to validate past titles. The second action must

be that the State pursue the Commonwealth to ensure that Western Australia, which will be subjected to native title claims over a greater area of land than anywhere else, receives the benefit of the Commonwealth's offer to meet a significant proportion of the compensation payments made as a result of the native title applications in Western Australia. The Commonwealth's offer to other States has by and large been accepted. Since the furore over the High Court's decision handed down earlier this year we have not heard an announcement from the Premier that the State has acceded to the suggestion by the Commonwealth that the compensation payable by the Commonwealth will be offered to Western Australia on the same basis as in each of the other States.

It is incumbent on the State to pursue that matter to ensure that the financial interests of the Western Australian Government and the Western Australian people are met. The ostrich approach that was previously adopted by the Government to the Commonwealth's offer of compensation is to the detriment of Western Australia and the State Government. For the State Government to turn its back on an offer from the Commonwealth to pick up a substantial proportion of the compensation that is payable to the other States simply because it opposed the concept of native title is churlish.

I am disappointed that we have not heard from the Premier a statement that this important second leg of the native title question has been accepted by the State. I urge the Premier, if it has not been done already, to reopen discussions with the Commonwealth to accept its offer of compensation for native title. In that way it will relieve what could be a significant demand placed on the state Treasury, which would then impact on many other programs which will not be able to be offered throughout the State if the State is liable for the full measure of compensation for the finding of the existence of native title on land which might be the subject of mining leases.

Mr Court: We have to pay all future compensation.

Mr McGINTY: Under the commonwealth offer? I do not think that is right.

Mr Court: Yes, we are talking about only the past matters.

Mr McGINTY: Has the Government accepted the commonwealth offer for past compensation?

Mr Court: That is what the negotiations are about.

Mr McGINTY: Is the Government back negotiating?

Mr Court: We have never stopped negotiating.

Mr McGINTY: With respect, Premier, the Government had: It was not negotiating prior to the commonwealth decision.

Mr Court: I said to you that the Government must pay compensation for all future acts.

Mr McGINTY: Where is the Government up to in negotiations for the acts between 1975 and 1994?

Mr Court: We have written to the Prime Minister and said we have now met all the requirement as set out. Gary Johns says that we are now meeting those requirements. I met the Prime Minister about three weeks ago. We ran through a number of issues, including the difficulty with pastoral leases. The next set of meetings will be with Johns and Tickner - and the Prime Minister says he will now give us a third Minister. I will tell you later in his words why there will be a third Minister.

Mr Prince: We are waiting to be advised when the next meeting is.

Mr Court: The State Government writes constantly to them. If you want copies of the correspondence, I have no problem with that. We see some urgency in the matter; however, we are not getting an urgent response. We have made it clear that we will meet whatever Ministers they want us to work with, anywhere and at any time, to get the matter resolved.

Mr McGINTY: In terms of the compensation involved -

Mr Court: The Government has written to the Prime Minister saying we have now

complied with his guidelines. The compensation which has been offered to the other States is not for the future.

Mr McGINTY: Dealing with the past, if the Commonwealth were to offer Western Australia the same deal as the other States, would that satisfy the matter?

Mr Court: Yes. I think the Northern Territory is holding out on the terms of the compensation.

Mr McGINTY: Is the Government seeking more than has been offered to the other States?

Mr Court: No.

Mr McGINTY: If the securing of commonwealth funds for compensation where native title is found to exist is being pursued, I am pleased to hear that. It is not something of which I was aware from what I had read in the media. That then means that the second important step in securing Western Australia's compliance with the national scheme on native title matters is progressing.

Mr Court: Our main liability is for future acts.

Mr McGINTY: The Opposition supports this legislation because it is the first step towards integration with the national native title scheme. I am pleased with what the Premier has now told the House about the State's accepting the Commonwealth's offer, although it has not yet been finalised, because of compliance with the commonwealth guidelines for native title in order to secure compensation for past acts.

The third matter which should be the subject of some priority by the Government is to establish a Western Australian native title tribunal. This is a matter I have discussed with the Minister for Aboriginal Affairs. He raises a number of objections to that process. It was clearly the argument advanced by the Government prior to High Court decision in the Western Australian case involving the Mabo issue that land management was a state responsibility. The commonwealth Native Title Act provides for a state based tribunal to be established to regulate matters dealing with native title, and in that way to integrate the determination of native title with the existing land management procedures, either through the Mining Act or generally through the Department of Land Administration. When we have a state based native title tribunal with persons appointed to it by the Government of Western Australia, operating in a way that completely integrates land management questions from the various state government agencies with the tribunal, we will start to fully accept the inevitability of the High Court's decision and the commonwealth legislation on native title.

It is highly desirable to proceed down that path; a path which might eventually recommend itself to the State Government. In the other two States where native title is a real and significant issue - Queensland and South Australia - native title tribunals have been established under state machinery. In Queensland, if my memory serves me correctly, the mining warden's court exercises jurisdiction for the state native title tribunal; in South Australia it is a court dealing with land and environment matters - I do not recollect the full title of that tribunal. A study of the tribunals that have been established in those States to deal with native title could indicate the way forward in Western Australia.

Mr Court: The Government asked the Prime Minister for a copy of all amendments the Federal Government proposes to make to the legislation. The only amendments we have seen from the tribunal are in relation to the native title claim application, not the future act process. It is the future act process which is the unworkable part of the legislation. The Government has been constructive and has said to the Prime Minister, firstly, that we want to see whether the state approvals processes can go through at the same time as the Federal Government's processes so there is not the long time delay; and secondly, that we want some certainty in relation to the pastoral lease question. Until now this State has been pushed to one side on that. We were told that the Prime Minister said pastoral leases would extinguish native title, but that will be up to the courts to determine. A case in Queensland has been appealed. The Aboriginal groups want to take it straight to the

High Court. The Queensland Government does not want that to occur; it wants it to go to a full federal hearing because all of a sudden it has realised that if a ruling goes against the High Court appeal, it is then in the same situation as this State in that more than half of Queensland is in the form of pastoral lease. The Prime Minister, I think, has an understanding of the issues surrounding pastoral lease. He has an understanding, I think, of the workability problems with future acts. We went through these matters with him step by step with his offsider Mike Dillon. We suggested that they bring about some amendments to make it more workable. We are waiting for the next meeting with them. It would be helpful if they gave us another Minister as well as the two we are working with.

Mr McGINTY: There will eventually be a majority of federal Ministers negotiating with the Premier on this legislation.

Mr Court: The comment made was that there was a need for more brain power - but that was just a comment.

Mr Cowan: In that case, we will have them all there!

Mr McGINTY: I am pleased to hear the general direction in which the State is now proceeding on this question. When I saw this legislation I was somewhat disappointed at its limited scope. In the light of the answers the Premier has given on the compensation question and also the direction of discussions the Government is having with the Commonwealth on the jurisdiction of the Native Title Tribunal and the procedures to be applied in that tribunal, it seems that, while tentative, it is heading in the right direction.

In respect of mining tenement matters, we have had, as no doubt the Government has had, extensive discussions with the mining and resources industries in Western Australia about the issues that affect them and what they would like to see done. These discussions were carried out before the High Court decision at the end of March as well as following the High Court decision. I am pleased that, in discussions with the mining sector in Western Australia, there is a realisation that the court's determination must be dealt with because the industry now accepts that many components of the industry were at fault in hoping for a different outcome from that which the High Court determined in *Mabo No 2* in 1992. The sorts of ideas that the leading lights in the mining and exploration industry are now advocating are the basis upon which this issue can be settled and that the developmental interests and the Aboriginal interests can be accommodated. It will be impossible to satisfy the views of the disparate mining groups and the disparate Aboriginal groups. However, in discussions with the mining and the agricultural or pastoral interests on the one hand and Aboriginal groups on the other, it is possible to end up with an accommodation that will satisfy the bulk of both requirements. If the discussions with the Commonwealth about future acts proceed in such a way as to give the certainty that the mining industry wants as well as recognise Aboriginal rights, that is a desirable way to go.

In respect of the second group, the pastoral interests, and the very important question of pastoral leases, last week the High Court refused to expedite the hearing of the claim to determine whether pastoral leases, at least in Queensland, extinguished native title. It did that for a simple reason: The content of pastoral leases in Queensland had not been proved in a court and to answer the question in the abstract would not assist anyone. The State Government can play a positive role in expediting a court determination of whether the grant of pastoral leases in Western Australia or elsewhere has the effect of determining native title or extinguishing native title. I was somewhat surprised to hear that the claim in the Kimberley region by the Mirunwong and Gajerrong people had not been expedited to the extent I thought it could and should have been. I have been advised that the next directions hearing will not be until October this year. That is a remarkable state of affairs if, as I am advised, the concerns of the pastoral industry about native title and pastoral leases are very real. The vast bulk of mining titles are granted over pastoral leases. Therefore, as its first priority, the State should undertake to have determined by the courts the impact of native title on pastoral leases. I can understand the argument that the Government should legislate and this can be done only by the Commonwealth.

Mr Court: It gets rid of the uncertainty.

Mr McGINTY: Legislation would achieve that. However, the Federal Government will not legislate. It has determined that the courts will determine it. The mining and pastoral industries and the State Government, if not Aboriginal people, have a very real interest in determining that question through the courts.

Mr Court: Certainty was provided with the legislation. However, we have the ludicrous situation where people on the east coast of Australia worked on the assumption that it extinguished native title. Wayne Goss thought he had concerns over 5 per cent of his State. These people are working under that mind set. South Australia, the Northern Territory and Western Australia are working under a different regime. My view is that, if there were certainty over that issue, we would immediately be able to negotiate much more favourable deals with Aboriginal people on lands than we can under the native title legislation guidelines. Our view is a practical one; that is, let us get certainty on this matter. The Ord River is a classic case. We want to complete the scheme. However, we must take into account Aboriginal heritage issues under state and federal legislation. We also must take into account conservation issues. We must sit down with Aboriginal groups and ask them what lands would suit them as part of that development if we do this level of development. The same must happen in Broome. We can negotiate a land deal because we are not short of land. While there is uncertainty, we must go through this complicated legal process and there will be no winners in the exercise. I know you will use the argument about our legislation being anti-Aboriginal. Quite the contrary, I believe we can achieve quicker results. We are not short of land. It is not like when the European settlers went to Victoria and New South Wales and took up their grants. Only the bottom south west corner of this State is freehold. We can work out arrangements that will be satisfactory to all parties.

Mr McGINTY: The Premier must understand why significant Aboriginal groups say that, in the light of this State's native title legislation, they do not trust the Government doing the right thing by them further down the track.

Mr Court: I disagree because the Aboriginal groups with which we have dealt have been involved in negotiating land deals and we have been nothing but cooperative in meeting their demands. Admittedly, that is on a small scale. However, the Minister for Aboriginal Affairs has been involved in those negotiations and we have been able to work through most of what those people have asked for and have accommodated them in the form of the title they want. We have not told them what type of title they must accept because it has varied around the State. We have been able to resolve a lot of the small land claims.

The SPEAKER: Order! I have allowed the Premier to continue his lengthy interjections because the Leader of the Opposition is giving no indication that he wishes him to stop. Nevertheless, it is unconventional for them to go on like this. If the Leader of the Opposition is happy for the Premier to interject at length, I am loathe to stop him.

Mr McGINTY: It might be unconventional. However, it is a most beneficial exchange because it deals with a number of issues and is getting them on the record. It also provides the Parliament with a better understanding of the respective positions on this matter. It is causing me no discomfort whatsoever.

There is suspicion among various Aboriginal groups in Western Australia that the State is sabotaging the Native Title Tribunal by nitpicking on every point along the way as was done in the Mirunwong and Gajerrong case. Their concerns that technical points will be raised at every opportunity rather than the substantive merit issues being dealt with is not compatible with the Premier's suggestion that there is great trust and that matters can be resolved to the benefit of everyone. It is beyond the competence of this Parliament to achieve a legislative solution along the lines of that desired by the Premier; that is, legislation acknowledging the impact of native title on pastoral leases. It behoves the Opposition to operate within the scope of its competence in this matter. The first, and most responsible, action that should be taken is to agree a statement of fact or whatever is necessary to get the issue of the various forms of pastoral lease in Western Australia

before the court in such a way that it can be posed a simple question: What is the effect of native title on these pastoral leases?

Mr Court: I wish it were so simple.

Mr McGINTY: I appreciate that evidentiary questions on the nature of Aboriginal interest in land might well pose a problem. A cooperative approach between the stakeholders in this complex issue would result in a measure of goodwill. This matter could then be expedited and we would not be waiting for five years to get an answer to the question.

Mr Court: Our dealing with the Native Title Tribunal has been proper. I do not agree with the concept that we have been trying to sabotage it. It has been on a learning curve and this State has the most comprehensive native title system in the country. We were the first Government to work closely with it and we continue to do so. The tribunal may not say so publicly, but it has reached the conclusion that the Act provides an unworkable regime. It has a responsibility to the legislation and it must deal within it. When working with Aboriginal groups we must deal with bodies like the Aboriginal Land Council, the Aboriginal Legal Service and others, and they are all political organisations. We do not have any problems dealing with Aboriginal communities around the State, but it is not healthy to deal with these peak bodies. They have been put in that powerful position and it will achieve little for Aboriginal people apart from creating something which is considerably complex. It is all about getting something out of the system that is meaningful to them and I do not think there will be much of that. Our views have not changed. We do not have any option other than to work through the proper legal system. That is the reason the Government made a judgment on pastoral leases to the effect that where there are Aboriginal leases, the formal system will be worked through. It will create delays, but they will not be deliberate. They will be created simply because of the system under which we must work.

Mr McGINTY: In recent months a number of Aboriginal groups in the north and their representatives have told me that there is no evidence of goodwill or desire on the part of the Government to see these matters resolved. A number of significant mining companies have indicated that, now the matter has been resolved by the court, they must deal with the realities.

Mr Court: Which groups have said they do not have a good working relationship with the Government?

Mr McGINTY: A coalition of groups in the north west of the State headed by Peter Yu.

Mr Court: Is that the Kimberley Land Council?

Mr McGINTY: No, it is a combination of groups.

Mr Court: You should talk to Graeme Campbell about who is responsible for what in the Kimberley.

Mr McGINTY: Until that inane comment from the Premier we were having a productive discussion. To throw in a comment like that does not assist the debate.

Mr Court: You cannot say that Peter Yu is representative of all the groups in the Kimberley.

Mr McGINTY: He is the chairman of a group comprising representatives from every significant Aboriginal community in the north of the State which is discussing these issues. These people come from the goldfields, the Pilbara and the western desert and they have met and corresponded with me. They have expressed their point of view which I am putting to the House; that is, there is no evidence of good faith on the Government's part. One of the complaints that has arisen in recent times is that the granting of title to Aboriginal groups in the Kimberley who have traditionally lived on a pastoral station or lease, around the homestead or on the river bank, has substantially ceased under this Government. They see the Government's action as a hostile act. It could not be said to impact in any way on native title if it is done in such a way that it is not a prejudicial act. The granting of title to an area in which someone lives, which was a common feature of

the administration under the previous Labor Government, has substantially stopped under this Government.

Mr Court: I will let the Minister for Aboriginal Affairs explain the negotiations we have with Aboriginal communities because I have another engagement. It is pretty constant. I said earlier that the Kimberley Land Council and the Aboriginal Legal Service are the representative bodies in this case. They have been very political organisations and we will have to see how it works out.

Mr McGINTY: If there were any independent evidence of bona fide response by the State Government to show goodwill to the Aboriginal communities, particularly those in the north of the State, we might be in a different position in doing away with a significant measure of distrust which exists for very good purpose.

In 1993 when this House debated the State Government's anti-Mabo legislation I said that it would never survive to become a valid law of this State. I said it was racist and offended section 109 of the state Constitution. I believe the State Government knew that. Nonetheless, the Government went ahead with the legislation for broader political reasons. I can understand why Aboriginal leaders and communities question whether they should trust this Government. It sought, by legislative action, to completely extinguish native title throughout the length and breadth of Western Australia. Since then all we have witnessed is nitpicking, legal points being taken to frustrate and delay claims. In addition, there has been a refusal to grant title to Aboriginal communities by using the method which has been used for many years. There has also been a general tightening up in the ability of Aboriginal communities and those most affected by native title to negotiate these issues with a sense of goodwill.

What evidence is there to demonstrate that a cooperative air is emerging? If the Minister or the Premier were to say that the Government had offered to cooperate in having a case go before the Full Court to determine the question of pastoral leases, because it would be in everyone's interest to do that, it would be an indication that no sabotage is occurring. In addition it would indicate that people were seeking the adequate and expeditious resolution of a contentious and divisive issue. I would like to see some evidence of bona fides being put on the table by the State Government. What is on the record, including the Government's ill-fated state legislation, can engender only a sense of hostility rather than a sense of cooperation.

In conclusion, I will refer to a number of incidental matters. It is apparent that the cost so far to the people of Western Australia has exceeded \$7.8m and before this issue is finished it is likely to go even higher because of what was adequately described in *The West Australian* as "Mr Court's Mabo folly". The breakdown of the cost to taxpayers reveals that \$2.7m has been spent so far to implement and defend the State's anti-Mabo law, \$3.4m has been spent to establish and operate the Mabo coordination unit, and \$1.7m has been spent on legal costs in the High Court. The Premier was extremely upset that *The West Australian* described it as his \$4m Mabo folly, but it seems to me that *The West Australian* got it wrong; in fact it was closer to an \$8m Mabo folly, based on the figures which I have just outlined, particularly when people were advised that the law would not succeed. I believe, based on advice that was received when I was a Minister, although I was not intimately involved in this matter, that the advice given by the Crown Law Department to the Government of this State was that the legislation was unlikely to succeed, and that is the reason the Government went outside the Crown Law Department and sought advice from any lawyer who would tell it what it wanted to hear and that would suit its particular view on this matter. That advice was very bad and expensive. Any legal firm which encourages a State Government to take on a case which it knows it cannot win, particularly on a matter about which emotions in the community are running so hot, must have a measure of culpability. I know that in a number of towns in the Murchison and other parts of the State where miners and Aborigines mix, Mabo and the issues associated with it have been the source of enormous social dislocation. Non-Aboriginal people are now using the Mabo name and series of events to be critical of Aboriginal people, and Aboriginal people are asserting rights that they do not possess as a result of their mistaken belief in what the Mabo decision was all about.

Mr Prince: I suggest that probably would have happened anyway.

Mr McGINTY: I am not so sure.

Mr Prince: There are people in society who behave like that; I heard someone talk about it on radio last night. That sort of thing would have happened irrespective of whether this Parliament had legislated, given the nature of some people in society.

Mr McGINTY: Some people will do that. I accept that there are racists in our community who will despise the fact that Aboriginal people have been given rights to land, and there are Aboriginal people who assert that Mabo means a lot more than it does legally. However, I am critical of this Government because it has fanned the extremities of that debate.

Mr Prince: If that was the result, it was not one that was intended or exacerbated; indeed, I tried, as I am aware other members tried, to prevent that from happening.

Mr McGINTY: The opinion polls that were published around Australia over the period of the Mabo debate, assuming that it has now finished -

Mr Prince: During 1993.

Mr McGINTY: Yes. During that time, attitudes in Western Australia were more extreme and frantic than they were anywhere else in Australia. To give an example, when the Premier said in this place, "Your and my backyards are under threat", that was a provocative statement. It was factually untrue, but it excited people into thinking that they would not give up their backyards. Frankly, it was pretty indefensible.

Mr Prince: I understand those poll results were about the same as those under Brian Burke's premiership when there was the land rights debate. There really has not been any change in the population's view in that period.

Mr McGINTY: We have had two peaks in our recent history of what I believe is an unfortunate manifestation of racism in our community: One was when Bill Hassell whipped the Western Australian community into a ferment over the black threat to our lands by publishing maps that showed Aboriginal people claiming land from white people, and all of that nastiness that went with the Bill Hassell campaign in the mid-1980s; and the other happened in 1993 and early 1994 as a result of the State's Mabo legislation. That is not the sort of atmosphere that we want to generate in our society. We want an atmosphere that is more understanding, accommodating and tolerant of diverse views. The Premier stands to be significantly criticised for doing what Bill Hassell did a decade ago. I make that criticism of the Premier very directly because it is destructive of the tolerant fabric of society to whip up that attitude of extremism, particularly when it is founded on a false premise.

The State's native title legislation has now been essentially struck down, although it is still on our Statute book, and we have given notice of our intention to repeal that law. The Government should remove that inoperative law from the State's Statute book, and the sooner that law is removed from the book, the better, because, as I said when the matter was debated in this House, I am very uneasy about being a member of a Parliament which has passed such blatantly racist legislation. Rather than keep that law on the Statute book in the hope that perhaps at some future time a Federal Government of the conservative persuasion will amend the Racial Discrimination Act to revitalise the State's anti-Mabo law, it would be a proper and conciliatory move to remove it from the Statute book altogether, particularly given that the High Court has effectively struck it down.

The way forward from here is, firstly, that this legislation is appropriate to deal with the grants of title - referred to as past acts - and to validate those grants of title where they would be valid other than for the existence of native title; and to that extent, we support this legislation. Secondly, we should move to ensure that the compensation payments offered by the Commonwealth are accepted by the State so that an undue burden is not placed on the state Treasury which will impact on other projects which are much needed by the community. The State should accept that offer from the Commonwealth and in

that way integrate itself far more with the federal native title regime. Thirdly - and the Premier did not answer this question in the extensive debate that we had prior to your coming into the Chair, Mr Deputy Speaker - a state native title tribunal should be established to integrate the native title processes with all the existing land management programs available in Western Australia. We have a very sophisticated land title scheme in Western Australia, and I am concerned that there will be ongoing uncertainty so long as the native title issue remains to be determined in the federal tribunal without any complementary provisions flowing on into the State's land management system. If the Premier is serious about land management matters remaining within the province of the State, the commonwealth legislation enables the State to establish its own native title tribunal and mechanisms which can see that complete integration and proper recognition of native title which we must all now accommodate.

**MR BRIDGE (Kimberley)** [3.40 pm]: The Titles Validation Bill, in the main, is consistent with the spirit of the national native title legislation, and, for that reason, as our leader has indicated, we on this side of the House will support it because to an extent it fits into the spirit of what is proposed and planned by the national land rights legislation in respect of providing the security that is designed to result from such validation. It has always been the view of the Commonwealth and generally the public that security is the most significant aspect of the High Court determination that had to be resolved; namely, that at the end of the day it is important to both Aboriginal and non-Aboriginal people to know precisely how we will deal with this matter.

That is why it is important this State introduce legislation to provide that security for Aboriginal people. The Minister for Aboriginal Affairs must take on board a number of points. From the time this Government indicated its clear opposition to the High Court decision and mounted its Mabo challenge, a very unhealthy situation emerged in this State. We saw how the various players in this issue interpreted what it was all about. Western Australia went off on the wrong track. We were handed a clear and precise ruling by the High Court on the statutory laws, which, in its deliberations and ultimate determination, took into account the entire continent. Western Australia should have responded to that in the same manner; that did not happen. The States of Australia came to different public positions on that decision. Some States, fairly understandably, embraced it; some showed a less than full commitment to the idea and others like Western Australia strongly took the other view and argued vigorously the wrongful constitutional conduct of the High Court in making that determination. Indeed, they argued forcefully about the damage that would flow to the States as a result of that decision.

The Government set the wrong environment in Western Australia and, sadly, Western Australia continues to carry that burden. Even at this point Western Australia has not come close to a clearly defined resolution that has a genuine capacity to satisfy most people and that is, at least, within the realms of workability. Western Australia still has a way to go. Although the law that will emerge from this Bill may set rules, the attitudinal factor remains entrenched. The Premier said in this Parliament today that the Government could work with a core of people in the Aboriginal community, but when peak bodies - as he termed them - were creating difficulties, it was hard to resolve anything. This Government has fallen foul of this issue. Those peak bodies play a significant function in the Aboriginal community in this application process. It is an extremely complex process, and the average Aboriginal - this community Aboriginal to whom the Premier referred - cannot go through that process without help.

**Mr Prince:** The same comments apply to the non-Aboriginal community.

**Mr BRIDGE:** Yes, I am sure the Minister will agree, for example, that the mining industry would not want to participate in this delicate process without obtaining learned advice. It is wrong to highlight these so-called peak groups like the land councils and the Aboriginal Legal Service and say that things would be a lot better without their involvement. The fact is that they have a responsibility to be involved. In the period since the High Court's Mabo judgment, in excess of 10 000 applications have been received by the Government in respect of land packages throughout this State.

**Mr Prince:** In the normal course of events some thousands of applications are received each week.

**Mr BRIDGE:** In that context the average community member is incapable of responding authoritatively to that mass of activity. Therefore, a mechanism must be in place to give them some ability - even it is only a marginal capacity - to deal with that. That highlights how important are those peak bodies referred to by the Premier, like the lands councils and the Aboriginal Legal Service. Those bodies have some resources available to carry out this function. They will say that they are under-resourced to meet their responsibilities, but they are better equipped than the general community to deal with those applications.

**Mr Prince:** I do not want to take up your time, but under the Land (Titles and Traditional Usage) Act we dealt with people on the ground in relation to all the applications that came through the system. That system worked without the involvement of the peak bodies, although they were informed of everything that went on.

**Mr BRIDGE:** I will not compare my time as Minister for Aboriginal Affairs with that of this Minister. I do not think I ever avoided talking to Aboriginal Legal Service people or to land councils about matters on which I was directly consulting the community; I made very certain that did not occur. For example, recently, on a matter unrelated to native title, I went through that process and found to my satisfaction that I was given very favourable support.

**Mr Prince:** I hope you are not suggesting I am avoiding talking to them.

**Mr BRIDGE:** I am telling the member about when I was a Minister. I am not talking about him; he will no doubt tell me about how he carries out his ministerial duties when he responds. During my time as Minister, I had no discomfort with approaching, and involving myself in the dialogue of these so-called peak bodies. I found in most instances that they were very good allies and those dialogues made the whole complex consultative process much easier.

That is a philosophical approach on which the Minister and I differ. Some members of the Government - I do not say all members - seem to find that to be a difficult task. Others within the Government do not find it so difficult because they have talked freely with me about it. However, it so happens that the people who are in charge of the carriage of this Bill are having difficulty with that consultative process. I see the requirement for that process as still missing from this legislation.

As I pointed out in the first instance, the spirit of the Government's intention with this legislation is not a problem; it fits in fairly snugly with the national Native Title Act. However, deficiencies will become apparent when a high number of applications continue to surface. The issues surrounding Aboriginal people's interests are highly complex and very difficult areas. As these applications come on stream and the notification process provides them with information, there must be a response, whether it be to give the okay to proceed without problems or whether to advise there are other ways in which to proceed.

**Mr Prince:** That is done through the native title process.

**Mr BRIDGE:** That is part of it.

**Mr Prince:** That is it.

**Mr BRIDGE:** Assuming that is the position, the respondent's position must be made known.

**Mr Prince:** That is done through peak bodies because under the Act, Judge French, the president and registrar of the tribunal, gazettes particular peak bodies to represent certain areas. They set in place a regime requiring people on the ground to work through whatever body - the ALS is one - to the tribunal which is where all roads meet.

**Mr BRIDGE:** If that is the position the Minister genuinely believes exists -

**Mr Prince:** It is.

Mr BRIDGE: It is a situation not readily understood by the Aboriginal people. I believe the Minister should take that on board because there is a view among them that, notwithstanding the functions of the tribunal, a preparatory exercise must be undertaken by the grass roots people in order to reach a point where it becomes either an official or a stated position to the tribunal. The mechanism must then evolve through that process. The Minister must realise that people feel that this legislation creates a deficiency. It is easy for people to conclude - it is the position many Aboriginal people have concluded - that the validation process secures, shall we say, the non-Aboriginal interest. It validates land. The Minister must agree that that is fair comment.

Mr Prince: It validates 31 January 1994, as the Leader of the Opposition pointed out, subject to compensation. It is the future Act that is the problem.

Mr BRIDGE: Someone in the community might ask whether the validation procedures that will follow the enactment of this law give a clear and very definite impression that the validation process secures those parcels of land.

Mr Prince: I agree.

Mr BRIDGE: On the other hand the people sitting under the gum tree may not be quite sure where their security comes from because they must now go through an awesome, complex exercise to meet that validation process and adjust to it.

Mr Prince: I do not quite understand. Are you talking about the validation of past acts, future claims they may wish to make or mining or land matters?

Mr BRIDGE: I am referring to a combination of all these issues. It must be understood by the Government that those are the grey areas in the minds of many people. There is a high degree of confusion as a result of the nature of the debate which has occurred in this State since the High Court judgment. We are debating a Bill that is designed to bring about the removal of much of that uncertainty and to shore up the knowledge among many people of their rights and entitlements concerning parcels of land. When we talk about lands which come under native title, we must be talking about the benefits to be enshrined in this legislation which deal with the indigenous people. The High Court determination was just that. It concluded that a false situation existed in this country, wrongfully kept in place by all of us as citizens. The terminology of that wrongful set of laws was "terra nullius". When the High Court concluded that it had to be removed, of course, native title evolved. It was to correct an anomaly that was legally, wrongfully in place.

Mr Minson: That is not quite true.

Mr BRIDGE: It is very true.

Mr Minson interjected.

The DEPUTY SPEAKER: Order! If the member wishes to interject he should make himself heard.

Mr Minson: Eddie Mabo in his case showed that the land had a traditional link for a long time and that he had the usufructuary rights to the land as he used it. I do not believe it was the question of terra nullius, but that particular case, which primarily gave rise to native title.

Mr BRIDGE: That is an interpretation which can be put on it, but it is a false interpretation. In the simplistic understanding of the Mabo challenge and the High Court determination two significant factors were brought together. Eddie Mabo in a 10 year legal challenge asked the High Court whether this country had been occupied by indigenous people before European settlement. As we all know, there were people here before that settlement. It is documented in the true passage of time and history that Captain Cook was met by what are termed to be the natives of the land when he arrived. That clearly shows that a core of people were here before that period of history of our nation. That became the thrust of the declaration. Following the removal of terra nullius that declaration had to be replaced by another form of law, which became native title. That is a simple but fairly close explanation of the way in which that exercise evolved.

All sorts of interpretations will be put on it, but if we get down to what might be termed "the guts of it", that is the truth of the matter.

Although I am more than happy to put on record that I understand that the spirit and intent of this legislation is consistent with the federal Native Title Act, grey areas still remain which need to be foremost in the Government's consideration if it seriously intends to resolve the land issue in this State. It is important that that be done. This State is poised for the development of projects and the advancement of growth. The resource potential and the growth capacity of this State is not in question. However, if the conflict which surrounds land tenure continues on a daily basis, many potential investors will be frightened off. They will find that it is a difficult issue and beyond their ability to deal with.

The investors can be categorised to illustrate my point. The mining industry, because of its history of having to deal with conflict over land issues, will not be scared. It is nothing new to the mining industry. It may be a bit different because it is the emergence of a new set of rules - a new law - but in the end it will fit in along the pathway of the complexities with which the mining industry has had to deal for countless years. However, in agricultural pursuits it is a different matter. The agricultural industry does not have the same capacity as the mining industry to deal with these major uncertainties with land issues because it is a whole new ball game now. Many who do not understand the issues will consider them awesome. It is crucial that the Government understand that. The Government must understand that within a State which offers us collectively a wonderful opportunity for managed growth and sustainable development, the Government has the most fundamental responsibility to nurture a process to accommodate those things.

Mr Prince: I agree with what you say about the mining industry. Are you talking mainly about the pastoralists, or agriculture in particular?

Mr BRIDGE: I would put pastoralists in the same category as the mining industry.

