WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE COUNCIL

Thursday, 17 December 1998

Legislative Council

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THE PRESIDENT (Hon George Cash) took the Chair at 11.00 am, and read prayers.

YANCHEP NATIONAL PARK SWIMMING POOL

Petition

Hon Ken Travers presented a petition, by delivery to the Clerk, from two persons praying that the swimming pool at Yanchep National Park not be closed.

[See paper No 650.]

LOT 17, MINDARIE-TAMALA PARK

Petition

Hon Ken Travers presented the following petition bearing the signatures of four persons -

> To the President and members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned residents of the Towns of Cambridge, Victoria Park and Vincent which comprise parts of the former City of Perth prior to its restructuring believe that each of these new Towns should each have received a quarter share of the City of Perth's ownership of Lot 17 Mindarie/Tamala Park. Following the restructure of the former City of Perth, the City retained full ownership of the asset without an equitable share being returned to the three new Towns and their ratepayers and residents. We call upon the Legislative Council to enquire into why this decision was made and how the situation can be rectified to return to the three new Towns a quarter share each of the City of Perth's ownership of Lot 17 Mindarie/Tamala Park.
>
> Your petitioners, therefore respectfully request that the Legislative Council will give this matter earnest consideration.
>
> And your petitioners as in duty bound will ever pray.

[See paper No 652.]

RAIL TRANSPORT - LACK OF ACCESS TO RESIDENTS OF NORTHERN SUBURBS

Petition

Hon Ken Travers presented the following petition bearing the signatures of 365 persons -

> To the President and Members of the Legislative Council of Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned residents of the Northern Suburbs submit:
>
> 1. The lack of access to the railway for people living in Clarkson, Quinns Rock, Merriwa and Mindarie is totally unacceptable.
> 2. The use of rail transport provides environmental benefits for everyone.
> 3. That young people, families and seniors are often dependent on an effective and affordable public transport system.
>
> We therefore call upon the Government to use some of the $1.4 billion gained from the sale of the gas pipeline to urgently fund the extension of the Joondalup railway line to Hester Avenue.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners as in duty bound, will ever pray.

[See paper No 653.]

ORDERS OF THE DAY

Motion

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [11.05 am]: I move -

> That Orders of the Day 1(a), 1(b), and 4 to 9 be taken ahead of motion No 1.

Yesterday I moved a similar motion at this time, and I did not speak to it because I did not think there was a necessity to do so. Today I briefly indicate to the House that the legislative program, combined with the time of the year, is such that it would be helpful to the House to use the next two hours, which would normally be set aside for motions and committee reports, to deal with Orders of the Day so that we can proceed with the native title legislation. However, two committee reports should be considered. They are Orders of the Day 1(a) and 1(b), which relate to committee travel. If those committees are to travel between now and when the House resumes after the Christmas break, it is important that the approval of the House be given for both of those committees to travel. I understand that the committee reports which recommend travel have been agreed to by all parties. The Government intends to support that on the basis that all parties have already indicated their agreement. Therefore, I do not expect that those reports will involve lengthy debates, particularly one of them which has already been debated previously prior to prorogation; it is here only on a technicality. The other one is the DNA report of the Standing Committee on Legislation. Therefore, on the basis that we should be making more progress on Orders of the Day, and in view of the fact that it is almost the end of this part of the session, I believe that using these two hours to debate the native title legislation would be more productive than going through the normal two-hour process between now and 1.00 pm.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [11.08 am]: I place on record my appreciation for having the opportunity to speak to the Leader of the House today about the way in which the Government's legislative program, particularly the three native title Bills, might be handled in this place. The Australian Labor Party has indicated to the Government that it is keen to offer reasonable extra time for the Government to have these Bills considered by the House and brought to resolution within a reasonable time frame. The Opposition will do its best to accommodate the Government's legislative program and will not in any way be involved in a protracted debate. I think I used the word "filibuster" the other day. The President told me yesterday that not only is a filibuster out of order, but maybe I should not even use the word in this place. However, the Opposition will not be involved in any filibustering to delay the consideration of those Bills. The Government has indicated that it will consider the options of extensions and extra time. The Opposition will do its best to accommodate the Government when it puts those specific requests to us. The Opposition will accommodate this motion, which will give us an extra two hours today.

The Australian Labor Party will support the motion concerning the Standing Committee on Estimates and Financial Operations. It had been my understanding that the second motion of the Legislation Committee would seek simply that the report be noted. The Labor Party will not support a request for travel by that committee at this time.

The PRESIDENT: Order! That is a matter the member can deal with when those matters come before the House.

Hon TOM STEPHENS: In fairness, I wanted to the respond to the point that you, Mr President, allowed the Leader of the Government to raise.

The PRESIDENT: Do not debate the matter now.

Hon TOM STEPHENS: I do not want a debate at this stage. I did not want the Leader of the House to think that the Opposition has agreed to pass that motion instantly. The Opposition will endeavour to accommodate the Government. If the Government has any requests about extra sitting time the business management committee may be a useful way to accommodate the Government's needs.

HON NORM KELLY (East Metropolitan) [11.11 am]: The Australian Democrats oppose the motion. Even though we appreciate the Government's desire to get through this legislation, and we hope to assist in that, I point out that the first hour of business is allocated to non-government business. We have had little opportunity to debate non-government business this session. There has been no debate at all on non-government Bills on the Notice Paper for the entire spring session. We feel it is unfair of the Government then to cut into the time allocated for non-government business, which is the only other real avenue for motions from the non-government parties in this Chamber. It would be far better to obtain a commitment from the Government that the Leader of the House is willing to facilitate some non-government Bills being debated in the autumn session. One Bill in my name on the Notice Paper has been debated extensively in the coalition party room, compared with the amount of time allocated to debate government Bills that have only recently been introduced into the Chamber. I feel that Bills such as the Liquor Licensing Amendment Bill have had ample opportunity to be thoroughly debated in the community and in the coalition party room and debate should be reasonably short. I know it is not possible this year. However, I would like a commitment from the Leader of the House that non-government business and Bills from the non-government parties could be facilitated in an orderly way. That is the reason the Australian Democrats are reluctant to support any motion that will further reduce the availability of non-government time in this Chamber.

Question put and passed.

COMMITTEE REPORTS - CONSIDERATION

Committee

The Deputy Chairman of Committees (Hon Derrick Tomlinson) in the Chair.

Standing Committee on Estimates and Financial Operations - Proposal to Travel

Hon MARK NEVILL: I move -

> That the House recommends that funds be made available for the purposes set out in the twenty-fifth report of the Standing Committee on Estimates and Financial Operations.

The committee successfully applied for funds earlier in this session, but could not travel at the time, and has elected to travel in early February. I will explain a few of the changes that have occurred since our previous report to the Chamber. The committee has decided to add to its terms of reference consideration of alternative sanctions to prison sentences. The committee believes it is extremely important to examine that issue, because the prison system currently operating in this State is under strain. That is shown by the high rates of recidivism - 31 per cent for adults, and 46 per cent for juveniles. The problems of chronic overcrowding could get worse and, as reported by the Ombudsman, there has been a 150 per cent increase over the past year in the number of complaints of harassment and abuse of rights and privileges made by prisoners. Also, the continuing number of deaths in custody is of great concern.

The reason for adding consideration of alternative sanctions to prison sentences to the committee's terms of reference is that the financial cost of imprisonment to the State is getting higher and higher. California spends more money on prisons than it does on education. In this State the daily cost of keeping an adult offender is $169 a day, and the daily cost for keeping a juvenile offender is $443. By contrast the daily cost of managing an offender through community supervision is much lower: An adult costs $10 a day as against $169 in prison and a juvenile costs $29 a day as against $443 in prison. They are Ministry of Justice figures. For every dollar spent on community supervision, we are spending $5.50 on imprisonment. We should have a hard look at where this State is going, so the committee is adding that issue to its terms of reference.

The expenses for this trip will total $10 000 less than the committee's previous request. The committee is working in with the Select Committee on Crime Prevention in another place, because that committee's third term of reference impinges on the area of recidivism, which we are also considering, and we do not want to duplicate that committee's work, which is extremely important. Obviously, our committee is looking only at what happens to people after they are convicted. The committee in another place is considering the situation, virtually from when offenders first make their appearance in the world. The Chief Justice of the Supreme Court has taken a great interest in this work. The committee sent him a copy of its travel proposal. He responded with an extremely thoughtful letter, which is available to members.

The escalating cost of imprisonment to the State and the Government's apparent ineffectiveness in deterring offenders, particularly juvenile offenders, from reoffending must lead to a re-evaluation of the effectiveness of prison as a sentencing option. If the Parliament wants to bring down sensible recommendations in these areas, it is important that members of Parliament be well informed. Appropriate interstate and overseas travel is important to enable members of Parliament to be well informed. The expense of sending members overseas is minuscule if it means that the Parliament will not make bad decisions. I seek the support of the Chamber for this proposal to travel.

Hon N.F. MOORE: As I indicated earlier, this matter was considered by the Chamber prior to the prorogation of the Parliament, and approval was given. However, the trip was postponed because of that prorogation, and it is now necessary for this matter to come back to the Chamber. On this occasion, I have no reason to change the view that I had on the last occasion that we discussed this matter, which was to indicate the Government's support for the provision of funds. However, I am a little perturbed at some of the comments that have been made by the Leader of the Opposition; namely, that with regard to the next report, the Opposition may now have a different point of view. The issue of travel causes some people in the media to drool. It also causes the Leader of the Opposition in the other place to get on a very high horse and pontificate about what the Parliament may or may not do, to the point of ordering his members not to go on a trip in order to get on the high moral ground. Therefore, because of those sorts of issues, I now have a bit of a problem about this matter. I am prepared to make my own judgment about whether a trip should take place, because I recognise and support the importance of trips in increasing members' knowledge about particular issues, and I have always argued in that way. However, it is helpful if all members have a unanimous point of view. I am told that there is a unanimous point of view about this trip. I wonder whether that is just because the Chamber has already made a decision about that matter. I am now told by the Leader of the Opposition that there may not be a unanimous point of view in respect of the next request. Therefore, I am now not sure what we should do on this occasion. If the Leader of the Opposition in the other place, Dr Gallop, wants to try to use this issue to embarrass the Government, then I am happy to say no to any trips at all, if that is the game that he wishes to play. I have a sneaking suspicion that he will play a game on the next report, from what the Leader of the Opposition in this Chamber has said, and from what I have been advised is a potential amendment to the next motion. Had I known about this earlier, I would have had serious reservations about agreeing to this trip, on the basis that if people want to play politics about overseas trips for members of Parliament -

Hon Barry House: Adjourn it!

Hon N.F. MOORE: I have indicated that we would support this trip, and I would be nothing less than a hypocrite were I to change my mind now. However, I suspect that the word "hypocrisy" could be levelled at some members who have signed

a report to this Chamber that another committee should travel and have suddenly changed their mind. I say to the Leader of the Opposition that it would be very helpful, bearing in mind the lectures that he has been giving me in recent times, if he gave some early indication of the Labor Party's position on some of these matters. Hon Ken Travers can laugh his silly head off - log -

Hon Ken Travers: What did you call me?

Hon N.F. MOORE: I called Hon Ken Travers a log, because that is what he is. He cannot help himself. This is a serious issue that he does not understand. He has been here for such a short time that he has no idea of the nuances and niceties of this place.

Hon Ken Travers: I will learn from you, minister!

Hon N.F. MOORE: The member could learn from me. If he keeps that up, I will say no now. I will not play that silly game.

Hon Tom Helm interjected.

Hon N.F. MOORE: I am happy to go along with Hon Mark Nevill's proposition, but Hon Tom Helm should not ever put his name on a list to go anywhere, because I will say, "No way in the world." It is a pity that we do not know in advance of this motion what will happen to the next one, because they do relate to each other; and if Hon Tom Helm does not know by now that these things need to be worked out in advance, he will never know. I will support this motion, but I am very worried about what may be the consequences for the next one.

Hon PETER FOSS: I support the motion, because the matters that will be inquired into by the committee are very important matters for the area for which I have responsibility. I am very conscious of the fact that any changes that may be necessary, of either an administrative or a legislative nature, will work only if they have bipartisan support. We know what are the problems; it is much more difficult to know what are the solutions. In order for this matter to be dealt with properly, a large number of the members of this Chamber should have some familiarity with it. I am very pleased with the matters that will be inquired into by this committee, and I hope sincerely that as a result of that inquiry, members will not only be better informed but will also be able to assist me in this matter. I am particularly pleased that the other committee will examine the matters of DNA profiling and domestic violence, because those matters need bipartisan support and understanding. There can be no harm whatsoever in members being better informed, and there can be considerable benefit. I commend the committee on its positive approach to this difficult issue, and I look forward to receiving what I am sure will be an extremely useful report.

Hon TOM STEPHENS: The Labor Opposition supports the motion that is currently before the committee. The committee has put strong and compelling arguments that have persuaded the Labor Opposition to support this proposal. The Leader of the House has raised the issue of the subsequent motion that will come before the Chamber. It was my understanding yesterday that the only item that would come before the Chamber with regard to this report was that the report be noted.

Hon N.F. Moore: Who told you that?

Hon TOM STEPHENS: That was my understanding.

Hon N.F. Moore: How did you get that understanding?

Hon TOM STEPHENS: That was my understanding, and I will leave it at that.

The Labor Opposition has adopted the approach that when committees come forward with proposals to travel, the arguments in support of those proposals will be put to our party room. There will then be the opportunity for any proposal to be subject to the rigour and scrutiny of our caucus room before we adopt a position in this place. It is my intention to oppose the foreshadowed motion in reference to Hon Bruce Donaldson's report.

Hon M.J. Criddle: On what grounds?

Hon TOM STEPHENS: To provide the committee with the opportunity of reconsidering its proposal and to seek a more cost effective way of undertaking the proposed work.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Order! Members are now debating the second motion. Although the Leader of the House raised the issue in the context of the motion and the Leader of the Opposition is responding to those remarks, I ask the Leader of the Opposition to confine his response to that and not debate the anticipated motion.

Hon TOM STEPHENS: I appreciate that, Mr Deputy Chairman. I will, of course, follow your direction. The Opposition wants to ensure that the committee will reconsider any subsequent proposal before the House to seek a more cost effective way of dealing with the issue. We are not trying to play politics with this issue. The Labor Party agrees with the Leader of the House that there are times when it is appropriate for travel to be undertaken.

Hon Barry House: Nobody has done more travel in this Parliament than you!

The DEPUTY CHAIRMAN: Order! I strongly recommend that we allow the Leader of the Opposition to complete his remarks because there are pressing matters that the House wishes to attend to.

Hon TOM STEPHENS: There is no hint of hypocrisy about my stance on the proposals for travel that I have previously supported. My stance has been taken following very careful consideration of the arguments in support of parliamentary travel.

Several members interjected.

The DEPUTY CHAIRMAN: Order! I will have to do something about the numbers in this House. If there is to be this sort of chit chat, at least two members might find themselves chit chatting for a day or two.

Hon TOM STEPHENS: In the view of the Labor Opposition, each proposal for parliamentary travel should be subject to scrutiny and review through the normal process of this Parliament. That process includes, with both parties, a party room discussion. Any arguments that people wish to advance for the pursuit of committee travel in the future will be explored in that way as far as the Labor Party is concerned.

Hon M.J. Criddle: That includes all the members in the lower House.