Mr Prince: They have been dealing with it over the years as well.

Mr BRIDGE: Not with the complexities we have today: It is a very different game today.

Mr Prince: Most of the pastoralists have not a prayer of being able to resource this; whereas the mining companies have.

Mr BRIDGE: I have put forward arguments for the need for those peak bodies to be recognised for the contribution they can make to this process. The complexities of land issues in Australia are such that landholders such as those in the pastoral industry should be seen to be in that same category; they need to be assisted as well. The mining industry is a different group of people because of its historical needs over countless years.

Mr Prince: It requires a good deal of tolerance from Aboriginal groups as well as mining, pastoral and agricultural groups.

Mr BRIDGE: I consider the Aboriginal and pastoral interests as somewhat parallel. Two forms of people are significantly involved in land issues, determinations and outcomes, but are underresourced in their capacity to respond to the emergence of other interests and the complexities and difficulties encountered through this process. The Government must engender the right climate; it must create the right basis upon which those things can be reasonably accommodated and made available for those groups of people.

The DEPUTY SPEAKER: Order! An unusually high number of interjections have been allowed in the spirit and climate in which the debate is occurring; however, members should address their remarks to the Chair.

MR KOBELKE (Nollamara) [4.18 pm]: The Titles Validation Bill is the second attempt by the Court coalition Government to deal with matters arising out of the High Court decision in 1992, which is commonly known as the Mabo decision. In order to see how effective this legislation might be we need to look back over the history of this Government's involvement with the Mabo issue. The two original Mabo decisions were

not unusual in terms of international jurisprudence. From what I have been able to read and from discussions with people with some expertise in this area, the decisions were expected because they flowed in the tradition of other countries which have the British system of law and in recognising the rights of the original inhabitants.

We expected this decision which, contrary to what those people who oppose Mabo would have us believe, was not out of the ordinary. It gave very little to Aboriginal Australians. An article in today's *The West Australian* indicates that some people who represent certain Aboriginal interests believe the Mabo decision should be revisited because it was unjust to Aboriginal people. I will not enter into that debate, but it clearly indicates that Aboriginal people felt they were given very little from the Mabo decision.

The Court coalition Government's response suggested that civilisation in Western Australia as we know it would be wiped out as a result of the High Court's decision. It was a gross overreaction to an expected legal decision, for purposes best known to this Government. The Premier, led by Bill Hassell, attacked the High Court for its decision. He did not attack only the logic of the decision, but he almost attacked the integrity of the judges who made the decision.

A range of issues arising out of the Mabo decision had to be dealt with by the Commonwealth and State Governments. I will briefly outline the history of what occurred. The uncertainty over land titles in certain parts of the nation, particularly in parts of Western Australia, had to be addressed and consideration had to be given to the delays that would flow from that decision. In addition, mechanisms had to be put in place to resolve the situation as soon as practicable so that a range of commercial enterprises would not find it impossible to operate because of improper tenure of their land. Some recognition had to be given to the Aboriginal people who wished to make a claim under the native title legislation for certain areas of land.

The State responded with the Land (Titles and Traditional Usage) Act, which was debated at length in this House. The debate on that legislation was guillotined in both this place and the other place because the Government wanted it passed with some haste and did not want the Opposition to go through its opposition to it in detail. It was made clear during that debate by members on this side of the House, who quoted statements by people who were aware of the complications of this law, that the Court Government's legislation would not work. In fact, Government members made statements to that effect. My notes reveal that on 14 July 1994, the Leader of the House was quoted in *The West Australian* as follows -

The Mabo decision was very clearly limited to cases where Aboriginal communities could show continuous occupation in relationship to a particular area of land . . . There are probably limited areas within Australia, particularly Western Australia where that continual occupation has applied.

Obviously, that was after the Bill had passed through this Parliament. It reflects what certain government members said at the time; that is, it was unlikely that the legislation would have any great effect on the landholdings of this State. Their comments were contrary to the Government's rhetoric.

Mr Prince: He said that in relation to Mabo No 2. There is a world of difference.

Mr KOBELKE: I am addressing my comments to the response to Mabo and the State Government's Land (Titles and Traditional Usage) Act.

A number of people were urging the Government to think carefully about what it was doing and to realise that it was going down the wrong road. The *Australian Journal of Mining* indicated its view to the Government privately. In its April 1995 edition it claims, with hindsight, that it advised the Government as follows -

. . . many commentators, including the AJM, predicted that the WA Act would not stand a challenge in the High Court . . .

There was no shortage of advice to this Government that it should rethink the passage of the Land (Titles and Traditional Usage) Act in 1993. At that stage it was necessary for

the State to work in cooperation with the Commonwealth to put in place a response to the Mabo decision which would help to remove the uncertainty and delays that would take place in the issuing of titles.

Mr Prince: The Premier said on many occasions that we tried; it would not.

Mr KOBELKE: The Minister is trying to mislead the House; what he said in his interjection is utter rubbish. The Premier and other Liberal Party leaders, for their own political purposes, berated the High Court for its decision and went about setting up a flow of racism against Aboriginal people in this State. They were not interested in cooperating with the Commonwealth to resolve the matter. In the early days of supposed discussions the Premier would not accept the High Court's decision. Perhaps he did not understand it, but he was on the record as not being willing to accept the basic fundamentals of the High Court's Mabo decision. He then realised he should accept it and he put every obstacle in the way so that he did not have to agree with the Commonwealth. He did that because he wanted the State to retain its power to issue approval for land tenure. That is something the Opposition said it would totally support. It is an area of state jurisdiction and it should remain so. Any person who was aware of the facts surrounding Mabo would have been aware that the Premier's decision would have direct implications for state control of land tenure. If the State were to maintain full control over land tenure, it could only do so with the Commonwealth's cooperation. Instead, the Court Government attacked the Commonwealth Government, the High Court and Aboriginal interests for its own narrow political purposes. That point was put to it very clearly time and again.

The Government failed to do two things in 1993. It failed to cooperate with the Commonwealth. It made no sense for the issue to be dealt with on a state by state basis. Native title would not recognise that land boundaries could be covered by state boundaries, which had occurred through our colonial history, and a national approach was needed. Secondly, there was a need to recognise the Commonwealth's power through its racial discrimination legislation and the constitutional powers which had been given to it following a referendum in the 1960s. The fact that the Commonwealth had certain powers and the State could not act without taking full cognisance of those powers could not be avoided. The Court Government's response was to reject that and go it alone. One can only guess why this Government put itself out on a limb, very much to the detriment of the interests of the people of this State. Perhaps it was because of its opposition in the 1980s to the land rights legislation which the Burke Government tried to introduce. That proposal tried to bring together all the different interest groups and to reach a consensus.

The process in which the member for Kimberley was involved was a credit not only to him, but also to the Burke Government. Only one interest group would not accept the Burke Government's legislation and that was the group which comprises the conservative parties which now form this Government. The mining and other conservative interests which had previously been opposed to land rights were, at the end of the day, willing to accept that legislation. Perhaps it was this Government's history of opposing any form of land rights that led to its not accepting reality in 1992.

The other objectives may have had far more sinister political motives. That is, when the Premier was elected he obviously needed to lift his profile and acceptance rate and get rid of the wimp tag. It was seen as a way of attacking Canberra, being out there fighting and being seen to be doing something for this State. We now know that the truth was very much the opposite. However, it was a useful ploy; it did help the Premier to increase his approval and acceptance levels in this State and that might have been the main reason that the Premier ran a very nasty campaign against Aboriginal people. He was making assertions that people's backyards in metropolitan Perth would somehow be under claim because of Mabo - something he was not able to substantiate because there was not a sliver of truth in that bold assertion. However, it was part of a political ploy to try to get support for the Premier and part of his attack on the Commonwealth.

Another reason that perhaps motivated the Government to take such a ridiculous and ill-founded stance with that legislation was the wish to stand up to Canberra, to assert

State rights, and this simply became a vehicle for part of that whole process. We must address this issue - the whole form of the Commonwealth and how it works is out of kilter; the system must be made to work a lot better. However, one does not do it by simply using it as a political ploy to improve one's own popularity. If one does not address the issues in a rational and substantial way, one undermines the real need for this State's law-making powers and its relationships to other States and the Commonwealth to be properly thought through.

We found that the Land (Titles and Traditional Usage) Act really took away the native title rights of Aboriginal people without giving them adequate compensation. In support of that claim I will quote briefly from the High Court decision that determined the standing of that Bill in relation to the commonwealth legislation, which was the Native Title Act. Under the heading "Compensation for taking of land", the High Court stated -

The "rights of traditional usage" which are created by section 7 and are qualified by the subsequent provisions of the WA Act fall short of the rights and entitlements conferred by native title the enjoyment of which is protected by section 10(1) of the Racial Discrimination Act. The shortfall is substantial.

I emphasise the words "the shortfall is substantial". The High Court continues -

Yet section 28(1) of the WA Act precludes the allowance of compensation for the extinguishment of native title effected by the enactment of section 7(1)(a) of that Act. No compensation is payable for the comparative insecurity of enjoyment of section 7 rights to which reference is made in the above review of the State legislation.

We see there quite clearly that what we said of the Government at the time is true: That it was taking away, if not totally, a substantial part of the rights that had been given through that Mabo decision. That High Court decision, which was basically between the Western Australian Government and the Commonwealth - although there were other parties - was seven to nil. It was a total loss for this Government. After members in its own ranks had told it; after supporters in various sections of industry and commerce had told it; and after the Opposition had tried to drive home to this Government what it was really doing, we found that it was totally wrong. It rejected that advice, and its legislation simply did not stand up.

To make it clear how foolhardy that was, I will quote from two newspaper articles that appeared on 17 March 1995, following that High Court decision. An editorial in *The West Australian* entitled "Court ruling ends foolish adventure" states -

Premier Richard Court's Mabo folly has left a costly stain on WA history. His foolhardy pursuit of an ideological fantasy has left WA morally isolated, derided, out of pocket and beset by increased confusion and uncertainty about the effects of Aboriginal claims to their traditional lands.

Perhaps Government members felt that was a bit strong - the Premier certainly did. As we now know, he took action to try to have the editor of *The West Australian* removed. After everyone else had told him the truth, a paper's painting it so vividly and accurately was too much for the Premier. He went over the top and tried to have the editor removed. We know that the article was a statement of fact and that this Government had really committed itself to a position of total folly. Further in the same editorial it is stated -

Having embarked on an adventure in the face of reason and reality -

That is clearly what it was: The reasons had been given. The reality of the High Court decision and commonwealth powers were there for everyone to see. Yet this Government simply could not accept that; for its own crass political motives it set about overturning the interests of this State for its own narrow political interests. It tried to push aside the rights of Aboriginal people to land under native title; it pushed aside the mining interests, the pastoralists' interests and those of commerce and tourist developments in this State because it had a narrow ideological political goal, and that was to try to gain some political capital out of the Mabo decision.

The Mabo decision presented us with difficulties. There was not a simple answer. Everyone would acknowledge that the commonwealth legislation has flaws and that it must be improved. However, simply to say that because of that we will go down a dead-end road that will not serve anyone's interests is sheer folly. We had a chance to influence the Commonwealth to try to ensure that it took on board the interests of Western Australia as we saw them only if the Government accepted the basic facts of the decision - if it accepted the relative powers of the Commonwealth and the State Governments and was willing to work cooperatively. One can understand, given the personalities and policies of this Government and those of the Commonwealth Government, that that would be difficult. However, the trouble with this Government is, putting aside its rhetoric, that it is not too good at doing things that are difficult. It wants to live in an ideological fantasy land, where it can simply push its position regardless of the facts. Time and time again this Government did not try to answer in a logical way the positions that were contrary to its position, and simply thumbed its nose at that advice and went its own way. Some people might say that *The West Australian* was going a bit over the top with that editorial following the decision. However, I turn to an article in *The Australian* of the same day. The article states -

Mr Court's defeat on this matter has been total. But it was not surprising. As this newspaper and many other critics have argued, WA's opposition to Mabo was always based on shaky legal foundation. It was also self-serving and against the national interests in its politics. The State has won nothing and lost everything by its forlorn legal challenge.

Clearly that newspaper is not in the same stable as *The West Australian* and it is not seen to be an adversary of the Court coalition Government. It stated in quite similar language the utter folly of the decision made by the Court coalition Government. As it says in the article, quite correctly, the decision of the Court coalition Government was against the national interests and was simply a political matter. It was not just against the national interests: It was against the interests of the State of Western Australia.

The DEPUTY SPEAKER: Order! We are dealing with the Titles Validation Bill. While I am finding the member's speech very interesting, 20 minutes of his 30 minutes has expired and I hope he will get on to the Bill in front of us.

Mr KOBELKE: As I said at the beginning of my speech, this Bill is part of the second attempt by the Court coalition Government to address a range of issues arising out of the Mabo decision. The effectiveness of this legislation means nothing if we do not consider it in the context of the Mabo decision and the commonwealth legislation. Mr Deputy Speaker, you must have read the Bill. Therefore, you will have noted whole sections that relate directly to the commonwealth legislation. In fact, this Bill will enact a range of provisions which sit within the Native Title Act - a commonwealth Act. We cannot address the substance of the Bill if we do not traverse the relationship between the State and the Commonwealth, the contents of the commonwealth legislation, what the state legislation which has been struck down sought to achieve, and what the commonwealth Native Title Act set out to achieve. I accept your guidance, Mr Deputy Speaker, but the points are not so easily divided.

After the High Court decision regarding state and commonwealth legislation the Premier was very begrudging in his acceptance of the decision. He stated repeatedly that he would continue to fight Mabo politically. Having lost in the highest court of the land, and having no further avenue to appeal legally, he said that he would fight the matter politically. After that 7:0 loss, and the trouncing in the newspapers and other media outlets across the nation, the Premier did not say that the Government had made a mistake; that the Government should look to the real interests of Western Australia - not the political interests of the Liberal Party - and introduce legislation to address the issue. In part, this Bill is a response to that. We must make a judgment on how effective this response will be.

The Bill conforms with the commonwealth Native Title Act, and so the technical details within it should be supported. However, this Bill of itself will not be an adequate

response. It is only part of how we can respond to a range of issues relating to Mabo. We must broaden the debate to look at the other issues if we are to address the interests of the State. I hope the Premier will move away from the childish attitude that he cannot accept that major mistakes were made. He must accept that his Government should cooperate with the Commonwealth - distasteful as it may be to the Premier - and address the issues so that the interests of the State and the Aboriginal people can be given proper consideration. The Premier continued to attack the High Court decision, and made false statements. That will lead me in a moment to the Minister's second reading speech, which also started with false statements. That is not a good basis on which to address a proper response to the issues we face.

On 16 March on "The 7.30 Report" the Premier said -

It didn't say our legislation was invalid but it said it became inoperative . . .

The High Court decision states -

The whole of the 1993 WA Act is inconsistent with the provisions of s.10 of the Racial Discrimination Act and therefore invalid by reason of s.109 of the Constitution.

The Premier has not apologised for his false statement that the High Court did not say that our legislation was invalid. I cannot say that his statement was deliberately misleading; perhaps the Premier is incompetent, because his statement was false. During the same television program the Premier said -

. . . the High Court said in their ruling that the rights of traditional land usage were not inferior to Native Title . . .

The High Court decision states -

. . . the rights of traditional usage . . . fall short of the rights and entitlements conferred by native title . . . the shortfall is substantial.

In two instances of major issue to the decision - not some little peripheral matter - the Premier's comments were false. How can we judge the Government's intent with this legislation when the Premier says that he will continue to fight the legislation politically, and makes statements which are false? How do we judge the real intent of the Government? Is the intent to continue this charade? Is this Bill simply part of the posturing? Although this legislation is technically correct and fits with the commonwealth legislation, is the Government committed to looking after the interests of this State or is this again a political tactic and posture? We need an approach which does away with the ideological fantasy and addresses the facts. We hope that this Bill can be part of that. However, a reading of the second reading speech provides grounds for a little doubt. The Minister's second reading speech states -

The Parliament moved to eliminate that concern and uncertainty by passing the Land (Titles and Traditional Usage) Act . . .

The Parliament did no such thing. The Parliament passed that Bill as part of a political strategy by the Government; it had nothing to do with eliminating concerns about uncertainty regarding land. It had nothing to do with looking after the interests of the State following the High Court decision on Mabo. The second reading speech is a continuation of political posturing rather than an effort to address the real issues. The interjections by the Premier today indicate he has great difficulty dealing with a range of Aboriginal groups. The Premier decides which groups he will take into account. If the Aboriginal groups comprise articulate, intelligent, and well-educated people, the Premier has difficulty with them. He does not want to deal with them. He calls them names. He puts them in categories and says that they do not represent Aboriginal people.

Mr Cowan: When did he do that?

Mr KOBELKE: Today, by way of interjection.

Mr Cowan: Nonsense.

Mr KOBELKE: He made it clear he did not wish to deal with peak bodies. The Premier has great difficulty in accepting that these peak bodies have a crucial role to play.

Several members interjected.

Mr KOBELKE: I am not suggesting that these peak bodies have a total say, to the exclusion of other Aboriginal interests, but when Aboriginal people realise that they have been conned for 200 years and they band together to try to use people with expertise in the law to represent them, they have every right to do so. However, the Premier has great difficulty with that. He would rather characterise people as those who speak or do not speak for Aboriginal interests. He wishes to deal with people with whom he thinks he can have the upper hand. That is a cynical way to approach the issues. The aim of the Government is to divide and rule in order to get its way with Aboriginal people. Fortunately, in this instance, the Constitution stands for the rights of ordinary people. The Commonwealth's Racial Discrimination Act upholds the rights of Aboriginal people. Therefore, it has not been possible for this Government to ride roughshod over the interests of Aboriginal people in this State. The Government should consider the interests of all people in the State, not its narrow, sectional, political interests.

MR GRILL (Eyre) [4.49 pm]: This legislation results from the unanimous decision of the High Court of Australia in the case of *Western Australia v Commonwealth Government*, handed down by the Commonwealth Government on 16 March this year. If it were not for that decision, we would not be here today dealing with common law land title for Aborigines in this State. The legislation struck down by that decision extinguished Aboriginal land title by way of common law in this State. In the judgment I have just mentioned, Dawson, J joined with his fellow judges in a 7-0 decision. In *Mabo mark I* and *Mabo mark II*, Dawson, J indicated that he disagreed with his fellow judges and that he did not believe common law bestowed a traditional native title upon natives in Australia.

Mr Prince: In his decision he said that in order to preserve the question of precedence, he was reluctant to consider it.

Mr GRILL: The Minister is right. In this instance the judge made the decision that he would go along with the majority decisions in *Mabo mark I* and *mark II* and he made that decision "in order to attain maximum certainty with the least possible disruption". Maximum certainty is a very desirable goal. It was one of the goals set by this Government, by the Federal Government and in the decision to which I have referred which was alluded to by Dawson, J, as a reason for the activities under consideration in each case. We do not have maximum certainty in the *Mabo* legislation, the *Mabo* judgment on this piece of legislation.

The second reading speech, short as it was, was neither clear nor concise. It was a piece of gobbledygook, a second reading speech which shed very little light on the true nature of the problems facing us and on the solutions to this problem. My reading of it led me to believe its lack of clarity could only be deliberate. It also led me to be suspicious that this Government was going down a very minimalist path, one of minimal compliance with the basic provisions of *Mabo* and of the commonwealth native title legislation without embracing the true spirit of that legislation and without being concerned for those parties within the State who will be most affected by this legislation.

I suppose a lot of people in the State will ultimately be affected; but those most directly affected are, firstly, Aboriginal people, quite a number of whom live within my electorate and, secondly, the mining and pastoral industries which are the mainstay of economic activity within my electorate. As people will know, the mining industry is the mainstay of our Western Australian economy. We have handed to those Aboriginal groups and to the mining and pastoral industries a state of considerable and, in some cases, quite extreme uncertainty. I will go into that later.

A lot of the responsibility for this state of uncertainty rests with the present Government and the Federal Opposition. It rests with this Government because it adopted a position at an extreme end of the spectrum when the *Mabo* decision was handed down and when

the Federal Government decided to legislate. It induced the Federal Opposition to adopt a similar extreme position, so extreme that when the Federal Government endeavoured in the Senate to introduce amendments to the legislation which would have made it a fairer and much easier and clearer piece of legislation to be used by the mining and pastoral sectors, the Opposition joined in an unholy alliance with the Greens (WA) to destroy those amendments. I believe it did so at the insistence of this Court Government. If we are talking about a state of uncertainty - the second reading speech refers to that statement - the responsibility to a large degree can be sheeted home to this Government. I do not believe either the Federal Opposition or this Government can be particularly proud of that unholy alliance. It would have removed a great deal of uncertainty with pastoral leases and as to whether mining leases extinguished native title. That did not happen, and it is most regrettable that it did not.

It is my understanding that this piece of legislation will confirm validity of all mining, petroleum and land titles issued by the State Government between 31 October 1975 and January 1994. In the second reading speech the Minister said that the Titles Validation Bill is a small step towards validation of titles of land and waters of Western Australia to the extent that it is possible to do so within the considerable constraints imposed by the Commonwealth Native Title Act.

I agree with that. Nonetheless it is a pity that we have an imperfect piece of legislation before us. Some of that imperfection can be laid at the door of the present Government. It does not behove this Government well to criticise the Federal Government for an imperfect piece of legislation when a large part of that imperfection can be laid at the door of this Government.

It was interesting to note the dialogue that occurred today, mainly by interjection, between the Leader of the Opposition and the Premier. I was a little surprised at the very conciliatory position adopted by the Premier. He informed us of negotiations between the Minister for Aboriginal Affairs and his officers and Ministers of the Federal Government with a view to bringing about some cooperation between the State Government and the Commonwealth Government to implement the Mabo package. The Leader of the Opposition was also a little surprised because this Court Government had to be dragged kicking and screaming into the arena of conciliation, liaison, cooperation and collaboration. Even as recently as a month or two ago, the Premier was proclaiming loudly through the Press and the rest of the media that his Government would wage a political campaign against the Mabo legislation and the decision generally. In indicating that we will not be opposing this legislation today, I would hate to think that we were unwittingly part of such a campaign. I would like to think that those indications of conciliation which were expressed by the Premier across the Chamber today were genuine. I do not know whether they are or whether they are not. If it is real, this shift certainly represents a change of face by the Government. The opposition to that native title legislation by the Government was, at best, quixotic.

That is the best I can say about it. When we discussed the counterpart state legislation some months ago most of us on this side of the House indicated that the state legislation would come to grief, and it did. I do not suppose we should pat ourselves on the back too much about that, because it was fairly clear it would come to grief. It was doomed to failure right from the very first day. One did not need to be a legal genius to appreciate that. I do not know what advice the Government accepted on that matter. It was obviously advice which, like the position of the Government, was at one end of the legal and political spectra. The posture adopted by the Court Government after losing the case against the Commonwealth is fairly described as petulant. If the Court Government is softening its position and becoming more collaborative, I am not one to continue to criticise it. Nonetheless, all commentators, and the Minister in his second reading speech, concede serious difficulties still in the present situation, which are alluded to only in passing in his speech and for which he has not yet indicated a sufficient remedy. It is partially, but not fully, remedied by this legislation.

Mr Prince: The remedy lies in the amendments to the Native Title Act, particularly to procedures and in relation to future grants.

**Mr GRILL:** It would be interesting to know when the Minister responds a little more detail about the negotiations he is having with the Federal Government and the prospects of bringing about a legislative solution. Everything I read in the newspapers at present and the feedback I get from my colleagues in Canberra suggests that a solution is not immediately on the horizon. A few months ago I was receiving clear indications that a legislative solution was very much on the cards. I have not spoken to them for some weeks now. Maybe the Minister has information about a legislative solution that I do not have. We would all be interested to hear what it has led to.

I am concerned that this Government is still pursuing a political vendetta against the Mabo legislation generally. A feeling at large in the mining community is that the Government intends simply to allow the present native title legislation, which is the Federal legislation, to operate for some time; for it to be inundated by applications from mining companies, prospectors and the like; and for the system to be clogged to such an extent that applicants will conclude that it is unworkable. The Government can then say in a petulant fashion, "We told you so." In that respect I am concerned that this Government is not making any moves to set up its own native title tribunal. It is an extraordinary situation. This State has always indicated it wanted to stand on its own two feet and handle its own land titles. The Government wanted decisions on land title to be made in this State and ultimately wanted its own Ministers to make final decisions on land title in the interests of the State. It is amazing that this Government is prepared to abdicate that position to the Federal Government by not setting up a state native title tribunal. The State Government has already indicated it does not intend to set up its own native title tribunal. Maybe the State Government is having a change of mind on that issue as well. If it is, it would be nice to know that during this debate. I believe that position is absolutely crucial in respect of the effect that Mabo will have on this State, on the mining industry and the various Aboriginal groups that want to lay claims under the Native Title Act. If such a thought is being seriously contemplated, and if it is part of a dialogue with the central Government, perhaps the Minister will inform us. The Minister remains mute.

**Mr Prince:** I am quite happy to respond. There is no point in having a state tribunal while the present procedural situation remains. All it will do is to duplicate the commonwealth tribunal. When the president of the Native Title Tribunal, Mr Justice French, is making fairly long and complicated proposals about the restructuring of the tribunal to become only mediation based, and that everything else must be dealt with in the Federal Court, and one does not know the Federal Government's response and whether there will be a legislative change and, if so, what it is, it is pre-emptive to have any state based native title tribunal. Whether it be state or commonwealth based, it is subject to the Native Title Act rules and procedures. We will get nowhere by doing it now. We want to know what is proposed by the change. Other than that which is publicly available from Mr Justice French and elsewhere, nothing concrete has yet come to us about the proposed amendments. We would like to see what is being proposed. A state tribunal can be considered certainly, but we are still in the process of a major change apparently, although we do not know what and when, so it is a little silly to set up a state tribunal.

**Mr GRILL:** Do I take it from that that the Minister has not closed the door to a native title tribunal in this State?

**Mr Prince:** Certainly I have not closed the door, but there is no point in doing it now with the current uncertainty.

**Mr GRILL:** Not having a native title tribunal in the State will have far-reaching effects. One major effect will be that, depending on whether it is a state or commonwealth tribunal, the Minister will have the final say on the determinations of that tribunal. If it is a state tribunal, a Minister in the State's interest can make decisions in respect of the determinations of the tribunal and can overrule decisions and determinations of the tribunal. If we do not have a state tribunal, we abdicate that responsibility to make decisions about the interest of the State to a federal Minister in Canberra who, in all likelihood, will not have experience of this State or the perspective of someone from this

State to be able effectively to decide whether a matter before the tribunal or a decision made by the tribunal affects the state interest. It is most extraordinary, given the almost xenophobic posture of this Government in the past, that it would allow those powers to be exercised by a federal Minister, especially a Minister like Tickner who does not always meet with the favour of my colleagues on the other side of the House. That federal Minister could exercise that discretion, which is unfettered under the Act. If he makes a decision that something is in the National Estate interest, that is it; there is no appeal against it. It is extraordinary that, because the State is not prepared to set up a state tribunal, it will allow the federal Minister to make those decisions. That makes me tremendously suspicious about the bona fides of the State Government and that another agenda is being run, which is the one which was outlined by the Premier when the decision of the High Court came down; that is, that this Government intends to run a political campaign against the spirit of this legislation and against the spirit of the decision that was brought down. That would be very petulant and it would be a decision made out of pique. It would be akin to this Government taking its bat and ball and going home. It does not take a particularly suspicious person - I am not a particularly suspicious person - to entertain those notions. If that is the position of this Government, it would be doing a great disservice to the mining and pastoral industries and the native groups involved because this legislation will have far reaching effects in this State and the legislation should be clarified as soon as possible. If this Government's view is that it will frustrate the legislation to such an extent that it does not work, it will be doing a grave disservice to the people of this State.

Mr Prince: It is already not workable. We have said that, with respect, since the beginning of last year, if not earlier.

Mr GRILL: We have said there are defects in it. However, as I said earlier, from the outset this Government has failed to remove those impediments. In fact, that unholy alliance that the Minister's colleagues had with the Greens in the Federal Parliament is indicative of where this matter could be going at the present time.

Mr Prince: Do you support the proposition that pastoral leases extinguish native title?

Mr GRILL: One of the great problems with the situation that we have before us is that that is unclear.

Mr Prince: Do you support that proposition?

Mr GRILL: I think many people do, and I do. The Prime Minister expressed that view earlier when the legislation went through the Federal Parliament. It is unfortunate that it was not clarified with one or two of those amendments to which I referred earlier. However, 38 per cent of this State is covered by pastoral leases. The question of whether pastoral leases extinguish native title is germane not only to pastoral lessees but also to the mining industry. The state regime, while the legislation was in place, worked on the basis that validly issued pastoral leases extinguished native title. That is far from clear. The High Court, in its latest decision, did not clarify that situation and that was most unfortunate. I believe it could have clarified it, but it did not. I understand that this State Government may want to pursue the Federal Government with a legislative amendment to make that position clear. However, we have wasted a lot of time since the Mabo decision first came down and since the Native Title Act was passed by the Federal Parliament. The Opposition and the people of Western Australia have only recently been informed that a meaningful dialogue is now taking place between the Federal Government and the State Government. However, that is a major problem and we are left with that problem.

Another problem is that enforceability of the tribunal's determinations is now also uncertain as a result of the decision by the Federal Court in the case of Brandy and the Human Rights and Equal Opportunities Commission, handed down on 23 February this year. A very big question mark was placed over the validity of determinations made by the Native Title Tribunal.

Mr Prince: There was no doubt about the validity of the decision. There is doubt about the enforceability of the deeming provisions.

Mr GRILL: Mainly because of the procedures adopted. I will not go into the constitutional consequences of that. However, it means that there is a question mark over those determinations and their enforceability just as there is now more than a question mark over the determinations of the federal Human Rights and Equal Opportunities Commission.

I referred a few minutes ago to whether pastoral leases extinguish native title. I said it was a very important question because 38 per cent of this State is covered by pastoral leases. It is an even more vexed question in this State because issues relating to pastoral leases here are different in one or two respects from issues relating to pastoral leases in other States. The main difference was that, in this State, a reservation was issued to Aboriginal groups and individuals to hunt and gather on many of the pastoral leases, although not all of them. That was very humane when it was granted. However, the reservations lead to greater uncertainty in respect of pastoral leases in this State, vis-a-vis the situation in other States.

Another matter that I think the Minister should address is the validity of mining and petroleum titles and land titles granted between 1 January 1994 and 16 March 1995. That was not alluded to in the Minister's second reading speech and has not been touched on in the debate so far. However, newspapers have commented on the matter and I think it is conceded privately by the Government that titles issued during that period are uncertain and that, in respect of mining and petroleum titles, if native title existed in the area the subject of the lease and if negotiations of a certain type did not take place between the parties before the lease was granted, those titles or leases could be declared invalid. I understand that, in respect of freehold title, the situation is even worse; that is, that freehold titles granted over native titles are invalid. I suggest to the Minister that it is incumbent upon this Government to correct a situation which it has created. Does the Government have in mind further legislation to correct that position?

Mr Prince: The difficulty is that, under the Native Title Act regime, there is nothing else we can do.

Mr GRILL: Therefore, the Government is not contemplating further legislation?

Mr Prince: If we could, it would be done. However, they all fall in the category of future Acts.

Mr GRILL: The Minister is really saying that those titles will be left in limbo and we will have to see whether native title emerges for them at a later date. I will not take more time. However, I think the Government is at last endeavouring to demonstrate some collaborative notions. On that basis the Opposition supports the legislation.