Hon TOM STEPHENS: This is not a case of the Labor leader in the other place being out of step with his party room. He had the opportunity of explaining his view and receiving the endorsement of the Caucus on his position on this matter. His viewpoint is that parliamentary travel should be subject to the scrutiny and rigours of the argument. It may be that the committee which Hon Bruce Donaldson chairs will have the opportunity of considering freshly the Labor leader's proposal to seek a new way of putting a request for travel before the House that might reduce the costs and the number of people who need to travel, and also of picking up some of the information through alternative methods. That is the Labor Party's united position on this question. The Labor Party has considered these issues and developed the protocols, and it is appropriate that I advise the House accordingly. I hope members will understand that backdrop and not try to -

Hon N.F. Moore interjected.

The DEPUTY CHAIRMAN: Order! I think the Leader of the Opposition was about to conclude.

Hon TOM STEPHENS: I was, Mr Deputy Chairman. It is true that our leader, Dr Geoff Gallop, has very high standards of parliamentary accountability.

Hon N.F. Moore interjected.

Hon TOM STEPHENS: He has been ensuring that our team lives by those standards.

Hon N.F. Moore interjected.

Several members interjected.

The DEPUTY CHAIRMAN: Order! The Leader of the House will come to order.

Hon TOM STEPHENS: He is supported by a united Labor Opposition as he endeavours to ensure that the entire Parliament is held accountable for its actions.

Hon NORM KELLY: I would like to speak to the report before us in a way that hopefully does not set a precedent compared with the contributions of the last couple of members.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): The member is reflecting upon the Chair.

Hon NORM KELLY: Sorry.

The DEPUTY CHAIRMAN: The Chair will not respond to that very kindly. I suggest that the member speak to the matter and allow the Chair to decide when other members are out of order.

Hon NORM KELLY: I appreciate those comments, Mr Deputy Chairman. I did not mean to reflect on the authority of the Chair.

I have spoken about the previous travel proposal that was put to the House by the Standing Committee on Estimates and Financial Operations. At that time I said that I believed that it was not necessary for the committee to travel to the Netherlands. However, I will not go into great detail about that as those comments are on the record. I note in this proposal that the committee intends to travel to the United States in addition to the original destinations.

Hon Mark Nevill: It intended originally to travel to the United States as well.

Hon NORM KELLY: To the United States as well? I am looking at the current report. In looking at the costs of travel, a round-the-world trip can be just as cost effective as a return trip to Europe. The US part of the travel could be beneficial because of the similarities between the US system of government and the Australian system, as opposed to the Netherlands system. That was the only concern I had previously and that is the main concern that the Australian Democrats still have about the proposed travel. It appears that the people who decide whether to support the recommendations by members of Parliament for travel are making it a party political issue.

Several members interjected.

Hon NORM KELLY: I will not digress from this debate to respond to those interjections but I will be more than happy to respond to them later.

Hon Ken Travers interjected.

The DEPUTY CHAIRMAN: Order! The member should be reminded of the authority of the Chair to deal with interjections.

Hon NORM KELLY: We, as members of Parliament, must take on board the comments of the members of the committee, who are more knowledgeable about the subject of their investigations. As members of Parliament we should raise our concerns if we believe that travel by a committee or the costs of that travel are not warranted, and I will continue to do so.

Question put and passed.

Standing Committee on Legislation - Proposal to Travel

Hon B.K. DONALDSON: I move -

> That the House recommends that funds be made available for the purposes set out in the forty-sixth report of the Standing Committee on Legislation.

There has been some conjecture because debate has occurred on the first part of the report, and today we will debate the second. First of all, we can just note the report. I do not believe in that. I believe the committee should be open and accountable, and I have always been upfront in what I do and what I believe in. The guidelines for the review stated quite clearly that the report must be shown to the Deputy Clerk (Committees) and Clerk of the House to enable them to look at it with the committee chairman and the advisory research officer. Consideration was given to ensuring that the committee travelled only to places that had relevance to its inquiry so that its members would be better informed on this issue of forensic science, thus pruning the cost of travel. An additional saving of $11 500 has arisen because, even if this motion for funding were passed, Hon J.A. Cowdell, a Labor member, would not be able to travel because of the direction from the Leader of the Opposition.

Hon Tom Stephens: He has decided not to travel - end of story.

Hon B.K. DONALDSON: That may be so, but with that saving of $11 500, the funding required is realistic, being in the vicinity of $71 000 or $72 000. Members must also bear in mind that the committee has completed one review.

DNA testing will replace the fingerprinting techniques which have been used for 90 years. A rapid growth in the clearance rate of crime in the United Kingdom has been achieved through the use of new technology, DNA sampling and some other measures that have been introduced under a legislative framework. The Criminal Law Amendment Bill was referred to this committee so that it could consider the use of reasonable force after a person had been charged with an offence. That provoked a great deal of debate in this place, in particular about civil liberties and the right to privacy in relation to who would take those samples. We were informed by not only the Minister for Police and the Attorney General, but also the Commissioner of Police in giving evidence to the committee, that in about the middle of the year they hoped a Bill would be introduced to the Parliament in which this branch of forensic science would be made available as yet another tool to assist the police in investigating some crimes. It is a well-known fact that in this State, of all offences, burglary has the highest rate of recidivism. At present, in the United Kingdom the clearance rate in that area is 44 per cent, and that figure is getting better each year as a result of DNA samples being available on a national database. The information on the database is used in the investigation of some breaking and entering offences. With reasonable suspicion, the police can obtain a DNA sample. If the offender is later found to be not guilty, that DNA profile is eliminated from the database. Whether that is correct is another story. DNA sampling has become a topic of much debate around Australia. Even the Australian Attorneys General believe the humble buccal swab is an invasive and intimate procedure. I am sorry they have taken that path and I hope later they may be convinced it is not.

The committee visited Victoria and South Australia and looked at the different models. The legislation relating to the one in South Australia has not been proclaimed yet and that State is having great difficulty with the regulations. The Victorian model was a grab bag of amendments to its Criminal Code and it is very difficult for the police and courts to understand. Although Victoria went to an enormous amount of trouble and looked at various ways of setting up its legislation, some

anomalies and problems have developed in the Victorian system. South Australia introduced a separate Bill covering DNA sampling procedures. In doing so, it forgot a key matter; that is, the use of odontology in DNA forensic procedures. We were shown some photographs which were quite horrific. In 67 cases being handled by the police, the odontology unit of the University of South Australia had been called in to assist, but more as a matter of convention, rather than its being laid out in legislation. Many social and civil libertarian issues are involved in this proposal. The other morning when the Minister for Police was on the Howard Sattler radio program, people raised with him many concerns about DNA testing. We heard similar concerns in Victoria and South Australia.

The Minister for Police and the Attorney General have welcomed the initiative of the committee. It realises that possibly within seven, eight or nine months, a piece of legislation will arrive in this House, and although I will not bet my house on it, I am fairly sure that that Bill will be referred to the Legislation Committee because of the wide-ranging social issues to which some people take exception. This State is very large. We are asking whether we should set up a 24-hour magistrates service. I will conclude my comments shortly, because I am trying to save a bit of time; however, it is important that I raise some of these issues.

The CHAIRMAN: I will focus the member a little. This motion is that the House recommends that funds be made available. The member is now debating the virtues of a DNA databank, whereas he should be debating the committee travelling.

Hon B.K. DONALDSON: I thought I had to set the scene, because not many people are as wildly enthusiastic as -

The CHAIRMAN: The member has done that admirably. Perhaps now he will get onto the final act.

Hon B.K. DONALDSON: The United Kingdom has been somewhat of a leader in the setting up of a national database in this regard. That country is experiencing ongoing problems, more on the social side of the legislation than anything else. It is important for us to look at that model because the Prime Minister has now indicated that the Federal Government will supply up to $50m to help establish a national DNA database when each jurisdiction gets an Act of Parliament in place and produces a state database. The United States uses a regulatory system, but it has not been favoured by police in some jurisdictions in Australia. The situation there is quite similar to that in Australia because it also has a number States. Its system is set up under the umbrella of the Federal Bureau of Investigation. The committee was encouraged to look at different models. Two years after the DNA database was set up in the United Kingdom, a national Euro DNA database has been established in Germany. Given the rapid change in technology for the taking of DNA samples and forensic science that is now available around the world, we are looking at an Interpol arrangement to do with DNA samples. The benefits of such an arrangement are huge. The Minister for Police stated that he felt it was very important that the committee continue with its work following its visit to the eastern States, gain first-hand experience of the problems that have arisen in the different jurisdictions and report its findings to this Chamber. That will be taken very much into consideration when the drafting of this legislation occurs. It would be far better for many members to be informed. I know that some issues have been raised, and other members of the committee will be aware of issues that no doubt will be raised in the community and within this Parliament. There was unanimous support for this travel from the committee. It was only in the past 16 hours that I became aware of a direction from another place to one of the members of the committee. I was very sad to hear that because if Dr Gallop had a problem with this proposed travel, he should have telephoned me. I could have filled him in on some matters and elaborated on others. That is another personal side of the matter. If a Leader of the Opposition in another place has a problem of this nature, he should have the decency and courtesy to get in touch with the chairman of the committee rather than deal with second-hand information. I will not use the word I would normally use in such circumstances because it would be unparliamentary. This action sums up the person in my estimation and endorses what I have always thought of him.

I ask for the support of the Committee of the Whole. I have never been more enthusiastic, committed and dedicated to seeing legislation pass through both Houses of Parliament that will give the Police Service another investigative tool with which to respond to public expectations on the clearance of crime in Western Australia. It is very important. If the Police Service is not provided with this tool, it can be likened to asking a carpenter to build a house without using a hammer or a nailgun.

Hon TOM STEPHENS: As I have indicated briefly in the earlier two motions on this subject which came before the Legislative Council, the Labor Opposition does not support this motion.

Hon Barry House: It is for exactly the same reasons that the native title committee went to Canada.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Order! Hon Bruce Donaldson was heard in silence, and I ask that the same courtesy be extended to other speakers.

Hon TOM STEPHENS: I will endeavour to address the interjection by Hon Barry House. The Opposition will not support this motion by Hon Bruce Donaldson, and it asks the committee to vote against it. That will provide an opportunity for me to move a motion that the request for the approval of the Legislative Council be referred back to the Standing Committee on Legislation for further consideration of more cost effective ways of examining this issue.

Hon Bruce Donaldson laced his argument for this motion with some gratuitous insults to the Leader of the Opposition in

the other place and the Labor Party, both today in this place and to me yesterday, both of which I reject. He has put forward a substantive argument, much of which I agree with. I am sure it is part of the substantive argument that brought forward a unanimous proposal from the committee to the floor of the House. I do not reject much of that substantive argument that there is a need for the Parliament to be well prepared to consider the issues about which Hon Bruce Donaldson spoke. Legislation will be drafted by the Government in relation to these issues.

Hon Barry House: Precisely.

Hon TOM STEPHENS: Hon Barry House recognises this as a familiar argument, because I put the same argument to the House in March 1997 with respect to the native title legislation. I said there would be a need to be informed, and I eventually persuaded the House of the need for members to prepare themselves for the issues that would be tackled. It may well be that the Standing Committee on Legislation could reconsider the issues that the Labor Opposition will ask it to reconsider and report back to the House with a more cost effective way of dealing with the issue. I understand from Hon Bruce Donaldson's comments that the Labor member Hon John Cowdell has advised that he will not travel.

Hon B.K. Donaldson: I am assuming that, because Dr Gallop has issued an ultimatum.

Hon TOM STEPHENS: I understand he has advised the member he will not be travelling, full stop.

The DEPUTY CHAIRMAN: Order! Instead of speculating about who might have advised whom what, I suggest the member proceeds.

Hon TOM STEPHENS: In the work done by the most recent select committee on native title I, along with other members, had the opportunity, for the first time in my experience, to utilise the video conferencing technology for collecting evidence. The committee took evidence from Mr Patrick Dodson of the Western Australian Indigenous Working Party. He was in Broome at the time and could not come to Perth, and neither could the committee travel to Broome. The video conferencing technique was used to obtain his evidence. It may be that the committee could consider this request from the Labor Party to reconsider this proposal and determine whether aspects of the work could be covered in a more cost effective way. The member should consider it.

Hon N.F. Moore: I cannot believe you are saying this.

Hon TOM STEPHENS: There are people who would be prepared to make that sort of support available to the committee. I am aware that the United States consulate has regularly made available to parliamentarians opportunities for video conferencing with experts in areas of interest to them with regard to the issues with which the Parliament is dealing. Perhaps the committee could avail itself of that technology which was recently utilised by the select committee. If at the end of its reconsideration of the issue, it wants to resubmit the matter to the House, that opportunity will be available to the committee. However, for the moment the response of the Labor Opposition is that the chairman of the committee has not yet provided adequate argument in support of the full proposal for travel for such a large group to undertake the work at this time. We, as a united Labor Opposition, ask the members of that committee -

Hon N.F. Moore: I can see they are all sitting behind you now!

Hon TOM STEPHENS: Indeed; they are preparing for their next contributions.

Hon N.F. Moore: They are all preparing for their next leader.

Hon TOM STEPHENS: I am not afraid of any knives in my back. I stand without fear.

The DEPUTY CHAIRMAN: Order! I suggest the member should be afraid of being sat down.

Hon TOM STEPHENS: I have put the position of the Labor Party. It has no intention of playing politics or doing more than state the facts.

Hon N.F. Moore: Hansard should record that there is loud laughter in the House.

Hon Barry House: We are laughing at you, Mr Stephens, not with you.

The DEPUTY CHAIRMAN: Order!

Hon TOM STEPHENS: The Labor Party is not embarrassed by its position on this issue. Hon Bruce Donaldson should come forward with a good argument and he might attract the support of the Labor Opposition.

Hon N.F. MOORE: It is appropriate for me to indicate the Government's position on this matter. As with all other reports seeking approval for travel, I have read the arguments and listened to the honourable member. I even took the time to talk to the chairman outside the Chamber about the proposed travel because I am interested to know what the committee is about. I am satisfied that there are good grounds for this committee to travel and it has my support.

I might add that a previous report, which is still on the Notice Paper, relates to travel by the Joint Standing Committee on

Delegated Legislation. I had serious reservations about that and, had the debate arisen, I would have expressed those reservations. As members know, that committee will not be travelling because the Leader of the Opposition, Dr Gallop, told his members they could not go. If that committee report had been put to the House, I would have had difficulty in supporting the travel proposal but I have no difficulty with supporting this one. Members have now used up one of the two hours I tried to make available to the House but I look forward to reading back to the Leader of the Opposition his words today when he next asks to go on a trip. Never in his life has he contemplated using video conferencing.

Hon Tom Stephens: We have just done it.

Hon N.F. MOORE: Hon Tom Stephens could have done that instead of going to Canada. I have never known Hon Tom Stephens to think of any alternatives to going overseas. However, the Leader of the Opposition, Dr Gallop, has taken the high moral ground because of the media coverage of the previous proposition. He is saying that the only party which does not support wasteful expenditure by the Parliament is the Labor Party. Dr Gallop has forgotten that the Australian Democrats have already taken that position. The high moral ground is very crowded now and one of them will fall off. I suspect it will be the Labor Party when another committee wants to travel. It is interesting that today we have already agreed that two Labor members can go on a committee trip. I strongly support that proposal but the Labor Party cannot bring itself to agree to another committee travelling because of its high moral ground problem. I am led to believe that this decision of the Labor Party is a result of the attitude of Dr Gallop. I understand that his putting a line through the previous trip for his members was an off-the-cuff decision. I thought that the Labor Party made its decisions in Caucus but I am told that Dr Gallop made the decision on his own and told the members they were not going. I wonder whether the same thing has happened here and whether Dr Gallop has decided that he is to be the judge of these things. It is interesting that, although the Legislative Council has become a House of Review, members opposite must go to their shadow spokesman in the other House to get their riding instructions. We have had proof of that for the past two or three weeks; so much for members making their own decisions about this.

Hon Bob Thomas interjected.

Hon N.F. MOORE: Hon Bob Thomas should not argue because he already has his passport and ticket. He should keep out of this.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Order! We will better expedite the business of this House without an exchange across the Chamber between the Leader of the House and Hon Bob Thomas. Until now interjections have been kept under control. If members want to lose control, I will exercise my control.

Hon N.F. MOORE: It would be easy for me to say that the Government will not support this either and further crowd the high moral ground. However, I will not say that because as grown, mature and sensible adults we should judge the merits of the proposal; we should not sit here for political purposes but to judge the merits of the proposal. I did not see much merit in a proposition which has not been brought before the Chamber but I see merit in this proposal. I also saw merit in the previous proposal put forward by Hon Mark Nevill and in the proposal Hon Tom Stephens put forward about the Select Committee on Native Title Rights in Western Australia 12 months ago. I said then I would agree on behalf of the Government and accept the flak from those who do not believe members of Parliament should travel. I was prepared to say that and wear the consequences. I am prepared to do the same thing with this trip.

I hope the Labor Party never again asks this Chamber to consider something it wishes to do which consumes public money because it will be very difficult to get me to agree. All the Labor Party is doing is playing politics, straight out gutter politics, in trying to retrieve something it thinks it lost to the Australian Democrats. The Labor Party is doing itself, its members and this House a grave disservice because it cannot help itself, and its leader in the other House is telling it how to think and behave in this House of Review. I am happy to support this motion. A Labor member of the committee has put his name on the report and, according to the committee chairman, supports the expenditure of the funds. I would be very amused if he went on the trip after the Labor Party has said it will not support the travel proposal. He is not here, he is outside on parliamentary business and I wait with great interest to see whether he is directed or decides not to go on his own volition. If he went, it would be absolute and total hypocrisy on behalf of the Labor Party. We will wait and see what happens.

Hon GIZ WATSON: I am a member of this committee. I did not know we would be debating this matter this morning and feel rather caught.

Hon N.F. Moore: I told you this morning.

Hon GIZ WATSON: Yes, about 20 minutes ago.

Hon N.F. Moore: I told you we were doing this about 9.30 am when I knew.

Hon GIZ WATSON: At fairly short notice anyway.

The DEPUTY CHAIRMAN: Order! Members should not allow the debate to degenerate because another member has the call.

Hon GIZ WATSON: To clarify the situation, I was not aware that this debate would be conducted now and in this manner. In both the committees on which I have served I have raised issues about judging when it is wise to travel overseas and spend money. I raised that issue early in the piece with the Select Committee on Native Title Rights in Western Australia when we were discussing travelling to Canada. Each proposal to travel must be taken on its merits. The issue of DNA sampling is very complicated, with many implications for Western Australia and how it coordinates national and international approaches to managing this type of crime investigation. I thought long and hard in making an assessment of the merits of the committee travelling to other jurisdictions. I put my name to this report and, on balance, I believe the travel is justified. The committee has looked carefully at ways of reducing the extent of the travel to the bare minimum. In this case, the travel will make a useful contribution.

It has been suggested that Hon John Cowdell not travel with the committee. It is important that the committee has a representative presenting a position of serious concerns about the civil libertarian aspects of databanks and access to that information. Members of the Standing Committee on Legislation know that I have expressed strong reservations and contrary positions to the majority of the committee. Therefore, I believe it is important that several members present a contrary position and ask for information about the different aspects of this proposed legislation.

I realise that this debate about committee travel has become highly politicised. If I do not also jump onto the moral high ground, I am aware of the danger that I will be seen to be condoning overseas junkets, etc. Every member of every committee must make his own decision on the merits of each proposal. I have thought long and hard about the travel of this committee. I believe that it will provide a useful contribution to the debate on DNA. I would also take the opportunity to gather information on the other matter which the committee is addressing, which concerns stalking. I am aware that both the United States and the United Kingdom have a great deal of experience in those areas.

My own experience of overseas committee travel with the Select Committee on Native Title Rights in Western Australia was that the committee members worked extremely hard, which I enjoy doing. When the committee was in Canada for two weeks, its work was extremely intense. It gathered a huge amount of information, which has contributed greatly to my understanding of the intricacies of native title matters. I have been convinced that a great deal of information can be gained from dealing with different jurisdictions. Other countries have information on this DNA issue from which we can learn so that we can get it right upfront. Therefore, I support the noting of this report.

Hon J.A. SCOTT: I agree with the motion put forward in the report. There has been a great deal of politicisation of committee travel in recent times. It is to the detriment of the committee system of this Chamber that this has occurred. People should be careful when they indulge in that type of behaviour, because certainly there will be members in this place who will ask about the value of travel of the Leader of the Opposition in the other place when he visits Mr Blair in London, probably over the Christmas holidays. The value to the community of certain other trips by members in this place will also be considered and compared with the value of the trips of other committees. Certainly the opportunity always exists for travel to be undertaken too lightly. However, most committee members in this place work extremely hard and are serious about the issues with which they are dealing. I regret very much that this has turned into a Roman circus. On the one hand some people are indicating that they are maintaining their purity, while on the other hand they are quite happy in other ways to dip into the public purse. I want to put that matter on the table. Certainly in some instances the people who are speaking about these issues have no knowledge whatsoever of what a committee is examining. Most members have little knowledge about what happens in the Joint Standing Committee on Delegated Legislation. The Leader of the Opposition in the other place showed that he knew nothing at all when he made his comments. Therefore, people should carefully read reports and consider them - that is one reason that they are tabled - and not shoot from the hip in order to get a headline. I support the motion in this report.

Hon NORM KELLY: Firstly, for members who are worried about the high moral ground, I can assure them that there is plenty of spare room up there. I would like *Hansard* to record that that was said with tongue firmly in cheek.

The Australian Democrats support the proposal put forward by the Standing Committee on Legislation. Since the report was tabled, I have had the opportunity to discuss it with a couple of members of the committee, including the chairman, and express a few concerns about the proposal. I am satisfied that this committee travel is a legitimate and worthy use of parliamentary funds. It is important that this Chamber consider each proposal to travel on a case-by-case basis. What is being proposed here has a direct impact on upcoming legislation. Hopefully, what is gained from the committee's travel will benefit all members of this Parliament when assessing that legislation. Earlier this year the Select Committee on Native Title Rights in Western Australia travelled to Canada, and members enjoyed the benefits of that travel as it assisted in their preparation for the upcoming debate on the native title Bills.

The nature of these forensic procedures relating to handling DNA is very much at the cutting edge. Therefore, travel is necessary to see how such testing is carried out and how it is applied. For that reason, this travel is required. I question whether it is necessary - this is more of a general comment about committee travel - at all times for all committee members to undertake such travel. On larger committees, it could be split so that in some instances perhaps two overseas trips could be funded. In that way much more information would be gained which could then be disseminated among other committee

members. I understand that it is still to be decided whether Hon John Cowdell will travel on this trip. However, it is important that both government and non-government members undertake committee travel.

I am concerned about the political opportunism of the Australian Labor Party in this matter.

Hon Ljiljanna Ravlich: There you go again. Coming from you, that is a bit rich. You have to admit that.

The CHAIRMAN: Order!

Hon NORM KELLY: I refer to the recent proposal for the Joint Standing Committee on Delegated Legislation to travel overseas. When the media contacted me and asked for my comments on the proposal, I was happy to air my concerns. My concerns, and what emanated from them, tended to create quite a bit of media publicity, and the ALP decided to take action on that proposal. From what Hon Tom Stephens has proposed in his comments today, it would seem that once again it is a case of trying to jump on the bandwagon in stating a position. I would love to see the ALP take that position; however, I would also love to see it do that consistently. We have not seen that yet, but hopefully that consistency will come about. There are other reasons why the ALP chose this time to make these statements. That is why I refer to its stance as opportunism.

It is also of concern that the standing committees of this Chamber are being influenced by the leader of the Australian Labor Party, Dr Gallop, and their activities are becoming matters for party politics, which is not their role. We would all like to take off our party cloaks when we undertake committee work. In reality that is not possible. However, as far as possible in the committees that I have been involved in since I came into this place, I have worked in a cooperative way with members of others parties. I am glad I am a member of a standing committee comprised of members from all five political parties in this place. The goal of the Standing Committee on Ecologically Sustainable Development has been to find answers, irrespective of political affiliations. We are very much aware of those affiliations, ideologies and party policies. However, the committee's work goes beyond that to come up with solutions and to provide our colleagues in the Chamber with those answers. We can do valuable work and save valuable time in this Chamber. Unfortunately, it seems the committee system is in danger of becoming more politicised, not only in this place but beyond this place. That is a big concern. However, I can see the reasons the ALP is taking this opportunistic, hit-and-miss approach to committees. That is unfortunate. The standing committee has put forward a proposal, and I have raised my concerns. I have been reassured on some of those concerns, but not on others. However, on balance the Australian Democrats will support the proposal for committee travel.

Question put and a division taken with the following result -

Ayes (18)

Hon M.J. Criddle	Hon Helen Hodgson	Hon M.D. Nixon	Hon Christine Sharp
Hon B.K. Donaldson	Hon Barry House	Hon Simon O'Brien	Hon Greg Smith
Hon Max Evans	Hon Norm Kelly	Hon B.M. Scott	Hon Derrick Tomlinson
Hon Peter Foss	Hon Murray Montgomery	Hon J.A. Scott	Hon Muriel Patterson *(Teller)*
Hon Ray Halligan	Hon N.F. Moore		

Noes (10)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Bob Thomas *(Teller)*
Hon Cheryl Davenport	Hon John Halden	Hon Tom Stephens	
Hon E.R.J. Dermer	Hon Tom Helm	Hon Ken Travers	

Pairs

Hon Bill Stretch	Hon Mark Nevill
Hon Dexter Davies	Hon J.A. Cowdell

Question thus passed.

Report

Resolutions reported and the report adopted.

TITLES VALIDATION AMENDMENT BILL

Second Reading

Resumed from 16 December.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [12.26 pm]: It is essential that the debate on this Bill and the Native Title (State Provisions) Bill be considered in a historical context - both long and short. The historical context in which Aboriginal issues have been debated regularly from the inception of the Parliament of Western Australia

is studded with references to the need for the Parliament to respond urgently within short time frames. I am a student of history and I have studied some of the history of Aboriginal issues, particularly their interface with this Parliament. I am conscious that this Parliament has regularly been faced with demands for special responses and measures to meet the rising challenge that Aboriginal people were considered to have been in the orderly management of this State. For instance, I am conscious of debates in this place in the 1890s and in the early part of this century that led to urgent demands for special powers and provisions to respond to the urgent needs of, first, the colony and then the State, to what were considered to be threats from Aboriginal people upon the rights and interests of the wider community.

In the early part of this century that led to what was called "the Queensland solution". Special powers were given to Aboriginal trackers who were brought in from Queensland to respond to the efforts of Aboriginal people to defend their country in the Kimberley and in other parts of this State. I have studied some of that debate and read with shame the arguments that were put in this House and in the other place.

Hon Derrick Tomlinson: Are you talking about the Native Protection Act?

Hon TOM STEPHENS: It was to set up powers for Aboriginal police aides or trackers -

Hon Derrick Tomlinson: I am trying to get it clear, because I have read some of the debates too, and I agree they were appalling, but I want to know to which debate you are referring.

Hon TOM STEPHENS: I am referring to the contribution that was made in 1918 by the then member for the Kimberley, who argued for special responses to what were then considered to be the assaults on the property rights of the pastoralists in that area, which led to special powers being given to the Aboriginal police aides of the time. Any member who sees what is implicit in that support for those urgent measures will treat with deep suspicion the repetition of that particular plea for urgency. More recently, many members of this Chamber were part of the process that saw the urgent need to pass the Land (Titles and Traditional Usage) Act in 1993. That process led to my expulsion from the Chamber as I tried to resist the demands that were placed upon us at that time, and to my lack of opportunity to participate in the second reading debate on that urgent matter that was subsequently enacted by this place but was eventually struck down by the High Court. It is useful to remember the history of this matter and to ask the Government: Why does this place need to deal with this legislation urgently?

I refer to an uncorrected copy of *Hansard* of 2 December on the Select Committee on Native Title, in which Hon Giz Watson asked Mr John Clarke, the consultant for the Government on native title issues, why the titles validation legislation needed to be passed before Christmas. Mr Clarke responded as follows -

> I think there is some sort of misunderstanding. The titles validation legislation is important because of the fact that we have just been talking about that potentially there are titles out there that are invalid and that the holders of those titles could find themselves involved in litigation if the legislation is not passed.

We are dealing here with the possibility of litigation - not with actual litigation - and that is the reason that Mr Clarke believes the passage of this legislation is urgent. It is important to put that issue to rest. The House is not faced with any evidence that litigation is afoot with regard to this matter that the Government has said is urgent. Therefore, I ask the Government again: Why does this place need to deal with this legislation urgently?

We need to recognise that the Aboriginal people of Western Australia have suffered in very large measure as a consequence of being displaced through European settlement, which has throughout its history wreaked enormous destruction upon the Aboriginal community. If we fail to acknowledge that reality, we fail to acknowledge that the Aboriginal community has effectively lost control of its traditional lands. Therefore, we cannot approach this Bill without seeking to repair some of that damage by restoring justice and equity within our land tenure system. The common law native title claims that have been made by Aboriginal people are an attempt to re-establish some direct control, influence and say over their lands, and to ensure that past and previous injustices are not perpetuated. It is important to recognise that the common law is a series of precedents that have been built up over centuries of court decisions, first in Great Britain, then in the courts of Australia, and then more widely in the Commonwealth. Common law is judicially-interpreted law based on the relevant circumstances, not judicially-made law. It is, therefore, highly inappropriate, particularly for members of Parliament, to criticise the courts as they carry out this function, because in many cases these court decisions are filling a void that has been left by the Parliament, either intentionally or otherwise. Members of Parliament need to set an example for the community by acknowledging that the courts play an essential role in our system of government. That system of government is based in part on the doctrine of the separation of powers. The courts form the third tier in our Westminster system of government; consequently, they play a vital role in our system of government and should not be attacked for carrying out that role. The Parliament has left it open to common law to determine the existence, or otherwise, of native title. The decision of the High Court in Mabo No 2 was that the notion of terra nullius did not apply at common law in Australia, because the indigenous inhabitants had possessed rights and interests in land prior to European settlement, and that a failure to recognise the injustice that had been experienced in no small measure by those indigenous inhabitants would lead to that injustice being perpetuated. However, common law claims are clearly not an ideal way to determine the question of native title. That is,

hopefully, self-evident when we look at the native title litigation that has taken place in this country. The Mabo, Wik and Miriuwung-Gajerrong cases have involved enormous time and expense and have resulted in decisions that have been very fact-specific and have not necessarily provided sufficient certainty about the principles that can be extrapolated across the board for other circumstances. The resolution of those cases has taken many years, and the recognition of the native title rights and interests of those claimants has been delayed while those claims for native title at common law have been dealt with in the courts. The two Mabo cases took about 10 years from go to whoa. The Miriuwung-Gajerrong case is not at the end of the legal process. It has reached the stage of a decision of one judge of the Federal Court with already the Government announcing its intention to appeal that determination.

This leads to the second question that I ask the Government to answer in its reply to this debate. There is an indication that the Government will want to appeal the Miriuwung-Gajerrong case and it is important for the Government to put on record precisely what it is about Justice Lee's determination that will be the subject of appeal, presumably to the full bench of the Federal Court, if not beyond to the High Court. It is only fair in the process of this debate, in view of the issues being considered in this Bill on titles validation and the included extinguishment provision, that we understand exactly what it is about the determination of Justice Lee that will be subject to appeal. I call on the Government to make clear the legal argument that will be pursued in the courts to overturn Justice Lee's determination. That is a fair thing for Parliament to request. I want the Leader of the House to reply with a clear and precise answer to that direct and specific question.