**MR RIPPER** (Belmont) [5.20 pm]: As my colleagues said, the Opposition supports this legislation but it argues that the legislation is both too little and too late. Firstly, I will turn to the proposition that the legislation is too little. It does not provide for a state native title tribunal. By way of interjection the Minister for Aboriginal Affairs commented on that and I will come back to his comments.

The Government missed an opportunity to integrate the determination of native title with the administration of this State's land title system generally. I know that the Minister said to the member for Eyre by way of interjection that there was no point in establishing a state tribunal because it would have to follow the same process, which needed reform, as the federal tribunal. I acknowledge that he said there was no point in establishing it at this time. If a state tribunal were established, state appointed personnel would deal with the issues. In other words, there would be a measure of state influence. It could perhaps lead to the speeding up of matters through the level of resourcing that would be allocated and the prospect other title determination matters could be run in tandem with what is occurring in the state native title tribunal. The Minister may wish to contradict me in his response to the second reading debate and I will be interested to hear what he says. There is some point in establishing a state native title tribunal. One area in which this legislation is deficient is that it does not proceed to do that. A state tribunal would provide some advantages for both Aboriginal people and developers in this State.

The second area where the legislation misses an important consideration is that of compensation. This legislation extinguishes native title. Native title which was extinguished from 1975 to December 1993 gives rise to compensation.

Mr Prince: It is even earlier than 1975.

Mr RIPPER: That is an interesting point. The reason I used 1975 is that it was the year in which the Commonwealth Government's racial discrimination legislation was passed. It is that Act which gives grounds to the claims for compensation. People whose title was extinguished since 1975 must be treated in the same way as others whose titles have been extinguished.

Mr Prince: You are right. It also applies in the creation of freehold land.

Mr RIPPER: The Minister agrees that arising out of this Bill is the potential for claims for compensation from between 1975 to December 1993. The question of compensation and who will pay it has not been resolved by the State Government. The way in which the Government has handled the Mabo issue has put the interests of the Western Australian taxpayers at risk. Other States passed this legislation a year ago.

Mr Prince: I do not think any State has proclaimed it.

Mr RIPPER: The legislation went through their Parliaments in time for those States to take up the Commonwealth's offer of assistance with compensation. This Government has failed to pass the legislation in time. For its own reasons, it went down an entirely different track from that of the other States. The alternative, futile strategy which it adopted has prejudiced this State's likelihood of receiving commonwealth support for compensation claims which will arise out of this legislation. As a Western Australian taxpayer I hope the Commonwealth will support these compensation claims. However, there would not have been any uncertainty if this Government had not adopted its strategy on Mabo. I wish the Minister success in his negotiations with the Commonwealth, but this Government will start behind the eight ball because of its actions.

Mr Prince: It will be untenable for the Commonwealth to use tax dollars from this State and elsewhere in dealing with states inequitably.

Mr RIPPER: I understand the argument for equitable treatment of all the States and that constitutional implications are involved.

Mr Cowan: Is this a sudden flash of inspiration or have you held this view for some time?

Mr RIPPER: Perhaps the Deputy Premier has not been listening to my argument.

Mr Cowan: I have been listening closely.

Mr RIPPER: The only reason there is uncertainty about the prospect of commonwealth assistance for compensation is the strategy that this Government adopted on Mabo.

Mr Cowan: Was it built into the legislation? The answer is no. It was a personal vendetta exercised by the Prime Minister and you should tell him that it was totally contrary to the Constitution.

Mr RIPPER: The personal crusade on Mabo has not been embodied in the Prime Minister's actions, but by the actions of the Premier of this State. It is the Premier's personal crusade which has put the interests of the State at risk and created uncertainty for the development industry in this State. It is his personal crusade which has resulted in this Government's attempt to frustrate the legitimate aspirations of Aboriginal property owners whose rights have been confirmed by the High Court. It is this Premier's crusade that has put at risk the Commonwealth's assistance on the question of compensation.

Mr Prince: It is totally not true.

Mr RIPPER: Why is it not true?

Mr Prince: Because the Premier put this situation to the Commonwealth in 1993 but he was not only ignored, but also rebuffed. A meeting was called for eight o'clock the next

morning in Brisbane and we could not attend it. We were told it was the Commonwealth's solution and we could take it or leave it.

Mr Grill interjected.

Mr RIPPER: My colleague is right: The State Government did not approach the Federal Government with goodwill or in good faith in the early stages or throughout the debate and negotiations on Mabo. The Premier decided to exploit the Mabo issue and to make political capital out of it. He thought he would build his leadership profile by adopting a strategy of confrontation and conflict with the Commonwealth over the Mabo question. That strategy has been brought to a dead end by the High Court's decision.

Mr Minson: The Federal Government did not give us a choice and look at the outcome.

Mr RIPPER: The Federal Government sought to reach a national solution on an issue of national significance.

Mr Minson: It made a national muck up of it.

Mr RIPPER: This Government has put at risk the interests of this State, including those of the development industry, by the strategy it adopted.

Mr Minson: You are totally un-Western Australian.

Mr RIPPER: Is the Minister for Works saying that there has been massive muck up at a commonwealth level?

Mr Minson: I was Minister for Aboriginal Affairs at the time and we cooperated with the Commonwealth, but it did not want to listen to what it would do to Western Australia and look at the result.

Mr RIPPER: The Minister for Works says that the Federal Government's scheme is unworkable and in so doing, he echoed what the Premier said. There is nothing as unworkable as an invalid Act, which is what the State Government came up with. It is not a workable solution when the High Court rules that it is invalid. The Minister may say the Federal Government's proposal and scheme were impractical, but the State's solution was totally unworkable. The State Government got nowhere in discussions with the Commonwealth Government because of its own intransigence and the Premier's campaign.

Mr Cowan: The point about the legislation being invalid is recognised by the introduction of this legislation. You have failed to respond to my statement about the Prime Minister's attitude in this case - that it is completely contrary to the Constitution to tell the States that the Federal Government will support some States for compensation but not others. It does not matter about the timing or anything else. The member should address the principle of that statement with his federal colleagues.

Mr RIPPER: The State Government must address the issue by dealing cooperatively in its negotiations with the Commonwealth, by seeking practical solutions to practical problems, and by avoiding hype, ideology and political opportunism. The State Government has not done those things. It may recently have adopted a more cooperative approach. I hope that is the case because it is in the best interests of Western Australia, its taxpayers, the resources development industry and Aboriginal people. We have not seen that approach followed by the State Government. In my view the State Government misled the people of Western Australia by claiming it had a solution that was more practical than that proposed by the Commonwealth to the issues posed by the High Court's judgment on native title. The State Government criticised the commonwealth legislation and said it was unworkable. However, the State Government's response to that legislation was no help at all because it was ruled invalid. This Government posed as the protector of property rights but at the same time ripped off Aboriginal property owners, whose rights had been confirmed, at least in principle, by the High Court. This State Government misled the people of Western Australia as a whole, and in particular the developers and the resources industry. Those people are now stuck with dodgy titles as a result of this Government's Mabo strategy. Titles issued between 1 January 1994 and 16 March 1995 have a big question mark over them. I understand 10 000 titles were

issued during that time, and the holders of those titles do not know whether their titles will be affected by a later determination, because they were issued under state legislation for native title rights which has been ruled invalid.

Mr Prince: They would not know anyway.

Mr RIPPER: They do not know because they were misled by the State Government, which told them all would be okay if they proceeded through the state legislation. That is not the case. The High Court has said the legislation is invalid, and the developers now have dodgy titles. Uncertainty has been created for the resources industry as a result of the State Government's strategy. The problem is that no real attempt was made to solve the problem. It was an attempt to make political capital and to build the leadership profile of the Premier. He sought to do that by exploiting anti-Aboriginal sentiments in the Western Australian community, and by exploiting States' rights views within the community. It is immoral for a politician to seek political capital by exploiting divisions between Aboriginal and non-Aboriginal people in this State. It is unfortunately and regrettably, all too easy to do, but in my view it is the mark of an unprincipled opportunist when a politician stoops to exploit those divisions in the Western Australian community. One of our roles as politicians should be to seek to heal those divisions, and certainly we should not seek political capital by exploiting them. That is one of the most regrettable features of the Premier's actions; that is, he sought to make political capital by explicitly and implicitly exploiting those divisions between Aboriginal and non-Aboriginal people. He also conducted his campaign at substantial expense to the taxpayers of this State. Those expenses were incurred for legal fees, propaganda campaigns and administration.

Mr Cowan: What do you think of clause 15 of the legislation we are debating?

Mr RIPPER: We will reach that in Committee. I do not have a particular opinion on clause 15. I am arguing that this legislation -

Mr Cowan: I am bringing to your attention the fact that you have not discussed the legislation yet.

Mr RIPPER: I began by discussing the legislation, and I am sure that the Acting Speaker (Mr Johnson) would have drawn to my attention any lack of relevance if I had strayed from the topic. The legislation must be debated in its context. The Opposition supports it as far as it goes but, as I have argued from the start, it is too little, too late. It is the latest product of an opportunistic political strategy on the Mabo issue, which has failed the people and the resources industry of this State. The Premier raised expectations about the State's ability to deal with the Mabo issue. The High Court decision showed those expectations to be false. In my view the High Court decision was predictable; the State's initial legislation on this matter did unjustly deprive Aboriginal titleholders of their rights. It was contrary to the provisions of the racial discrimination legislation. Although the direction of the decision by the High Court was predictable, the scale of that decision - 7:0 - was not. Given all those circumstances, it is no wonder that the Premier copped the response he did in *The West Australian* newspaper when the High Court decision was made. His actions on Mabo were a folly; they imposed a direct cost on the Western Australian community, an indirect cost in the uncertainty created for developers, and a social cost in the deepening of divisions between Aboriginal and non-Aboriginal people. The Premier did all that to build up his political capital and leadership. In the final upshot, it has demonstrated his lack of leadership and stature as a politician.

What is required? This legislation is one of the actions required. However, other things will be required. There must be continuing discussion and negotiation between the State Government and the Commonwealth Government, firstly, to resolve the question of compensation and, secondly, to deal with some of the admitted problems in the Commonwealth Native Title Act. Those discussions must be conducted by this State Government in an atmosphere free from ideological prejudices and political opportunism, and with goodwill and a commitment to solve rather than exploit the practical problems arising from native title issues in this country. I believe the commonwealth Mabo

legislation can be changed. I do not believe it will be changed in principle, but it will be possible to achieve changes in operational details and questions of process.

Mr Prince: That is what we have always wanted.

Mr RIPPER: That change can be achieved, but it will be most effectively achieved if this State Government approaches the issue properly and according to the criteria that I have outlined. It is a very important issue for this State. It is important to Aboriginal people and to our resource industry, which needs certainty of title and speedy processing of titles. I want this State Government to work cooperatively with the Commonwealth. I want an assurance from the State Government that it will not try to sabotage the operation of the commonwealth Native Title Act for political reasons. If it does that, it will be at the expense of Western Australian development and the living standards of Western Australians. A justified suspicion exists that this State Government might try to hold Western Australian development hostage to the Mabo issue, to its own ideology on Mabo, its own political opportunism.

Mr Cowan: The Commonwealth will do that quite successfully.

Mr RIPPER: It will not be the Commonwealth which does that, it will be this State Government, and it will try to hold the Commonwealth and the State Opposition to blame. If that is the approach of the State Government the losers will be developers, Aboriginal people and the community of Western Australia generally. This State Government should give a commitment that the negotiations with the Commonwealth will be conducted with goodwill and in a cooperative spirit. We need to avoid the mishandling of the truth that we have seen from the Premier throughout this Mabo debate. We need to avoid statements like the one made by the Premier on the ABC "The 7.30 Report" of 16 March 1995. When referring to the High Court the Premier said that it did not say our legislation was invalid, it said it became inoperative. That is quote from the Premier, but the judgment of the High Court said that the whole of the 1993 WA Act was inconsistent with the provisions of section 10 of the Racial Discrimination Act and therefore invalid by reason of section 109 of the Constitution. That is just one example of the way in which the Premier has mishandled the truth in the community debate arising from the High Court's judgment on native title. If the Premier is to proceed with that sort of mishandling of the truth, the prospects of a practical solution to the practical problems that have arisen will be that much reduced. This is a significant issue for the people of Western Australia. It will be a good thing if the State Government can handle this issue free at last from the Premier's ideological prejudices and from his political grandstanding. We live in hope. We have seen some signs of a change of heart and tack by this State Government in this legislation and in some of the comments that have been made by the Minister for Aboriginal Affairs. If that is not demonstrated with the progress of negotiations with the Commonwealth, the losers will be all Western Australians. Despite those comments the Opposition supports the legislation. We want to see the State do much more than simply bring this legislation into the House.

DR WATSON (Kenwick) [5.44 pm]: I support the Bill. I am very sorry that so much time and money has been wasted in a futile attempt to make unworkable legislation work. It is clear from reading the *Hansard* transcripts of debate in the native title legislation, that every member of the Opposition warned the Government that its legislation could not work, and that it was in contravention of the federal racial discrimination legislation. Legislation that should have had bipartisan support to heal the wrongs of the past, legislation that should have been cause for celebration, that should have righted many wrongs fast became an opportunity for litigation, uncertainty and people having to make hard decisions about economic risks. It was clear from the beginning that the Premier and the Government, and certainly the Liberal Party in this State, were out of step and at odds with the rest of the country. There was no way that any standards of justice and decency as contained in the High Court decision were being adhered to in the legislation that was debated in this Parliament. In fact, Carmen Lawrence, as Leader of the Opposition, described the Premier's stance as one of isolated stupidity. We have seen that come to pass. I feel very strongly that in the debate on this legislation we must make clear our disappointment in what has occurred to date. It angered me and many decent

people in the community that the Premier spread lies that 80 per cent of the State was potentially claimable -

Mr Pandal: That is unparliamentary language.

Dr WATSON: I am not sure what else one could call it.

Mr Pandal: You may say that it is untrue.

Dr WATSON: It is not true.

*Withdrawal of Remark*

The ACTING SPEAKER (Mr Johnson): I believe that is unparliamentary and I ask the member to withdraw it.

Dr WATSON: I withdraw, but I say -

The ACTING SPEAKER: Order! The withdrawal must be unequivocal.

Dr WATSON: I have withdrawn it, and I will rephrase it Mr Acting Speaker.

*Debate Resumed*

Dr WATSON: The Premier said that 80 per cent of the State was potentially claimable. It could never have been the case, and I am sorry that some people chose to believe him. That statement fed into the lowest common denominator in our community. Bill Clinton only last week spoke about some aspects of talkback radio as hate radio. That kind of propaganda was spread through the medium of various talkback radio programs and articles in some of the community newspapers and the *Sunday Times*. The *West Australian* adopted a very good view about the Government's approach to the native title legislation. All the time it was perfectly clear that the legislation was inconsistent with the Racial Discrimination Act. I am sorry as well that before the legislation was drafted the Premier refused to meet with the Prime Minister and the Minister for Aboriginal and Torres Strait Islander Affairs.

Mr Prince: When?

Dr WATSON: In the period leading up to the legislation's drafting and its subsequent introduction in Western Australia. The Premier did not meet with the Council for Aboriginal Reconciliation until the night before the debate. He did not meet with church people and he did not meet with those Aboriginal and Torres Strait Islander people who had drafted an Aboriginal peace plan. That legislation was not about justice, it was purely about land management in the worst possible terms. Justice Brennan, in his decision, said that he observed that the fact that Aboriginal people had not been able to assert rights over land to protect their economy and livelihood was not a tragedy of legal history and misunderstandings of the law, but a fact derived from government actions over 207 years. We saw in that legislation the perpetuation of that latent and unconscious prejudice and racism.

My colleagues who have spoken in this debate have outlined to the Parliament some of the propaganda peddled after the legislation became law and the way in which that was refuted 7:0 by the High Court decision. One of our best frameworks for public policy and public administration of Aboriginal issues is the 339 recommendations of the Royal Commission into Aboriginal Deaths in Custody. Recommendation 339 is about reconciliation and the five penultimate ones deal with land needs. It is a very important issue to bring into this debate because land needs are very different from land rights. The High Court decision, the commonwealth native title legislation and its sequels, parts 2 and 3 of the Commonwealth Government's response to the High Court decision address land needs. These include the rights not only to land for cultural and traditional purposes and the recognition of prior ownership, but also of people to have access to land so that living standards and shelter are appropriate for their needs and provide the expected standards that should be available to all people living in Australia. It provides the right for Aboriginal owners to determine who can enter their lands and under what conditions. Prior to this legislation, and still where mining companies have gained permission to enter Aboriginal held land here in Western Australia, very often conditions are negotiated

between the Aboriginal people through the Aboriginal Lands Trust and the mining companies concerned. Aboriginal owners should have the right to control the impact of development on their land. They need secure title to improve their lives and the lives of their children and to be able to care for their elders.

Aboriginal people should have access to pastoral leases. I think in Western Australia some very good conditions have been worked out for almost all pastoral leases. There should be access to national parks, particularly for traditional pursuits. The royal commission made a very strong recommendation that where missions had appropriated Aboriginal traditional land, those missions should be handed back to Aboriginal people as inalienable land. Commissioner Elliott Johnson wrote in his findings of his observations and the advice that Commissioner Patrick Dodson had given him that any land claimed on traditional grounds should not be able to be sold; it should be inalienable. This Bill will ensure that Aboriginal land that is acknowledged to have native title over it will be inalienable. Am I right?

Mr Prince: Not in this Bill; it validates acts of issue of title of some sort from October 1975 to 1 June 1994.

Dr WATSON: Will it be possible for traditional land over which there is native title to be sold?

Mr Prince: No.

Dr WATSON: We can have this debate in Committee.

The Commonwealth has made a three stage response to the Mabo 2 decision. The Commonwealth addressed the High Court decision in its legislation; although it is acknowledged, on the advice of Justice French, that some adjustment is necessary, on the whole the principles of Mabo 2 can be seen to be operative and will benefit Aboriginal people who can claim native title. Perhaps it is reasonable to acknowledge that most Aboriginal people in Australia will not be able to claim native title. The next two phases of the Commonwealth's response are probably even more important for more Aboriginal people; that is, to provide for the land acquisition fund for which the Government has set aside a budget to meet the land needs of Aboriginal and Torres Strait Islander people, and its social justice package which will be implemented together with the Council of Aboriginal Reconciliation.

The High Court decision gave not only Australian Governments, but also all Australian people an unprecedented opportunity to improve the relationships between indigenous and all other Australians, new and sixth generation. However, I am sorry to say that the Western Australian Government has severely compromised that process, particularly reconciliation. One of the lines from the High Court decision that encapsulates the spirit of that decision was that the common law entitlement of native title will enable those Aboriginal people "as against the whole world" - that means Western Australia as well - "to enjoy possession, occupation and use of their land".

Where to from here? The Prime Minister made it very clear that he recognised a number of wrongs in the history of Aboriginal people throughout Australia. He blamed racism for Aboriginal suffering. In what has been acknowledged to be the strongest statement ever on indigenous people by an Australian leader, he said on human rights day in December 1992 -

We took the traditional lands and smashed the traditional way of life. We brought the diseases and the alcohol. We committed the murders. We took the children from their mothers. We practised discrimination and exclusion. It was our ignorance and our prejudice - and our failure to imagine these things being done to us.

He said that Aboriginal people continued to live in a society characterised by inequality, injustice and racism. He said that the whole point of the year of indigenous peoples, at which he was speaking on the opening day, was to bring those dispossessed people out of the shadows and make them part of us. He said that the answer of course, is not in succumbing to guilt, but in recognising and acknowledging that history. In order to move

on, that is what we must do, all of us together in order to be able to reconcile the difference of the past and too often the difference of the present.

The ACTING SPEAKER (Mr Johnson): I ask the member for Kenwick to reflect on the fact that much of her speech has not had much to do with the Bill before the House.

*Sitting suspended from 6.00 to 7.30 pm*

Dr WATSON: The Prime Minister's statement in what has become known as the Redfern speech about the history of Aboriginal and colonial contact is an important context for this legislation and indeed for any legislation dealing with land or social justice for Aboriginal people. The next steps to follow from the native title legislation are the land funds Bill and the social justice package because of the opportunity both offer for Aboriginal advancement, for want of a better term. No community, country or person can be subject to the advancement or development process unless they are empowered to do so. It is the role of government to provide the kinds of structures and legislation, and sometimes funding, which enables that empowerment.

I will speak briefly about the Aboriginal drive for self-determination that is now possible because the Western Australian Government is prepared to have an appropriate form of land legislation. In *The Independent Monthly* of December 1991 and January 1992 Steve Hawke, who members will remember wrote the book on the Noonkanbah conflict, published an essay entitled "Poor Fellow White Country" in which he explained some of the early colonial history of the Kimberley region. He makes the point that the Kimberley history as we know it is only half as old as the history in the south east: That is, the history of Aboriginal-white contact in the Kimberley is only 100 years old; whereas in the south east of our country it is now 207 years old. In describing the contact between the colonists and Aboriginal people he says that the only real blood and guts in our history has been the slaughter of Aboriginal people from one end of the continent to the other, but that that conflict was swept under the carpet and remains a matter of unresolved shame.

Public discourse in this country is dominated by economic debate and latterly, at both federal and state levels, by the kind of rationalism where as a sign of progress it is seen "that an industry or enterprise now employs half as many people as it did 10 years ago". He talks about the soul of the community and about how Aboriginal people, despite their dispossession of land, language, law, family, and country, have been able to survive through that link with the land, through their language, and through a tenacious hanging on to their cultural integrity. He outlines the history of the Bunuba people whose land is the Fitzroy River Valley and the hills beyond up into the Oscar and Napier ranges and the King Leopold mountains. He describes the way in which one young Bunuba man was conscripted into the Police Force. We know him as Pigeon. In no time Pigeon was rounding up people to send to Rottnest Island, or in turn conscripting them to work in chain gangs on the Derby jetty. He very soon reclaimed his true name - his culture. He shot his white mentor, a Constable Richardson, and released his countrymen from their chains. He was chased around the Kimberley over the next three years before he was captured and died a defiant and, as Hawke says, a bloody death at Tunnel Creek in 1897. Hawke says that there was indiscriminate slaughter and mass arrest. By the turn of the century the Bunuba were a shattered people. They survived as serfs on cattle stations for 70 years and in fringe camps and overcrowded housing for the next 20 years. But in a tribute to the human spirit they somehow managed to survive with their language, cultural integrity and memories intact. Until recently the grandsons of the man known as Pigeon were living in Fitzroy Crossing. The happy ending to that story is that the Bunuba were able to take possession of the Leopold Downs cattle station recently. That occurred while I was Minister for Aboriginal Affairs, although it had been negotiated before then.

The strength of Aboriginal people, Hawke says, is the nation's weakness. It behoves us all as parliamentarians to reflect on that. There are many Aboriginal people in the Kimberley, where many valid claims to native title will be made. The strength in the Kimberley is now seen in the determination, expressed through the leaders of the

Kimberley Land Council, to develop their own regional authority for administration. According to an article in last weekend's *The Australian Magazine*, it is important that we understand that in the Kimberley the Aboriginal sector is the biggest generator of revenue in the region after the Argyle diamond mine - the world's largest diamond mine - and that Aboriginal people are responsible for 40 per cent of regional income. They are important stakeholders in the regional economy, and there is absolutely no reason to think that when native title is granted to those areas of land which are rightfully theirs, they will not be as important and interested stakeholders in the tourism and mining industries, and other industries, as they are now. The article refers to the way the Marra Worra Worra Aboriginal Corporation has been able to pull together about 30 Aboriginal organisations through the Fitzroy Valley and coordinate the activities and development of those corporations to the benefit of the Aboriginal people concerned, the Fitzroy region and, indeed, the Kimberley itself. Although uncertainty was created by the previous piece of legislation, we can now be provided with some hope that this Bill will pave the way for Aboriginal people to take their place if they have a claim to native title. It is fantastic that their culture has survived despite the stubborn dispossession of their lands by the white man because they were not considered equal human beings or as human beings worth any inherent dignity and respect as is now provided for through the United Nations' instruments and through any kind of civilised Government.

Before I close, it is important also that, in any interests that are expressed, the views of women must also be taken into account. We have seen what can happen in the opportunistic and clumsy handling of the Hindmarsh Island bridge claim. However, it also brought to the nation's attention the fact that women have a stake and a very real interest in many claims to land and to title. I have spoken before about the experience I had attending a women's law meeting in 1992 with 500 women at Billiluna. Many of those women were Martu women who originated from the western desert region. In my view, those people who belong to the western desert, the Martu, have a claim to land that should be satisfied without having to resort to tribunals and, I guess, inevitably to appeals. They lived from the desert a mere 32 years ago. Their links are there. Their lives are structured around their culture, around their laws and around 40 000 years of knowing and loving that land. The women of the Martu have a very strong tradition and those traditions must be respected.

I am concerned that this Bill does not set up a tribunal. I also have concerns related to the present administration of Aboriginal public policy in this State. I am pleased the Minister has given notice that he will seek to amend the Aboriginal Heritage Act. I hope that will address some of my concern about its administration. I think the way in which the department currently is operating probably is marginal to the way the Aboriginal Affairs Planning Authority Act intended it to operate. However, I understand that that Act is to be amended also because the AAPA Act at the moment and the Aboriginal Heritage Act are really the only statutory mechanisms that exist for Aboriginal people to gain access to their land and to have their sites protected.

They are different issues from those that this Bill addresses. However, the Bill only marginally conforms to commonwealth legislation. I do not think it has been drafted in a very generous fashion. I am concerned that no state based tribunal will be set up; then again, that may be the best means of avoiding duplication. I am concerned that claims should be processed as quickly and as thoroughly as possible so that those people who have entitlement to land because of their culture and their traditions have that right recognised and restored.

**MR D.L. SMITH** (Mitchell) [7.46 pm]: For a matter of substantial importance, it is disappointing that the Minister's introductory speech covers only some two and half pages of *Hansard*. It is noteworthy that this legislation comes before this Parliament some three years after the two Mabo decisions. It is noteworthy also that the Western Australian Government introduced its own legislation into this Parliament in November 1993, approximately 18 months ago. That 18 months has been lost to the economy of Western Australia, to the mining industry and to rural enterprises in Western Australia because they have not been able to achieve some degree of certainty about their title and

their future. It is also noteworthy how ungracious is the second reading speech. There is only a very brief reference to the Mabo decision and a statement that Mabo created a degree of uncertainty and raised fundamental questions about security of title. This Parliament eliminated that concern and uncertainty by passing the Land (Titles and Traditional Usage) Act and the Government did not even have the honesty or the graciousness to acknowledge in this Parliament that this Parliament did not really pass that legislation, although technically it did. Technically, forever, the member for Kimberley, I and all members on this side will go to our graves in the knowledge that we were members of a Parliament that legislated to confiscate the legal rights of Aborigines as a race in this State. Why did we do that? We did it because the Executive which controls this Parliament chose to make the Mabo issue an affirmation of the reputation of the Premier as a tough man and to appeal to the rednecks in this community and in the mining and pastoral industries, in particular, to vote for the Government. It was nothing short of using racist attitudes to score political points. I am one of those people on this side who misjudged the Premier. I have attended a number of meetings with the Premier. In my personal dealings with him, I was relatively impressed that he was a kind, if somewhat naive, man whom one could generally trust. I did not think he was a hard-nosed politician who would stoop to any level to score political points and win political arguments in order to hang onto office. His performance and the performance of this Government on this land titles legislation which they introduced and passed through this Parliament despite our opposition has forever branded the Parliament and the people of Western Australia in the international community as racist; as people who were prepared to legislate exclusively to confiscate the rights of the original Australians.

I do not know how the Premier intends to explain that fact to his grandchildren; I certainly will be much troubled in trying to do it. I find it very difficult to hold up my head in any international meeting that it is my pleasure to attend and say that in Australia, and in Western Australia in particular, we conform to the common standards of human decency in our obligations under various international treaties in relation to racism. The truth is that anyone who studies the history of this Parliament and its legislation over many years knows that we have failed repeatedly to acknowledge the equality and justice that our Aboriginal people deserve as fellow Australians.

I will not go through a recitation of past legislation. However, the previous Bill both typified and excelled itself in its racist comment. This racist Minister for Aboriginal Affairs and Government simply had a one-line statement about the High Court decision in the second reading speech. It said -

The High Court recently held that the Land (Titles and Traditional Usage) Act is inoperative, due to its inconsistency with laws passed by the Commonwealth Parliament.

The Minister is a lawyer and he must know that that simple statement is as false and misleading as was much of the legal advice that seemed to be given to this Government about the drafting of that original legislation. The cornerstone of the High Court decision really was that this legislation was racist and discriminatory and that it offended the federal legislation dealing with that issue. It was not just that it was inconsistent with the commonwealth legislation dealing with the Mabo provisions.

In addition, of course, by a unanimous decision of the judges, the High Court found against this Government on every point raised. Yet, this Minister, as a lawyer and as the Minister for Aboriginal Affairs in this State, is prepared to concede only that the Act failed because it was inconsistent with the commonwealth legislation dealing with Mabo. Why is it that even when the highest court in the land has declared our legislation to be racist, and has confirmed that we were racist when we passed it, the Minister for Aboriginal Affairs does not have the graciousness and decency to acknowledge that as the primary reason why our previous legislation failed? Why was he not willing to say that never again would this Parliament pass racist legislation of that kind? Why did he not have the decency to acknowledge the wrongness of that legislation and simply say that we should now set about righting the wrong that we did as a Parliament in passing it?

Of course, he did not just leave it at that. He then set about identifying what he considered to be a few flaws in the commonwealth legislation, which was to confirm native title and give a process for it to be identified and brought into effect. His attitude is to talk of that legislation, that model, as being seriously flawed. The whole substance of his Bill is not an apology or an admission that his law and his advice, the Attorney General's advice and the advice of the private legal practitioners in relation to their Bill was wrong. It does not acknowledge that not only was the legislation racist but that those legal advisers who had the responsibility for its drafting were simply wrong in law. The Government says, "We are not going to say that we were wrong in the law. What we will talk about is our judgment that this commonwealth legislation is seriously flawed." Again one would think that somewhere along the line, someone who had been struck out 7:0 in the High Court might have had a bit of discomfort about now passing judgment about the Commonwealth's legislation, given that his judgment about the state legislation was so wrong in relation to the advice he gave at that time.

The rest of the Bill is really an attempt to pick out the worst of the gobbledegook that is inherent in much of the legislation dealing with land titles - whether it be white or Aboriginal land titles - and to say, in effect, that it is all confusing and that no-one will comprehend it. In fact, the Premier actually says that one of the flaws of the legislation is that -

it imposes a convoluted collection of definitions, categories and consequences beyond the comprehension of the people who must work with it.

I do not know whether he was talking about himself or whether he is saying that the commonwealth legislation is beyond the comprehension of those who have been legally advising the Government. However, it does not help anyone for the Minister or this Government to come into this Parliament and to talk in those terms. In effect it is an acknowledgement that, at best, they did not take advantage of the opportunity to talk to the Commonwealth about the legislation when they first had that opportunity - when the Federal Government was first developing its legislation. If they and their redneck advisers had had the foresight and right legal judgment, they would have been in there when the commonwealth legislation was being drafted, providing constructive advice about both the content of the legislation and the processes that were to be adopted under that legislation. Had they done that, some 18 months to two years later we would not now have the Minister simply running through the Act and trying to attack it as being flawed. He and the rest of the Ministers involved would have had the opportunity to put their views to the Commonwealth and to get the Commonwealth to listen to their views because they would not have been taking the attitude that they finally did. We would have been so much further advanced in this State in relation to the resolution of the issues to which the Mabo decision gave rise. In the end, of course, the Premier states -

In conclusion, I must say that the result is less than ideal. The Bill goes as far as it usefully can go within the constraints imposed on all Western Australians by the commonwealth Native Title Act.