I mentioned to the House last night that I arrived in Western Australia 21 years ago and I came to work in WA for the Miriuwung-Gajerrong people. I was employed and recruited from Sydney to work with and for them. My experience of those people at that time involved me in the task of having to present their case for having the opportunity to experience the benefit of their land from which they were being at that time systematically removed by virtue of the expansion of the Ord River scheme and then the response of the pastoral industry to the changing circumstances of that industry.

In 1978 the Ord River review was conducted by Sir Norman Young. He was involved in a review to which the people of the Miriuwung-Gajerrong made a submission. They obtained my assistance and the support of a close friend of mine named Ben Ward but whose Aboriginal name is Gulmirr. Twenty-one years ago Gulmirr signed a very detailed submission to the Ord River review begging the federal and state governments of that time to respond to the land aspirations of his people. Sir Norman Young brought down his report with this remaining as an unprocessed submission. He recognised that he had come across the most detailed and heartfelt plea on the part of the Miriuwung-Gajerrong people, specifically the Miriuwung people, for a response to their needs for land. He did not have the capacity to process that submission and simply attached it as an appendix to a report without making any recommendations upon it.

It seemed to me inevitable that this issue would flow eventually into legislation to respond to those needs. That is why the Labor Party initiated the legislative response of 1984 in an attempt to produce a statutory resolution to the aspirations of Aboriginal people for land rights. When that failed in this place, it was an inevitable consequence that eventually this issue would find its way back into the courts until it was resolved; and so it has happened. I was one of those who predicted that this would be the eventual outcome of the failure of this place to produce legislative certainty on these questions.

There are considerable disadvantages about going down that path. I have had 21 years experience of the Miriuwung-Gajerrong claim. Those of us who served on the first Select Committee on Native Title Rights in Western Australia saw how long that process took in other jurisdictions in going down that path. For instance, I am thinking of the Nisga'a peoples of British Columbia. It took them 100 years from go to whoa before they finally got agreement with the peoples of British Columbia and the Federal Government of Canada. Economic and other projects in the interests of the State or nation can be delayed inevitably or, worse, destroyed by that type of response leaving these questions to be litigated out forever rather than being accommodated in another way. In reference to that point, I return briefly to the example of Miriuwung-Gajerrong. How refreshing indeed was the press release on this question that came the next day from Wesfarmers Limited on the decision of Justice Lee. It was a press release referred to in evidence that we received in the second Select Committee on Native Title. I think Mr Michael Barker QC quoted from *The Kimberley Echo*, a paper that I am not given to regularly wanting to quote from. I am probably the only member in this place that has had the responsibility of having to sue it in its earlier life. However, *The Kimberley Echo* reported fully the press release of Wesfarmers which, as the House will know, is the selected proponent for developing Ord stage two right across the areas of land that the Aboriginal people of the Miriuwung-Gajerrong families will be pursuing effectively in their second, not first, claim.

Wesfarmers said words to the effect that the company is not unnerved by the decision of Justice Lee. It had always intended, as it would still be expected to do now, to resolve its issues for the aspirations of the use of the indigenous lands by the Miriuwung-Gajerrong people to the north east of Kununurra by virtue of an indigenous land use agreement. If I am to rely upon the decision to issue that press release, that company has extremely good sense to embark upon that course of action. I appreciate that it seems to have enormous successes as a company and a corporation under the skilful leadership of Michael Chaney. He was not the person who signed the release; I think it was a Mr Hopkins. However, I commend the company for understanding the reality with which it is faced. I urge the Government to take the leadership that is being displayed by proponents from that industry, embrace that leadership, own it for themselves and chart us off on a new direction such as is being advocated by that company and by the report of our select committee.

Adopting a legislative approach to come in over the top of common law is clearly, as we are doing in this Bill, subject to many problems. Unless it is fair and reasonable, the injustices that have been recognised and remedied at common law will be replaced by a system taking a backward step. The ideal way in which native title and competing claims can be resolved is clearly by negotiation and agreement, either within or outside a legislative framework, ideally within one. I was pleased to have had the support of the other members of the select committee from both the non-government and the government sides of the House that recognise that important point. The Government members who participated in that committee and who have submitted the report to the House have effectively made an extremely valuable contribution to the future directions that these issues should take in all of our futures. I recommend that members, the Government and the wider community fully appreciate the significance of that report, its deliberations and recommendations.

The legislative response since the Mabo No 2 case has been pretty rapid. That is remarkable by any standard of Parliaments' handling of the common law. We saw the legislative responses of both the Federal Labor Government and the State coalition Government. It is worth comparing and contrasting the two legislative responses. In 1993 the State Government, when faced with the need to respond with legislation, did not accept the reality of native title or recognise the need to negotiate in good faith in pursuit of an agreement with the Federal Labor Government about its legislative response to native title issues. Instead it appeared intent on continuing to perpetuate the injustice against the indigenous people in Western Australia, who have seen a legislative continuum in this State from settlement until now. The Premier appeared to be more intent on playing politics, rather than tackling the realities and finding a solution to these questions.

In April 1993 the Premier was again quoted in *The Australian* as saying there was a need to protect the ownership of land threatened by the Mabo decision. He endorsed the comments of Mr Bill Hassell in *The West Australian* on 10 May 1995, when Mr Hassell - a very senior figure in the Liberal Party, a lawyer and a former member of this Parliament - said that the decision of the High Court of Australia was illegitimate, illogical and racist. How a decision of the High Court can be considered to be illegitimate defies logic. A decision of the High Court is inevitably legitimate. It is an interpretation of law and, therefore, is law. That is an elementary appreciation of the realities that we are all left with. To comprehend that is integral to our understanding of what we are on about within our democracy, within the working out of law, within this system we have embraced.

The State coalition Government then went on to pursue its legislative response which was found by the High Court to be racist and discriminatory. The Premier has said that he has the interests of all Western Australians at heart; but, in my view, there is no way any Western Australian - Aboriginal or non-Aboriginal - can look at the way this Premier has conducted himself in the handling of native title from 1993 until now and arrive at that same conclusion: By their work, we shall know them.

Hon Max Evans: You are very lucky the Premier has worked so hard to try to resolve it. That's more than you did.

Hon Bob Thomas: The traditional usage legislation was struck down by the High Court. I am glad he did all that work on my behalf and on behalf of the taxpayers. Thanks very much!

The PRESIDENT: Order! Given the length of that interjection, I wonder whether the member wants that to be counted as his speech.

Hon TOM STEPHENS: The point I was endeavouring to put was made by way of that interjection. The process unleashed by this Government has been the pursuit not of resolution, but of dispute, of uncertainty, of playing politics with this question and never bringing it to resolution. This Government's response was the 1993 land titles and traditional usage legislation, purporting to replace native title existing in Western Australia with the rights of traditional usage. These rights were to be limited and made subject to all other interests in land and could be extinguished by legislative or executive action. This Government was so desperate to get this shameful, notorious legislative response through this place - ultimately it was found to be unconstitutional - that all processes were unleashed at that time, including my unceremonious despatch from this place when I tried to argue against -

Hon Max Evans: You put on a stunt. It was a stunt and you would have wanted it. You would have cried if you had not been put out.

Hon TOM STEPHENS: I was thrown out. I asked the Government members not to do so, and they persevered to deprive me of the opportunity of contributing in that debate.

Hon Simon O'Brien: This was before my time here. Is there any chance of a rerun?

Hon TOM STEPHENS: Fortunately, those opposite no longer have the numbers to throw me out. In those circumstances, they will have to grin and bear it.

On 24 December 1993 the Keating Government passed its federal native title legislation. An essential feature of this legislation - one lacking from the current state native title Bills - is a recognition that it must contain a process that is sufficiently attractive to all parties, including the native title claimants. If such a process does not exist, claimants may chose

to use common law. This will not benefit any of the parties involved. If such a process of equity and fairness and attraction to all parties is not available, it is inevitable that another way of pursuing these issues will be embarked on and explored by the native title interests, and that will benefit no-one.

The Mabo decision took 10 years and we cannot afford myriad similar attempts to pursue native title interests across this State or this country. On many occasions the Premier has said that native title will affect this State more than any others. It is obvious, therefore, that one must arrive at a whole range of consequent conclusions, at which the Premier has yet to arrive and, hopefully at some early stage, government members will arrive before they get this State into deep trouble. Members opposite seem to overlook that, in many respects, the federal legislation of the Keating Labor Government was a minimalist approach to native title. The federal Native Title Act was agreed to by that Government after a process in which the indigenous people were effectively trading off what had happened in the past for a say about what would happen in the future. Indigenous peoples made very significant concessions in their substantive rights, in return for procedural rights which were contained within the original native title legislation.

This Act was to give certainty to all holders of post-European settlement titles by validating all titles, including those issued after 1975 that were inconsistent with the federal Racial Discrimination Act. These procedural rights were to include statutory procedures for the extinguishment of native title, simplified mechanisms for providing native title as well as, very importantly, a right to negotiate process. The opportunity for any success in the operation of the federal native title legislation was always going to face two hurdles. The first - I turn quite deliberately to face the area in this place where members of the minor parties sit - was the insertion of a provision in the federal legislation that reduced the threshold test to the point where that national legislation would never be workable. I have said previously that I know how that came about. There are many times when the Labor Party does things that may not be of the highest principle, but in this issue a practical resolution was needed, and at the federal level the Australian Democrats and the Greens (WA) could not rise to the challenge of recognising the need for a higher threshold test to make the federal legislation workable.

Sitting suspended from 1.00 to 2.00 pm

Hon TOM STEPHENS: With reference to the handling of earlier federal legislation in 1993, the Labor Government was stripped of the opportunity to work with the coalition parties to produce an equitable arrangement for this legislation. I was sharing the blame between the minor parties and the coalition parties for their failure to produce and deliver workable legislation for the entire Australian community. It was left to the Government to rely on the support of the Australian Democrats and the Greens at the federal level, and one of the results was the shockingly inadequate threshold test. The consequence of that was played out in Western Australia, especially in the goldfields.

I fully acknowledge that that issue was explored by the first select committee, and it reported on how complex the problem was in that area. In many ways the goldfields of Western Australia have displayed the unworkability of that aspect of the federal legislation. The goldfields of Western Australia, more than any other part of the country, have driven the need to change that threshold test. That matter is discussed in the first select committee report. The great tragedy in many ways is that the difficulties of the goldfields are largely quarantined to that area. In many ways its needs have driven the requirement for change that was not the experience of the rest of the country. That inadequate threshold test produced a very bad result and the need for change was effectively incontrovertible, and multiparty support was obtained for changes in that regard. It led to changes in the registration process, through the 10-point plan, and the National Native Title Tribunal now has the obligation to weed out unacceptable claims that do not adequately reflect the provisions of the amended Native Title Act for registrable claims.

However, other equally serious problems threatened the effective and orderly operation of that legislation. The refusal of the coalition parties to accept, in a bipartisan way, the need for inevitable integration of the reality of native title and to embody those principles in a workable system of law, has meant that the coalition parties at state and federal levels have been in pursuit of the politics of this issue. It has almost been a catchcry that if people vote for the coalition parties, they will provide the legislative change that will produce a system that is workable and provides certainty. Of course, there is a subtext to that catchcry; that is, that somehow or other the coalition will be able to knock this native title business back into a box and reduce the rights and benefits that would flow to the indigenous people of this country. It is a political pursuit of the impossible. It is from somewhere over the rainbow, pie in the sky, and the politics of image and illusion. It is mixed up with the politics of beads and mirrors, trinkets and baubles, which have characterised the coalition's response to the native title question.

The tragedy is that some sections of industry and the community have been misled into believing that the path being pursued by the Court Government, in particular, and the coalition parties at the federal level, leads somewhere. The reality is that it goes in only one direction; that is, downwards into frustrating despair for the entire community, not least of which are the indigenous interests. As a result, the native title system has been faced with that hurdle and challenge, whereby the stakeholders have not been prepared to accept the playing field on which they must work out this issue. As the state and federal coalitions have not accepted that playing field, a large section of the community has walked away from the playing field and will wait for the day when it is reconstructed and the parties get back to the resolution of native title issues. In

addition, the federal native title legislation has faced legal challenge after legal challenge to the power, authority and processes of the National Native Title Tribunal and the role and processes of the Federal Court when it has been involved in the hearing of applications for native title determination. Despite all this, slowly the process of native title has been moving into gear, against the odds, and in spite of the many hurdles put in its place. Quite clearly, the coalition parties have been trying to deliver legislative change, prove that the system did not work, to create the need for legislative change, and to portray the coalition as having delivered a workable system which was not otherwise on offer. It is illusory.

The National Native Title Tribunal, with the skilled chairmanship of Justice Robert French and his staff, and the increasing goodwill of the various parties and stakeholders in the native title issues, has started to produce results at last. That has been in spite of the coalition parties in government, and not because of them. Aided by the amendments to the federal legislation on native title, particularly with reference to the threshold test and the resolution of many of the issues of law through various court decisions, the logjam created artificially is starting to unravel. The first national audit of native title agreements since the introduction of the laws in 1993 has now been completed. The figures released by the tribunal in September show that more than 1 200 agreements have been struck between miners, pastoralists, different indigenous groups, industry bodies and Governments. This clearly indicates that where the parties are focused on achieving a practical resolution of the problems they face, they can resolve those problems, particularly if they are not faced with interference from Governments or the courts.

In my electorate I have seen the resolution of native title disputations deliberately frustrated by the intervention of coalition parties in government. They have endeavoured to move industry proponents away from resolution towards dispute as if the Government is more interested in dispute than the resolution of the issues in the best interests of the wider community. These agreements between the various proponents are the way to create the greatest certainty, to recognise and protect the native title rights of indigenous people and to protect the validly granted rights and interests of other parties. The National Native Title Tribunal audit figures reveal that 91 per cent of these agreements have been made in Western Australia. The State Government's embarrassingly futile constitutional challenge to the Native Title Act was aimed at trying to convince Western Australians that somehow or other Mabo and native title were simply a problem and a threat and that the State's legislation would provide a workable solution to the problem. The Premier identified this as "the problem of native title". The only problem with this contention for Premier Court is that seven High Court judges disagreed with him in their finding of 16 March 1995. As a result, the Land (Titles and Traditional Usage) Act was deemed to be inconsistent with the Racial Discrimination Act and, therefore, invalid. The judges found that the rights of traditional usage fell far short of the rights and entitlements conferred by native title, the enjoyment of which is protected by the Racial Discrimination Act. The court specifically stated that the shortfall is substantial. The court also held that the Native Title Act was a valid exercise of commonwealth power supported by the racial discrimination power and the federal Constitution. The decision recognised that the Court Government had denied indigenous interests equality before the law.

The High Court's decision cannot be dismissed - as this Government has been doing - as dealing only with minor technicalities by which the state legislation was deficient. This was a far reaching and significant blow to the structure of the previous legislation. The significance of the court's rejection of the State's argument is demonstrated by the court's award of costs without argument against the State. The Government's ideology has cost the taxpayers some $4m for this exercise, including the High Court challenge and establishing the Office of Traditional Land Usage. That is not the entire cost. The full cost can only be seen when one includes the money spent on the anti-Mabo advertising and polling conducted by this Government. We should also include the hidden costs of the other parties and interests in the legal challenge and through investment in the failed processes of the Office of Traditional Title and Land Usage legislation the Government put in place against legal advice. Under that legislation land tenures were cleared and then further land tenures, mining leases and tenements were granted. Other acts were approved under that process and it was all a futile and costly exercise on the part of Government and the other parties to that fraud.

Hon N.F. Moore: To that what?

Hon TOM STEPHENS: To that fraud.

Hon N.F. Moore: I thought you were trying to make a sensible speech.

Hon TOM STEPHENS: The Leader of the Government knows that I am endeavouring to make a succinct contribution to this debate.

Hon N.F. Moore: You are now in your third hour.

Hon TOM STEPHENS: I will speak briefly but as comprehensively as necessary to handle this legislation.

Sadly the Premier has shown that he is slow on the uptake with these issues. On 2 July this year *The West Australian* quoted the Premier as saying that his preferred position would be to start again with much simpler legislation but legislation which was not dissimilar to the traditional land usage legislation. Unfortunately, the courts have found that that will not do. We need to consider the background in dealing with this Bill. The Government has seen native title only as a threat or a

problem. It has never been able to embrace the concept of native title being a challenge and an opportunity. It has aimed to deal with the reality of native title as harshly and quickly as possible rather than seeing it as an opportunity to achieve equity in the Western Australian community. Since settlement that community has been deficient in handling the Aboriginal interests.

For that reason the Opposition is understandably wary about any legislation this Government puts forward to tackle native title issues. Inevitably we ask why this Government cannot approach native title like some sections of industry are tackling it. Their approach is shown by the agreements being struck between the parties which resolve disputes over the existence of native title. Given the complexity of the legislation and of the issue, it was unfortunate that the second reading speech of the Leader of the House effectively and comprehensively failed to explain the operations of the Bill and the context in which it has been introduced. The Leader of the House indicated in that speech that the basis for the Bill was the amendments made to the Native Title Act at the federal level. Members will be aware that those amendments were passed by the Senate on 8 July 1998 and the amended Act came into effect on 30 September. Amendments were necessary for a number of reasons. That need was recognised by all parties who recognised that the registration test was less than perfect. The registration test has been rectified and is currently working through the system of administration of native title and will resolve so many of the previously insurmountable problems. The problems of overlapping claims and the number of claimants are being brought to resolution through the registration processes. Other factors also necessitated change to the administration of the native title laws of this country. The High Court decision of 23 December 1993 in Wik held that pastoral leases do not necessarily extinguish native title and that the two interests can co-exist, with the former prevailing over the latter to the extent of any inconsistency. The ongoing administrative experience of the National Native Title Tribunal would, I imagine, have been described by some participants as nothing short of a nightmare because of the deficiencies of the earlier legislation.

A premise of the Bill before the House is that there is a need for certainty for people to whom titles have been issued in much the same way as was provided for in the original federal native title legislation. The Leader of the House has not put forward any argument to demonstrate that this Bill is essential to provide certainty to the thousands of individuals and developers who were granted titles in that period. That was specifically contradicted by Mr John Clarke, a witness before the Select Committee on Native Title. Government figures have indicated that approximately 10 000 interests were granted by the Office of Traditional Land Usage when it was in existence. To this point we have not been provided with any evidence of how many of these were not in accordance with the Native Title Act. The Bill is an acknowledgment that native title claimants are not the only innocent parties who have fallen victim to this Government's ineptitude. The Labor Opposition believes people who received titles in good faith are entitled to assume that those grants and interests are valid. Validation is needed so that those new title holders of various forms of tenure and rights are not in any way disadvantaged. Although indigenous people may justifiably consider that it is not an equitable result, the validation of the titles of innocent third parties would otherwise leave the way open for disputation. The Australian Labor Party does not wish to countenance that as a path down which this State must travel. Nonetheless, those indigenous interests will have the opportunity to pursue a claim for compensation in regard to their native title interests.

The question is left open as to how the State will handle validated titles issued on areas which this Bill cannot validate. It does not have the authority to handle titles issued in breach of the requirements of the federal native title future acts regime on vacant crown land, land over which only mining leases had previously been issued, and of course on reserves. The third question that I asked the Government quite specifically was whether it was proposing to reach agreements with indigenous Australians on those areas, or was it proposing to come back into this Parliament with yet another validation Bill concerning those areas. I saw one quote on this whole sequence of validation by validation that has occurred in this State Parliament. The accusation that this Government is converting members into something that approximates serial validators is a witty but nonetheless telling description of what members are being asked to do.

In its current form, the Titles Validation Amendment Bill does a number of things. Proposed part 2A, validation of intermediate period acts, validates potentially illegal acts undertaken during the intermediate period; that is, between the commencement of the Native Title Act on 1 January 1994 and the Wik High Court decision on 23 December 1996. The acts are potentially invalid due to the failure to comply with the native title future act processes. That includes legislation, the grants of tenure and the construction of public works. Entitlement to compensation is given to native title holders when validation of an intermediate period act is provided for.

Proposed part 2B, confirmation of past extinguishment of native title by certain valid or validated acts, provides for the extinguishment of native title by previous exclusive possession acts which are defined within the Native Title Act, and includes the grants of tenure and the construction of public works provided for under that legislation. Native title holders are entitled to compensation when their rights and interests are extinguished, but only in cases in which they were not otherwise extinguished.

Proposed part 2C, validation of future acts by agreement, provides for the validation of future acts, by agreement, that have already been done invalidly by the State. I commend that section of the legislation as a preferable part for use by the Government.

We need to understand the purposes of this legislation to deal with its consequences, as members are faced with legislation which is clearly controversial. In the first instance, it involves the validation of potentially unlawful acts, and it involves the extinguishment of native title on a range of interests by a statutory extinguishment. This is more than just simply validating intermediate period acts and confirming the common law extinguishment in the way that the legislation is currently drafted. It endeavours to extinguish native title via that schedule interest, as set out as a schedule to the federal native title legislation. This takes it from being simply a validation Bill to being an extinguishment Bill, which clearly endeavours to extinguish beyond that which is extinguished by virtue of the operation of common law. The title of the Bill, and to some extent the heading of proposed part 2B, are misnomers in that regard.

Any doubt that this second purpose exists is removed by the decision of Justice Lee in the claim by the Miriuwung-Gajerrong people over their traditional lands. That decision held that a number of the schedule interests which this Bill is trying to extinguish are not extinguished at common law. I am thinking particularly of the back sections of Justice Lee's decision in which he deals most specifically with the community purpose leases. Regularly throughout that judgment Justice Lee found that what is contained within the schedule to the native title legislation did not extinguish native title in the Miriuwung-Gajerrong people's determination area. The effect of extrapolating from that decision is that this Bill is aiming at extinguishing native title in circumstances where the common law does not. That obligates us to view this Bill in its historical context.

In passing, it is worth thinking about the case that was put to Justice Lee on behalf of the State of Western Australia. I think that was in October. Counsel for the State Government argued before Justice Lee that by virtue of the existence of this Titles Validation Amendment Bill before the State Parliament, somehow or other Justice Lee should stay his decision and not bring down judgment in the Miriuwung-Gajerrong matter. That was an extraordinary argument on this proposed legislation that was put to Justice Lee on behalf of the State. As members know, Justice Lee brought down his decision on 24 November, despite the arguments put before the Federal Court of Australia.

Under new section 12P of proposed part 2B of the Titles Validation Act, section 23J of the Native Title Act has been remodelled to provide for compensation, but only for extinguishment that will not occur outside of this Bill. In that regard, one cannot help but note that if this Bill were simply confirming extinguishment that had already taken place at common law, there would be no need for compensation. The fact that allowance is made for it clearly implies that the legislation is doing more than that which it is stated to be doing in the Government's modest claims concerning this legislation. The Bill has moved beyond just simply confirming extinguishment and is providing for statutory extinguishment. The Labor Party acknowledges that and then responds to what it believes is that invitation put before the Parliament.

The Government's advice has been that all the items in part 4 of schedule 1 to the Native Title Act were included on the basis that it was clear that they extinguished native title at common law. In the second select committee's report, members will see that contained within appendix A is the dialogue that occurred in the senate hearings on the question of the basis upon which that federal schedule was compiled to accommodate the land tenures within Western Australia. It is illustrative of the way in which some sections of the schedule have moved beyond the concept of confirming previous acts of exclusive possession. Particularly when one considers the Miriuwung-Gajerrong decision, one cannot accept that the Government is honestly saying that this is all that the legislation is doing. On its own test, one would think that the State Government would be encouraged to amend its Bill so as to put within it an opportunity for confirming extinguishment by statute only that which is the current position at common law. The Government might then say that it does not accept the Miriuwung-Gajerrong decision as the final word and that it will subject it to appeal. Another response that might arise from that, is why not wait until those appeals are successful, should they be successful, before proceeding to legislate in this way. That would provide more workability, certainty and probably less compensation liability for the State. If the decision is appealed to the High Court, as seems likely, it is worth keeping in mind that the record of this Government in appeals to the High Court is not good; it is woeful. Nonetheless, if by some quirk of fate the Government's position were upheld by the High Court, it would be open to the Government to then proceed with more confidence and for the Parliament to deal with the legislation with more certainty than is currently the case. If the Government is right - that is most unlikely - and the court upholds the Government's appeal, non-indigenous tenure holders will not be disadvantaged because their interests will prevail over the native title interests regardless of whether the Opposition's amendments are carried, and they will remain intact to later extinguish native title. If the Government is wrong - that is more likely the case - this Bill, if it is passed unamended, will have the effect of ensuring that native title rights will be extinguished where they have not been extinguished at common law before. This will ultimately be a fatal act for those native title interests to the extent the legislation is amended, insofar as we have succeeded in inadvertently including in the legislation any native title interests that might have otherwise survived what we think is the appropriate test for an act of past exclusive possession.

A further consequence of the Government's being wrong with this legislation is that it opens up to the taxpayers of not only Western Australia but also the nation the possibility of a massive compensation bill for the unnecessary extinguishment that is part of the legislation. The Premier has admitted that the Government cannot identify all the areas caught by the schedule, or what the possible compensation bill might be. The Government is yet to provide a copy of the written agreement relating to the compensation payment. I have seen some of the correspondence that has been exchanged, but there does not seem

to be a final agreement on compensation arrangements between the Commonwealth and State Governments. Such extensive compensation is completely unnecessary. The Bill could more appropriately provide certainty by legislating that non-indigenous interests prevail over indigenous interests, to the extent of any inconsistency, as proposed in the Opposition's amendment, which would significantly reduce the liability of the State to possible compensation payments. It is an act of an irresponsible Government to commit the State to unnecessary and overly large compensation payments without full knowledge of the Bill's financial implications, when certainty can be provided in an alternative manner, and to do so when the Government has neglected to provide proper funding in so many other areas.

The Bill is deficient in setting out how compensation for extinguishment of native title rights might be awarded. It is the Opposition's view that this area of the legislation cries out for amendment. Unfortunately, the Opposition has not yet found a way to amend the legislation to accommodate that crying need. I hope, even at this late stage, that the Government can come forward with some way to expedite the compensation procedures in this legislation. It is a tragedy that the Government has been unable to do that. This puts on display something that is missing from the Government's handling of the issue in contrast to the way it is being handled in Queensland and other parts of the country, where validation and extinguishment Bills have been passed. In Queensland in particular there has been a real commitment to embarking on the expedited compensation process, and significant emphasis has been placed on the indigenous land use agreements provisions. The problem for the Labor Opposition is that by virtue of the policy parameters of the Bill, this Government is not providing the Parliament with an opportunity to include expedited compensation procedures. I cannot devise a strategy which can improve the legislation in that regard. If anyone else has been able to find a way to get amendments up that will pass muster, I would love the opportunity to put the case to my party room to accept them.

The Bill is also deficient in setting out how compensation for extinguishment of native title rights might be awarded. That process should be fair, speedy and accessible. The process for claiming compensation is not adequately set out in this legislation by reference, simply, to the principles of the federal Native Title Act. No fast-track compensation procedures are in place and this is a deficiency. Individuals whose rights are impaired cannot be said to have access to compensation if that right is not clearly set out, if it is complex or overly complex, legalistic or potentially more costly than the value of the compensation being sought. The Government should commit itself to advise the Parliament each year on the amount of compensation it pays due to the requirement of this Act, together with associated costs such as legal costs, and the circumstances in which they occur.

The future-act consequences of the Bill need to be put into context, particularly in relation to the historical scheduled interests that are provided for within the federal Native Title Act which serve no purpose other than to frustrate native title claims. Despite the assertion of the Government in the other place to the contrary, the operations of the Native Title Act - specifically sections 62(1)(b)and 62(2) - require that a native title application must specify the information, whether by physical description or otherwise, that enables the boundaries of any areas within those boundaries that are not covered by the application to be identified. The State Government misunderstands the operation of this legislation if it thinks that that requirement is not being utilised by the Crown and others - the Government of Western Australia specifically - to argue for the striking down of claims in the native title process, insofar as they are deficient. The claims to the contrary by ministers in the other place are the opposite of the realities of the operations of the National Native Title Tribunal. Where an application covers areas included in the schedule of interests which would extinguish native title in the Bill's current form, it would not be sufficient for an application to have a generic exclusion of any areas that are scheduled interests. The native title claimants are required by statute to definitively define the areas over which their claims cannot be registered; yet the State Government's legislation is completely void of that delineation that is required of native title interests. Members should compare the resources of the two sides. All of the resources of government are available to the Government to dispute matters in the tribunal and registration processes. It has access to government archives and vast quantities of knowledge on its database about those areas of land over which historical tenure once existed. It can then apply that historical information to the tribunal processes to strike down claims that somehow or other include within them tenures that have, by virtue of their inclusion, applications over land where native title rights have been extinguished. That is a most unfair situation, particularly when in this legislation the Government is making no similar effort to define, delineate, put boundaries around, or produce maps to indicate over what areas we are extinguishing native title. I find that one of the most cruel aspects of the way this Government is operating with regard to this legislation.

The minister handling this legislation has stated that it would be wrong for the National Native Title Tribunal and the registration process to handle these matters in any other way; that is, that a generic exclusion could not apply. However, the Crown Solicitor's Office is doing that which the government minister in the other place has said is wrong, because that is the argument it has put regularly in the applications that go before the tribunal, and that is the argument that was put extensively in the submissions of crown counsel and the expensive Queen's Counsel who were employed on behalf of the Government in the Miriuwung-Gajerrong application. It is necessary for an application to particularise the areas, yet the Government has admitted that it cannot identify all of those interests. Therefore, how can it expect the native title applicants, with their scarce resources, to do that which it is not able, or refuses, to do itself?

An enormous amount of crown-origin tenure is not available for public search at the Land Titles Office. That creates a

significant problem. Consequently, any application that includes an area not identifiable by a normal title search over which native title has been extinguished risks not being registered. That creates substantial problems where a section 29 notice under the Native Title Act has been issued, because native title claimants have only four months in which to register if they want to be involved in the negotiations envisaged by a section 29 notice. This is extremely trying for native title applicants with limited resources, and it may mean that a claim that is lodged in response to the notice to ensure that their native title interests are not locked out unwittingly includes an historical scheduled interest that has no current effect at all, and that may for all intents and purposes look, feel and smell like vacant crown land, and for which no easily identifiable record of tenure is accessible. The proponents of the future act - the mining companies or the Government - may have far greater resources, including legal teams, to find an historical scheduled interest which may render the application invalid under section 62 of the Native Title Act. Even if the National Native Title Tribunal registers the claim, the mining companies may seek to strike out the application in the Federal Court, which will delay the registration period well beyond the four-month time limit, which does not stop running by virtue of the operations of this Act. The consequence would be that a native title claimant who had a legitimate native title interest in the relevant area would not be able to participate in the negotiation processes that would otherwise be available to that claimant; and even if the claim was ultimately registered, it would probably be too late for anything other than compensation as there would be no ability to restrict how or where the act was carried out, which might well be the crucial issue for the claimant.