Again that is a very misleading statement, because this Government's clear intention is not to support and complement the federal legislation but simply to go on knocking it and to create even more uncertainty in the future. The Minister even had the temerity to say in his opening remarks -

As a consequence, while those laws -

That is, the commonwealth laws -

- continue in their present form, the Act is of no effect.

Of course, that throws out the hope that a change of Federal Government one day might make the Federal Government more inclined to accept the racist views of the Western Australian Government and that, as a consequence, the commonwealth Act might disappear or be so substantially modified that it would fit well with the legislation that this Government attempted to put in place in this Parliament in November 1993.

To make that type of comment to the mining industry does a great disservice to the

Western Australian community. The Minister should know that the mining industry in Western Australia was very divided about its response to the State Government's legislation. The more intelligent people, the people who had good legal advice, recognised that the State legislation was bound to fail. They urged the State Government privately to negotiate with the Commonwealth. They told the Opposition privately that much of what it was saying was correct but it was not being heard by the Government because it was being drowned out by the more erratic people in the mining industry who believed that if they came on side politically with this racist State Government they would achieve substantial change to the commonwealth legislation or somehow the sky would fall in on the Commonwealth Government and it might have a bonus win and be able to retain all of its rights without the impediment of any Aboriginal title.

It is a great pity for the mining industry of this State that the rednecks in the mining industry were able to dominate those who had the foresight and intelligence to see that that legislation was bound to fail, but it is doubly wrong for this Minister to now throw out the hope to that same redneck group in the mining industry that somehow there will be a change of Federal Government in the near future and as a consequence the commonwealth legislation will not continue in force in its present form. That is a clarion call to the rednecks not to change their attitude and not to recognise that if we are to have a viable mining industry in this State, they must deal with the Mabo decision in a proper and just way. This Government and this Minister are calling them to the view that if they hold out for a bit longer and keep supporting this State Government for a bit longer, there will be a change of Federal Government and they can get on with changing or repealing the commonwealth legislation.

The first thing that is wrong with this legislation is that it contains the message from this Government that it is moving reluctantly and it still hopes that the flawed commonwealth legislation will somehow disappear one day. The Government has adopted the most minimal approach to fitting in with the commonwealth legislation, in order to guarantee that the problems which it has forecast in the past will arise. The Minister well knows that this legislation leaves uncertain the question of whether there should be a state tribunal, and a great number of issues in regard to compensation and processes. This Government could have gone a lot further than it has in resolving some of the difficulties that will inevitably arise as Aboriginal people attempt to prove their titles, and we will then have to discuss what we do in this State to take account of the legal rights that have been established for those Aboriginal people.

The moment the High Court made its decision, the Government should have had the commonsense to admit that it was wrong, to say that it had forever changed its attitude to acknowledge the legality of the rights of Aboriginal people, and to say to the Commonwealth, "How can we best develop legislation and procedures in Western Australia to both complement what the Federal Government has done and try to expedite the resolution of some of the issues that will arise so that there can be some certainty about what are the competing legal rights of people?" However, that has not been the Government's attitude. It has simply attacked the commonwealth legislation and tried to hide the fact that the Minister does not have the wit to comprehend the commonwealth legislation, and has sought to say that all it must do is go through the motions of appearing to accept the High Court decision but in spirit and in fact not cooperate at all.

I am glad that not all Liberals in this State support the views of this Government. I am particularly pleased that the former Hon Fred Chaney -

Mr Day: He is still honourable.

Mr D.L. SMITH: He is even more honourable in my eyes because he at least has been willing to stand out from the Western Australian Liberals and say, "I am not a racist. I acknowledge the injustice of what we have done, and I will lend my legal and diplomatic skills to the furtherance of the rights of Aboriginal people in this State and to the conciliation of those people who may be affected by the rights that will be established." Hon Fred Chaney deserves great credit, and I would not like to identify all Liberals in Western Australia, because he is one, as being as racist as the people who introduced the

former legislation into this House and who are now adopting such a noncooperative attitude to the federal legislation.

I could talk at further length about the detail of the legislation and what is wrong with its drafting and the explanatory notes that seem to form part of the Bill, but that is properly a matter for the Committee stage. However, I reiterate in the strongest possible terms that the comments of the Government and the Minister in introducing this legislation do nothing to try to restore the reputation of Western Australia in the international community. They certainly give me no reassurance about how I will explain to my grandchildren, if I have the good fortune to have any, that I was a member of a Parliament that purported to confiscate the legal rights of Aboriginal communities and individuals in Western Australia, and that even when the High Court decided 7:0 that the legislation was invalid because it was racist, and for other reasons, the Government of the day and the Parliament of which I was a member did not have the good grace to acknowledge the wrong of what it had done and to say that it would put that wrong behind it and would make up for lost time by doing whatever it could to ensure that the commonwealth legislation was successful, in the interests of both the Aboriginal people whose rights it was intended to confirm, protect and identify, and the economy of Australia, to ensure that any uncertainty that arose from the Mabo decision was quickly recognised, identified and put to rest.

The Premier too often is prone to say to the Labor Party that we should apologise for WA Inc. I am prepared to make that apology, but I can guarantee that this Premier and this Government will never have the good grace to acknowledge how wrong they were with the legislation they introduced and to apologise to the Parliament and to the people of Western Australia for branding us all as racist in both the Australian and international communities.

We have come to know a bit more about this Government and the Premier. With a great deal of sadness I have to say - I have always trusted my first impressions of people - that my first impressions of this Premier were entirely wrong. In the Land (Titles and Traditional Usage) Act he demonstrated that he was prepared to use any issue for his own base political purposes. If that meant forever damaging the reputation of Western Australia and Western Australians, so be it. He has been prepared to sacrifice and make insecure many good public servants in Western Australia and others who were affected by workplace agreements; to jeopardise our health and education systems in the way he has done; and his latest effort over the past week or so, to use the legal system through the royal commission to control the Parliament and to concentrate on the very unfortunate suicide of a person in our community for the Premier's own shallow purposes. Anyone who is prepared to set up royal commissions on political issues and almost to salivate on television about the death of Penny Easton and the political comfort it was giving him, is not the person I thought I was meeting when I formed my first impressions.

Mr Cowan: When will you come back to the debate?

Mr D.L. SMITH: I hope the Deputy Premier will one day write a book about how he was prepared to stand up to the current Premier's father and go into the political wilderness for a great number of years on matters of moral principle, when now all we hear from him is that this is the Premier's decision.

The SPEAKER: Order! I ask the member not to dwell any further on this area - perhaps he is bringing his remarks in this vein to a conclusion - and return to the matter before us.

Mr D.L. SMITH: I am bringing my point to a conclusion. However, I ask what has happened to the strong man of yore who has become the tired old man who is prepared to be rolled in Cabinet and not say anything about it afterwards, who would allow this Government to get away with legislation like the Land (Titles and Traditional Usage) Act and then to bring in such a half-hearted Titles Validation Bill. It is not aimed at cooperating with the Commonwealth and securing the future of the mining, pastoral and farming industries in the State, but rather to cause confusion, delay and uncertainty in the hope that those opposite can gain some political mileage so that in the run-up to the next

election they can say that they were proved right because of a delay in some project as a result of the flaws in the legislation. That is all this Bill is intended to be: A half-hearted attempt to go along with the Commonwealth but without the commitment in spirit, resources and intent to support that legislation and to make it work in a way which would both safeguard the rights which the High Court established on behalf of Aboriginal and Torres Strait Islanders and create the certainty that is required if we are to have successful mining, pastoral and farming industries.

Those industries and the rights of Aboriginal people are far too important to be used as political playthings by Ministers, Governments and Premiers who are prepared to see that right has always been consistent with their short term political goals and not in terms of the international definition of rights and our obligations under the covenants and treaties we have signed as a member of organisations such as the United Nations and even the British Commonwealth of Nations. I went to a few conferences where we talked about members of the Commonwealth being expelled for various reasons. At the next one I could make a very good argument why this Parliament should be expelled from the Commonwealth and the Commonwealth Parliamentary Association because of the legislation that we have been prepared to pass which has no place in forums like the CPA, or in the law of this land, and which has done an enormous amount to damage irreparably and irretrievably the reputation of the State in the international community and among the Australian legal community.

**MRS HALLAHAN (Armadale) [8.15 pm]:** It is well nigh time that we were debating seriously a Bill on this topic; however, the advent of this debate has been brought about by a remarkable challenge in the High Court of Australia which struck down the Court Government legislation 7:1. It is a remarkable event in our history.

**Mr Cowan:** No; it was 7:0.

**Mrs HALLAHAN:** The Deputy Premier will never forget that. It will be indelibly imprinted on all our minds.

**Mr Cowan:** It was not imprinted indelibly on yours, obviously.

**Mrs HALLAHAN:** Having been so kind as to correct my slip of the lip quickly, one then does not need to be ungenerous on such a piece of serious legislation. One must concede that members opposite must be very sensitive about the history and irresponsibility that they have portrayed from the outset on this matter. Like the member for Mitchell, I do not hold responsible all members opposite or all members of the Liberal Party; but as a collective body - I include the National Party members - they are responsible for an appalling event in this State's legislative history. That legislation, intended as it was to boost the Premier's very poor standing and the wimp tag that had been connected to him, and the use of the kicking Canberra technique and at the same time kicking Aborigines, was absolutely repugnant in the extreme. If ever there was a piece of legislation or a motivation that should have been dealt with as thoroughly as it was in the High Court of Australia, it was that piece of legislation. Sometimes there is justice ultimately, and thankfully we saw it in the 7:0 decision against the Western Australian Court Government.

In my view it is a very regrettable legacy of the Court Government and in its attempt in this Bill to rectify some of that damage, it must be encouraged. Of course, it is a very half-hearted Bill. A terrible economic uncertainty now hangs over about 10 000 land titles which have been issued since 1 January 1994. Rather than creating certainty, as was alleged by the Premier, we had a sleight of hand, a trickery. I hope supporters of the Liberal and National Parties understand the trickery to which they were subjected and are not too severely damaged economically by the duplicity of one of their so-called own in the Premier.

Despite the assurances given by the Premier, a number of instances have been recorded where the Premier has been found to be telling untruths in the public domain. Several occasions recorded and other subsequent facts have proved that what the Premier has stated is not so in fact. That is being quite kind to him. I think he set out in a calculating

way to mislead Western Australians. That is reprehensible. We came out of a period when there was a lack of confidence in public institutions in Western Australia. The Court Government was elected to provide sound government, openness and accountability. As has been the case on so many other issues, we find the Government is not beyond misleading the community or instilling fear, anxiety and uncertainty by telling untruths. The Premier was unwilling to provide the legislative framework under which sound economic development could take place. I find him wanting on every score as a political leader in Western Australia. I have not seen that improved today in his announcement of a royal commission.

Mr Cowan: Which section of the Bill are you talking about?

The SPEAKER: Order! Over the last minute or two, which is not very long, the member has been raising matters which I do not think are, as someone used to say regularly, germane to the Bill. I have shown some tolerance because it is a rather short debate. I ask the member to confine her remarks to the Bill.

Mrs HALLAHAN: I am happy to confine my remarks to the Bill. The Bill has been brought about by the duplicity by the leadership of this State. I made reference in less than 30 seconds to the events of today regarding the Easton affair, whereby this State is faced with an unnecessary, highly political royal commission. That was all I said.

The SPEAKER: The member's remarks before that also were not germane to the Bill, but I did not pull her up. I ask the member to relate her remarks more closely to the Bill.

Mrs HALLAHAN: I certainly will. I will refer to the lack of truth indulged in by the Premier. I did not intend to do that at any great length but it does relate directly to the Bill before us and apparently is what the House really wants to hear. On the ABC "7.30 Report" of 16 March 1995 Premier Richard Court, referring to the High Court decision, said -

It didn't say our legislation was invalid but it said it became inoperative . . .

The fact of the matter is that the High Court said in its judgment that the whole of the 1993 Western Australian Act was inconsistent with the provisions of section 10 of the Racial Discrimination Act and, therefore, invalid by reason of section 109 of the Constitution. The Premier, our political leader, absolutely misrepresented the High Court of Australia. That is very serious. On the matter of the rights of traditional land usage the Premier said on the same program -

. . . the High Court said in their ruling that the rights of traditional land usage were not inferior to Native Title . . .

The High Court actually said -

the rights and traditional usage . . . fall short of the rights and entitlements conferred by native title . . . the shortfall is substantial.

Again the Premier is misrepresenting the High Court of Australia. In my view that is extremely serious. On the threat to new investment the Premier was reported in *The Australian* of 26 December 1994 as saying -

The one thing that will stop that new investment is the . . . native title legislation, and it has already started.

The facts that have been drawn together, once again contradicting the Premier, are these: There was a 17.11 per cent increase in investment from September 1992 to September 1994; investment in September 1994 was \$1.382m, higher than the \$1.372m in September 1993. The figure for investment between 1993 and 1994 is significantly higher than that for 1992. Therefore, on three points the Premier is found to be misleading the public of Western Australia. I was pulled up earlier for taking a generalised stance. I now put before the House more facts about the misleading information consistently given by the Premier of Western Australia. No amount of interjecting by members opposite now will change the course of history. Those matters are now recorded. I found the statement about suburban homes being under threat the

most disturbing lack of leadership by any political leader I am ever likely to witness. The Premier is recorded in *The Financial Review* of 21 June 1994 - this is Richard Court - as saying -

The SPEAKER: Order! Standing Orders make it quite clear that members should be referred to by the name of their seat or their title. The member is aware of that. Sometimes because one is quoting the full name is used but, broadly speaking, I ask the member to abide by that.

Mrs HALLAHAN: Thank you, Mr Speaker. I appreciate your guidance on that technicality. The Premier is recorded as saying -

You have to understand where Vacant Crown land was turned into a development between 1975 and now, that title currently is in dispute. That includes former vacant Crown Land that may have been turned into residential development.

The member for Cottesloe said -

The Mabo decision was very clearly limited to cases where Aboriginal communities could show continuous occupation and relationship to a particular area of land . . . There are probably limited areas within Australia, particularly Western Australia, where that continual occupation has applied.

The member for Cottesloe understood the nature of the legislation. The Premier of this State either did not understand it or wilfully misled the people of Western Australia, in an attempt to scare them witless about the security of their homes and families. On that score alone this Premier should be thrown out. The sooner that happens the better. If any members opposite manage to achieve that, they will be doing Western Australia a very great favour indeed. He is an embarrassment to this State, nationally and internationally.

Mr Johnson: He is very highly regarded by the public. Yours is a very narrow minded opinion.

Mrs HALLAHAN: We know that the member for Whitford does not have much of a following outside Whitford.

Several members interjected.

The SPEAKER: Order!

Mrs HALLAHAN: We had another statement by the Premier regarding the rights of Aboriginal people. This is a classic. I want members who are interested in Aboriginal people and who believe their leader has not led them down a dastardly path to listen to this.

Our approach, as supported by the WA community, provides certainty and security to industry and fairness to Aboriginal people. It ensures that Aboriginal rights are affected as little as possible and, if affected, fairly compensated. It treats all Western Australians equally and equitably.

That quote is taken from the Premier's media statement dated 22 June 1994. The High Court said in consideration of that matter -

The holders of s.7 rights suffer a diminution of their rights inconsistent with s.10 of the Racial Discrimination Act.

It roundly rejected the assertions of the Premier of Western Australia. Therefore, the leadership of this Government constantly put forward misleading information. My advice to members opposite is that, if they are ever in the position where their future depends on an assertion or an undertaking by the Premier, they should treat that undertaking with a very large grain of salt because he misleads people. The people who do that sort of thing will do it to anybody. He has tried to undermine the rights of Aborigines who are the most dispossessed minority in this community but, at the same time, claims some affiliation with Aboriginal people. He should not be trusted. Nor should he be trusted because he tried to scare the people of this State by saying that their

homes and their land could also be the subject of claims by Aboriginal people. Anyone who says that is capable of saying anything.

Today, he set up a royal commission that we do not need. It was set up as a highly political inquiry which again proves very poor leadership and that he will go to any length to survive and to support the leader of the federal Liberal Party. What did the High Court challenge cost? The media have reported that the challenge and everything associated with it cost approximately \$4m, although there is a suggestion that the figure is as high as \$8m. On top of that, the Premier today set up a royal commission which he indicated to the House earlier could cost \$1.25m. However, presumably there is no limit to the cost. That money will be thrown out the door, as was the \$8m spent on the High Court challenge. It is an extremely costly and wasteful way for this Government to pursue political point scoring. The expenditure of \$8m was about getting rid of the Premier's wimp tag. That was a pretty expensive way of getting rid of an undesirable tag for a political leader. I do not think it was worth it and I do not know anybody who does.

On a more serious note, Western Australia did not take part in the negotiations at a federal level on the question of native title legislation. Therefore, it put in jeopardy the offer by the Commonwealth to compensate the States for land successfully claimed. That compensation would have covered about 75 per cent of the amount claimed. We do not know what will be the outcome of that. However, we do know that the Federal Government was prepared to provide certainty of compensation but now that certainty no longer exists. Will Western Australians have to pick up a very expensive compensation payout simply because the Premier of Western Australia had an undesirable wimp tag? We will all pay very dearly for that tag.

I was saddened when the High Court of Australia said that legislation passed by this Parliament was racist. That is no small statement. The Premier would have had advice which indicated that there were doubts about the validity of the State's legislation. However, he pushed ahead, so important was it for him to rid himself of the wimp tag. He did not mind whom he hurt or how much it cost. He did not mind that the Western Australian Parliament passed racist legislation so that everybody now believes that Western Australians are capable of anything when it comes to human rights.

Why does this legislation not include the provision for a state land tribunal? There is no commitment to that in this legislation. Some of my colleagues have said that this legislation is too little too late. The Commonwealth has set up a tribunal that is based in Perth. Eminent Western Australians are members of that tribunal and it is headed by an eminent Western Australian. However, the fact remains that, had we, like South Australia and Queensland, positioned ourselves to be part of the negotiations to access compensation which was offered to us, we would be in a much better position today. Had this legislation included a provision for the establishment of a state land tribunal, the state Minister would have had an opportunity to overview decisions on the matters that were in contention. We have this conundrum, this extraordinary anomaly, of a State Government parading as a states' righter at every opportunity, but not being prepared to set up a state tribunal to discuss native title issues. I do not understand that. I want the Minister who responds to the second reading debate to explain that to me. This State set out, under the political leadership of the Premier, to cane Canberra, not minding in the least that we caned Aboriginal people in the process. However, it also gave away every opportunity to look after the interests of Western Australia. That is beyond my comprehension.

We are now debating a Bill that goes some way to putting us in the position that we should have been in a long time ago, prior to any High Court challenge, and the embarrassment and uncertainty that followed that, and prior to our having to spend that huge amount of money. We have been forced, not through maturity or careful consideration, to put in place legislation which in part addresses what was a historic decision by the High Court, a decision which we now know as the Mabo decision, a decision which, once and for all time, says that Australia was occupied by Aboriginal people prior to European settlement. Although the High Court has recognised that claim of continuous association with the land, it is still a very limited recognition. However, it

was an important decision. Anyone who does not recognise that does not recognise reality. Those who do not recognise that do not believe that all human beings are equal. They also challenge religious doctrines, including Christianity. Christians could not, in any way, have supported the Premier of Western Australia. Many of them must be relieved that this matter is now being approached with some cognisance of the reality of this State's history, the High Court decision and the fact that Aboriginal people, who were a part of this community well before our arrival, no longer can be treated as though they are not people. The Opposition supports the Bill, which has a sorry history. It is hopeful that the more reasonable and responsible members opposite will try to curtail the excesses of this Premier.

**MR PRINCE** (Albany - Minister for Aboriginal Affairs) [8.41 pm]: I thank members opposite for their expressed support of the legislation. All but one of the members opposite expressed that support. I will refer to some of the observations which were made by members opposite in the course of the debate.

My first comment, which follows on from the closing remarks of the member for Armadale, relates to the limitations of this Bill. As I said in my second reading speech this Bill has a limited effect because it is framed within the constraints imposed by the commonwealth Native Title Act. It deals only with what is described in the commonwealth Act as past acts; that is, acts which deal with the issue of title - land, mining or any other title - passed between October 1975 and 1 January 1994. It does not address any issue other than the validation of acts for the grant of title during that period because, as it says in its description, this is a Bill to validate past acts. The commonwealth Native Title Act sets up a regime which deals with those matters I referred to and are described in that Act as past acts. It also has a future act regime and a claims regime. The future act regime applies to the granting of all titles after 1 January 1994. The issue of claims is a separate exercise where those who claim to have native title over any piece of land or waters can bring a claim alleging that and have the matter litigated - I use that term in its broadest sense - to the native title tribunal and through the Federal Court and, ultimately, into the court process. We are dealing only with the question of past acts from October 1975 to 1 January 1994.

I agree with the Leader of the Opposition's comment that the Native Title Act contains some paradoxes. He alluded to the paradox with respect to not extinguishing title between October 1975 and 1 January 1994. I refer him and other members to the utterly absurd situation I mentioned in my second reading speech where a person who had a potentially invalid title issued between 1975 and 1 January 1994 will have, by reason of the Commonwealth Native Title Act and this Bill, when it is proclaimed, a totally valid title. However, the person who had an otherwise valid title in that period does not, because there could be a problem with the actual title.

**Mr Grill:** Can you give an example of that?

**Mr PRINCE:** It is a theoretical possibility. It will correct an invalidity where there has been an error in the issue of title, but it will not correct an otherwise validly issued title. It is a peculiar position which arises out of an interruption -

**Mr Grill:** Is it possible for you to give an example of where that might apply?

**Mr PRINCE:** I tried to find one but I have not been able to as yet. My advisers are looking for one and when I can I will give it to the member. I am sure that when it is a theoretical possibility there must be some practical example. The difficulty is searching through everything that was done during that 19 years to try to find something to fit into this category. It is conceptually there, but to find an example is obviously extremely labour intensive. Whether that is a productive exercise is a matter for debate. One would better use that resource in looking to the future rather than for an error of the past. It will be better to wait and see whether one comes up.

The Leader of the Opposition said there should be two other processes in this legislation. He referred to this Bill as the validation of past acts and then said that the Government should pressure the Commonwealth for compensation because Western Australia was the

worst affected. I make the following reservations with respect to dealing with the Commonwealth on this matter: I understand the situation was that conferences were called which the Premier attended. He brought to the attention of the Prime Minister and other Premiers and officers from both the Commonwealth and State the peculiar and particular situation which exists in Western Australia with respect to potential native title and the way in which matters might be handled in this State. It certainly is peculiar in this State in the sense of the magnitude of the effect upon land management. The member for Eyre referred in his speech to the fact that 34 per cent of this State is pastoral lease. The map I have in my hand accurately illustrates that. The white part of the map graphically illustrates that part which is freehold; the yellow is pastoral lease of one form or another; and the red is other forms of Crown land, but not necessarily only Crown land, perhaps held, for example, by the Aboriginal Lands Trust. Approximately 11 per cent of the State is held by the Aboriginal Lands Trust in Crown reserve. It is a visual demonstration of the position which confronted this State in 1992.

The Government has endeavoured to get that fact over to the Commonwealth. It is only in recent times that there has been a realisation of just how substantial is the problem that is created in this State because of the nature of land tenure of this State as it existed in June 1992.

Mr Kobelke: It is a clear recognition of the failure of your Government to communicate with the Federal Government at an early stage.

Mr PRINCE: I observe that communication requires at least two parties, if not more than two, to be prepared to listen to each other. On Friday, 9 March this year, the Friday before the last native title decision was handed down, I and Hon George Cash, the Minister for Lands, met with Mr Tickner, Mr Johns and their advisers, including the Chief Executive Officer of the Aboriginal and Torres Strait Islander Commission. By means of a computer generated visual display we were able to show, not just this problem, but also other matters in relation to mining and land title and their overlaying nature over the years. We were able to give illustrations of the Ord River area and the Miriuwunga Gajeronga claims and the areas around Kalgoorlie covered by the Waljen claim and the other two associated with that. I might add that they are one-third of the size of Victoria. It showed how complex is the background and history to the land tenure in those areas not only from the point of view of mining titles, but also other forms of title that the Crown has issued. It was said by the other Ministers, particularly Mr Johns, that they now had a realisation of exactly what we were talking about which they did not previously have. I was not involved in negotiations in 1993, but the Premier has said on many occasions, privately and publicly in this place and elsewhere, that he went to meetings and presented those to the Prime Minister and other Premiers to try to get an acceptance and understanding of the nature of the difficulty.

Mrs Hallahan: You cannot believe the Premier. That permeates everything Western Australia tries to achieve.

Mr PRINCE: I did not interrupt Hon Kay Hallahan and I wish she would not interrupt me when I am mid-sentence.

Mrs Hallahan: I do not think I will comply with your request. That is not the way the House has conducted itself in the past.

Mr PRINCE: The Premier and his advisers attempted to get over the nature of the circumstances that apply in this State, but were unsuccessful because the Commonwealth did not want to listen. The Commonwealth Government presented its solution and thereafter if a meeting was called, for example, for eight o'clock in the morning in Brisbane, Western Australia was notified the night before the meeting was held. That sort of silly trick was played. As a result there was no means to communicate.

Mrs Hallahan: I do not believe that.

Mr PRINCE: The member's comment, with respect, is not correct because it requires both sides to wish to communicate and, self-evidently, there was no desire on the part of the Commonwealth Government to do so.

With regard to the matter of compensation, the Leader of the Opposition said pressure should be brought to bear on the Commonwealth Government for compensation. I assure the Leader of the Opposition and members opposite that that is the case - in an atmosphere of goodwill. The proposition put by me and others is that it is clearly inequitable for taxpayers in this country to be discriminated against in the distribution of the tax dollar by the Commonwealth Government, because of a perceived failure to comply with a time limit. Clearly, compensation should be available in this State - and I am talking about past acts and validation thereof - as it applies in any other States. Therefore, equity demands that the tax dollar should be shared equitably for compensation, irrespective of whether the dates have been complied with. I understand some of the other States had not passed their legislation within the time limit and, as far as I am aware, none has proclaimed the legislation yet.

Mr Kobelke: There is some confusion in what you are saying. It is not a matter of Western Australia not meeting the time limit, but rather the whole attack by this Government trying to undermine the Commonwealth Government's strategy. That is in a different category altogether.

Mr PRINCE: This Government took a different view as to how the Mabo No 2 decision and ruling should be approached. The State Government did not think it should be claims based. There are a number of different distinguishing matters. This Government is entitled to take a different view, and it should not be a matter of ridicule and unreasonable criticism if this Government has a difference of opinion with the Federal Government. I have no problem with putting that.

The Leader of the Opposition also said we should establish a state native title tribunal - other members also alluded to this - in order to integrate native title matters into land management in this State. That has been the case in two other States. I think the Leader of the Opposition was correct in saying that in Queensland it has been done by modification of the mining warden's court. I am not sure what the situation is in South Australia, but certainly some attempt has been made to establish a tribunal that complies with the Commonwealth Native Title Act provisions. The Government has carefully considered this matter and it is not a closed case. Mr Justice French has issued a number of papers, and some have been quite lengthy and obviously profound as a result of his running the tribunal for more than a year. He has identified problems in the procedures and the nature of the tribunal as presently constituted by the Commonwealth Native Title Act. He has proposed radical changes, namely, that the tribunal should become a mediation service only and claims should be dealt with entirely in the federal court and not in the tribunal process. A number of other major modifications have been made.

Mr Grill: In reality it is nothing more than that at the moment.

Mr PRINCE: It is more than that because the CRA-Wik matter was not a mediation exercise, but was a determination by Mr Justice French with respect to whether the claim by the Wik people in the CRA mining lease could be accepted for registration. He determined it could not because it had been extinguished by the provisions of the pastoral lease a hundred years ago. It is not just a mediation service at the moment.

Mr Grill: But it will then go to the federal court.

Mr PRINCE: It could easily, and particularly in that matter where the Reynolds' plea has also been run. That is named after a Queensland historian who takes the view that the British Government of the day so distrusted the colonies of Australia that it implicitly put into the Constitution that Aboriginal people were to be protected, irrespective of the Statutes passed by the colonies. That matter has also been ruled upon. I understand those matters will go on to appeal.

Mr Grill: I have copies of the various brochures from the native title office and in each of the pamphlets and the other material it is indicated quite clearly that any disputed matter will go to the federal court for decision making, and that the native title tribunal will decide only on matters where there is agreement or an unopposed application.

Mr PRINCE: That is a change which has administratively been brought about by the

president in recent times because he perceived the tribunal process could not deal with a contested claim. Ultimately, contested claims go to the federal court and, therefore, he determined if there was to be a contest it might as well go to the courts in the first instance. That is part of his proposal for a change in the law. With regard to the pastoral leases and the Wik claim, there is a strong argument - I do not know whether it will be successful - that the Queensland legislation purports to extinguish native title on pastoral leases but it may not be valid. That matter is going to the High Court.

One of the reasons this legislation is limited to validation - unlike the Queensland legislation which is more extensive and covers the establishment of a tribunal - is that the Government wished to bring to the Parliament a Bill that could be sensibly debated, passed and become law, without being subject to challenge. The State Government looked at the Queensland Act which contains more than validation provisions, and some other matters which could be attractive. For example, it contains provisions to overcome the uncertainty with respect to pastoral leases. However, it was decided that if those provisions were included in the Bill, this State could be off to the High Court again and it would not achieve anything of any value for Aboriginal people or anyone else. That is why this Bill is specifically drafted to deal with the validation of past acts. The tribunal is not a closed question but, while the president of the tribunal and others, and evidently the commonwealth government authorities, are considering amendments to the Native Title Act - we do not know what they are and how far reaching they may be - it would be fruitless to create a tribunal in this State which must be a virtual duplicate of that which already exists in the commonwealth system, albeit located in Perth. That is not a sensible way to go about things. We should wait to see what the changes will be and how they will impact and infringe upon the operation of the tribunal now, and then seriously consider whether there should be a state tribunal. The member for Belmont said that better integration could be achieved of land management matters between other state agencies and a state native title tribunal. However, the operating relationship between state government agencies and the native title tribunal is very good. The information flow from day one has never been interfered with. It has always been a matter of cooperation, and we have given whatever information is requested. That was done from the beginning.

Mr Grill: What do you feel about the federal Minister exercising discretion that could be exercised by the state Minister in the state tribunal jurisdiction?

Mr PRINCE: I feel distinctly uncomfortable. However, in the position of Minister I have some powers of that nature under the Aboriginal Heritage Act. Only in a very extraordinary and extreme case would the Minister interfere and veto a decision of a tribunal or a quasi-judicial process, however constituted at the time. Usually a significant amount of information and views are put to it to come up with a decision; it would be an unusual and extraordinary circumstance where the Minister would override the situation, whether State or Federal. I say that, conscious that I will say again, I would feel happier with a state Minister doing it rather than a commonwealth Minister. One cannot make much of that because it will only arise in the most extraordinary and exceptional circumstances.

Mr Grill: Might you not be dealing with a decision whether a major resource development goes ahead? Should that not be dealt with by a state Minister rather than a federal Minister?

Mr PRINCE: Yes. Of necessity it requires that whoever makes the final decision, from the state Minister's point of view it is final. A parallel exists with matters in Aboriginal heritage where under the Aboriginal Heritage Act we can have that process. Marandoo was the classic case while the member was in Government, and the crocodile farm matter and the Normandy-Bow River diamond mine are two that come to mind in which I have been involved in the past 12 months. After a process a decision was made by the Minister, and the commonwealth Minister intervened.

Mr Grill: Under this legislation, if the state Minister makes a decision, the federal Minister is excluded.