One can assume only that the Government's intention is to refuse to remove the historical leases which have no current effect and which would be very difficult to otherwise discover, and that is to be paid for by the taxpayers. Also, it will deliver the opportunity for future acts, presumably by third parties, on land that for all intents and purposes would otherwise be assumed to be vacant crown land. If members opposite really subscribed to the view expressed by the minister who handled this legislation in the other place that such an effect would be clearly wrong, the course of action available to them would be to support the amendments that the Opposition has placed on the Supplementary Notice Paper.

I will conclude by referring to those amendments. We have proposed amendments to this Bill that will safeguard the interests of the entire community of Western Australia, both indigenous and non-indigenous, because both sets of interests will be exposed if this legislation is passed unamended. Our amendments will safeguard those interests in five ways. Firstly, they will confirm that acts extinguish native title where they do so at common law. Secondly, they will provide specifically for extinguishment of native title in areas where there is currently no common law position, but where it is considered highly likely that native title will have been extinguished at common law because the tenures involved most certainly grant exclusive possession. These include conditional purchase leases in agricultural areas or of cultivatable land, and perpetual leases for war service veterans.

I have been asked by some members how to best characterise what the Opposition's amendments are about. I will borrow the words of another and claim them as my own. The way of characterising the mini-schedule that we have put within our amendments is that it contains those previous acts of exclusive possession that are caught by the Hills hoist test. That is a reasonable way of summing up what we are on about - tangible, real, substantial tenure upon which residential interests, commercial interests and other interests that represent exclusive possession have been granted. We are proposing to ensure that those tangible interests are included within the exclusive possession category that justifies the extinguishment of native title and the operation of the compensation provisions. Thirdly, they will confirm that previous exclusive possession acts under section 23B(2)(a), (b) and (c), subparagraphs (ii) to (v), (vii) and (viii), extinguish native title, provided that any lease described was in force as at 23 December 1996, the date of the Wik decision; and limiting the definition of agricultural or pastoral leases so that they do not include any reference to the scheduled interests. Fourthly, they will confirm that in any other case, non-native title rights and interests prevail over native title rights and interests to the extent of any inconsistency. Fifthly, they will limit the extinguishment by public works to those that existed as at 23 December 1996 and only to the immediate area of the public work.

Advice by government legal officers that some of the amendments proposed by the Opposition to the native title Bills are unconstitutional has been received, has been duly noted and has been duly discounted by virtue of our assessment of their right to comment on our amendments. We have sought good advice, and we have obtained bad advice from some. That bad advice has come from government quarters. That is the advice upon which this Government has relied in its pursuit of failed constitutional challenges to its legislation in this area. We are confident of our advice, and we have no similar confidence in their advice, which has been put to us, we assume in good faith, but which nonetheless we have heard and discounted on the basis of the effect of the whole chain of advice which has led the Government to this point. We are amazed that the Government would suggest with a straight face that we should take on board its view of the world.

That advice has in many ways been self-serving, because it has delivered back to many legal practitioners in this State further legal work that has led this State nowhere. That advice said that the Government's Land (Titles and Traditional Usage) Act was constitutional and valid. However, the Government's arguments, which were put most eloquently, and certainly most expensively, to the High Court, were knocked out in a 7:0 decision. That is rare in constitutional cases and it is rare for such a decision to be unanimous. It is inconsistent with the federal Native Title and Racial Discrimination Acts. It is a clear indication that it was not only unconstitutional but also racist. This Government challenged the federal Native Title Act as

being unconstitutional and its argument was knocked down 7:0 by the High Court's decision. This same Government, relying on many of the same legal advisers, tried to persuade Justice Lee that the Miriuwung-Gajerrong case should be held off due, in part, to the introduction of this Bill. However, His Honour discounted that same legal advice that we are being expected to rely upon in making decisions on our amendments. The Government argued before Justice Lee that the claim of the Miriuwung-Gajerrong peoples should fail and that their native title should not be recognised over the areas that they were claiming it existed. His Honour, clearly applying principles laid down in the majority judgments in Mabo and Wik, found that native title did exist.

Whose advice should we be relying upon? Not this Government's; certainly not this Government's view of the world. This Government's advice has led it into making extraordinary breaches of the requirements of legislation that now governs this field and it has fallen foul of the courts. This State Government wanted the Opposition to pass its Native Title (State Provisions) Bill unamended, despite us making clear to the Government that the Bill contained serious deficiencies that had not been addressed. We pointed out to the Government that it did not satisfy the minimum requirements set down by the federal native title legislation. The Australian Labor Party argued in another place that the Government would need to introduce amendments to accommodate the concerns that it had highlighted. The Government introduced more than 40 amendments to that legislation, some of which adopted the Opposition's suggestions. We are yet to receive an answer from the State Government on whether it has accommodated all of the concerns expressed by the Federal Government about the legislation's deficiencies.

Given all these adverse decisions made against the Government in its pursuit of the arguments advanced by it and its advisers, we ask: How much of the public purse has this Government wasted in the pursuit of misguided, inequitable, unfair and unworkable alternatives to the orderly working out of the native title issue? The Government is now saying it has legal advice that the Opposition's amendments are unconstitutional and would be knocked out as being inconsistent with the federal Act. From the opposition benches we ask: Why should we have regard for such shonky, self-serving legal advice?

In a briefing provided to the Opposition, the Attorney General said that his normal approach to passing legislation that is possibly inconsistent under section 109 of the Commonwealth Constitution is to pass it and see whether it is challenged; that this is an approach which any States' righter member of the Western Australian Parliament no doubt would endorse; and that it is one that asserts the authority of the Parliament to deal with this State's land as it considers appropriate without kowtowing to Canberra. We will take some of those leaves out of the book of that advocate for the rights and entitlements of this Parliament. The Attorney General said that it was inappropriate to adopt this approach on the Native Title (State Provisions) Bill as the commonwealth minister could refuse to approve the whole Bill because of an inconsistency. Leaving aside that argument, presumably he will be advocating to his colleagues that the approach advocated by the Opposition on this Bill is a correct one.

I want to leave on notice in this debate some outstanding questions to the Government to which I would appreciate answers before this legislation is brought to resolution. Have any of the interests issued by this Government in the intermediate period yet been legally challenged? If yes, how many and what has been the outcome? If not, can the minister answer my very first question: What is the urgency of passing this Bill? How many projects important to the State's economy have been threatened in any way by legal action causing the need for validation of the titles on which these projects are being undertaken, and which ones? How many projects have titles which are subject to imminent legal challenge? Is the minister aware of the comment by John Clarke, to which I referred, that this legislation is being misunderstood as the urgent Bill? Does he concur with that view? If not, why not, and what is the urgency upon which we are relying? Is it not true to say that the urgency for this Bill no longer exists because of the unsuccessful attempts by the Government to argue before Justice Lee in the Miriuwung-Gajerrong case? Is it not true to say that there is an argument that suggests that the broad ambitions for this Bill should be diminished now that Justice Lee's decision has been made?

Minister Prince said in 1995 that the processes, consultation and effort expended were to ensure that no invalid titles were issued. In the light of the apparent lack of urgency and certainty that no invalid titles were issued in relation to earlier legislation, why does the Government not adopt the approach suggested by the Opposition that it gazette all the titles to be validated and allow a period for objection? Those titles can be validated after that time, in the vast majority of cases, and the Government can have a clear conscience for a clean process in potential application of the compensation provisions of this legislation. Section 29 of the Native Title Act provides for a process when native title interests are not known in a particular area. Why cannot the same process be used for the validation of past intermediate period acts just as for future acts? I ask the Leader of the House: Can any legislation that is found to be constitutionally invalid really be regarded as good legislation? That is the case that has been put for the previous legislation by the Premier of this State.

There are underlying land tenure questions about the seven special projects with which the Government is faced. The information that the Government provided on these projects in the debate in the other place indicates that it is relying in some cases on historic tenures as the basis for proceeding in violation of the Act. We are left asking: Is it not the case that the 1993 Native Title Act in force at the time in question did not allow for any such distinction and that such land was vacant crown land under the 1993 Act? If that is so, the Government, by not complying with the Native Title Act, was acting illegally at that time. In the Opposition's view this is a deliberate flouting of the law. I would like to find a government

minister who is prepared to acknowledge that incontrovertible fact. The historic-tenures defence has been concocted after the event only to argue a defence for the Government. Arguably, this flouting of the law has rendered the indemnities provided to these tenures void and unenforceable. Does the Government not yet concede that some of the interests are on vacant crown land and therefore can be validated only by an indigenous land use agreement? Is it not the case that by its very nature an ILUA requires agreement from the native title claimants? Is it not also the case that the lack of good faith on the part of the Government in dealing with the process in this area means that obtaining agreement with indigenous people is something that the Government has, in part, placed at risk? Is it not time that the Government conceded that by its own actions it is creating uncertainty for the very projects for which it purports to be embarking upon the process of establishing certainty? We are left asking: How will tenures on land not covered by this Bill be validated? Will it be by further legislative initiative on the part of this Government, merely by using ILUAs or another yet unidentified means? I hope that the Government will respond with a clear outline of strategies and policies on how it will achieve those ends.

Who will pay for any compensation found to be payable? Can the Government guarantee that the gas pipeline laterals were not laid over vacant crown land anywhere? Are these not a form of vacant crown land, particularly the nature reserve, as only the State has an interest in it? Keeping in mind the decision of Justice Lee about reserves, is the Government now left with doubts as to its actions in this regard? Are these the types of tenure that can be validated by this Bill? The answer I would give to those questions preliminarily is no. I am interested to see whether the Government has a different view. What other method of validation can be used in reference to the pipelines? Is there a need for those pipelines to be the subject of indigenous land use agreements; if so, what steps will the Government be taking to achieve this and improve the relationship between the native title interests for those lands covered by the pipelines? Is the Government contemplating using further legislation to validate these grants; if so, under what provisions of the Native Title Act?

I refer to the Broken Hill Proprietary Co Ltd direct reduced iron plant. According to the debate in another place and some material presented to the second select committee, BHP undertook extensive historical, land tenure searches and advised that it was confident no native title existed over the land in questions. It does not answer the question of what is the underlying land tenure upon which the Government and the company has arrived at conclusion. We are left to ask whether the underlying land tenure was not stated because it is vacant crown land. If it is, we must ask all the same question about the BHP direct reduced iron plant for which certainty and workability is most necessary. The indigenous land use agreements are looking like an absolutely essential route to gain the certainty that is necessary for that company and the State. Yet by embarking upon these strategies, inflaming the situation so far as the indigenous parties are concerned, what is the prospect of arriving at an amicable resolution of those questions?

I now turn to Consolidated Gold NL. Is it correct that existing gold mining leases are not a form of tenure which this Bill can validate? If that is the case, how, and pursuant to what provisions of the Bill and the Native Title Act? Where is a mining lease referred to as an intermediate period act over which this Bill can validate title? What was the land tenure underlying the mining leases? The answer would appear to indicate that it was probably vacant crown land which also cannot be validated by this Bill. If this is correct, how is the Government planning on validating this project? Will there be a need for an indigenous land use agreement for this project; if so, what steps is the Government taking, or will it take, to achieve this and improve its relationship with native title parties? Is the Government contemplating using further legislation to validate these grants; if so, under what provisions of the Act?

I refer to the Golden Web project. Do these leases currently exist, or has the underlying land tenure - the pastoral leases issued between December 1932 and 25 January 1935, without reservation for Aboriginal access - expired? The leases were adjacent to an existing open-pit mine. I cannot help but wonder what is meant by the notion of an exclusive pastoral lease. The minister representing the Minister for Lands said that there is no such thing. Although these underlying tenures might have had no reservation for Aboriginal access, because of their dates between December 1932 and January 1935, surely the Government can see the problem of relying on the concept of extinguishing native title as those pastoral leases somehow were acts of previous exclusive possession. Can this form of pastoral lease be included in this Bill; if so, what provision of the Native Title Act permits this? I certainly cannot find one. If some or all of them have expired and they are some form of vacant crown land, we are left to ask whether the pastoral leases issued more than 60 years ago could have the effect of extinguishing native title forever. Is that seriously the contention of this Government? In regard to the goldfields gas pipeline lateral connection, can this Bill validate a grant over a pastoral lease and, in the process, extinguish native title; if not, how will this tenure be validated? The questions asked about the Consolidated Gold proposal also apply to this gas pipeline project.

I note that the Minister for Police who handled some of this debate in another place was reported in the media as saying that he carefully researched whether there could be any adverse effect on any native title and concluded that there was not; otherwise the Government would not have proceeded. How does he reconcile that statement, particularly in light of the Miriuwung-Gajerrong decision which found that native title does exist at common law over some schedule interests. We must square that with the goldfields gas pipeline, the Consolidated Gold and the Golden Web projects, and the BHP direct reduced iron plant. There is a need for agreements where there is evidence of native title interests surviving.

In the BHP project, the lessee informed the minister that anthropologists commissioned by it had taken archeological,

anthropological and ethnographic investigations of the subject land, which did not indicate the existence of native title. I still ask why the Government did not carry out an independent check on the existence of native title in that land. What is the basis for the Government saying there would be no adverse effect on any native title, and had there been, it could not have proceeded? There is a conflict of interest with the mining company checking whether native title interests existed on the land, the subject of this project. Why did the Government not undertake independent additional checks? Did the Government see the reports and subject them to independent verification; if not, why not? The minister has relied on these investigations. I ask him whether he is prepared to table those reports and, if not, why not?

Can only the Federal Court and the National Native Title Tribunal determine whether native title exists over the land in question? Why has the Government been prepared to rely on the reports prepared for BHP? Is it possible that the State can be accused of recklessness, or of being wilfully blind to the possibility that native title existed over the land by not carrying out its own checks or not utilising the existing federal procedures for determining the existence of native title? In this case, it is possible that the company could argue that it could show the indemnity was not accepted by the Government in good faith and, therefore, it is not possible to rely upon it.

I will ask a whole series of questions in the committee stage, and will seek a response from the Government in due course. I would like a number of additional questions answered before the passage of this legislation. I ask the Government to recognise the need to minimise the exposure of this State to the reckless risks that it is embarking upon by the passage of this legislation, unamended, both in terms of the compensation bill with which the State could be faced and also the amount of bad will it would generate among native interests by mass extinguishment, particularly in view of the need to ensure development opportunities and future acts - for that matter, some of the past acts - can be accommodated by agreement. How can the State Government expect to broker the much-needed agreements that are required across this State if it embarks recklessly on this path? For all those reasons, I hope the Government will see that the alternative strategy outlined by the Labor Opposition, both in this place and the other, is worth embracing to deliver some real prospect of certainty, some better prospect of equity, and some limited form of justice for the indigenous peoples within this State. For all those reasons, I hope the Government - even at this late stage - will be prepared to embrace the amendments of the Labor Opposition enthusiastically.

Debate adjourned until a later stage, on motion by Hon Derrick Tomlinson.

[Continued on page 5327.]

SITTINGS OF THE HOUSE

Thursday, 17 December

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [3.10 pm]: I move -

> That the House continue to sit until 12 midnight.

I seek some additional time to deal with this important legislation. For some little time I have been asking for the House to agree to sit additional hours, and I understand there is some support from the Labor Party at least to sit until midnight tonight. I also indicate that at midnight, assuming that is when today's sitting will be completed, I will move that the House adjourn until tomorrow to sit from 10.00 am to about 3.45 pm, which is the normal afternoon tea adjournment. That would allow staff in Parliament House to attend the staff Christmas function, which is only fair at this time. I hope the additional period tonight and tomorrow will result in significant progress in the legislative program still on the Notice Paper.

HON HELEN HODGSON (North Metropolitan) [3.11 pm]: The Australian Democrats will oppose this motion. I appreciate that some comments are being made about the fact that this House has not yet been able to finalise the legislative program for this year, and I appreciate that it is getting close to Christmas. At the same time, this House has been sitting for nine of the past 10 weeks. It has been a very long haul. In that time this House has dealt with the Commercial Tenancy (Retail Shops) Agreements Amendment Bill, the School Education Bill, the Workers' Compensation and Rehabilitation Amendment Bill, the Gas Pipeline Access (Western Australia) Bill, the Local Government Amendment Bill (No 2), the revenue laws Bills, the Surveillance Devices Bill, and the Health Amendment Bill, not to mention a number of relatively small matters which proceeded without much debate. In that time the sittings have been limited in this place to Tuesday mid-afternoon through to Thursday evening, which means any research or other work must be done after 10.00 pm when the House rises or on Friday or Monday. The Democrats raised this issue some weeks ago with the Leader of the House and said that in order to keep up with the legislative workload, we needed to know where we stood and the order of business in order to organise our workload. We thank the Leader of the House for the steps he took, and so far that has been reasonably successful, with a couple of minor hiccups, because there has been cooperation and goodwill with the order of business on the Notice Paper.

At this stage, members must ask themselves whether this is really urgent and whether it must be done before the end of the year. We are currently debating the Titles Validation Amendment Bill which will validate titles for past acts. Those acts have already been committed. What difference does it make whether it is decided today, in February or in March? The Bill

also relates to intermediate period acts which have already occurred. Why must the validation be determined before Christmas? A further Bill on the list is the Native Title (State Provisions) Bill. The National Native Title Tribunal is operating in accordance with the Wik decision and legislation, and it is currently introducing new procedures.

The PRESIDENT: Order! I understand the general tenor of the member's comments. However, this debate is not about native title validation or the state commission; we are trying to determine whether the House should sit until midnight.

Hon HELEN HODGSON: The degree of urgency suggested by the request to sit not only until midnight, but also to come back at 10 o'clock tomorrow morning, and next week and the week after, is not justified. I remind members of what happens when we get overtired and cranky, as we all do. I remind people of what happened in this place on 1 December, without in any way reflecting on a vote taken in this Chamber. At two o'clock in the morning a chain of events resulted in matters needing to be reconsidered by this House, because members were tired and cranky and not in a fit state to give the matters due consideration. This has been agreed to by the Government and the Labor Opposition to prevent proper scrutiny and examination of these Bills. One of those Bills has been in this place for only 18 days, and the others have been here for not much longer. They are not so urgent that members must put themselves through this ordeal to determine them before the House rises for the Christmas break.

HON GIZ WATSON (North Metropolitan) [3.15 pm]: I also oppose this motion.

Hon N.F. Moore: If you will talk about it until midnight, I will withdraw the motion.

Hon GIZ WATSON: It is fair and reasonable that I have a chance to put the Greens' position. I cannot agree with this proposal. It is unreasonable, for the reasons Hon Helen Hodgson has given. The Greens (WA) do not accept that these native title Bills are urgent. I have heard no argument that illustrates that these matters cannot be delayed until next year. Therefore, I do not support the move to sit unreasonably long hours. Also, the House has sat excessive hours to date. I am not one to refuse to work hard for long hours, but there must be a good reason for it. No such reason has been provided.

I also place on the record my disappointment in the Labor Party for concurring with the Government's request to push this legislation through before Christmas, and I will not support the proposal to sit late.

HON CHRISTINE SHARP (South West) [3.17 pm]: The motion moved by the leader of the Government in this place raises two big issues. The first big issue is that, although we all agree that the native title Bills are important, the Greens totally disagree with the proposition, and no evidence has been given to support it, that these Bills are urgent.

The second big issue is the wellbeing, health and self-respect of members of this Parliament. As a new member of Parliament I find the hours and conditions in which members are expected to work and make decent, long-term and wise decisions on behalf of the people of Western Australia, extraordinary. Members work in the same conditions and hours that they legislate against for other workers. Why do members inflict upon themselves conditions under which it is impossible for them to think clearly and wholesomely, without frayed tempers, because of the long hours they work? It is particularly true for the Greens (WA) and the Australian Democrats because there are not many members of those parties in this place and those few members must handle an extraordinarily heavy workload. We do our utmost to keep on the ball and to not hold up legislation. I do not think the Government can point to a single example of the minor parties holding up the legislative program because they have not managed to keep up with events. The members of the minor parties have kept up and have done a terrific job but, on the basis of our self-respect, our health and wellbeing and respect for the decisions of this place and the importance of native title, it is appalling that we should be expected to sit for longer hours. This House has already sat for an additional two weeks after the end of the sitting program, and in this third extra week members are talking about sitting a further week. The House has already sat earlier on some sitting days, and the Government is now asking us to sit until later in the day. It is totally inhumane.

HON NORM KELLY (East Metropolitan) [3.19 pm]: I apologise for my delay in rising to speak in this debate. I was expecting members of the Australian Labor Party to speak, but obviously their silence is indication enough. This is extremely unfair not only on members of this House but also, and more importantly, on the Parliament House staff who have to endure these extended hours. Given the uncertainty about sitting hours and days, they are unable to make any personal plans. We were expecting to finish at 6.00 tonight, but at 3.20 pm we are talking about sitting until midnight. I am not doubting the importance of the Bills we are debating, but when making these decisions it is selfish of the Leader of the House not to take into consideration the lives of people who work in this place. These decisions are made off-the-bat with just a couple of hours' warning. At least he has given us some indication of his intentions for tomorrow, but I would like to hear what his plans are for next week.

Hon Simon O'Brien: You can have Friday off next week.

Hon NORM KELLY: It is reassuring to hear that from at least one government member. I would be happy to hear through interjection what the Leader of the House has planned for next week.

Hon N.F. Moore: You know interjections are out of order.

Hon NORM KELLY: Oh, they are out of order now! Sorry about that.

Hon N.F. Moore: I have been trying to sit a bit earlier this week to make some progress and you keep knocking me back. I will try again next Tuesday.

Hon NORM KELLY: There have been times in the past when we have been willing to sit earlier but have been told that others must have their coalition party room and caucus meetings.

Hon N.F. Moore: That is normally the case on Tuesday, but not at the moment.

Hon NORM KELLY: This is an unprofessional way of conducting business in this House. It shows a total lack of consideration for the people who work in this place - in the Chamber and within the parameters of Parliament House.

Hon Ray Halligan: Welcome to politics.

Hon NORM KELLY: I am happy to sit as long as we need to but I have some consideration for the people who work here. That interjection demonstrates a contemptible attitude. Hon Ray Halligan's comments show a callous disregard for the people who work here.

Hon N.F. Moore: With all due respect, I have taken into account their circumstances and discussed the matter.

Hon NORM KELLY: That is why they are here at the moment uncertain about whether they will be here tonight.

Hon N.F. Moore: That is why I would like you to make a decision. If you do not want to do it, just vote against the motion. You could save a lot of time by not talking. Let's just have a vote.

Hon NORM KELLY: It is important to put our point of view on the record and justify why we will vote the way we will. It is possible that we will be handling the Health Amendment Bill again next week. I have organised meetings for tomorrow to facilitate the speedy passage of that Bill next week but I can change those meetings. However, the continual last-minute negotiations about sitting hours and these deals done behind the Chair with the Australian Labor Party with their mute agreement -

Hon N.F. Moore: I told the management committee last Thursday that I would be moving to sit beyond the normal hours whenever I had the opportunity, and your leader knows that.

Hon NORM KELLY: I know that, but other people work in this place and they need to be considered along with the members. For those reasons, I oppose the motion.

Question put and a division taken with the following result -

Ayes (25)

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

Noes (5)

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

Question thus passed.

TITLES VALIDATION AMENDMENT BILL

Second Reading

Resumed from an earlier stage of the sitting.

HON GIZ WATSON (North Metropolitan) [3.27 pm]: I consider this to be an extremely important piece of legislation. I feel inadequate to speak on this matter in a sufficiently informed manner given that it is a contentious and complicated subject. I am acutely aware that we do not have members of the indigenous community in this Chamber to represent their own position and that is unfortunate. On matters to do with native title and indigenous people's aspirations to their full rights, including their rights to land in this country, the Greens (WA) have always stood resolute in support of those aspirations and will continue to do so with these Bills.

One of the strongest measures of democracy is how well we protect our minorities. The history of European and Aboriginal interaction in this country is one of shame and dispossession. Europeans have consistently chosen to dispossess Aboriginal people of what is rightfully theirs.

Initially I wish to speak about the historical context of these Bills that the House is debating. At the time of European settlement, or invasion, depending on which word one prefers to use, approximately half a million Aboriginal people were living in relative harmony in this country according to their laws and traditions. During the progress of European settlement and movement out into the country, at least 20 000 Aboriginal people were killed. The majority of those Aboriginal people were murdered. That is the history which we in this country have inherited. It is not an honourable record. It is important that members acknowledge what we are dealing with today in the context of that history.

Members should make no pretence about the fact that the first of the three Bills with which we are dealing is a Bill to further dispossess Aboriginal people of their land. That is merely a continuation of the practices of previous Governments. Indeed, it is a continuation of the process of displacing Aboriginal people and of removing them from what is legitimately theirs; that is, their right to live on the land as they have done for thousands of years.

We are dealing with a very difficult situation. When dealing with the history of the interaction of cultures, when one nation settles or invades another, we see that one of three things may happen: The prior possessors of those lands may have war declared against them, and if they lose that war they are legally dispossessed of those lands; they may enter into a process of negotiation and treaty, as has happened to a large extent in America - land has been ceded by treaty; or the land may be purchased from them. Those are three ways in which one group of people can have their land taken away from them, or they can cede their rights to those lands. None of those things has happened in Australia. As a European culture, we have not entered into any of those options when dealing with the legitimate rights of the original inhabitants of this continent. Aboriginal people have never ceded their land and they have never agreed to a treaty. Therefore, what we are confronted with is the need to deal with the ongoing legal rights of Aboriginal people. What we are choosing to do by adopting the propositions in this Bill is, by an act of Parliament, to take the land away from those people. We are facing that unpalatable reality.

Recent history has witnessed the sequence of events relating to Mabo and the legislative response - a response which was acknowledged in the earlier speech of Hon Tom Stephens. The legislative response in the form of the Native Title Act was a huge compromise and a huge gesture on behalf of Aboriginal people to trade off their past rights for rights to have a say in future acts on their lands. Since then, there have been concerted efforts at both state and federal levels to further erode those conditions which were developed under the Native Title Act. Therefore, as decision makers, what is our obligation? I sincerely say to members that when making decisions on matters that affect people's rights, we need to be very clear that we are taking all aspects into consideration. The argument to date on these Bills has been very much about unworkability, uncertainty, and dire consequences if we do not pass these Bills quickly. There has been little debate about matters of principle and justice, which must also be considered by members in this place. I sincerely believe that all members here are reasonable people who are capable of understanding that this Bill is about much more than just getting on with business, which is the way in which this whole debate has been presented in the public arena. As decision makers, we have a duty to consider those matters of principle and justice. It has been difficult in this debate to do that, because the matter with which we are dealing is complicated. In a purely legal sense, it is incredibly difficult to understand the full impact of the Titles Validation Amendment Bill and the Native Title (State Provisions) Bill, which will soon be debated.

This House should look at the example of the Canadian model. I, along with several other members from this place, was fortunate to be on the Select Committee on Native Title Rights in Western Australia, which visited Canada and had the opportunity to see how things can be done differently. One thing that is worth raising is that the approach taken there has been based fundamentally on a set of principles. I will mention some of those principles. I am sure they will be raised later during the committee stage. However, the approach in Canada was to consider a model which would achieve certainty about rights for all. We hear a lot of rhetoric about certainty and workability. All the certainty seems to be on the side of the pastoralists and miners; there is no certainty for Aboriginal people.

I refer to appendix E of the second report of the Select Committee on Native Title. In the minority report which appears in appendix E, Hon Helen Hodgson and I alluded to a number of principles which we considered were essential to put this legislation into a holistic context. The appendix, in part, states -

> These principles must balance the following objectives:
>
> . fairness, equity, mutual respect and recognition of rights
>
> . upholding the honour of the Crown
>
> . certainty with respect to land and resource rights for Aboriginal people and other Australians
>
> . preservation and encouragement of economic development possibilities for all Australians

. acceptability to Aboriginal people, governments and other parties potentially affected efficient and accelerated settlement of comprehensive claims, thereby lowering negotiation costs for Aboriginal people and government

. consistency with the historic situation legally

As a member of a select committee comprising members from all parties, my experience in the lengthy debates we had to resolve matters of native title was of a general acceptance that those principles had to underlie any decisions on native title. However, it seems that when members debate the legislation those principles, once again, will be ignored. The main argument put in support of the need for the Titles Validation Amendment Bill is that the mining industry in this State has all but ground to a halt as a result of the pressures of native title.

[Quorum formed.]

Hon GIZ WATSON: The catchcry in this debate has been that the state of the mining industry in particular is dire as a result of native title issues. I would like to put a contrary position; that is, the situation in the mining industry is much more a result of globalisation in the marketplace than of native title issues. I refer to a document titled "Native Title, Mining and Mineral Exploration" by Ian Manning of the National Institute of Economic and Industry Research, in which he points out that, contrary to industry claims, there is very little evidence of depressed exploration activity in Australia following the historic Mabo native title ruling in 1992. He states that mineral exploration expenditures revived in 1993 after a lull during the recession of the early 1990s, and since then expenditures have been running at levels to rival the boom of the late 1980s. He also states -

> Western Australia is the most important State for mining in Australia.

I do not dispute that for a moment. It continues -

> It also claims to be the State most affected by native title. This report examines the experience in Western Australia. Of interest is that:
>
> . As much as 95% of notices issued under the NTA for exploration licences have been granted without objection from native title claimants.
>
> . The Australian Bureau of Statistics reports that mineral exploration expenditure rose by $11.9m, to $188.2m, in the June quarter 1997, more than any other state or territory.

I am aware, through the processes of the Select Committee on Native Title Rights in Western Australia, from evidence given by mining companies and from Aboriginal representative groups, that there is much conjecture about the statistics on mining in this State. I will talk a little about mining, because it has been the linchpin of the justification for this legislation. The matter of assessing what factors have influenced the level of exploration, and companies moving from greenfield exploration and focusing on brownfield mining, is open to conjecture. I have read reports presenting both sides of these arguments. Again I refer to Ian Manning on this matter, because I found that his paper went into this issue in detail. He states -

> Using econometric and other research methods, the paper concludes that:
>
> . The Mabo decision and the NTA have not prevented a high level of activity in mining and mineral exploration -

Sitting suspended from 3.45 to 4.00 pm

[Questions without notice taken.]

Hon GIZ WATSON: I have been discussing the conjecture that these native title Bills are necessary because the mining industry in this State is being severely impacted upon by native title claims, and I have been referring to a document entitled "Native Title, Mining and Mineral Exploration" by Ian Manning. That document concludes that -

> The Mabo decision and the NTA have not prevented a high level of activity in mining and mineral exploration in Australia in the years 1993 to date.
>
> The Mabo decision and the NTA are unrelated to the trend to brownfields exploration.
>
> The trend to overseas exploration has been exaggerated, and Mabo and the NTA are in any case minor factors contributing to this trend.
>
> The NTA has not seriously delayed exploration, but there is evidence of delays to mining projects. . .