Mr PRINCE: Under the Native Title Act, yes. It must be absolutely understood that that is certainly the finish. I accept what the member says; it is a valid point. Can he understand why we have some reticence now with regard to a state tribunal, for the reasons indicated, with duplication and basically uncertainty regarding how it would operate, because it is in a process, which is as yet undisclosed to us, of some form of change?

I turn now to a couple of matters raised by the Leader of the Opposition. He was talking about tribunal sabotage, and referred to the Miriwunga Gajeronga claim. As I recall, that claim originally involved in excess of 400 participants. It was huge by any standard in any form of litigation. I think the numbers have been reduced to around 170-odd, but that is still huge by any standard in any form of litigation. To speak about that matter as being capable of an expedited hearing - and I understand, as a lawyer, what he is talking about - is, because of its nature, not possible. It is so complicated with so many parties involved, and with the differences of opinion between not only the Aboriginal claimants but also the landholders of the radical title from the Crown. There are not only difficult questions of law, but also the question of the underlying tenure back to the original grant from the Crown of pastoral leases. The slices of tenure history between about 1880 and 1930 that I have seen show a considerable change in the nature, type and number of pastoral leases. Again, we have the problem of what happened when pastoral leases were resumed in the 1960s for the Lake Argyle project and so on. It is a very complex case not only in its factual circumstances, and in the numbers of people involved, but also in the logistics of being able to handle it. For those reasons, it is not a matter where it is likely that one could get an agreed statement of facts. It is not a matter which is capable of being taken to an expedited list. I only wish there were one to try to resolve very quickly the question of pastoral leases. That matter is not, and that is the only one in this State.

There are other cases, mostly in Queensland, which may or may not deal with the question, but they will deal with the Queensland version of pastoral leases and other forms of Crown leases. The other forms of Crown leases there may or may not have particular types of reservations in respect of Aboriginal people. It may be that Premier Goss has a considerably bigger problem than he thought, depending on which way those matters are resolved. The uncertainty there is caused by the Prime Minister saying in his second reading speech that pastoral leases will extinguish native title. He has said publicly that that is the case but the Native Title Act is unequivocal. However, the President of the Native Title Tribunal said that he does not accept necessarily that that is the case. Indeed, he thinks it is a matter to be decided and determined. In other words, he does not accept what the Prime Minister said in Parliament, and the matter is now before the courts. It is reasonable to expect with the Miriwunga Gajeronga matter - given Chambers hearings and so forth - that towards the end of this year we may be given a trial date next year. The result would be known perhaps in 1996 and, given the nature of it and the convoluted nature of the proceedings, it is likely that the matter will go to the High Court. To get matters into the High Court and determined will take further considerable time. Therefore the general nature of "let the courts decide" - the answer from the Prime Minister particularly in relation to the Western Australian case - means continued uncertainty for pastoral lease matters for at least the next year at a minimum, and possibly as long as two to three years depending on what happens.

The member for Eyre said that 34 per cent of the State is under pastoral lease. Sixty-four per cent of mining activity takes place on pastoral leases. He is concerned about that matter. He said that his preferred position is that pastoral leases extinguish native title. It is well and good for him to say that, but that is not the law. Certainty of law would be of benefit to the Aboriginal people as well as the miners, pastoralists and others who have the desire to do some form of development on land.

Mr Kobelke: From the Minister's remarks one could infer that his position is not the Government's position; that he is opposed to the approach of "let the courts decide".

Mr PRINCE: Yes. Ultimately the courts will decide and we shall have certainty.

Mr Kobelke: But not as a major process.

Mr PRINCE: The objection we have to letting the courts decide is the time it will take. We do not have an objection to letting the courts decide per se; we object to the fact that it could be two to three years, at worst, before a decision is made.

Mr Kobelke: Is that a change in government policy from 18 months ago when it was stated that the matter should be left to the courts to decide?

Mr PRINCE: No. That was in relation to the High Court determination on the Land (Titles and Traditional Usage) Act as opposed to the Native Title Act case which was decided on 16 March 1995.

Mr Kobelke: Prior to passage of the traditional land usage Bill introduced by the Government, key government spokesmen suggested that it should be left to the courts to decide.

Mr PRINCE: With respect to pastoral leases?

Mr Kobelke: With respect to claims generally.

Mr PRINCE: I am talking only about pastoral leases. If the member wants to talk about claims being left to the courts, that is not the way to go if it can be dealt with in some other way, in fairness and equity. The cases launched in the Supreme Court here before there was any legislation, were likely - on the estimation of the judges - to take up to five years. That is not fair on the claimants or the respondents. It is not fair on whoever must resource and fund the exercise. I was about to say that it is not fair on the judges, but that is what they are paid for. I will leave it at that. It is a long time during which the aspirations of people are put on hold and frustrated, particularly in cases where elderly Aboriginal people die, or their memories fade. It is unreasonable to expect them to go through a process of that nature. Eddie Mabo died before the final decision was handed down in June 1992. Although the courts have their place - I would not wish to say otherwise - I wonder whether they are the best place to determine these matters, notwithstanding what Justice French says. If some other justice system provides that equity and fairness with the ability to be heard and to be represented by an articulate spokesman and the matter can be dealt with more expeditiously - that should be considered. The question of certainty and finality is achieved through a court process.

Mr Kobelke: Is the current policy by the Native Title Tribunal to refer contested claims to the court a result of the High Court's decision which related to the powers of tribunals?

Mr PRINCE: I think the decision in Brandi had something to do with that, because there is now some doubt about whether a tribunal decision can be deemed to be a court decision. It is also a recognition of the judgment by Justice French that the tribunal system cannot cope with determining a claim where there is a contest and that the courts are the place for that. There is nowhere else to go. I contrast that with the traditional land use system which says if there is native title - we called it traditional use - it is there and is a statutory right protected by law. It was not a claimant based system.

Regarding the matter the Leader of the Opposition raised concerning sabotage of the tribunal by taking all the points; that is not so. It is certainly not the intention of the Government to sabotage the tribunal by flooding it. This is where we deal with what is called the future act regime where, if a title in any form has been granted since 1 January last year and there is the possibility of it impinging on native title, that matter must go through the Native Title Tribunal. I will illustrate the problem with that by a diagrammatic representation of the future act process, the time line for which is 24 months; that is, if it all works, which I will lay on the table.

[See paper No 249.]

Again, we are talking about the problem of time. That has been the Government's fundamental objection to the Native Title Act; not to its principles, but to its process. This sort of process is simply not workable in this State. People have said thousands of titles will be issued in a year. Probably some of them might have to be subject to this process, but not all; one must know as a preliminary filter how many might be. If there is

the possibility of a title having an effect on, or extinguishing, native title it must go through the native title process for there to be certainty. If there is not, for example, a title granting freehold land, there is no problem.

This is a problem addressed in other States by the issue of what has been called a "Swiss cheese title", namely a title with a large disclaimer saying, "This has not gone through the native title process, so on the recipient's head, be it. For absolute certainty, take it to the Native Title Tribunal, the Government will not guarantee that." This has been done in New South Wales. Whether that is an acceptable way to go is debatable. It might be in New South Wales where the vast majority of land is either freehold or some other form of tenure which has extinguished native title-like pastoral lease. Only part of New South Wales is pastoral lease. In other words, they do not have the problem there, so it suits them to be able to issue the Swiss cheese model. However, in this State, as the member for Eyre knows, it cannot work. If we are to be a responsible Government and issue valid title, those which we reasonably think could affect native title must go to the tribunal because nothing else can be done.

The Leader of the Opposition referred to living area excisions and goodwill between Government and Aboriginal organisations. The fact is that at Mardiwah Loop, just outside Halls Creek in the electorate of the member for Kimberley, some Aboriginal people live in poor conditions. Two kilometres away there are 20 Homeswest houses, only two of which are occupied. As the people of Mardiwah Loop are living on Aboriginal Lands Trust land and the local shire has decided the conditions contravene the Health Act - I accept they do - I have been required, as Minister for Aboriginal Affairs, having the ultimate authority for the Aboriginal Lands Trust, to provide safe living conditions. That is a bit difficult when the Aboriginal Lands Trust has no resources. Therefore, I have directed Homeswest to provide those resources. The area is a camping ground established in 1988 which has become a permanent settlement.

I have today received similar correspondence from the Shire of Derby, West Kimberley concerning the Mardiwah Aboriginal community which is also on Aboriginal Lands Trust land. They have problems with the laundry and ablution facilities. In addition, the East Pilbara Shire Council has referred to the Cotten Creek community and the deplorable state of its septic systems. They are similar arguments. The shires have a duty of care and a legal liability. They are discharging this by placing orders on the owners of the land, which happens to be the Aboriginal Lands Trust, to provide safe facilities. We have 48 target communities for which the State is responsible by agreement entered into when the Opposition was in government. The other communities established by the Commonwealth, and latterly by the Aboriginal and Torres Strait Islander Commission, are looked after and funded by it. However, the legal liability could well rest with the local authority, which will then pass it on to whoever is the landowner. The problem of living areas is not so much a problem for some redneck reason of not wishing to grant more land; the problem is that if we are to have a living area, it should be where people can live and it should provide the proper services so that people live in decent conditions. In 1995 they should not be living in squalor. If we permit more and more excisions, we are probably perpetuating, and indeed making worse, the problems. It is not a matter of trying to stop legitimate aspirations of people, but a matter of making sure it is done in a safe way.

I thank the member for Kimberley for his sage advice on dealing with various matters, particularly for his observations concerning the capacity of miners and pastoralists to deal with matters with which other people cannot deal. I think I have addressed most matters the member for Eyre raised. The lack of communication on the part of the Commonwealth when negotiations should have been taking place in 1993, to a certain extent, is the reason the Native Title Act is so totally unworkable. Had the Commonwealth Government listened to us, the legislation might well have been vastly more workable.

The member for Belmont asked whether titles issued between 1 January 1994 and 16 March 1995 are valid, and referred to compensation. The State asserts that all those titles are valid and, if necessary, it will pay compensation. However, the process we went

through for the issue of those titles clearly identified whether there was native title in relation to any of them. The titles were issued after that examination; hence we are confident there will not be any such claim.

The member for Mitchell did not address the Bill other than to condemn it, and took the opportunity to launch into a personal slur and attack on not only the Premier, but also me. I do not engage in debate at that level, and I note that far too often the debate in this place is a flat statement by one side followed by a flat contradiction and personal abuse by the other. That is a degrading way to debate any subject, particularly this matter. I will not descend to that level and I do not expect anybody else to do so.

Question put and passed.

Bill read a second time.

## **BANK OF WESTERN AUSTRALIA BILL**

### *Committee*

Resumed from 4 May. The Deputy Chairman of Committees (Mr Ainsworth) in the Chair; Mr Court (Treasurer) in charge of the Bill.

Progress was reported after clause 8 had been agreed to.

### **Clause 9: Day of privatisation -**

Mr KOBELKE: I understand from the earlier debate that a requirement exists that in order to pick up the compensation payment from the Commonwealth, this Bill must pass through the Western Australian Parliament by 30 June 1995. I am not sure what other requirements the Commonwealth may have imposed. Clearly there must be an intent to have set a day for privatisation. Although I know the date will be flexible depending on which path is taken, what are the key milestones which will lead us finally to the day of privatisation?

Mr COURT: The day of privatisation is at the end of the process when the sale takes place. A number of important decisions are to be made. For example, shortly the brokers who will be involved in the float if the Government goes down the float path will be appointed, but they will make that decision. It is hoped that in around August or September a decision will be made as to whether we go to a float or to regulated tender. If we go for a float, after that point a number of stages will occur, culminating in the final decision as to whether we proceed at a certain price. The day of privatisation will depend on markets and offers. It could well take a couple of years if there is not a good price in the marketplace.

Mr Kobelke: Is there any degree of commercial confidentiality in setting that date now, or does it depend on the decisions that are made and the vagaries of the marketplace at that time?

Mr COURT: There are many vagaries. The Government ended up delaying the float of the State Government Insurance Office for a year. The delays ended up working in our favour price-wise, but that does not always occur. As the member will know, a number of things had to be put in place. That is why with a float of this size delays may occur on the way which put it back.

In the Budget tonight the Federal Government announced the Qantas sale. It is the fourth time in four years it has announced the sale. Asset sales last year were to be \$3.3b; I think they were \$55m. It is foolish to say that something will definitely happen, but our goal is to work towards a sale.

Mr Kobelke: Will the move to float off in two stages the remainder of the Commonwealth Bank have any major implications for the sale of BankWest? Is there a time horizon by which you feel that the privatisation of BankWest must be finalised?

Mr COURT: This Government must start the process. The Federal Government will not force us to sell a bank in a poor market. That is why we want the legislation through by 30 June; not only that, we want to start investigating accountants and brokers. The Federal Government in its Budget has provided for \$200m for tax compensation

payments, working on the assumption that the sale goes through this year. I do not see the Commonwealth Bank sale around the same time as the BankWest privatisation causing a difficulty. I will be interested to know how it sells the remaining shares because the first shares that were sold had a government guarantee attached. If the Federal Government does not want to sell the balance of the bank and keep a government guarantee in place, it should take the Government out of that liability.

Mr D.L. SMITH: I do not have any problem with this clause, except with the power to both change the method of privatisation if there is seen to be some benefit to the State, or to change the date of privatisation if there is a need to do that. There was a lot of business sense in delaying the float of the SGIO for as long as it was delayed. Having chosen to privatise by way of a float, it concerns me that part of the float process is to ask the public to submit their applications and cheque and they will be told that the date of listing will be a certain day. Does the Treasurer envisage that at that late stage he might be able to change the method of privatisation or the date of listing? Will the date of listing become the date of privatisation.

Subclause (4) concerns me and it is probably because I have not attended the briefings or paid particular attention to the second reading debate. Under this subclause it is envisaged, in spite of the method of privatisation, that the shares in the bank held by R & I Holdings will be transferred to whatever the new entity is. A number of approaches can be taken when floating a business like the bank. For example, the shares can be retained, but the business sold to a new entity and, in effect, the shareholders then own the business but the proceeds of the sale of the business, which becomes the value of the shares, are then realised by the State. It appears that the Government is not contemplating a float. Subclause (4) deals solely with the sale of the bank. The easiest way to sell the bank privately would be to sell the business by transferring the shares held by R & I Holdings. If that is the case, are we seriously looking at all the alternatives or solely at a method that will dispose of the State's assets by disposing of the shares and then it becoming important as to when the property in those shares passes?

Mr COURT: Subclause (4) covers all methods of sale because the R & I Holding shares must be transferred.

Mr D.L. Smith: Why do you have to do that when the new company is the business?

Mr COURT: The business is being transferred to the new operation.

Mr D.L. Smith: On one day you would have R & I Holdings holding shares, the value of which is the value of the business. If the actual business is sold, rather than the shares, to the new entity, on the day after the sale the shares will be supported not by the business, but also by the proceeds of the sale of the business. It seems odd that you are envisaging only one method of disposal.

Mr COURT: I have been advised that in the case of the float it is the intention to offer the shares in R & I Holdings as the float rather than they go through a different body. That is what subclause (4) is about.

Mr D.L. Smith: By increasing the number of shares? How many shares are there?

Mr COURT: I am getting the precise number for the member. The proposal being considered is to use that number of shares in the float. I refer to the so-called allotment day and advise that in the State Government Insurance Office legislation the allotment day was the day fixed by the directors of the company for the allotment of shares in the public float to be published by notice in the *Government Gazette*. However, it did not restrict the directors' power to change the allotment day, but any such day must be published in the same way. The allotment day cannot be the day before the appointed day.

The process involves building up an interest in the float. A prospectus is sent out and a closing day is announced. Hopefully within a few weeks the money rolls in, with people buying shares in the company. The skill of the float is in getting the price right and the market interested in it. Currently there are 435 million shares and the legislation permits the issuing of further shares to R & I Holdings.

Mr D.L. SMITH: Subclause (4) is intended to have that effect. The only method of disposal will be by offloading the shares held in R & I Holdings. There are two ways of doing that. One is to off-load the existing 435 million shares, but that worries me because it would become a selective float.

Mr COURT: They can issue more shares.

Mr D.L. SMITH: The second way is to issue an appropriate number of shares to equate to whatever value is required. I hope it will be in the tens of millions and not in the hundreds of thousands. Why does subclause (4) refer to property in shares, property in the business and property in the assets?

**Clause put and passed.**

**Clause 10: Powers exercisable for purposes of privatisation -**

Mr COURT: I move -

Page 6, line 21 - To insert after "prospectus" the following -

or other document containing information for potential purchasers of shares in the Bank

This amendment follows from the amendment to clause 5 to reflect changes to the Corporations Law which came into effect on 5 September last year but was not taken into account when the Bill was finalised.

Mr D.L. SMITH: I do not understand how this clause is meant to take effect and that is primarily because I do not understand who it is directed at and who will ensure that it is enforced. Can it be construed as an empowerment provision? Is it intended to be some kind of direction to R & I Holdings and the bank that they shall do those things and, if so, who will be responsible for making sure that they do them and that they are done in an appropriate manner? Is this an enabling clause or is it some kind of direction which tells the two entities that they must do it?

Mr COURT: Subclause (1) states that all things must be done to comply with a privatisation order. Ensuring that they must be done might also include those things which are listed in subclause (2).

Mr D.L. Smith: Is it up to the first person to issue the privatisation order and then ensure that it is done?

Mr COURT: Yes.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 11 put and passed.**

**Clause 12: Consultation -**

Mr D.L. SMITH: I presume that the consultation is to occur between R & I Holdings and the board of directors of the bank and not with anyone else? Is it just an obligation to consult each other?

Mr COURT: R & I Holdings is basically the Under Treasurer assisted by Treasury officers consulting with the board. However, as I mentioned, we are using a steering committee in relation to these matters, which involves the chairman of the board; the CEO; the Under Treasurer; Mr Neville Smith, Assistant Under Treasurer Accounting; and Richard Elliott. We also have representation from the Crown Solicitor's office. However, in this case, it is basically saying that the board must consult the owners and vice versa. The board has always made it clear that it is the Government's decision as to what happens with the sale and it carries out the wishes if the bank is or is not to be sold.

Mr KOBELKE: Further to the same point, can the Treasurer explain who are the shareholders or the authorised people in R & I Holdings? Will those he has just mentioned in relation to the steering committee be caught up with the secrecy provisions within the Bill? If that is a problem, is the means of avoiding that simply to make the

steering committee R & I Holdings? It seems that there could be a problem. Can the Treasurer be more explicit as to how he ensures that the steering committee is the group required by this clause to consult fully with the board of the bank?

Mr COURT: R&I Holdings performs its function through its director, who shall be the person for the time being holding or acting in the office of Under Treasurer; so R & I Holdings is the Under Treasurer.

Mr KOBELKE: Is there a concern that the secrecy provision is required if the steering committee holds that role, or does the Treasurer see that as a third party involved in the process but not necessarily fulfilling the requirements of this clause?

Mr COURT: That person is part of a steering committee. The steering committee must ensure that all parties are treated fairly. In a regulated tender process it must ensure that all parties have access to the same information so no preferential treatment is given. That is where the whole tender process must have credibility - that people are all treated equally. In terms of the confidentiality, those people are caught under clause 16, with the associated penalties.

**Clause put and passed.**

#### **Clause 13: Proceeds -**

Mr D.L. SMITH: The only concern I have about this clause relates to subclause 1(a). I can understand if it is just that person's meeting expenses of privatisation, full stop. Why have the words "as determined by the Treasurer" been added? If the directors of the board have incurred expenses, why should they not be paid and why should it be open to the Treasurer, in effect, to come along later to say some should be paid and some should not be?

Mr COURT: It is purely because someone has to quantify the amount and it is left with the Treasurer.

Mr D.L. SMITH: Does it give the Treasurer the discretion to say that some expenses should not be paid?

Mr COURT: The board will say that it has cost \$3m and, because at that stage when the bank is still in the hands of the Government, we will make an agreement -

Mr D.L. SMITH: The bank is not. The former holder of the shares in the bank is R & I Holdings.

Mr COURT: It is the same with the dividend. If the board recommends that it pays a certain dividend, it is finally approved by the Treasurer.

Mr D.L. SMITH: The same applies to the payment to the Bank of Western Australia. What factors will determine the amount to be paid to the Bank of Western Australia? What factors will the Treasurer use to determine what amount will be paid in shares?

Mr Court: Fairness!

Mr D.L. SMITH: Will the Treasurer please explain paragraph (b). Why should payment be made to the Bank of Western Australia at all and, if so, who will quantify it and who gets the benefit?

Mr COURT: In relation to the payment to the bank of any amount determined by the Treasurer, it could be appropriate to make a payment to the bank for future income tax benefits in respect of payments in lieu of tax which would have continued to have value had the bank remained subject to its existing obligations under section 31 of the 1990 Act. This payment could be in lieu of the purchase of additional shares by R & I Holdings prior to privatisation if the bank requires additional capitalisation.

**Clause put and passed.**

#### **Clause 14: Disclosure of information -**

Mr COURT: I move -

Page 8, line 14 - To delete "any provision" and substitute "section 232".

This clause allows persons to disclose information for the purpose of facilitating privatisation. It is necessary that the bank's directors and officers be afforded protection against the disclosure of that information otherwise constituting an offence under the Corporations Law, and such was the purpose of clause 14 (1)(b). However, to ensure that the scope of the protection is closely defined, it is now proposed that clause 14(1)(b) of the Bill be amended to refer specifically to section 232 of the Corporations Law, which deals with the duty and liability of an officer of the corporation.

**Amendment put and passed.**

**Mr D.L. SMITH:** None of us has problems with the idea that when the bank is being sold those who will be seeking to advise the bank should have full access to information about the bank and its assets. However, I would have liked some assurance that the exemptions that are given under the clause will not be used to allow the disclosure of private affairs of any customer. I am concerned that the details of particular account holders may be made available.

**Mr COURT:** The provision applies to confidential information or information not publicly known concerning the affairs of the bank or of any subsidiary of the bank or of any customer of the bank or of any subsidiary. Generally, this information will need to be made available to investigating accountants, consultants and other parties in the due diligence process of the sale and in the preparation of a prospectus or an information memorandum. Of course, no information concerning any of the affairs of any customers will be made publicly available. This will, of course, always be a dilemma. The banks in the 1980s and early 1990s were not in very good shape with some of their loan portfolios, but over the past few years the bank has been able to get those things very much in order. Anyone who conducts a due diligence on a financial organisation must ensure, particularly in the commercial area - the housing loan area is easier to look at - that accounts cannot be made publicly available.

**Mr D.L. SMITH:** I am concerned to ensure that the disclosure that can be made under clause 14 into the affairs of the bank will not involve any customer of the bank. I have no problem if someone wants to assess the value of a bank or to ensure that no hidden debts or contingent liabilities will spring out of nowhere. However, the other side of the equation is whether anyone should have access to, for instance, the size of the deposits of individual customers. I do not know whether that is necessary with regard to a due diligence-type evaluation, but nothing in this clause would prevent the disclosure of information which has nothing to do with due diligence but has to do with the general affairs of the bank, including the assets of customers. The penalty of \$10 000 in clause 16 for the offence of disclosing information is fairly paltry when we are talking about information concerning probably hundreds of thousands of individuals who have both deposits with and debts to the bank, remembering that it is a maximum penalty and not a minimum.

**Mr COURT:** We are talking about people such as investigating accountants, whose job it is to undertake a professional investigation. It is summed up at the beginning of clause 14, which states that the disclosure of information can be made only for the purpose of facilitating the privatisation process. Those people need to have access to a great deal of information but they cannot make that information public. Accountants who conduct audits of banks do go through all of the details of individuals, but they must retain confidentiality. I realise that the operations of a financial institution are totally dependent upon the confidentiality which the community has in that institution. We had that debate in this Chamber when the Teachers Credit Society was being taken over by the R & I Bank, when personal information about the then President of the Liberal Party was made public.

**Mr D.L. Smith:** I did not approve of that at the time and I would not want to see it happen in the process of this privatisation.

**Mr COURT:** The then Government said how much money had gone out of an account and, even worse, explained that that money had gone from TCS into State Energy Commission of Western Australia bonds. That happened just before the dinner

suspension, and during the dinner suspension I was at a function with the then chief executive officer of the bank, and I said that if the Government did not watch it, it would have a run on the bank if people believed that their private banking details would be made public. The member will recall that the bank made a public statement that it was wrong to discuss any of the private details of the bank.

That was a serious incident and it did not help public confidence because many customers of the bank were concerned that their information would be made public. I agree with the member for Mitchell that confidentiality is absolutely paramount when we are dealing with a financial institution of this type. The people responsible for overseeing the privatisation process certainly will be vigilant to ensure that confidentiality remains, because if it does not, it will destroy the privatisation process.

Mr D.L. SMITH: I am concerned that clause 14 is couched too wide and that incidents such as the one referred to by the Treasurer may occur. I am concerned also that the penalty provided for in clause 16 does not reflect the concern which the Treasurer says he has. I had expected a more substantial penalty to be provided.

Mr Court: What penalty would you suggest?

Mr D.L. SMITH: Because of the information we are talking about, it would be appropriate for the penalty to be \$100 000 and/or imprisonment for a period of up to 12 months.

Mr KOBELKE: I ask the Treasurer to explain the penalties in this area, because we find in clause 14 that a disclosure of information made in accordance with this clause is not to be regarded as a breach of contract or confidence or otherwise as a civil wrong; or as a contravention of any provision of the Corporations Law. I am sure that the Corporations Law provides penalties for people who disclose information and breach the agreement or the duty without lawful excuse, as outlined in clause 16, so we may have Corporations Law coverage of the area; but if there is a hole in the coverage of the Corporations Law in respect of an offence with regard to secrecy or confidentiality, clearly a penalty of \$10 000 will not be sufficient maximum penalty, given that a person who perhaps discloses information for a small commission may still make a windfall gain of hundreds of thousands of dollars. Can the Treasurer indicate what penalties may apply under the Corporations Law or other laws of this State for such a disclosure, and is the \$10 000 an additional penalty, or do we have a possible gap in the coverage for such breaches of confidentiality; and, if so, will the Treasurer consider an amendment to increase the penalty?

Mr COURT: I cannot give the member the precise information in relation to the penalty in the Corporations Law, but certainly the Government is prepared to consider an increase in the penalty in a similar form of legislation. In clause 14(1)(a) the consequence of breach is civil damages, which would have to be determined and in clause 14(1)(b) it is a maximum of \$25 000 or five years' imprisonment. In relation to clause 16 the Government will look at the possibility of changing that penalty in a similar area. If that is acceptable to the Opposition, we will advise in the other Chamber whether it can be increased.

Mr KOBELKE: We appreciate the way in which the Treasurer is willing to take on board such suggestions, and we look forward to a response in the other place.

**Clause, as amended, put and passed.**

**Clause 15: Auditor General may disclose information -**

Mr D.L. SMITH: Will the Auditor General be put in the position of incurring a liability? For instance, the Auditor General may be asked by the director to undertake some sort of audit function before the privatisation occurs or a potential buyer may come to the Auditor General and ask for full disclosure of any potential liability that might affect the bank. If the Auditor General fails to provide the information adequately, can he be held liable? Does the Treasurer perceive the Auditor General fulfilling any role which might incur some liability on the State after the float?

Mr COURT: This clause allows the investigating accountant access to the Auditor General's working papers, but it protects the Auditor General.

Mr D.L. Smith: Is there any protection of the Auditor General's civil responsibility if his work is later found to be defective?

Mr COURT: He is an untouchable. He has immunity under his Act, but that will be checked for the member.

**Clause put and passed.**

**Clauses 16 to 18 put and passed.**

**Clause 19: Restriction on public authority's shareholding -**

Mr KOBELKE: From my scant understanding this clause is being deleted because we have already deleted clause 8(2), but if there is anything else to it, I would appreciate an explanation.

Mr Court: That is it.

**Clause put and negatived.**

**Clause 20 put and passed.**

**Clause 21: Guarantee -**

Mr D.L. SMITH: Will the Treasurer give a shorthand summary of the continuing liability in relation to the guarantee after the float or sale?

Mr COURT: With two exceptions the clause restates the phasing out provisions of the government guarantee of the financial obligations of the bank as contained in section 33 of the 1990 Act. In broad terms the guaranteed deposits at the time of privatisation will continue to be guaranteed for the term of the deposit or for a maximum of five years depending on circumstances. Two exceptions to earlier guarantee provisions have been introduced in this Bill: First, the Government has decided that the phasing out provisions should commence from the day of privatisation rather than from a separate day to be otherwise fixed. The phase-out of the guarantee will commence on privatisation and this is consistent with the objective of reducing the Government's liability through the privatisation process. Second, the Government guarantee will not extend to excluded debt of the bank. Excluded debt is a new term which covers any financial obligation incurred by the bank which, by the terms of its issue, specially provides that the Treasurer's guarantee does not apply. This exemption allows the bank, for example, to replace the existing perpetual and subordinated debt provided by R & I Holdings with non-guaranteed debt prior to the privatisation.

Mr D.L. SMITH: In summary the Treasurer is saying that five years after the privatisation the guarantee continues, but it does not extend to any new liability that the bank may incur after the date of privatisation and extends only to those debts which were there at the time of privatisation if they have not been excluded.

Mr Court: Yes, if they have that maturity of more than five years. The member for Mitchell is right; it does not include any new debt after privatisation.

Mr D.L. SMITH: There is no phasing down and the full liability continues for that period of five years.

Mr Court: As the debt matures it falls off.

Mr D.L. SMITH: As the liability is discharged it falls off, but subject to that there is no phasing down and the guarantee continues for that full five years.

Mr Court: Yes.

**Clause put and passed.**

**Clause 22: Charges for guarantee -**

Mr D.L. SMITH: If I were contemplating buying some shares or buying the bank, I would be very worried by clause 22 because it seems unlimited. There would be nothing

to stop the Treasurer or some other Treasurer saying to the privatised bank that the cost of a guarantee this year is 10 per cent.

Mr COURT: It is estimated that about 70 per cent of the guaranteed moneys will be phased out in the first 18 months. It is a normal commercial action for guarantees to be given to banks and others charging fees.

Mr D.L. Smith interjected.

Mr COURT: An arrangement can be entered into before the event. It would be part of the negotiations for the privatisation as to what those fees would be.

Mr D.L. Smith: The clause does not say that.

Mr COURT: I refer the member to clause 46(2)(c) which proposes to insert subsection (4a) and states -

The Treasurer may agree with the Bank that a charge fixed under subsection (4) will not be increased under that subsection for a stipulated period, and the exercise of the power in that subsection is subject to any such agreement.

One can enter into an agreement on what the charge will be before the float.

Mr D.L. SMITH: It is again couched in the discretionary form. It does not oblige the Treasurer to do that.

Mr Court: The people in the float would insist that it was done.

Mr D.L. SMITH: It gives a wide power after privatisation to change the rate. I know that the Treasurer would not do that, but we cannot guarantee that he will be there for the five year period.

Mr Court: It would be one of the factors that whoever invested would want to know.

Mr KOBELKE: Does this form of clause allowing for a charge by a State Government on a guarantee for a privatised entity as opposed to a totally owned government corporation exist in any other legislation, either in this State or other States, or has the Government put together something novel?

Mr COURT: I do not know of any other examples in this State because this is the only institution for which a guarantee is in place.

**Clause put and passed.**

**Clause 23: Treasurer may require information to be given -**

Mr D.L. SMITH: Does this Bill contain any provision which makes it clear that the Treasurer would be free to inform the Parliament of any information he obtained from time to time in relation to the privatisation of the bank and progress towards it?

Mr COURT: The Bill contains no explicit provision as to how that information could go across. There would be no reason that a lot of information could not be provided in answer to questions, so long as it was not confidential information about individuals or confidential commercial information as part of that privatisation process. To what level of information is the member referring?

Mr D.L. SMITH: I would not like clause 16 to be used to prevent the Treasurer from answering questions about some matters which would normally be answered in the Chamber. Quite obviously, for private information and commercial and confidential information, the usual rules would apply. I want some assurance that prior to and after the float, if the Treasurer is in possession of information that comes to him under these provisions, this Bill will not restrict his capacity within the usual constraints on confidential information to answer the questions in the Chamber.

Mr Court: I do not think it does.

**Clause put and passed.**

**Clause 24: Bank's articles of association to include certain provisions -**

Mr D.L. SMITH: Both sides of the Chamber would acknowledge that entrenching

provisions are important because after privatisation we want this bank to be based in, and preferably owned by, Western Australia and its major management decisions to occur in this State, and the size of the bank's business in Western Australia after privatisation to not decrease. Is the Treasurer in possession of legal advice on the effectiveness of the clauses to achieve those aims? If so, is he prepared to provide that legal advice to give some assurance to the Chamber that those objectives will be achieved? My major concern is that this clause relates to the articles associated with the bank. It would be possible, for instance, if the bank so desired, for it to sell the business rather than the shares. If it sold the business or part of the business, it would be possible for that business later to be shifted out of Western Australia. The fact that these entrenched articles exist would not mean very much afterwards. Has the Treasurer obtained legal advice about the effectiveness of those provisions to ensure that the bank continues to be controlled and managed in Western Australia and that a substantial proportion of its current business continues to operate here? Without going into detail, as a lawyer I have grave reservations that it does any of those things.

Mr COURT: Crown Law advice was received in the drafting of this legislation. Clause 20(b) refers to the definition of bank. That covers the member's concerns about selling the business separate from the shares.

Mr D.L. SMITH: It does not after the event. I am concerned that if we set up this bank with these articles of association and the bank purported to sell some major parts of its business, it would not matter what the articles of association said; the bank would not be prevented from disposing of its assets which includes the business that it conducts.

Mr Court: The definition in clause 20(b) covers that because it talks about "banking business".

Mr D.L. SMITH: However, it extends only to those banks which immediately, before the date of privatisation, owns the banking business. I am talking about the prohibition on the bank disposing of part or all of the banking business in the future.

Mr Court: It covers any other corporation that acquires the business.

Mr D.L. SMITH: It does not if it acquires it before the date of privatisation.

Mr Court: At any time.

Mr D.L. SMITH: Again I ask whether the Treasurer has received legal advice that these provisions will be effective in ensuring that the owner of the banking business continues to be based and managed in Western Australia.

Mr Court: It was drafted with legal advice from senior counsel to cover that area.

Mr D.L. SMITH: That does not mean that, in the course of drafting or the finished product, legal counsel did not express that there were difficulties. I want to know whether, after the drafting exercise, an assurance was given in the form of legal advice that this clause would be effective.

Mr Court: The nods from the back of the Chamber indicate that those people are happy with it.

Mr D.L. SMITH: Are they happy that it will achieve what it sets out to achieve in terms of the corporations' management of the business?

Mr Court: Yes. You are suggesting that someone will try to avoid those entrenchment provisions.

Mr D.L. SMITH: I do not want to pass on professional secrets on how to avoid the legislation. However, as it stands at present, I have concerns as a lawyer because it concentrates on the articles of association and not other matters. Therefore, it will not achieve what it sets out to achieve.

Has the Treasurer received advice on what the words "substantially the same" and "not significantly less" mean in subclause (1)(b)? They seem to be subjective sorts of words which could be interpreted as one sees them.

Mr COURT: The words deliberately allow some flexibility so that, if a bank wants to change direction inside its operations, it will not be strictly limited. We want to ensure that a bank that is involved in housing, the agricultural sector, commercial lending and the mineral sector, etc, remains operating broadly in those areas.

Mr D.L. Smith: I suggest that the words are so loose and subjective that any lawyer could ride through them without any problems.

Mr COURT: My advice is that it would be difficult to do it any other way because the operations of the bank would be too restricted.

Mr D.L. SMITH: I have extreme concerns about the looseness of the drafting language contained in this clause and the framing of this clause around the articles of association because the intent of the clause will not be necessarily fulfilled in the future. I have made it fairly clear already that I am opposed to the privatisation taking place. However, if this Parliament allows the Bill to pass believing that forever and a day the bank will continue to be based here or have a substantial part of its business operate here - certainly not less than the current business - it is wrong. As a lawyer I do not believe these clauses will achieve that and any clever corporate lawyer will be able to ride through them in the future and achieve with shareholders whatever the shareholders think is in their best interests.

Mr Court: An injunction can be applied for in the Supreme Court under clause 31 if the Government does not believe these provisions have been met.

**Clause put and passed.**

**Clauses 25 to 29 put and passed.**

**Clause 30: Enforcement only by injunction -**

Mr D.L. SMITH: Again I have concerns about this clause and the clauses that follow it. I am concerned whether the constraints that are imposed will be sufficient to achieve the intention of these provisions. For the life of me, I do not know why clause 30 states that the obligations created by clauses 24, 27 and 28 are enforceable under clause 31. Section 31 deals only with injunctions. The Government proposes to try to control what the bank is doing, but actions for damages, forfeiture of assets, and breach of contract do not seem to be available. It is intended simply to use the method of the prerogative approach of seeking both preventive injunctions and mandatory injunctions.

I am concerned that because we are limiting remedies in those ways, we shall go down the path of not arming this State fully with all the resources of the law in being able to set aside any actions which we believe, as members of the public or members of Parliament, are being breached. One of the intentions of this legislation is to ensure the bank remains in Western Australia, is owned in Western Australia and continues its major business operations in Western Australia.

Mr COURT: We are not looking for damages, but for the Act to be applied. The Government wants those conditions met and that is the purpose of being able to apply for those injunctions in that way.

Mr KOBELKE: Clause 30 refers to the obligations created by previous sections. I refer to clause 28 restricting the use of the names "The Rural and Industries Bank of Western Australia", the "R & I Bank of Western Australia Ltd" and "R & I". Why is it necessary to preserve those names? Are they ongoing businesses, or are they regarded as part of the assets of BankWest?

Mr COURT: It is normal for a corporation to protect trade names it has previously used. There are many examples of companies with well established trade names they have stopped using. If they lose control of the names, other groups can use them and it is normal commercial practice to protect such names to prevent people picking up the goodwill from those names by establishing new companies using them.

Mr Kobelke: I understand a request must be made to the responsible Minister to provide a waiver, if so sought. That may happen in a few years' time when the bank is

functioning successfully as a private organisation. Must an approach be made to the Treasurer for permission to use or purchase the rights to those names?

Mr COURT: We regard the name as a state asset rather than a bank asset. Permission to use those names in the future will be required from the Treasurer.

Mr Kobelke: At some time in the future if a company approached the Treasurer and wanted to take up those names, would it be within the power of the Treasurer of the day to hand them over or sell them to a third party, independently of the interests associated with the bank?

Mr COURT: Yes.

**Clause put and passed.**

**Clauses 31 to 36 put and passed.**

**Clause 37: Immunity etc. to continue -**

Mr D.L. SMITH: I cannot recall whether the repealed legislation carried any preference for officers of the bank. I seek an assurance that if the existing legislation provides immunity for officers in particular situations, it will continue to operate in that way.

Mr COURT: I am advised that this clause repeats the provision in the existing Act.

**Clause put and passed.**

**Clauses 38 to 40 put and passed.**

**Clause 41: Definition -**

Mr COURT: I move -

Page 24, lines 5 and 6 - To delete "sections 42(1), 43(1) and 44 are" and substitute "section 42(1) is".

Page 24, line 7 - To delete "this Part" and substitute "that section".

This is consequential to our amending clause 8(2).

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clause 42: Treasurer's shareholding -**

Mr COURT: I move -

Page 24, lines 18 and 19 - To delete ", but in exercising any right or option to take up further shares the Treasurer must comply with section 44".

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 43 and 44 put and negatived.**

**Clauses 45 to 47 put and passed.**

**Schedule 1 put and passed.**

**Schedule 2 -**

Mr COURT: I move -

Page 36, after line 8 - To insert the following -

(c) in paragraph (b), delete "give such a direction" and substitute the following -

" make such arrangements ".

It is proposed that section 3(4)(b) of the Industry (Advances) Act be amended to echo the earlier amendments to that section. This is a consequential amendment overlooked in the earlier draft.

2400

[ASSEMBLY]

**Amendment put and passed.**

**Schedule, as amended, put and passed.**

**Title put and passed.**

**Bill reported, with amendments.**

*House adjourned at 10.41 pm*

---

## QUESTIONS ON NOTICE

### JUVENILE OFFENDERS - BAIL STATISTICS

21. Mr BROWN to the Attorney General:

- (1) Since the changes to the Bail Act came into operation in March 1994, how many juveniles granted bail have been held in custody for one or more nights because -
  - (a) their parent or parents are unwilling to agree to the bail conditions;
  - (b) their parent or parents do not wish them released from custody;
  - (c) a responsible adult could not be located;
  - (d) a responsible adult was unwilling to accept the bail conditions?
- (2) Since the changes to the Bail Act in March 1994, how many juveniles have been released on bail under the supervision of a sessional worker?
- (3) How many hours a week does the sessional worker spend supervising a juvenile on bail?

Mrs EDWARDES replied:

- (1) This information is not readily accessible without considerable manual checking. For example, since March 1994 there have been 2 700 admissions to Rangeview and each file would need to be individually checked to establish the information requested. However, a sample was taken for the month of January 1995 - in which there were 52 admissions - with the following results -
  - (a) 11.
  - (b) 1.
  - (c) 5.
  - (d) 1.Of the 52 admissions -  
20 were released the same day;  
16 were held overnight;  
6 were held for one to two days;  
5 were held for three to five days; and  
5 were held for six or more days.
- (2) 31.
- (3) Sessional workers provide supervision for an average of three hours per juvenile per week although this can be increased if the situation dictates. The court does not normally specify a particular number of hours of supervision and leaves the supervised bail program to assess what level is required. However, if the court had a specific requirement regarding supervision and the juvenile was accepted on the supervised bail program, that supervision requirement would be met.

### WATER AUTHORITY - CONSULTANTS, REPORTS

349. Mrs ROBERTS to the Parliamentary Secretary representing the Minister for Water Resources:

- (1) How many reports by outside consultants have been commissioned by the Water Authority of Western Australia since January 1993?
- (2) What is the name of each of the reports?
- (3) Who undertook each of the reports?
- (4) How much did each report cost?

Mr McNEE replied:

The Minister for Water Resources has provided the following reply -

(1) 203.

(2)-(4) [See paper No 247.]

**WATER AUTHORITY - WASTEWATER PLANNING AND DESIGN BRANCH**

391. Mrs ROBERTS to the Parliamentary Secretary representing the Minister for Water Resources:

- (1) What is the current staffing level of the wastewater planning and design branch of the Water Authority of Western Australia?
- (2) What was the staffing level of this branch in 1988?
- (3) By what percentage has the staffing level been reduced since 1988?
- (4) On what day did the branch become a commercial services unit?
- (5) Do the branch charge-rates include provision for full recovery of the business unit costs?

Mr McNEE replied:

The Minister for Water Resources has provided the following reply -

- (1) 55 FTEs. This includes an extra three FTEs to manage the infill sewerage project.
- (2) 57 FTEs.
- (3) 3.5 per cent - 9 per cent if the infill FTEs are excluded.
- (4) 1 July 1992.
- (5) Yes.

**WATER AUTHORITY - WASTEWATER PLANNING AND DESIGN BRANCH**

392. Mrs ROBERTS to the Parliamentary Secretary representing the Minister for Water Resources:

- (1) What is the function of the planning and design branch of the Water Authority of Western Australia?
- (2) How do the in-house design costs for the wastewater treatment section compare to the relevant ACEA recommended scale of fees for each of the last 10 years?
- (3) How do in-house design costs for the major design section-pump stations compare to the relevant ACEA recommended scale of fees for each of the last 10 years?
- (4) How do the in-house design costs for the major design section-main sewers compare to the relevant ACEA recommended scale of fees for each of the last 10 years?

Mr McNEE replied:

The Minister for Water Resources has provided the following reply -

- (1) The Wastewater Planning and Design Branch of the Water Authority is responsible for -
  - (i) the preparation of infrastructure planning for the authority's wastewater systems throughout the State;
  - (ii) the investigation and design of the authority's wastewater receipt, conveyance, treatment and disposal facilities;

- (iii) the provision of advice to developers, consulting engineers, external authorities and agencies, members of the public and internally within the Water Authority itself; and
- (iv) the development and maintenance of wastewater standards.
- (2) The ACEA recommended scale of fees is within the range of 6 per cent to 14 per cent of the capital cost of a project. Since the establishment of the commercial service unit in July 1992 and the introduction of full cost recovery, the in-house design costs of the wastewater treatment section have been between 3 per cent and 4.5 per cent of the capital cost.
- (3) The ACEA recommended scale of fees is within the range of 6 per cent to 14 per cent of the capital cost of a project. Since the establishment of the commercial service unit in July 1992 and the introduction of full cost recovery, the in-house design costs of the major design - pumping stations section have been approximately 3 per cent of capital cost.
- (4) The ACEA recommended scale of fees is within the range of 6 per cent to 14 per cent of the capital cost of a project. Since the establishment of the commercial service unit in July 1992 and the introduction of full cost recovery, the in-house design costs of the major design - main sewers section are approximately 1.25 per cent of capital cost.

#### WATER AUTHORITY - COOPERS AND LYBRAND (SECURITIES) LTD, PROJECTS

394. Mrs ROBERTS to the Parliamentary Secretary representing the Minister for Water Resources:

- (1) What work has Coopers and Lybrand (Securities) Limited undertaken for the Water Authority of Western Australia since January 1993?
- (2) What was the cost of each project undertaken by Coopers and Lybrand (Securities) Limited?
- (3) Who were the staff from Coopers and Lybrand (Securities) Limited that worked on each project?

Mr McNEE replied:

The Minister for Water Resources has provided the following reply -

- (1) Business activity reviews for -
  - (a) Construction activities.
  - (b) Analytical services.
 Commercial expertise for -
  - (c) South West Irrigation Steering Group.
- (2) (a)-(b) \$65 000.  
(c) \$6 500.
- (3) (a)-(b) Stuart Duplock.  
(c) Leslie Chalmers.

#### HOMESWEST - TENANCY TERMINATIONS UNDER RESIDENTIAL TENANCIES ACT SECTION 64

446. Mr BROWN to the Attorney General:

- (1) Has Legal Aid expressed the opinion that Homeswest has acted in contravention of the Commonwealth/State Housing agreement by terminating tenancies under Section 64 of the Residential Tenancies Act 1987?
- (2) Has this opinion been conveyed to the Attorney General?

- (3) Does the Attorney General intend to examine whether Homeswest is acting in contravention of the Commonwealth/State Housing agreement by using section 64 of the Residential Tenancies Act 1987 to terminate tenancy agreements?

Mrs EDWARDES replied:

- (1)-(2) As a matter of courtesy the Legal Aid Commission forwarded its press statement to me on this subject.
- (3) No.

#### EDUCATION DEPARTMENT - ASIAN LANGUAGE TEACHERS' EMPLOYMENT

452. Mr BROWN to the Parliamentary Secretary representing the Minister for Education:

- (1) How many Asian language teachers are employed by the Education Department?
- (2) How many schools currently offer students an opportunity to learn an Asian language as a second language?
- (3) How many teachers employed by the Education Department have the qualifications to teach an Asian language as a second language?
- (4) What qualifications does the Education Department require a teacher to have to be eligible to teach an Asian language as a second language?

Mr TUBBY replied:

The Minister for Education has provided the following reply -

(1) Teachers Employed	Secondary	Primary	Total
Chinese	5	15	
Indonesian	16	33	
Japanese	55	22	
Total	76	70	146

(2) Schools offering courses in Asian languages -	Secondary	Primary	Total
Chinese	4	26	
Indonesian	16	44	
Japanese	39	45	
Total	59	115	174

- (3) Teachers employed by the Education Department have language qualifications of a sufficient level of expertise to suit the learning group.
- (4) Two main avenues of eligibility -
  - (a) Formal teaching qualifications.
  - (b) Proficiency in the second language which meets the needs of the target group - currently, minimal communicative competence is considered adequate to initiate primary programs. However, most of these teachers are continuing to upgrade their language proficiency through EDWA constructed courses conducted by tertiary institutions. For secondary upper school programs the department prefers at least third year tertiary or equivalent units.

TER HORST, JAN - IMPRISONMENT CASE

497. Mr McGINTY to the Attorney General:

- (1) Further to the indefinite imprisonment of Mr Jan Ter Horst, does the Attorney General concede that this matter could be resolved by her intervention?
- (2) What action will the Attorney General be taking to resolve the issue of the transfer of land?

Mrs EDWARDES replied:

- (1) No, based on Crown Solicitor's advice.
- (2) The Registrar of Titles filed an application in the Supreme Court on 20 March 1995.

WATER AUTHORITY - FLEET MANAGEMENT AND MAINTENANCE  
CONTRACT

504. Mrs ROBERTS to the Parliamentary Secretary representing the Minister for Water Resources:

- (1) At what stage is the tender process for fleet management and fleet maintenance at the Water Authority of Western Australia?
- (2) Has a contract been awarded yet?
- (3) How many tenders were received?
- (4) Which companies tendered?
- (5) If a contract has not yet been awarded, when is it anticipated that a contract will be awarded?
- (6) What is the anticipated reduction of full time jobs as a result of privatising the fleet?
- (7) What are the anticipated savings, if any, to the Water Authority of Western Australia?
- (8) What are the anticipated improvements to service, if any, to WAWA?

Mr McNEE replied:

The Minister for Water Resources has provided the following response -

- (1) Evaluation process completed and was presented to the authority's tender committee on 7 April 1995.
- (2) No.
- (3) 11.
- (4)
  - (a) JMJ Fleet Management Pty Ltd
  - (b) EasiFleet Management/Skilled Engineering
  - (c) TNT Fleet Management
  - (d) MMS Pty Ltd/NBM Fletcher Pty Ltd
  - (e) Major Motors Pty Ltd
  - (f) Atkinson's Car Care Centre
  - (g) Orix Australia Corporation Ltd
  - (h) Custom Service Leasing Ltd
  - (i) Professional Fleet Services Pty Ltd
  - (j) Cockburn Contract Services
  - (k) EasiFleet Management
- (5) On or before 31 May 1995.
- (6) Up to 19 FTEs.
- (7) Up to \$500 000 per annum.

- (8) An improved level of customer focus, reduced input of maintenance requirements by customer.

**WATER AUTHORITY - PLANT AND EQUIPMENT MANAGEMENT AND MAINTENANCE CONTRACT**

505. Mrs ROBERTS to the Parliamentary Secretary representing the Minister for Water Resources:

- (1) At what stage is the tender process for the plant and equipment management and maintenance at the Water Authority of Western Australia?
- (2) Has a contract been awarded yet?
- (3) If not, when is it anticipated that a contract will be awarded?
- (4) How many tenders were received?
- (5) Which companies tendered?
- (6) What is the anticipated reduction of full time jobs as a result of privatising the plant and equipment management and maintenance at the WAWA?
- (7) What are the anticipated savings, if any, to WAWA?
- (8) What are the anticipated improvements to service, if any, to WAWA?

Mr McNEE replied:

The Minister for Water Resources has provided the following response -

- (1) Evaluation process completed and was presented to the authority's tender committee on 7 April 1995.
- (2) No.
- (3) On or before 31 May 1995.
- (4) 12.
- (5)
  - (a) Esanda Finance
  - (b) MMS Pty Ltd/MNM Fletcher Pty Ltd
  - (c) Skilled Engineering
  - (d) Brambles Manford
  - (e) Coates Hire
  - (f) EasiFleet Management
  - (g) Powertrain Trading
  - (h) Cockburn Contract Services
  - (i) Holtfreter (Ltd)
  - (j) Professional Fleet Services Pty Ltd
  - (k) Pump Force Repairs
  - (l) Wreckair Pty Ltd
  - (m) EasiFleet Management/Skilled Engineering
- (6) Up to 16 FTEs.
- (7) Up to \$300 000 per annum.
- (8) An improved level of customer focus, reduced input of maintenance requirements by customer.

**WATER AUTHORITY - FIELD DRILLING WORK PUT OUT FOR TENDER**

506. Mrs ROBERTS to the Parliamentary Secretary representing the Minister for Water Resources:

- (1) What percentage of field drilling work is currently planned to be put out to competitive tendering?
- (2) When is it anticipated that a tender document will be released?

- (3) Has a management buy out proposal been developed for field drilling work?
- (4) Will the Minister ensure that serious consideration is given to any management buy out proposal?
- (5) What is the anticipated impact on full time jobs at WAWA?
- (6) What are the anticipated savings, if any, to WAWA?
- (7) What are the anticipated improvements to service, if any, to WAWA?

Mr McNEE replied:

The Minister for Water Resources has provided the following response -

- (1) A final decision on the possible outsourcing of field drilling work has yet to be made.
- (2) If decided to tender it is likely that expressions of interest will be called in May with formal tender requests in June/July 1995.
- (3) Staff of the field drilling section have registered a preliminary interest in an MBO.
- (4) If outsourcing proceeds staff will be permitted to bid for the work - as an MBO - along with other private sector providers.
- (5) 16 FTE will be impacted.
- (6) Preliminary analysis indicates private sector companies are approximately 10 to 20 per cent cheaper than in-house services. The real test will be prices recorded through the tender process.
- (7) Minimum service levels will be specified in any contract - if let - which will at least be comparable with service levels attached through present in-house service provision.

#### WATER AUTHORITY - LABORATORY SERVICES PUT OUT TO TENDER

507. Mrs ROBERTS to the Parliamentary Secretary representing the Minister for Water Resources:

- (1) Is it intended to put the laboratory services of WAWA out to tender?
- (2) Has a review of the requirements and provision of analytical services been undertaken?
- (3) If so, will the Minister provide me with a copy?
- (4) Who has conducted or is conducting a review of the requirements and provision of analytical services?
- (5) What is the cost of the review?
- (6) If it is intended to proceed with putting the laboratory services out to tender, when is it anticipated that would occur?

Mr McNEE replied:

The Minister for Water Resources has provided the following response -

- (1) A final decision on the possible outsourcing of scientific analytical services has yet to be made.
- (2) A review on the sourcing options of services is currently in progress. It is expected that recommendations of review will be put to the authority's board for a final decision.
- (3) As the report is still being finished, copies are not yet available.
- (4) Coopers and Lybrand, with assistance from Water Authority staff.
- (5) The appropriate cost of the review is \$20 000.

- (6) The timing depends of course on when the board feels confident that it has enough data to arrive at an informed decision. My current expectation is that this may occur some time in mid-1995.

**WATER AUTHORITY - WAREHOUSING AND DISTRIBUTION SECTION  
CONTRACT**

508. Mrs ROBERTS to the Parliamentary Secretary to the Minister for Water Resources:

- (1) At what stage is the tender process for the warehousing and distribution section of the Water Authority of Western Australia?
- (2) How many tenders were received?
- (3) Which companies tendered?
- (4) Has a contract been awarded yet?
- (5) If a contract has not yet been awarded, when is it anticipated that a contract will be awarded?
- (6) What is the anticipated reduction in full-time jobs as a result of privatising the warehousing and distribution section?
- (7) What are the anticipated savings, if any, to WAWA?
- (8) What are the anticipated improvements to service, if any, to WAWA?

Mr McNEE replied:

The Minister for Water Resources has provided the following response -

- (1) Registration of interest submissions were publicly invited for the provision of warehousing, distribution and transportation services on 17 December 1994. The closing date for submissions was 10 January 1995. Subsequent to the processing of the ROI submissions tenders were invited from shortlisted organisations on 17 March 1995. Tenders closed on 19 April 1995.
- (2) Five tenders were received.
- (3) Brambles Manford  
TNT Logistics  
Key Transport  
Courier Australia  
Total Western Transport Pty Ltd
- (4) No.
- (5) The decision to award the contract will be made after tenders have been evaluated.
- (6) The reduction in full-time jobs will only be able to be determined after tenders have been evaluated.
- (7) Analyses conducted in 1994 concluded that savings of the order of \$300 000 per annum were available from outsourcing these activities.
- (8) Contracts will only be awarded if they provide an equal or better level of service and price advantage in comparison with existing arrangements.

**WATER AUTHORITY - METER READING FUNCTION PUT OUT TO TENDER**

510. Mrs ROBERTS to the Parliamentary Secretary to the Minister for Water Resources:

- (1) Is it intended to put the meter reading function of the Water Authority of Western Australia out to tender?
- (2) If so, when will it be put out to tender?

- (3) Has a management buy out proposal been considered and, if so, at what stage is that?

Mr McNEE replied:

The Minister for Water Resources has provided the following response -

- (1) It is intended that the meter reading function for the metropolitan area will be put to tender.
- (2) Approximately May/June 1995.
- (3) The proponent of a management buy out has advised that he no longer wishes to proceed with a management buy out.

**WATER AUTHORITY - ENGINEERING DESIGN SERVICES SECTION,  
PRIVATISATION**

511. Mrs ROBERTS to the Parliamentary Secretary to the Minister for Water Resources:

- (1) Is it proposed to privatise the engineering design services section of the Water Authority of Western Australia?
- (2) If not, what is proposed for the engineering design services section?
- (3) Is it intended to call for registrations of interest and, if so, when?
- (4) What savings and improvement to services are anticipated in the engineering design services section?

Mr McNEE replied:

The Minister for Water Resources has provided the following response -

- (1)-(2) It is intended to contract out some of the definition and all of the design function of the engineering design service.
- (3) Registration of interest will be called within the next two weeks.
- (4) Savings will depend on the submissions received from the private sector. Service levels will be specified by the authority to ensure the present level of service is retained.

**WATER AUTHORITY - REGIONAL ENGINEERING SUPPORT ACTIVITIES,  
BUSINESS ACTIVITY REVIEW**

512. Mrs ROBERTS to the Parliamentary Secretary to the Minister for Water Resources:

- (1) Has a business activity review of all regional engineering support activities been undertaken?
- (2) If so, who undertook the review and at what cost?
- (3) Will the Minister provide me with a copy of the review?
- (4) How many Water Authority of Western Australia jobs will go?
- (5) What cost savings are anticipated?
- (6) What service improvements are anticipated?

Mr McNEE replied:

The Minister for Water Resources has provided the following response -

- (1) Yes.
- (2) A joint consultancy of Coopers and Lybrand and Productive Edge. Cost was \$28 800.
- (3) As the report is still being finalised, copies are not yet available.

- (4) A number of positions will go. The timing and number will depend on the decisions made by the board and implementation plan yet to be developed.
- (5) Will be dependant on the outcomes of (4).
- (6) Service levels will be specified by the authority to ensure the present level of service is retained.

**WATER AUTHORITY - WASTEWATER AND BULKWATER ACTIVITIES PUT OUT TO TENDER**

515. Mrs ROBERTS to the Parliamentary Secretary to the Minister for Water Resources:

- (1) Is it intended to put the bulkwater and wastewater activities of the Water Authority of Western Australia out to tender?
- (2) If so, when?
- (3) Is it intended to contract out the maintenance component of the bulkwater and wastewater activities?
- (4) If so, when?
- (5) How many full-time jobs at WAWA will be lost in this area?
- (6) What are the anticipated savings, if any, to WAWA?
- (7) What are the anticipated improvements to service, if any, to WAWA?

Mr McNEE replied:

The Minister for Water Resources has provided the following response -

- (1)-(2) A business review of all bulk-water and wastewater activities is planned. However, at this point in time it is too early to predict the outcome of these reviews.
- (3)-(7) Not applicable.

**JUSTICE, MINISTRY OF - ROWE, WILLIAM**  
*Document Submitted to Public Service Commission*

527. Mr BROWN to the Minister for Justice:

- (1) Did Mr W. Rowe, former executive director court development, submit a document to the Public Service Commission prior to his resignation from the Ministry of Justice?
- (2) Have the issues and complaints raised in the document been investigated?
- (3) Do the issues and complaints raised in the document focus on the Director General and the Attorney General?
- (4) Does the Government intend to conduct an inquiry into the matters raised in the document?
- (5) Did it raise issues relating to -
  - (a) the deterioration in the relationship between the executive and the judiciary since the creation of the ministry;
  - (b) high level of political intervention in the personnel management function as it operates in the ministry;
  - (c) the willingness of the Director General to compromise due process by providing the Attorney General with palatable advice?
- (6) Was the document critical of Brian Easton's involvement with transfers of personnel from the Education Department to the Ministry of Justice?
- (7) Did the document contain criticism of the Director General not being

prepared to accept advice or pass on advice to the Attorney General on proposals to restructure the court development and management division?

- (8) Did the document contain allegations that alleged the Director General arranged a 12 month contract with the Building Management Authority for a Michael Bernard Ryan?
- (9) Did the document predict Dr Denzil McCotter's position as Executive Director Corrective Services Division would be made untenable?
- (10) What action has been taken in relation to the document since it was submitted?

Mrs EDWARDES replied:

(1) Yes.

(2)-(10)

Mr Rowe's contract of employment was terminated in May 1994 by Mr Rowe's own acknowledgment that he was unable to work within government policy. Mr Rowe's report was submitted to the then Public Service Commission and a detailed commentary which completely rejected the assertions and demonstrated their invalidity was forwarded from the Ministry of Justice shortly thereafter.

#### WATER AUTHORITY - REDUNDANCIES, OVER 55 YEARS, NO PAYMENT

563. Mrs HALLAHAN to the Parliamentary Secretary representing the Minister for Water Resources:

- (1) Do Water Authority of Western Australia employees over 55 years of age who are made redundant receive no payment in respect of their redundancy?
- (2) If no, what payment do they receive?
- (3) Does a WAWA employee made redundant face the sack if he/she refuses three alternate jobs, notwithstanding that those jobs may carry a salary of up to 20 per cent less than the employee's former salary?
- (4) If no, what is the actual position?
- (5) Is there wholesale human suffering within WAWA occasioned by the Government's program of retrenchment?
- (6) What positive measures has the Minister taken to alleviate this suffering and to give support to his workers, large numbers of whom have loyally served WAWA and this State for many years?

Mr McNEE replied:

The Minister for Water Resources has provided the following reply -

- (1) All employees of the Water Authority occupying positions which have been declared redundant will be managed in accordance with the respective legislative and award provisions which may include redeployment or the taking of voluntary severance. There is no age criteria in either circumstance.
- (2) Voluntary severance payments are made in accordance with the provisions of either the Western Australian Government Employee Redeployment Retraining and Redundancy General Order or the Public Sector Management (Redeployment and Redundancy Regulations) 1994.
- (3) No.
- (4) Water Authority employees occupying positions which have been made redundant may be redeployed into suitable alternative employment consistent with either the general order or regulatory provisions.

- (5)-(6) No. However, the authority provides assistance to all employees who may request it through its employee assistance program. As a result of recent government initiatives regarding contracting out the authority is seeking to provide additional services to employees and is currently evaluating tenders for the provision of such support services as financial and retirement planning and job search assistance.

#### COMMISSION ON GOVERNMENT - COMMISSIONER, APPLICATIONS

574. Dr GALLOP to the Premier:

- (1) How many applications were received further to advertisements for the position of commissioner for the Commission on Government?
- (2) How many applications were received from women, two days before the close of the applications?
- (3) How many applications were received from women in total?
- (4) How many of these applicants were contacted by a male from the Ministry of the Premier and Cabinet who urged them to apply?
- (5) Did a male staff member from the Ministry of the Premier and Cabinet contact part-time and semiretired women from the media urging them to apply?
- (6) Did the Premier authorise this action?
- (7) If not, who did?
- (8) What reasons does the Premier ascribe to the lack of applications from women for the position of commissioner for the Commission on Government?

Mr COURT replied:

- (1)-(3) The first round of advertising took place in 1992 when out of 32 applications, none were from women. In the second round of advertisements in 1994, 18 additional applications were received. Four of these were from women.
- (4)-(8) In an effort to increase the number of applications, and without the knowledge of the Premier, four women were contacted by officials of the Ministry of the Premier and Cabinet. It is unknown why more women did not apply during either of the two rounds of advertising.

#### LEGAL PRACTITIONERS COMPLAINTS COMMITTEE - CASE No 235-93

579. Dr GALLOP to the Attorney General:

Which members of the legal practitioners complaints committee sat on case No 235/93 which was heard on 7 December 1993 and 6 April 1994?

Mrs EDWARDES replied:

I am advised that the complainant in matter 235/93 was, on 2 May 1994, given the names of the members of the complaints committee, as, on 13 March 1995, was your office. On both occasions the staff of the law complaints officer referred to the long standing practice of the committee not to disclose the identity of those members involved in any particular matter. Section 31C of the Legal Practitioners Act provides that unless the committee otherwise determines and orders, an inquiry under part IV of the Act is not to be held in public. The chairman of the complaints committee reports to me under section 25 and section 31G in relation generally to its activities, but otherwise I have no part to play in its proceedings or practices. I suggest that if the member wishes the committee to give the appropriate direction or make the appropriate order under section 31C or part D of schedule 2, he writes to its chairman.

**EAST PERTH GASWORKS SITE - CONTAMINATED SOIL DEPOSITED AT  
LANDFILLS**

582. Dr EDWARDS to the Minister for Planning:

- (1) Has any contaminated soil from the East Perth gasworks site been deposited at landfills?
- (2) If yes -
  - (a) which landfills accepted this waste;
  - (b) how many tonnes of this waste did each landfill accept?
- (3) What procedures are followed by trucks carrying waste from the East Perth gasworks to prevent contamination spillage and dust blowing from their cargo in transit?

Mr LEWIS replied:

- (1) Yes, but restricted to soil with low level contamination which falls within approved criteria for landfill disposal.
- (2) (a) Redhill landfill.  
(b) Approximately 33 000 tonnes to date.
- (3) All trucks carrying soil to landfill have their loads covered by tarpaulins, additionally all trucks are washed down before leaving the site.

**EAST PERTH GASWORKS SITE - DUST COMPLAINTS**

583. Dr EDWARDS to the Minister for Planning:

How many complaints have been received by the East Perth Redevelopment Authority about dust from trucks carrying waste from the East Perth gasworks site?

Mr LEWIS replied:

One.

**CALM - AUSTRALIAN HERITAGE COMMISSION**  
*Memorandum of Understanding*

587. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) What are the nature and details of the memorandum of understanding between Conservation and Land Management and the Australian Heritage Commission?
- (2) When was this memorandum signed?
- (3) Has it been altered in any way since then; if so, when?
- (4) If so, in what way?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1) I will forward a copy of the memorandum to the member.
- (2) In December 1991 by the Australian Heritage Commission and January 1992 by Department of Conservation and Land Management.
- (3)-(4) No.

**RETAIL TRADING HOURS - DEREGULATION**

612. Mr CATANIA to the Premier:

Given that the Liberal Party has considered the issue of deregulation of retail trading hours, will the Premier advise the House whether he intends to -

- (a) support deregulation as he indicated in the 1994 Estimates debates; or

- (b) support the claims of the Small Business Development Corporation which advised him not to support the deregulation of retail trading hours because it would cause hardship to small business and result in job losses?

Mr COURT replied:

- (a)-(b) I support the decision made by Government. That decision maintains a fair balance between the interests of small and large business and the needs of their customers. It also provides new opportunities and encourages small business to grow.

**FAIR TRADING, MINISTRY OF - RESPONSIBLE FOR TRADING HOURS AND COMMERCIAL TENANCY**

614. Mr CATANIA to the Premier:

Will the Premier advise why two of the most important issues affecting small business; that is, trading hours and commercial tenancy, have been surrendered to the responsibility of the Minister for Fair Trading?

Mr COURT replied:

The responsibility for retail trading hours was transferred to the former Minister for Consumer Affairs by the then Labor Government and it has remained as part of that portfolio which is now Fair Trading. As far as commercial tenancy is concerned the administration of the Act was transferred while the advisory and educational services to small businesses remained with the Small Business Development Corporation. The administration was transferred as it could have been construed that it interfered with the role of the Small Business Development Corporation in giving independent advice to small businesses.

**SCHOOLS - MAYLANDS PRIMARY**  
*Enrolments*

619. Dr EDWARDS to the Parliamentary Secretary to the Minister for Education:

- (1) What are the projected enrolments for the Maylands Primary School for 1995?
- (2) How many teaching positions will be lost?
- (3) From what teaching areas does this loss come?

Mr TUBBY replied:

The Minister for Education has provided the following reply -

- (1) The projected enrolments for Maylands Primary School for 1995 is 205 pupils.
- (2) The Maylands staffing allocation for 1995 is 10.3 full time equivalents, resulting in a drop of 1.9 full time equivalents from 1994.
- (3) The loss of one full-time teacher occurred in the junior primary year level.

**LEGAL AID - COMMONWEALTH FUNDING, ADDITIONAL OFFER TO STATE**

637. Mr BROWN to the Attorney General:

- (1) Has the Commonwealth Government offered the State Government additional legal aid funding to the State Government?
- (2) If so, how much?
- (3) Does the State Government intend to take up the offer?
- (4) If so, when?
- (5) If not, why not?

Mrs EDWARDES replied:

- (1) Yes.
- (2)
 

1994-95	\$215 000
1995-96	\$237 000
1996-97	\$277 000
1997-98	\$292 000

(3)-(5) Not applicable.

#### PUBLIC RECORDS OFFICE - RECORDS MANAGEMENT ASSOCIATION CONCERNS

645. Ms WARNOCK to the Minister representing the Minister for the Arts:

- (1) Is the Records Management Association of Australia disappointed by your actions on the issue of the Public Records Office?
- (2) Has the same group also expressed concern about a Government that pays only lip-service to the concept of fair and open government?
- (3) What action will the Minister be taking to rectify these concerns?

Mr NICHOLLS replied:

The Minister for the Arts has provided the following reply -

- (1) It would appear so.
- (2) That would appear to be their interpretation. However, I do not accept their criticism. Full consultation is occurring in formulating new public records legislation acceptable to the people of Western Australia. The chief executive officer of the Library and Information Service of Western Australia is consulting with bodies that have raised concerns about specific provisions of the proposals, for example, the need for time restrictions to apply for certain kinds of confidential records. This process will continue when a draft Bill is drawn up. People will have ample opportunity to provide further input so that problems and anomalies are eliminated as far as possible. I have seen nothing to change my view that the proposed model is the right one. It provides for a public records commission that will have monitoring, regulatory and auditing powers and will have a direct reporting line to Parliament, a power that no other Australian State or the Commonwealth has. The operational side of its functions will be carried out by the proposed public records office, one of LISWA's structural programs.
- (3) I have previously made it clear in correspondence with the RMAA that I am committed to a model where policy and regulatory functions are separated from the operational ones. I am arranging a meeting with the RMAA to explain the strengths of that model and the way in which it will provide the sort of accountability implied in the concept of fair and open government. I am very concerned that the model proposed by the RMAA suffers from the very problems it sees in my model. The Public Service must be accountable and must be subject to wide and prudent audit. Their model would lead to an unaccountable group carrying out the work and auditing their own work. I am sure we would all feel more comfortable to work in such a milieu, but it would not to my mind satisfy the requirements of open accountable government.

#### OPENING OF PARLIAMENT - CAR HIRE

647. Mr McGINTY to the Premier:

- (1) What cars were hired for the opening day of Parliament?
- (2) Who were the cars for?

- (3) Where were they hired from?
- (4) What was the cost of each of the cars to hire?
- (5) Where did this money come from?

Mr COURT replied:

- (1)-(5) No cars were hired by the Ministry of the Premier and Cabinet for the opening day of Parliament. Chauffeur services were provided as requested from the Government Garage in the usual manner.

**PUBLIC RECORDS MANAGEMENT - GOVERNMENT AGENCIES,  
CONTRACTING OUT**

652. Ms WARNOCK to the Minister representing the Minister for the Arts:

- (1) As a result of the McCarrey report are government agencies investigating the possibility of contracting out the records management function in total including daily operations?
- (2) Given there is no known precedent for this sort of contracting out, will the contracting out of such services jeopardise the process of accountability of the Government in terms of the public record?
- (3) How many jobs will be lost as a direct result of the restructuring?

Mr NICHOLLS replied:

The Minister for the Arts has provided the following reply -

- (1) I know of only one which is actively considering this possibility, namely the Water Authority in respect of the John Tonkin Water Centre's operations. (In this case, however, the indexing function will continue to be carried out by officers of the Water Authority, as now.) It is highly likely other agencies will consider these options.
- (2) No.
- (3) If this reference is to the LISWA restructuring as it affects the State Archives, the position is that at least 1.5 additional staff will be made available for the public records function, continuing the organisation's commitment to improving the quality of public records management in government agencies.

**ZOOLOGICAL GARDENS BOARD - CASUAL EMPLOYEES, JOBS AXED**

672. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) Further to question on notice 190 of 1995, how many positions filled by casual employees have been axed in the last 12 months?
- (2) Why were these jobs axed?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1) We do not axe jobs.
- (2) Not applicable.

**JUSTICE, MINISTRY OF - RANGEVIEW REMAND CENTRE**  
*Juveniles on Remand, Average Period; Juveniles Held in Custody on Remand*

680. Mr BROWN to the Attorney General:

- (1) Since 1 July 1994, how many days on average have juveniles spent on remand at the Rangeview Juvenile Centre?
- (2) What percentage of juveniles have been held in custody on remand for -
  - (a) more than one week and less than four weeks;

- (b) more than four weeks?

Mrs EDWARDES replied:

- (1) For the period 1 July 1994 to 7 April 1995 the average length of stay was 6.23 days.
- (2) For the same period -
  - (a) 21 per cent
  - (b) 3 per cent.

**EAST PERTH POWER STATION SITE - FUTURE**

730. Ms WARNOCK to the Minister for Planning:

- (1) When does the Minister expect to finalise plans for the long-term further use of the old East Perth power station site?
- (2) What options are currently being considered for the site?
- (3) Which groups have been consulted as part of the Minister's plans for the site?

Mr LEWIS replied:

- (1) It is hoped that plans for the long term use of the power station site can be finalised this year. As previously advised, however, determination of future use and timetable depends on the outcome of current environmental and heritage investigations, technical studies and commercial and funding considerations among other matters.
- (2)-(3) Consideration is currently being given to a process calling for expressions of interest as part of the deliberations on the future of the power station. The need for any formal consultation process beyond this will be determined at a future time. It can also be noted that the Heritage Council is represented on the working group examining the future use of the power station and that the Institution of Engineers is taking an active interest in the future of the plant and equipment associated with the facility.

**SEAGRASSES - PERENNIALS, REHABILITATION**

776. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) Is the Minister aware that extensive attempts by the Commonwealth Scientific and Industrial Research Organisation to grow perennial seagrasses have been a failure?
- (2) Is the Minister aware of anyone, anywhere in the world, who has rehabilitated perennial varieties of seagrass?
- (3) If so -
  - (a) who;
  - (b) where;
  - (c) which varieties;
  - (d) where is their success published?
- (4) Is the Minister aware of any instance where perennial varieties of seagrass, which have been damaged this century, have regrown of their own accord?
- (5) If so -
  - (a) where;
  - (b) which varieties;
  - (c) where is it published?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1) All seagrasses are perennial plants. Use of the word 'perennial' for the purpose of this question is assumed to mean the long-lived meadow-forming species of *Posidonia*, rather than opportunistic short-lived species such as *Halophila*. If that is the correct interpretation of the question, the Minister is aware CSIRO research in Perth's coastal waters between 1988-1992 in replanting the meadow-forming *Posidonia* seagrass meadows in natural conditions for purposes of restoration have failed, although he understands individual plants survived for a number of years but did not spread.
- (2)-(3) He is not aware of any case where *Posidonia* seagrass meadows have been successfully rehabilitated.
- (4)-(5) He is unaware of any reported case where *Posidonia* seagrass meadows, which have been extensively damaged this century, have recovered of their own accord.

**SEAGRASSES - MINING COMPANY, REHABILITATION REQUIREMENT**  
*Cockburn Cement Ltd*

777. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) When shellsand or other calcium carbonate sources are mined on shore is the mining company required to rehabilitate?
- (2) Has Cockburn Cement rehabilitated any of the seagrasses destroyed by offshore mining in the last two decades?
- (3) If so, where is the information published?
- (4) Do any other varieties perform the same ecological functions as *Posidonia*?
- (5) If so, what varieties perform this function?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1) All terrestrial-based mining activities conducted on a mining lease, including the mining of calcium carbonate sources, will have some requirements for rehabilitation.
- (2)-(3) No, Cockburn Cement has not rehabilitated the seagrass destroyed by offshore mining in the last two decades.
- (4)-(5) Although some seagrass species other than *Posidonia* undoubtedly perform part of the functions of *Posidonia*, no seagrass species will perform all of the ecological functions of that plant in the coastal waters of Perth.

**COCKBURN SOUND - *POSIDONIA*, GROWTH DEPTH**

779. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) Does natural *Posidonia* growth cease at a depth of 13 metres in Cockburn Sound, owing to light attenuation by water turbidity?
- (2) Is this consistent with past claims by Cockburn Cement or is it significantly deeper?
- (3) What is the area of sea-bed dredged by Cockburn Cement beyond 13 m so far?
- (4) How extensive will such areas be by 2011 when Cockburn Cement's current contract to supply Alcoa runs out?
- (5) What plans for rehabilitation are in place to prevent areas mined that are deeper than 13 m from being barren afterwards?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1) Seagrass in Cockburn Sound and adjacent waters occurs in variable densities depending upon the availability of light and the composition of the substrate. In this context natural *Posidonia* growth tends to cease at a depth of less than about 10 m, in Cockburn Sound, less than about 12 m on south east Success Bank - Owen Anchorage - and less than about 15 m north west of Success Bank - Gage Roads.
- (2) The maximum depths of seagrass meadow growth outlined in (1) are consistent with Cockburn Cement's claims.
- (3) Cockburn Cement has dredged an area of sea-bed of approximately 150 ha on Success Bank to a depth of greater than 13 m developing the first part of an inner shipping lane in the process.
- (4) The extent of sea-bed dredging will depend upon the current review of the company's environmental management program, however, in 1990 Cockburn Cement in its dredging and management program 1991-2000, estimated it would require approximately 8km<sup>2</sup> - 800 ha - of sea-bed should it exercise its current option to continue mining through to 2021. On a pro rata basis it is estimated that Cockburn Cement would require approximately 530 ha until 2011.
- (5) Cockburn Cement has produced an environmental management program outlining studies into rehabilitation of seagrass in favourable areas and replacement of seagrass generally elsewhere than in the dredged area. The EMP has been released for public comment and is currently being reviewed by the Environmental Protection Authority and other agencies in accordance with ministerial conditions covering the company's present short to medium term operations.

#### COMMISSION ON GOVERNMENT - AUDITOR-GENERAL'S ACCESS TO CABINET DOCUMENTS PROPOSAL

785. Mr McGINTY to the Premier:

- (1) Does the Government support the Commission on Government's proposal granting the Auditor-General access to Cabinet documents and waiving privilege against self-incrimination?
- (2) If not, why not?
- (3) Does the Premier agree with the COG proposal that the withholding of material by a Minister under the Financial Administration and Audit Act 1985, may not be consistent with the concept of open and accountable government?

Mr COURT replied:

It would be inappropriate for me to respond definitively to the questions asked at this time. The Commission on Government has been charged with inquiring and reporting on a wide range of matters. In due course, Government will consider the reports and recommendations and respond appropriately.

#### MOTOR VEHICLES - "REBIRTHING CARS" PRACTISE

787. Mrs HENDERSON to the Minister representing the Minister for Fair Trading:

- (1) Is the Minister aware of the practise of "rebirthing cars", where private buyers do up wrecked cars, when auctioned by insurance companies, and then sell them to unsuspecting purchasers?
- (2) Have some cars been through this process three or four times?
- (3) Is there any legislation in place to stop this practise?

- (4) Will the Minister take the necessary action to ensure that consumers are protected from buying a car that has been "rebirthed"?

Mrs EDWARDES replied:

The Minister for Fair Trading has provided the following reply -

- (1) Yes. The problem is of great concern to the Ministry of Fair Trading . The ministry has recently attended a meeting arranged by police licensing and services to discuss the problem. I am advised that representatives of the Insurance Council of Australia, the Motor Trade Association, the RAC, the vehicle body repair industry, the Police licensing and services vehicle safety branch and vehicle inspection staff, and police motor (vehicle theft) squad were also in attendance. The meeting agreed that a working party would be established to consider how to ensure that the public interest was best protected. The meeting also acknowledged that from a technical repair viewpoint it was possible to "rebirth" a vehicle with professional quality repairs without compromising the safety of the owner. I am also advised that many of the "backyard" repairers do in fact complete the repairs to the highest professional standards. Consequently the answer to the problem may not simply be implementing a ban on the practice.
- (2) I am not aware whether some cars have been through the process more than once, but clearly it would be possible for accident damaged vehicles which have been repaired to be involved in another accident.
- (3) It is likely that the private buyers who purchase wrecked vehicles, repair and sell them are engaged in unlicensed motor vehicle dealing. The ministry will be discussing strategies with police licensing and services, the police and the insurance industry to identify those persons who are engaged in unlicensed dealing and to take steps to eliminate the practice of "backyard" dealing.
- (4) The safety of vehicles which have been repaired after a serious accident is primarily a matter for police licensing and services. I am advised that the police licensing and services working party will be examining ways to ensure that repairs to accident damaged vehicles carried out are completed to a satisfactory standard.

#### LAKE CHINOCUP - MINING APPEALS DECISION

796. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) Has the Minister made a decision on the appeals on mining at Lake Chinocup?
- (2) If so, what was the decision?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1) No.
- (2) Not applicable.

#### SHARK BAY - WORLD HERITAGE AREA, MANAGEMENT AGREEMENT

797. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) Has a new agreement been reached with the Federal Government over management of the Shark Bay World Heritage area?
- (2) If no, why not and when is agreement expected?
- (3) If yes, would the Minister table a copy of the agreement?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1) No.
- (2) On 16 January 1995 the Western Australian Minister for the Environment sent a draft agreement to the Commonwealth Minister for the Environment, Sport and Territories for his consideration. No reply has yet been received.
- (3) Not applicable.

ENVIRONMENTAL PROTECTION, DEPARTMENT OF - SERVICES  
CONTRACTED OUT

799. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) In relation to the Department of Environmental Protection, which services and/or functions have been identified for future contracting out to the private sector?
- (2) Have documents been prepared for the tender of these services?
- (3) Will the Minister table these documents?
- (4) Does the Minister plan to advertise for expressions of interest or tender bids for these services?
- (5) If so, when will such advertisements be placed?
- (6) Who will make recommendations as to the successful bidder?
- (7) How many public sector positions will be abolished as a result of this process?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1)-(7) No services have been identified for contracting out although a review is currently being undertaken.

BURSWOOD BRIDGE SITE DEVELOPMENT - CORE TESTS IN RIVERBED

801. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) What involvement does the Swan River Trust have in coring tests currently being undertaken in the riverbed around the proposed Burswood bridge site?
- (2) What information are these tests seeking?
- (3) What have the results revealed?
- (4) Do these results indicate riverbed contamination?
- (5) If so, what is the origin of this contamination?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1) The Swan River Trust is not aware of core testing in the river as part of the Burswood bridge site development, at this stage.
- (2)-(3) Not applicable.
- (4) Extensive testing for contamination of the river in the area of the proposed Burswood bridge was carried out as part of the East Perth redevelopment and showed some contamination of the sediments.
- (5) The contamination came from the old gasworks site and has now been cleaned up in a very successful operation as part of the East Perth redevelopment.

**CALM - WILDLIFE OFFICER, QUALIFICATIONS; ABORIGINALS**

802. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) What qualifications are needed to become a Department of Conservation and Land Management wildlife officer?
- (2) How many Aboriginal people are employed in such positions?
- (3) What is being done to encourage Aboriginal people into these positions?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1) The minimum entry qualification for the position of wildlife officer and all similar field officer positions in the Department of Conservation and Land Management is a tertiary qualification - certificate, associate diploma or degree - relevant to natural resource management. In the case of wildlife officers, specialist attributes such as the ability to undertake law enforcement functions are required. Applicants are required to be physically fit and possess a current driver's licence.
- (2) Three wildlife officers out of a total of 32 are Aboriginal people. An additional 10 Aboriginal people are employed in other field positions, including national park rangers, around the State.
- (3) The department's ability to employ additional Aboriginal people at this time is limited. However, Aboriginal people are encouraged into a range of resource management fields including ecotourism ventures, for example, within the private sector.

**CALM - PORT KENNEDY, FAUNA SURVEY**

803. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) When will the Department of Conservation and Land Management carry out a survey to identify fauna at Port Kennedy?
- (2) Who will conduct the survey?
- (3) What are the -
  - (i) objectives;
  - (ii) methodology that will be used for this survey?
- (4) When will it be completed?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1),(4) A survey was conducted from 1 to 13 April 1995, on behalf of the Woylie recovery team which is chaired by the Department of Conservation and Land Management.
- (2) A consultant named Cathy Lambert.
- (3) (i) To trap woylies in order to determine their status at Port Kennedy following the capture of woylies by volunteers from the Port Kennedy land conservation district committee.
- (ii) Standard cage trapping techniques.

**SWAN RIVER TRUST - SERVICES CONTRACTED OUT**

805. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) In relation to the Swan River Trust, which services and/or functions have been identified for future contracting out to the private sector?
- (2) Have documents been prepared for the tender of these services ?

- (3) Will the Minister table these documents?
- (4) Does the Minister plan to advertise for expressions of interest or tender bids for these services?
- (5) If so, when will such advertisements be placed?
- (6) Who will make recommendations as to the successful bidder?
- (7) How many public sector positions will be abolished as a result of this process?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1) The chemical analysis of water samples for the Swan River Trust and the Waterways Commission has been identified for contracting out. Specialist consultants are used from time to time as needed.
- (2) Yes.
- (3) It is not normal practice for tender documents to be tabled.
- (4) Tenders will be advertised.
- (5) Tenders will be called on 6 May for a period of three weeks.
- (6) The Waterways Commission.
- (7) None.

**NITRIC ACID - DUMPING, KARRAGULLEN SITE, RESPONSIBILITY**

807. Dr EDWARDS to the Minister representing the Minister for the Environment:

- (1) Who was responsible for the dumping of nitric acid, in an old gravel pit in Karragullen, which was accidentally unearthed on 22 March 1995?
- (2) When did the dumping occur?
- (3) What amount of nitric acid -
  - (i) is known to have been dumped at this site;
  - (ii) has been unearthed at this site?
- (4) Were any other chemicals dumped at this site?
- (5) What records are held and what procedures have been adopted to prevent further accidents such as the one that occurred on 22 March 1995?

Mr MINSON replied:

The Minister for the Environment has provided the following reply -

- (1)-(2) Not known.
- (3) Two two-litre bottles.
- (4) Not known.
- (5) The incident appears to have been the result of an isolated case of irresponsible dumping which, the member will understand, is virtually impossible to legislate against.

**DOMESTIC VIOLENCE - CHILDREN ASSISTANCE PROGRAMS, FUNDING**

812. Ms WARNOCK to the Minister for Community Development:

- (1) Is the Government funding any programs to assist children to overcome the trauma of being either victims of or witnesses to domestic and family violence?
- (2) If so, where are these programs being provided?
- (3) What is the level of funding?

- (4) Are any of these programs within women's refuges?
- (5) If the Government is not funding these programs, will any such funding be provided in the future?

Mr NICHOLLS replied:

- (1) Yes.
- (2) Perth, Geraldton, Wanneroo, Armadale.
- (3) Total for specific projects in 1994-95 is \$265 120. Additional funds provided through generic family counselling services would also be used to meet the needs of this target group.
- (4) Yes.
- (5) Not applicable.

#### EAST PERTH REDEVELOPMENT AUTHORITY - BOAN'S WAREHOUSE, FUTURE

814. Ms WARNOCK to the Minister for Planning:

- (1) What are the Government's plans for the East Perth Redevelopment Authority-owned Boan's Warehouse in East Perth?
- (2) Is it regarded as a heritage building?
- (3) Will it be sold or redeveloped for housing?
- (4) Is there an intention to retain at least half the building as an arts venue?
- (5) What was the result of the recent tender period in which people were invited to submit proposals for its redevelopment?

Mr LEWIS replied:

- (1)-(5) The East Perth Redevelopment Authority is proposing to dispose of the Boans warehouse building under a development agreement following a tender process. The redevelopment proposals must have regard for development guidelines which in turn have considered the heritage significance of the building and the preferred uses. At this time the building is not listed on the State's register of heritage places although it has been identified as having local heritage value. The mix of building uses will not be finally determined until the tender process has been completed.

#### SUBIACO REDEVELOPMENT AUTHORITY - HARBORNE STREET PLANS

815. Mrs ROBERTS to the Minister for Planning:

- (1) Is the Minister aware of the concerns of Harborne Street residents arising out of the Subiaco Redevelopment Authority's proposals?
- (2) What traffic impact studies have been conducted by or for the Subiaco Redevelopment Authority with regard to Harborne Street?
- (3) What were the findings of any such traffic impact studies?
- (4) Who conducted the traffic impact studies and when?
- (5) Does the Minister intend to take any action to support the concerns of residents of Harborne Street?

Mr LEWIS replied:

- (1) The Subiaco Redevelopment Authority launched its concept plan for community consultation on 4 May 1995. Feedback is being sought and responses including those from Harborne Street residents will be considered in this consultation process.

- (2) Detailed traffic impact studies of the Subiaco redevelopment area which includes part of Harborne Street have been conducted by the authority.
- (3) The findings of these studies are now available to the public.
- (4) Sinclair Knight Merz, consulting engineers, in 1994 and 1995.
- (5) See (1).

#### HEALTH SERVICES - ARTIFICIAL EYES

821. Dr WATSON to the Minister for Health:

- (1) Are artificial eyes considered as essential prosthesis by the Government?
- (2) How much does an artificial eye cost the user?
- (3) How much are two eyes if needed by one person?
- (4) How long is an artificial eye expected to last?
- (5) How many artificial eyes were provided in Western Australia in -
  - (a) 1992;
  - (b) 1993;
  - (c) 1994;
  - (d) 1995 to date?
- (6) When was a decision made to charge for artificial eyes?
- (7) Why was the decision made?
- (8) Are costs for eyes the same regardless of which agency supplies them?
- (9) What is the cost of an eye from -
  - (a) Royal Perth Hospital;
  - (b) Princess Margaret Hospital;
  - (c) Fremantle Hospital?
- (10) Will the Government reconsider its decision to charge people for artificial eyes and provide them without cost?

Mr KIERATH replied:

- (1)-(3) Hospital policy is to provide inpatients or outpatients with their initial requirements for artificial eyes free of charge and replace those eyes free of charge when there is a clinical need. The patient must be referred, with a prescription for provision of an artificial eye, by an approved specialist working at the hospital. There is no provision for the replacement of lost artificial eyes.
- (4) Artificial eyes are not expected to last for any specific period.
- (5) This information is not readily available. Artificial eyes are provided in both the public and private sector. Therefore no readily accessible record is available.
- (6)-(9) See (1).
- (10) Not applicable.

#### MENTAL HEALTH SERVICES - PSYCHIATRIC HOSTELS REVIEWS *Licensed Beds for People with Psychiatric Disabilities*

829. Dr WATSON to the Minister for Health:

- (1) Were any reviews into psychiatric hostels (licensed and unlicensed) held in -
  - (a) 1993;

- (b) 1994?
- (2) Are the reports available to the House?
  - (3) What recommendations have been made and what is their status?
  - (4) How many licensed beds are there in Western Australia for people with psychiatric disabilities?
  - (5) How many unlicensed beds are there known to be in Western Australia for people with psychiatric disabilities?
  - (6) How many licensed beds are there outside the metropolitan area?
  - (7) How many unlicensed beds are there outside the metropolitan area?

Mr KIERATH replied:

- (1) No reviews into psychiatric hostels - licensed or unlicensed - were held in 1993 or 1994.
- (2)-(3) Not applicable.
- (4) There are 621 licensed psychiatric hostel beds in the State.
- (5) There are approximately 70 to 80 non-approved beds in licensed psychiatric hostels and a further 100 to 110 beds in boarding houses - licensed by local government but not under the Mental Health Act 1962. In addition, there are 60 beds at Whitby Falls which is a Health Department hostel.
- (6) There are seven licensed beds outside the metropolitan area.
- (7) There are five unlicensed beds outside the metropolitan area. However, in addition, there are housing support services in both Albany and Bunbury operated by non-government organisations which have been established to assist people with psychiatric disability to manage their lives in the community.

#### HEALTH SERVICES - BREAST PROSTHESIS

833. Dr WATSON to the Minister for Health:

- (1) What is the Government's policy for the immediate and ongoing provision of breast prosthesis?
- (2) How much money is each woman required to pay for each prosthesis?
- (3) Is the allowance the same no matter from where the prosthesis is provided?
- (4) How often can a woman renew the prosthesis with the same entitlements?
- (5) Is the Government planning to seek full cost recovery for all prosthesis provided from government hospitals?
- (6) Is the Government planning to abolish the entitlement to a fee relief if the prosthesis is bought from a shop?

Mr KIERATH replied:

- (1) Aids and appliances are distributed by public hospitals. In recent years various hospitals have introduced changes to the system such that there are now some inconsistencies in the items supplied, in the supply of repeat items and in the requirements to pay fees or deposits.
- (2) The arrangements vary from hospital to hospital.
- (3) No. A person's entitlements may vary from hospital to hospital.
- (4) See (2).
- (5)-(6) A committee established by the Minister for Disability Services and

myself is currently reviewing the system of providing aids and equipment. Charging for aids and appliances will be considered in the content of this review. The review will include consideration of external prostheses such as breast prosthesis. The committee is expected to put forward its recommendations by the end of June for the provision of aids and equipment under a consistent, equitable and more accessible statewide system.

**HOSPITALS - PORT HEDLAND REGIONAL**  
*Nurses Employment*

839. Mr GRAHAM to the Minister for Health:

How many nurses were employed at the Port Hedland Regional Hospital for the year ending -

- (a) 30 June 1975
- (b) 30 June 1976
- (c) 30 June 1977
- (d) 30 June 1978
- (e) 30 June 1979
- (f) 30 June 1980
- (g) 30 June 1981
- (h) 30 June 1982
- (i) 30 June 1983
- (j) 30 June 1984
- (k) 30 June 1985
- (l) 30 June 1986
- (m) 30 June 1987
- (n) 30 June 1988
- (o) 30 June 1989
- (p) 30 June 1990
- (q) 30 June 1991
- (r) 30 June 1992
- (s) 30 June 1993
- (t) 30 June 1994?

Mr KIERATH replied:

- (a)-(l) The information the member seeks for these periods is not readily available and considerable resources would be required to be diverted from government business to research old records. If the member has a specific need for this information I will endeavour to provide a response in writing as soon as possible.

- (m) 130
- (n) 122
- (o) 121
- (p) 127
- (q) 120
- (r) 117
- (s) 111
- (t) 117

**HOSPITALS - PORT HEDLAND REGIONAL**  
*Nurses, Turnover Rate*

840. Mr GRAHAM to the Minister for Health:

What was the turnover rate of nurses at the Port Hedland Regional Hospital for the year ending -

- (a) 30 June 1975
- (b) 30 June 1976

- (c) 30 June 1977
- (d) 30 June 1978
- (e) 30 June 1979
- (f) 30 June 1980
- (g) 30 June 1981
- (h) 30 June 1982
- (i) 30 June 1983
- (j) 30 June 1984
- (k) 30 June 1985
- (l) 30 June 1986
- (m) 30 June 1987
- (n) 30 June 1988
- (o) 30 June 1989
- (p) 30 June 1990
- (q) 30 June 1991
- (r) 30 June 1992
- (s) 30 June 1993
- (t) 30 June 1994?

Mr KIERATH replied:

- (a)-(l) The information the member seeks for these periods is not readily available and considerable resources would be required to be diverted from government business to research old records. If the member has a specific need for this information I will endeavour to provide a response in writing as soon as possible.

- (m) 103 per cent
- (n) 98 per cent
- (o) 81 per cent
- (p) 91 per cent
- (q) 67 per cent
- (r) 60 per cent
- (s) 74 per cent
- (t) 69 per cent

#### HEDLAND WELL WOMEN'S CENTRE - GOVERNMENT FUNDING

841. Mr GRAHAM to the Minister for Health:

What is the total amount of State Government sourced funding provided to the Hedland Well Womens' Centre for the year ended -

- (a) 30 June 1991;
- (b) 30 June 1992;
- (c) 30 June 1993;
- (d) 30 June 1994?

Mr KIERATH replied:

- (a) \$7 000
- (b) \$37 500
- (c) \$42 500
- (d) \$40 000

#### EMERGENCY SERVICES - LEGISLATION

842. Mr GRAHAM to the Minister for Emergency Services:

- (1) Will the Government be introducing Emergency Services legislation?
- (2) If so, when?

Mr WIESE replied:

- (1)-(2) I will assume the member is referring to the proposed emergency management legislation which is anticipated will be introduced into Parliament early next year. The purpose of the proposed legislation is to provide for the organisation and management of the prevention of preparedness for response to and recovery from emergencies in this State.

**FIRE BRIGADE - PORT HEDLAND VOLUNTEER, UNDER AUTHORITY OF BUSH FIRES BOARD**

843. Mr GRAHAM to the Minister for Emergency Services:

Do the operations of the Port Hedland Volunteer Fire Brigade come under the authority of the Bush Fires Board?

Mr WIESE replied:

No. The Port Hedland Volunteer Fire Brigade is a WA Fire Brigade volunteer brigade not a Bush Fires Brigade.

**FIRE BRIGADE - TOM PRICE VOLUNTEER, UNDER AUTHORITY OF BUSH FIRES BOARD**

844. Mr GRAHAM to the Minister for Emergency Services:

Do the operations of the Tom Price Volunteer Fire Brigade come under the authority of the Bush Fires Board?

Mr WIESE replied:

No. The Tom Price Volunteer Fire Brigade is a WA Fire Brigade volunteer brigade not a Bush Fires Brigade.

**FIRE BRIGADE - SOUTH HEDLAND VOLUNTEER, UNDER AUTHORITY OF BUSH FIRES BOARD**

845. Mr GRAHAM to the Minister for Emergency Services:

Do the operations of the South Hedland Volunteer Fire Brigade come under the authority of the Bush Fires Board?

Mr WIESE replied:

No. The South Hedland Volunteer Fire Brigade is a WA Fire Brigade volunteer brigade not a Bush Fires Brigade.

**FIRE BRIGADE - PARABURDOO VOLUNTEER, UNDER AUTHORITY OF BUSH FIRES BOARD**

846. Mr GRAHAM to the Minister for Emergency Services:

Do the operations of the Paraburdoo Volunteer Fire Brigade come under the authority of the Bush Fires Board?

Mr WIESE replied:

No. The Paraburdoo Volunteer Fire Brigade is a WA Fire Brigade volunteer brigade not a Bush Fires Brigade.

**COMPENSATION (INDUSTRIAL DISEASES) FUND - COMMITTEE ESTABLISHMENT**

847. Mr GRAHAM to the Minister for Labour Relations:

- (1) Is there a committee within Government examining the scope of the Compensation (Industrial Diseases) Fund?

(2) If so -

- (a) who are the members of the committee;

- (b) what organisations/departments do the members of the committee represent;
  - (c) what are the terms of reference of the committee;
  - (d) when was the committee established;
  - (e) on what dates has the committee met;
  - (f) to whom does the committee report; and
  - (g) when will the committee report?
- (3) If not, does the Government have plans to establish such a committee?

Mr KIERATH replied:

- (1) Yes.
  - (2) (a)-(b) Hon Graham Kierath, Minister for Labour Relations - chairman  
 Dr F. Heyworth - chairman, industrial diseases medical panel  
 Mr P. Gilroy - Chamber of Mines and Energy  
 Mr G. Hewson - Department of Minerals and Energy  
 Mr J. Hollingsworth - State Government Insurance Commission  
 Mr B.P. McCarthy - Chamber of Commerce and Industry  
 Mr H.T. Neesham - Executive Director, WorkCover WA.
  - (c) To examine and report to the Government on the following proposal submitted by the Chamber of Mines and Energy -  
 "Establish a statutory Mining Industry Industrial Diseases Board akin to that operating in New South Wales and give the Board responsibility for the effective utilisation of the funds now held or levied by the Compensation (Industrial Diseases) Fund which is administered under the Workers' Compensation and Rehabilitation Act".
  - (d) 19 July 1994.
  - (e) 19 July 1994, 16 September 1994, 13 October 1994, 9 March 1995.
  - (f) By the Premier.
  - (g) By 30 June 1995.
- (3) Not applicable.

#### "SAFETYLINE" - PRODUCTION COST

860. Mr GRAHAM to the Minister for Labour Relations:

- (1) What was the cost of production of the document "Safetyline" No 24 - October 1994?
- (2) What was the purpose of producing the document?
- (3) What was the cost of distribution of the document?
- (4) To whom were the copies distributed?
- (5) Where was the document printed?
- (6) By which company was the document printed?

Mr KIERATH replied:

- (1) Production costs - printing plus photographs, packaging etc - was \$10 667.04 for 12 000 copies of this 24 page edition.
- (2) The purpose of producing the document is to increase awareness of OHS, workers' compensation and rehabilitation issues through the promulgation of informative articles in the magazine.

- (3) The cost of distribution the document - postage cost - was \$2 456.43.
- (4) The Department of Occupational Health, Safety and Welfare maintains a mailing list of subscribers to "Safetyline". Subscribers include health and safety representatives, health and safety officers, employers, managers, supervisors and others in workplaces who have an interest in occupational health and safety, compensation and rehabilitation.
- (5) The document was printed in Perth, Western Australia.
- (6) The document has been printed by Scott Four Colour Print. Tenders are sought every 12 months for the printing of four editions.

**PLANNING - LEGISLATION, COMMONWEALTH COMPLIANCE**

875. Mr KOBELKE to the Minister for Planning:

- (1) What matters were resolved or agreements made at the Ministerial Council meeting in Brisbane in April 1995 with respect to the compliance by the Commonwealth with state planning laws?
- (2) What steps has the Minister taken to urge the Commonwealth to ensure that all developments on commonwealth land comply with state planning laws?

Mr LEWIS replied:

- (1) The council agreed as a matter of urgency that the Commonwealth set up a working party of state representatives to report back within six months as to effective procedures to ensure consistency between proposals to develop commonwealth land and state planning laws.
- (2) The council accepted my recommendation to expedite agreements between the Commonwealth and the States as to compliance with state land use regulations and policies. I have put a draft protocol to the Federal Airports Corporation as a basis for agreement on the processing of land development proposals on corporation land in Western Australia.

**MEDICAL BOARD - PREMISES, LEASE**

983. Dr GALLOP to the Minister for Health:

- (1) Who does the Medical Board of Western Australia lease its premises from?
- (2) What is the monthly rent on these premises?

Mr KIERATH replied:

- (1) The Medical Board of WA do not lease any premises.
- (2) Not applicable.

**HOSPITALS - MT HENRY**  
*Rooms Unoccupied*

989. Dr GALLOP to the Minister for Health:

- (1) Why are 1 unit and 30 rooms currently unoccupied in the Mt Henry Hospital complex?
- (2) How does the Minister justify this when there are long waiting lists and hospital bed shortages?

Mr KIERATH replied:

- (1)-(2) The unoccupied unit and 30 rooms in question were caused by the reduction in nursing home beds to 134. These beds were approved nursing home beds some of which were relinquished as part of the agreement with the Commonwealth Government and others were transferred to Amaroo Nursing Home in Gosnells.

## PATIENTS' ASSISTED TRAVEL SCHEME - COST

1000. Mr GRAHAM to the Minister for Health:

(1) What was the actual cost of operation of the Patients' Assistance Travel Scheme for the years -

- (a) 1987
- (b) 1988
- (c) 1989
- (d) 1990
- (e) 1991
- (f) 1992
- (g) 1993
- (h) 1994
- (i) 1995?

(2) What was the source of the funds expended?

Mr KIERATH replied:

- (1) (a) 1987-88 - not applicable
- (b) 1988-89 - \$6.76m
- (c) 1989-90 - \$5.7m
- (d) 1990-91 - \$7.2m
- (e) 1991-92 - \$7.2m
- (f) 1992-93 - \$7.3m
- (g) 1993-94 - \$7.4m
- (h) 1994-95 - \$7.6m - projected.

(2) Health budget.

## PATIENTS' ASSISTED TRAVEL SCHEME - USERS, NUMBERS

1001. Mr GRAHAM to the Minister for Health:

How many people have used the Patients' Assistance Travel Scheme for the years -

- (a) 1987
- (b) 1988
- (c) 1989
- (d) 1990
- (e) 1991
- (f) 1992
- (g) 1993
- (h) 1994
- (i) 1995?

Mr KIERATH replied:

Statistics on the number of people assisted under the PATS are not available, however, a rounded number of trips undertaken for financial years are -

- (a) 1987-88 - not applicable
- (b) 1988-89 - 29 000
- (c) 1989-90 - 27 000
- (d) 1990-91 - 28 000
- (e) 1991-92 - 29 000
- (f) 1992-93 - 31 000
- (g) 1993-94 - 31 000
- (h) 1994-95 - 32 000 - projected.

It should be noted that these figures include multiple trips by some applicants.

**PATIENTS' ASSISTED TRAVEL SCHEME - PROSECUTIONS**

**1002. Mr GRAHAM to the Minister for Health:**

- (1) Have any patients been prosecuted for rorting the Patients' Assistance Travel Scheme for the years -
  - (a) 1987
  - (b) 1988
  - (c) 1989
  - (d) 1990
  - (e) 1991
  - (f) 1992
  - (g) 1993
  - (h) 1994
  - (i) 1995?
- (2) If so -
  - (a) how many prosecutions have been launched;
  - (b) on what dates were the prosecutions taken;
  - (c) how many prosecutions were successful?

**Mr KIERATH replied:**

- (1) No. However systems are now in place to ensure that people utilise their PATS assistance to attend specialist appointments. Prior to May 1991 the PATS allowed retrospective claims, where people were able to claim assistance after they had undertaken travel to visit a specialist. This resulted in a significant proportion of applications being submitted where the applicant had not in fact attended a specialist appointment. Changes to the scheme were made in May 1991 whereby prior approval to travel had to be obtained, thereby ensuring that this abuse was curtailed.
- (2) Not applicable.

**PATIENTS' ASSISTED TRAVEL SCHEME - PROSECUTIONS**

**1003. Mr GRAHAM to the Minister for Health:**

- (1) Have any medical practitioners been prosecuted for rorting the Patients' Assistance Travel Scheme for the years -
  - (a) 1987
  - (b) 1988
  - (c) 1989
  - (d) 1990
  - (e) 1991
  - (f) 1992
  - (g) 1993
  - (h) 1994
  - (i) 1995?
- (2) If so -
  - (a) how many prosecutions have been launched;
  - (b) on what dates were the prosecutions taken;
  - (c) how many prosecutions were successful?

**Mr KIERATH replied:**

- (1) No.
- (2) Not applicable.

**PATIENTS' ASSISTED TRAVEL SCHEME - PROSECUTIONS**

1004. Mr GRAHAM to the Minister for Health:

- (1) Have any Health Department staff been prosecuted for rorting the Patients' Assistance Travel Scheme for the years -
  - (a) 1987;
  - (b) 1988;
  - (c) 1989;
  - (d) 1990;
  - (e) 1991;
  - (f) 1992;
  - (g) 1993;
  - (h) 1994;
  - (i) 1995?
- (2) If so -
  - (a) how many prosecutions have been launched;
  - (b) on what dates were the prosecutions taken;
  - (c) how many prosecutions were successful?

Mr KIERATH replied:

- (1) No.
- (2) Not applicable.

**QUESTIONS WITHOUT NOTICE****ROYAL COMMISSION - EASTON PETITION**

135. Mr McGINTY to the Premier:

- (1) Will the Premier confirm that limiting the terms of reference of the royal commission announced today to events which, "involved conduct that was an improper or inappropriate use of executive power or public office or was motivated by improper or inappropriate considerations", is designed to protect the Premier from scrutiny by the royal commission of his role and relationship with Penny Easton following concerns expressed by the Deputy Premier and others that the royal commission could damage the Premier?
- (2) Will the Premier make public all the legal advice the Government has received in relation to the establishment of the royal commission?

Mr COURT replied:

- (1) No.
- (2) What legal advice is the Leader of the Opposition referring to? Is he asking whether the Government received legal advice on whether there should be an inquiry? It was a matter decided by the Government. The advice on helping to draft the terms of reference and other formalities concerning the appointment of judges was normal advice given by the Crown Law Department and there is nothing to table.

**MENTAL HEALTH SERVICES - PSYCHIATRIC EMERGENCY SERVICE, FUTURE**

136. Dr HAMES to the Minister for Health:

Some notice of this question has been given.

- (1) Is the Minister aware of any rumours being spread regarding the future of the psychiatric emergency service?
- (2) Can he inform the House as to the truth or otherwise of these rumours?

Mr KIERATH replied:

- (1)-(2) A certain member of the Opposition has been running around making comments in the media that the psychiatric emergency team might be disbanded through lack of funding. These comments are an absolute disgrace because there is no truth in the rumour that there is a lack of funding. It has not been suggested by me, anyone in the department or anyone else involved and that is the case. We are serious about resolving the crisis in mental health in this State. This is another one of these unfortunate and callous rumours which are part of a tawdry campaign to smear the reputation of good people. I can understand the Opposition is so desperate and morally bankrupt that it has to make up these rumours. For those members who might be interested in what happens to people in this State who have a mental health problem, I assure them that the exact opposite is the truth. Not only has the psychiatric emergency team been given security and permanency of tenure - it was a day to day operation and a pilot program - but also it has been put on a permanent footing for a period of three years, under advice from the mental health task force. In addition, it said that there should be additional psychiatric emergency teams. I give the undertaking that I will provide those teams as part of the budgetary process. Members opposite have been caught out again making up rumours and accusations as they go along. I ask the member for Perth to apologise for spreading those rumours and striking fear into the hearts of people who are simply incapable of dealing with that sort of fear and stress. At very least, if the member is not prepared to apologise, the Leader of the Opposition should apologise on her behalf.

#### ROYAL COMMISSION - EASTON PETITION

137. Mr McGINTY to the Premier:

- (1) Will the Premier undertake that all legal costs incurred by witnesses called before the royal commission that he announced today will be met by the Government?
- (2) What limitations, if any, does the Premier intend to place on the availability of legal representation to witnesses called before the royal commission?
- (3) Does the Premier stand by his cost estimate of \$1m for the five-month royal commission?

Mr COURT replied:

To clarify my answer to the previous question the member asked, I said that it is not designed to limit my being called as a witness or whatever. His question is written in circles.

- (1)-(3) The first part of the question the member just asked referred to all witnesses. As I understand it, the convention is for former Ministers to have their legal expenses paid, and beyond that I do not know the situation. It is something that would be addressed by Crown Law. The second part of the question referred to the limitations -

Mr McGinty: You indicated on ABC radio that you would impose some limitations.

Mr COURT: With the WA Inc royal commission the legal fee bills for counsel representing went through the roof and there were virtually no controls in place. In relation to the last inquiry - the Kyle inquiry - certain controls were put in place to ensure that it was not an open-ended cheque on providing the counsel. Again,

that would be negotiated by Crown Law to keep some sort of control over the legal expenses. The original estimate we have from Crown Law is \$1.25m. However, it is just that - an estimate. The Kyle inquiry cost \$617 000 and it was a very simple exercise.

#### LOCAL GOVERNMENT ELECTIONS - POSTAL VOTING

138. Mr BLOFFWITCH to the Minister for Local Government :

In view of the successful trial of postal voting and the poor 11 per cent turnout in the Geraldton council election, does the Minister intend to introduce postal voting for all councils?

Mr OMODEI replied:

As members will know, I have tried to promote local government elections across Western Australia and have expressed concern about low voter turnouts. The average in the past for the metropolitan area has been about 14 per cent and in the country about 20 per cent. I understand that this year the figures are slightly above that. However, in the specific case raised by the member for Geraldton, I wonder what else a Minister can do to promote elections, particularly by polling booth. Certainly the trial of postal voting in local government elections was a great success, to such an extent that the turnout was approximately 50 per cent across the three towns and the new city which previously came under the capital city area. The turnout in the new capital city area was as high as 68 per cent total voter participation.

Mrs Roberts: You need to compare it to a lord mayoral election and then you will get a more accurate comparison.

Mr OMODEI: If the three new towns conduct another postal voting election in two years a direct comparison can be made. The trial has been a success and I advise the member for Geraldton, in response to his question, that it is proposed to include postal voting in the draft local government Bill. One of the downsides of postal voting is that it is more expensive, but certainly the turnout was better and I expect that will be the case in future elections. I will encourage local government to try to increase its voter turnout. That is important, and I am fairly confident that those people who cast their votes take more interest in what happens in their local communities. More than 27 000 people voted in the postal voting election. The percentage is higher in some areas than in others, as is normally the case. Voting in local government elections in Tasmania increased from 20 per cent to 60 per cent after postal voting was introduced. In the City of Perth election 68 per cent of electors voted. That clearly is an indication of the success of postal voting, and I will always encourage local authorities to adopt the method of conducting elections which they think will attract the highest voter turnout.

#### WESTRAIL - JOB LOSSES

139. Mrs HALLAHAN to the Premier:

In relation to the axing of 1 345 Westrail jobs today, in addition to the 1 100 already axed from the Midland Workshops and other railway areas, I ask -

- (1) Did Cabinet yesterday discuss the timing of today's announcement?
- (2) Was the motive for announcing the cuts on Budget day to avoid widespread publicity?
- (3) Does the announcement on the same day as the announcement of an unnecessary and highly political royal commission also reflect the Government's totally uncaring attitude to Westrail workers and their families?

Mr COURT replied:

- (1)-(3) The changes to Westrail announced today for the modernisation of its

operations have been discussed by the Government for many weeks. It is a major change, and negotiations and consultation with the unions involved have been ongoing for many months. The Government has been working towards the timing of this exercise, and a large group of people involved will go out and explain the planned changes to all the groups across the State working for Westrail. The consultation process is one of the most extensive put together. In relation to members opposite constantly talking about more and more job losses, they should note that in two years 86 000 new jobs have been created in the private sector. If members opposite think about that, they will realise it is equal to the size of the public sector. In other words, a work force the size of the public sector has been created in the private sector. Members opposite should also note that 20 per cent of all new jobs created in Australia have been created in Western Australia.

#### JUSTICE, MINISTRY OF - JUVENILE JUSTICE TEAMS, LOCATIONS

##### 140. Mr BOARD to the Attorney General:

Residents in my electorate have welcomed the proclamation of the Young Offenders Act. Can the Attorney General indicate where the juvenile justice teams are operating, particularly areas in and around my electorate of Jandakot?

Mrs EDWARDES replied:

I am sure everyone knows that the juvenile justice teams are proving to be an effective and successful alternative to the court process. They are successful for victims because they become part of the process which determines the penalty; they are successful for offenders because they accept responsibility for their offence; and they are successful for parents because they are, for the first time, involved in an appropriate way in the supervision of the young offender and also in the determination of the penalty.

Mr Ripper: It is a great Labor initiative.

Mrs EDWARDES: The creation of the juvenile justice teams and the way in which they have been extended was a great initiative, and I hope members opposite will support that throughout Western Australia, because we have now extended the juvenile justice teams to 16 locations. The pilot programs were established in Fremantle and Armadale, so that deals with part of the member's electorate, and the team which is now operating in Rockingham will deal with another part of the member's electorate.

#### MEMBER FOR WANNEROO - AUSTRALIAN TAXATION OFFICE AUDIT

##### 141. Mr MARLBOROUGH to the Premier:

I refer to the report in the *Sunday Times* of 7 May that the member for Wanneroo has been audited by the Australian Taxation Office.

- (1) Does the secret Mann report give any clue about why the member would be audited by the proceeds of crime division of the Australian Taxation Office?
- (2) Has the Premier satisfied himself that the member for Wanneroo has not cooked the books or been involved in any impropriety?

Mr COURT replied:

- (1)-(2) The Federal Government has responsibility for taxation matters, and if the Federal Government has carried out an audit into the member for Wanneroo or any other member of Parliament, that is a matter which -

Mr Marlborough: The Federal Government has nothing to do with the Australian Taxation Office.

Mr COURT: Has it not?

Mr Marlborough: No, it has not. Are you suggesting that the Federal Government directed the Australian Taxation Office to look into the member for Wanneroo's accounts? Answer the question.

The SPEAKER: Order! Member for Peel.

Mr Marlborough interjected.

The SPEAKER: Order! Member for Peel.

Mr COURT: If the federal tax office carried out an audit of a member of Parliament - and, no doubt, it carries out audits of lots of members of Parliament -

Several members interjected.

The SPEAKER: Order! Member for Mitchell.

Mr COURT: Is the member implying that there was criminal action? If something was wrong, it would be up to the federal tax office -

Mr Marlborough: I have been talking for a long time in *Hansard* about the activities of the member for Wanneroo. Yes, I believe he has been involved in criminal activities; I have put that on the record.

The SPEAKER: Order! Member for Peel.

Mr Marlborough: I believe he has, and the evidence will come out.

The SPEAKER: Order! I formally call to order the member for Peel.

Mr COURT: We have yet again the member saying that another member is responsible for criminal activities.

Mr Marlborough: That is right.

Mr COURT: If the member for Peel has that evidence, he should give it to the police and allow them to investigate it, but he comes into this place and uses the privilege of Parliament to evaluate another investigation. I am sure the federal tax office is capable of looking after its responsibilities, and that if the member for Peel has some information that he wants to give to the police, they will be responsible in carrying out those investigations.

#### FISHERIES - COMET BAY PRAWNING TRAWLERS, DISCARDED FISH

142. Mr MARSHALL to the Minister for Fisheries:

A Mandurah local newspaper has reported that over 50 000 fish are discarded annually by Comet Bay prawning trawlers and that the trawlers are seeking to extend to grounds around the Dawesville Channel. Can this fish wastage be substantiated against the new recreational fishing bag limits, and is it likely that the trawling grounds will be extended beyond Comet Bay?

Mr HOUSE replied:

The recreational fishing advisory committee was fully consulted regarding the new bag and size limits for recreational fishermen. We went through a thorough consultative process with the 10 regional committees which were established to seek advice about recreational fishing matters. The south west trawling fishery was gazetted by my predecessor. When I came to office we received a number of complaints, including the matter referred to by the member for Murray; that is, a high percentage of the by-catch is wasted. As a consequence, I ordered a full inquiry into and report on the fishery. The report is being published and will be circulated to the general public and interested people for some input. Ultimately, we will make a decision after that time. I emphasise that that fishery is worth about \$1m annually to the local economy. Therefore, it plays a very important part in the economics of the region. These matters must be balanced against all other factors which will be taken into account. That is what the current study is all about. We will make a decision in a few months about how the fishery will be

allowed to continue, and how it will interact with recreational fishing in the region.

**ROYAL COMMISSION - EASTON PETITION**

143. Mr McGINTY to the Premier:

- (1) Can the Premier explain the basis upon which he can be called to give evidence before the recently announced royal commission? In other words, how does his behaviour fit within the terms of reference of that royal commission?
- (2) Will the Premier pay for his legal representation, given that in an earlier answer today he said that only former Ministers called as witnesses will have their legal costs met by the Government?

Mr COURT replied:

- (1)-(2) I said that the convention has been to pay the legal costs for former Ministers - I was Leader of the Opposition at the time. I cannot give an answer regarding whether a person's fees would be paid. I will make an inquiry at Crown Law to discover what the guidelines have been. In the past, guidelines were determined by the Government of the day. I will find out the guidelines for the Royal Commission into Commercial Activities of Government and Other Matters - the WA Inc matters. Were I called as a witness, it could be that I would pay my own fees.

Mr McGinty: I think your father's expenses were met -

Mr COURT: He was a former Minister and Premier.

Mr McGinty: I think public servants' costs were also paid.

Mr COURT: There was a set of rules for that. I will provide the guidelines for that royal commission.

Mr McGinty: We seek the new guidelines that we expect to be applied to this royal commission.

Mr COURT: Royal commissioners can call any witnesses they wish to call. I envisage the commissioner may choose to call me.

**MENTAL HEALTH TASK FORCE - WILSON, KEITH, SMEAR CAMPAIGN**

144. Mrs van de KLASHORST to the Minister for Health:

- (1) Is the Minister aware of any recent actions which have cast a slur on the reputation of a member of the mental health task force?
- (2) Can the Minister inform the House of the real situation?

Mr KIERATH replied:

- (1)-(2) A mental health task force was established to improve the situation for people suffering a mental disease. I chose a range of people with the necessary expertise who could contribute to debate. It did not matter what political allegiance they held. Unfortunately a member of the task force has been accused of being mentally unstable and irrational. I appointed him to the task force because he is one of the most calm, rational and caring people that I know. His only crime has been to break his silence on an issue relating to the federal Minister for Health, who recently launched an \$8m campaign aimed at ignorance and misunderstanding and the widespread stigma associated with mental health problems. She said that ill people and carers face discrimination, injustice and rejection.

What pious sentiments when her own office started the rumours trying to destroy the credibility of Keith Wilson, who was not only a Labor member of Parliament but also a Labor Minister for Health. He wanted to make a contribution to mental health in this State. Members opposite repay one

of their faithful and loyal servants by attacking him when it suits them, when they are trying to save the federal Minister for Health's bacon. Members on this side of the House are aware of these transparent denials, and this disgraceful smear campaign. If Dr Lawrence aspires to high political office, heaven help us. I hope that Dr Lawrence - as she launched an \$8m campaign to make people aware of the stigma and injustice which is attached to people with mental problems - has the integrity to apologise to Mr Keith Wilson, and not stoop to the depths to which her own campaign is targeted.

Mrs Hallahan interjected.

Mr KIERATH: Does the member for Armadale endorse Dr Lawrence's actions or criticise them?

Mr Ripper: Are you telling the truth?

Mr KIERATH: Yes, I certainly am. Mr Wilson has already established himself as one of the greatest contributors on the mental health task force. He is genuinely interested in mental health problems. He is not worried about chasing some political football or scoring political points. Mr Wilson wants to make a contribution to mental health. He acknowledges that he did not have that chance when he was the Minister, and he wants to put the record straight. I hope that Labor members of this House will support him in those endeavours, and will support anyone who wants to improve the lot of mental health patients in this State.

#### MEMBER FOR WANNEROO - FINANCES INQUIRY; CONCEALMENT

145. Mr McGINTY to the Premier:

Last week the Premier apologised to the House for giving an incomplete answer to the Parliament concerning the terms of reference of the Stephen Mann inquiry, which the Premier continues to keep secret.

- (1) Will the Premier now admit that he has misled Parliament on two further occasions by claiming in the other place that, firstly, the Fowler report covers the period up until 1992, when in fact it stops at 31 June 1990; and, secondly, a loan for \$570 000 taken out by Mr Smith and his partners "was not made in relation to the units developed by the member at 15 Courageous Place" when mortgage documents show that this was the very purpose of the loan?
- (2) When will the Premier apologise for this campaign of concealment and call a judicial inquiry?

Mr COURT replied:

- (1)-(2) There has been no campaign of concealment. Last week the Leader of the Opposition very cleverly got the media to believe one item about some terms of reference.

Mr McGinty: The Premier apologised for misleading the House.

Mr COURT: It did not change what the terms of reference covered. The Leader of the Opposition told the media about one section of the terms of reference and implied that Stephen Mann had been stopped from looking at one area. The fact that the previous terms of reference covered that area showed that the Leader of the Opposition was up to his usual trick of misleading the people of Western Australia. Any information that I received has gone to the police. In this House a member of the Labor Party has accused the member for Wanneroo of criminal activities. What information does the Leader of the Opposition have, and why has he not given that information to the police?

Mr Marlborough: I have the Kyle report.

The SPEAKER: Order! The member for Peel, order! Reluctantly, I call the member for Peel to order for the second time. The member must cease his interjections. He was given the opportunity to make his first comment against the Premier's comments, but, obviously, he cannot go on at length, nor at that volume.

Mr COURT: As a result of the Kyle report charges were laid and are currently before the court. The Leader of the Opposition said in the Press that he had given his information to the police, which is the appropriate body, and the police will investigate that matter.

#### FUNERALS - MIX-UP OF BODIES REPORT

146. Mr BLAIKIE to the Minister for Local Government:

- (1) Did the Minister or his department read a report in the *Sunday Times* of a mix-up of bodies?
- (2) Does the report have any validity?
- (3) If so, can the Minister advise any actions that can be taken to ensure that these circumstances never recur?

Mr OMODEI replied:

- (1)-(3) I am aware of the report, in part, in the *Sunday Times*. I understand that the issue occurred quite some time ago and some compensation has been paid. If I recall, the article related to the reinstatement of the employee involved in the mix-up. There is no doubt that the matter has caused great trauma and sadness to the family concerned. In my time as the Minister responsible for the Cemeteries Act, I have found that the Metropolitan Cemeteries Board and the Fremantle Cemetery Board are professional groups which take great care and interest in carrying out their duties. This problem related to a certain funeral operator and, obviously, the guidelines and procedures that were in place were not adequate to ensure that this mix-up did not occur. I will make sure that both boards are aware of the concerns that have arisen as a result of this unfortunate incident, and that proper procedures are in place. I suspect they are, but in part were not adhered to in this instance. I will be asking for a full report on this issue. As I said, I thought this incident occurred quite some time ago and that it had been settled. However, as the member for Vasse has mentioned, we should ensure that it does not happen again.

#### GOLD ROYALTY - PROPOSAL

147. Mr RIPPER to the Premier:

I refer to the advice to Parliament of the Minister for Resources Development that there have been informal discussions in Cabinet relating to a gold royalty.

- (1) How does the Premier reconcile his public statement that a gold royalty would not be introduced with the Minister's comment last week that he found the arguments in favour of a gold royalty overwhelming and that his department has been asked to prepare material for the introduction of a royalty?
- (2) Does the Premier agree with his deputy on the introduction of a gold royalty, or is this just a case of the Minister preparing himself for leadership?

Mr COURT replied:

- (1)-(2) No proposal has been put to Cabinet. We have a policy on this matter, and it has not changed.
-