One of the witnesses who appeared before the Select Committee on Native Title last week made an interesting contribution by explaining and justifying the assertion that exploration has moved overseas. However, the witness mentioned within her submission that companies have sought to leave Australia because the environmental restrictions are such that they find it

easier to conduct their operations in other countries - I suggest countries which have much less careful management of their environment. I argue that that is also the case with regard to native title. Companies that are not willing to take full responsibility for adhering to strict environmental management and for adhering to the justice of dealing with Aboriginal people may well go to other countries that do not provide adequate protection for their environment and for their indigenous people. That is an indictment of those companies. It is very obvious that there is a parallel within the mineral extraction industry, because when the State introduced legislation to protect the environment, many companies said, "This is shocking. We will have to pay more. It will delay our operations." The same arguments are now being made about the native title process. My response is that it is a shocking state of affairs if mining companies are not prepared to adequately protect the rights of Aboriginal people and to allow the traditional owners of the land upon which mining operations are taking place to have their say.

The Select Committee on Native Title Rights in Western Australia heard evidence in Canada that companies have come to terms with doing business with indigenous people and are working cooperatively with them in negotiating outcomes that are win-win situations for the traditional landowners, the companies and indeed the whole economy of Canada. In Western Australia we seem to have an extraordinary resistance to facing up to the legal reality of native title.

A Coopers and Lybrand survey dated December 1998 notes that the mining industry has increased its investment spending by 25 per cent in the last financial year. Also, WA has regained its AAA credit rating, indicating that the State is in a very strong financial and economic position, contrary to the scaremongering about the impact of native title on mining in this State. It is important to acknowledge also that Aboriginal people have never opposed outright mining on their lands. They have always listened to requests to undertake the extraction of minerals from their land. However, they do not wish to have that work undertaken without their first being consulted and without having their heritage, particularly their sites, protected in that process. On only a few occasions have mining proposals been opposed outright by Aboriginal people.

I refer also to the first report of the Select Committee on Native Title Rights in Western Australia in which it discussed mining and native title. I remind members that the report was a reflection of the views of all members of that committee and all parties that were represented. On page 122 at paragraph 8.5 the report states -

> The Committee does not accept that the causes of the delay are wholly due to native title or wholly due to other commercial and economic factors.

On the evidence the committee heard it was unable to come to the conclusion that native title was bringing the mining industry to a grinding halt in this State.

Another point that has been made long and loud in this place and in the media is that the mining industry represents a huge number of businesses and the mums and dads in this State. I dispute that. A large number of the mining companies that we are talking about in this State, the ones that are shouting longest and loudest about the perceived problems associated with native title, are multinational companies. I challenge the notion that we are putting unrealistic or unnecessary barriers in the way of these companies to do the right thing in relation to Aboriginal rights in this State.

The Titles Validation Amendment Bill is proposing to validate titles that were granted in the intermediate period when the State's Land (Titles and Traditional Usage) Act 1993 was in place. In proposing the validation of those intermediate period acts we will make legal acts that were undertaken unlawfully. That is an appalling proposition and one of the key reasons that the Greens (WA) are opposing this Titles Validation Amendment Bill outright.

The Bill also seeks to confirm past extinguishment of native title. It seeks to extinguish native title on leases that may have been granted for a brief period of time. For example, if a lease was granted for a stockyard and that lease was never taken up, this Bill proposes that that act, even though it was only brief in its duration, extinguished native title to that particular piece of land. That also is an appalling proposition. The Bill also seeks to validate a whole number of crown-to-crown grants that have been granted.

[Quorum formed.]

Hon GIZ WATSON: On 18 November I asked some questions about crown grants. I asked the Minister for Lands to confirm that during the period 1993 to 1997 the Government converted 142 crown reserves from land reserved for a public purpose into fee simple titles and sold those titles to citizens of the State. The response was that in fact 162 former reserves were sold during the financial years 1993-94 to 1996-97. The question about these reserves is that a transfer of these leases to freehold has been occurring. My contention is that a part of the objective in doing that was to circumvent the requirement for assessment of these pieces of land to ascertain whether they were subject to native title. That question has not had a full airing in this current debate. However, it is apparent that native title considerations were not taken into account in making those crown grants. Again, we might well be choosing to vote on a Bill that will make legal illegal acts.

The Titles Validation Amendment Bill is inherently discriminatory and racist. In answer to questions from members of the Select Committee on Native Title, Mr John Clarke from the Ministry of the Premier and Cabinet acknowledged that the Bill is able to operate due to a winding back of the provisions of the federal Racial Discrimination Act. It follows on from the

winding back of that Act that has occurred at the federal level with the passing of the recent Wik amendments.

The decision in the Miriuwung-Gajerrong case has also been raised in this debate. I had only a brief chance to look at that decision in any detail. Unfortunately, my workload has made it very difficult to read that decision. However, I understand that the decision in that case has clearly illustrated that a number of leases currently listed in the schedule for extinguishment under these Bills still maintain their native title. The title claimants struggled for 30 years to obtain the decision in the Miriuwung-Gajerrong case to have their legitimate rights to traditional lands recognised - including three or four years in the court process. Less than a month after that decision has been made, this Government is proposing through legislation to take away those rights to approximately 80 per cent of the country over which native title rights are now confirmed. That is an appalling proposition. Having spoken to the families involved in this case, I know that they are deeply distressed and angry that after all these years of struggling, they are about to have their rights snatched from under their noses again.

I now raise the matter of the position of both major parties on this legislation. I am deeply disappointed that all members of those parties are choosing to involve themselves in the decision to validate unlawful acts. We are dealing with a shocking situation here. In the earlier debate the Leader of the House commented that members were comfortable in their metropolitan houses and had not taken the time to find out what was happening in the areas most affected by native title. I have taken the time. One of my objectives in being involved in the Select Committee on Native Title Rights in Western Australia was to take the time to meet people in their country and to speak with people in their territories. It makes a big difference, because when people are speaking in and from their country, one has a much great understanding of what this issue means to Aboriginal people and their aspirations in trying to achieve a stable community and some life for their families. Indeed, they feel that the window of opportunity that was opened with the Mabo decision, the aspirations of the right to negotiate and the recognition of their native title rights, is just about to be slammed in their faces again. What will be the consequence of that? It will be the ongoing shame of Western Australians if this Parliament allows those rights to be taken away again; that it did not think of another way of dealing with the indigenous people of this country through an approach that did not legislate to take away their rights or seek through the courts to demolish their common law rights and the right to native title.

As decision makers in this State, we have an opportunity to pursue a policy of reconciliation and a policy of seeking agreements, treaties and common ground in the resolution of these matters. We must not continue with the approach of not listening to the aspirations of the Aboriginal communities. This Bill and the other two Bills which we will be contemplating in this place over the next few days have not had the benefit of being discussed in Aboriginal communities because the Government has chosen to cut those communities out of the discussion. There has been absolute lip service to consultation. Most of the communities in the north west of this State knew that these Bills were available only because I emailed them, faxed them and wrote to them. It was the first they had heard that their rights were about to be further eroded by this Government. Let us not pretend that they have been consulted in any way on the impact of these Bills.

I plead with members to think very carefully about their decisions on these two Bills. I realise they are very complicated matters, but what we are about to embark upon will hugely set back whatever opportunities for reconciliation have been opened in this State. As a member of the second Select Committee on Native Title, I heard what the likely impact of the passage of these Bills would be in the north west of this State, and in particular the Kimberley. The response of Mr Patrick Dodson was that the reaction of the community would be one of great anger, disappointment and distress. I cannot support legislation that is about taking people's rights away. Let us make no bones about that. It is an appalling action that this Parliament is about to undertake. In my estimation, the consequences will be further dislocation of Aboriginal communities, further despair and more deaths in custody. The Greens (WA) get very upset when we see the end effects of anger and despair caused by the continual dispossession of Aboriginal people.

The PRESIDENT: Order, Hon Christine Sharp! It is against standing orders for a member to speak across the Bar of the House. That applies in this House as it does in another place.

Hon GIZ WATSON: The consequences of continuing a policy of a blindfolded and blinkered approach to the aspirations and rights of Aboriginal people in this State will be that which is beginning to happen with Aboriginal youth. There is a huge amount of substance abuse and crime, and disproportionate representation of Aboriginal people in our jails. All these matters are related to the Bills before the House. Western Australia will reap the further consequences of the decision to deny Aboriginal people their aspirations to land and their legitimate say in how their country is exploited or managed. This will not go away. If we continue to use our resources and our decision-making powers as a Parliament to marginalise people, rather than to choose as forward-looking decision makers to put in place policies that are about respecting other people, listening to their rights and engaging in dialogue, this State will be forever caught in a trap of courts, legal challenges and counter challenges.

It will cost this State an enormous amount of money, from both the public purse and the private purse. This Parliament can chose right now not to take that course, and to put that money into developing indigenous land use agreements, which this legislation leaves open. That would be a very honourable outcome, in my opinion. If we do not do that and if this Parliament continues to legislate away people's rights, the consequences will be borne by future generations. In this House

earlier today, we heard comments about the relative amount of money invested in education versus the cost of dealing with the social consequences of people committing crimes and being incarcerated. Every dollar invested in solving the conflict between traditional ownership of land and our system of law, and in negotiating conflict resolution is a dollar well spent because this State does not end up with the consequences of disempowered and fractured communities. I implore all members of both major parties to think again about what this House is contemplating with these Bills, and to consider seriously the long-term consequences of legislating away the native title rights of Aboriginal people in this State.

Amendment to Motion

Hon GIZ WATSON: I move -

> To delete the words "now read a second time" and substitute the words "read a second time on Thursday, 11 March 1999.

I again seek the support of members to allow sufficient time for consultation with Aboriginal people on this matter because it is of critical importance to them. They have not been consulted in this matter.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.04 pm]: Firstly, on a point of clarification, I presume I can speak on the amendment without forgoing my right of reply.

Hon Tom Stephens: Can I, too?

The PRESIDENT: Order! For those who may not be aware, if this amendment were to be carried, the House would not be able to read the Bill a second time until the date specified; that is, 11 March 1999.

Hon N.F. MOORE: I thank you, Mr President, for that clarification of the situation. I hope I get a chance in the debate to sum up and we can then proceed to a vote on the second reading and to the committee stage.

The member is seeking to delay further a decision on native title until 11 March 1999. I can only speculate on her reasons for wanting to do that. If people have not made up their mind about native title by now, they never will. This issue has been around for a long time. It well precedes the Mabo case, as Hon Tom Stephens told us at some length in his speech yesterday and today. This House has already dealt with land rights legislation. The Federal Parliament dealt with it in the 1980s. There is land rights legislation in the Northern Territory. That is all reasonably recent history, but in the context of this debate it happened quite some time ago. It is not a new concept, not something that just got invented last week, or a product of this Government deciding to do something in a hurry this week. In fact, all people who have taken an interest in native title and land rights, as they were termed in the 1970s and 1980s, have already spent a lot of time considering these issues.

First of all, the Federal Parliament responded to the Mabo decision with the original Keating legislation. We then had the Wik decision and the associated problems, in the sense that it created doubt in respect of pastoral leases. Then came the 10-point plan and the decision of Parliament about that, and now we have federal native title legislation, which entitles this Parliament to respond. That debate by the Federal Parliament on the Wik decision was very prolonged and drawn out. Anybody with an interest in these issues was taking a very serious interest in native title at that time. It was a very difficult debate and a difficult time for the Senate, in particular. It took evidence from vast numbers of people, who spoke for vast lengths of time about the issues that were considered to be important. If the member was not taking notice then, she should have been.

This Parliament is now seeking to respond to what has been determined at the national level. I might also add that the Parliaments of Queensland and New South Wales have already dealt with this without any problem, and I intended to talk about that in my summing up of the second reading stage. For some strange reason, the Parliament of Western Australia needs more time or to amend its legislation in a way that was never contemplated in Queensland or New South Wales. This amendment is just an attempt to delay this legislation even further, not because the member needs to consult with anybody or to take any more evidence. Only so much evidence can be taken on any issue. She wants to delay this House making a decision on this Bill so that, ultimately, the newly-constructed Senate, which will come into place midway through next year and which will be controlled by the Australian Democrats, will be able to toss it out. That is what she wants to do. Members should not make any mistake about this. I cannot speak on behalf of the Australian Democrats, but I imagine their motives are identical to those of the Greens (WA). Hon Giz Watson is attempting to ensure that ultimately they will achieve in the Federal Parliament what they cannot achieve in this Parliament. Knowing what the Labor Party has said it will do with this Bill and not being able to achieve what it wants, the Greens (WA) want to delay this and see if they can get the Federal Parliament to throw it out. The Federal Parliament came up with what the Government thought was a reasonable solution to the native title problem after many hours of debate. If the opposition parties agree to this amendment to the motion, this Bill will not proceed. The Parliament can proceed with it but not make a decision until 11 March 1999. I do not think this House will be sitting on 11 March 1999 unless it continues every week until then. That may be a solution, it would give the member time to debate this and work on every clause but that is being facetious. I seek your advice, Mr President. If this motion is passed, must we terminate now or can we simply not make a decision until 11 March?

The PRESIDENT: The debate can continue but I am required to put the question on 11 March 1999. That has the same effect the Leader of the House has been describing.

Hon N.F. MOORE: In the event of this motion being passed, I will contemplate two possibilities. One is to sit in this place, continue the debate until 11 March and then have a vote; and the second is to simply not proceed with this Bill, deal with some other legislation and adjourn the House for the Christmas recess. If the amendment were passed, I would have two options. I do not know which one I would choose. Members should not misunderstand what this is about. It is an attempt by the Greens (WA) - I suspect the Australian Democrats will support them - to prevent the passage of this Bill and the subsequent native title Bills and to ensure that the will of this Parliament is upset and overturned by a potential future Senate. That is what this amendment is about. The members opposite do not understand the urgency of this matter - they have already said that - because they have never talked to the people being affected by the current state of affairs. They sit on their nice little freehold blocks and could not care less about the people whose interests are being looked after by this Bill. For some reason they have the idea in their minds that somehow or other this will disadvantage people. The legislation contains a course of action agreed to by the Federal Parliament of Australia, and by the Queensland and New South Wales Parliaments, to bring some certainty into this matter. All members opposite want to do is create a situation in Western Australia where that certainty cannot be put in place. That is what they are seeking to do. Hon Tom Stephens is also seeking to do that, but by way of amendment rather than complete rejection or delay.

Hon Tom Stephens: Misrepresentation.

Hon N.F. MOORE: I have not even started on what Hon Tom Stephens said.

Hon John Halden: I don't want to interrupt your controlled speech but perhaps the House might like to decide on this before midnight.

Hon N.F. MOORE: We will. I will sit down in a moment, but I needed to contemplate what we might do. I want everybody to understand.

Hon Tom Helm interjected.

Hon N.F. MOORE: This is a very important vote, Hon Tom Helm. It has the effect of killing this legislation. If this House does not deal with it until 11 March, it will go to the new Senate. If the Democrats and the Labor Party have their way, that new Senate will toss it out. It will be the end of the validation Bill and of the state tribunal. That is the bottom line and we should make a decision now.

The PRESIDENT: I will call the Leader of the Opposition who, like the Leader of the House, has already spoken on the main question. Therefore, the Leader of the Opposition is required to speak directly to the amendment.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [5.15 pm]: I will be brief. The Opposition will not support this amendment to the motion for these reasons. It has given the Government an undertaking that the Titles Validation Amendment Bill will be dealt with by the Parliament before it rises for Christmas. The Government has sorely tested the commitment made by the Labor Party.

Hon N.F. Moore: Why do you not just simply go along with this? You will feel a lot better but nobody else will.

The PRESIDENT: The Leader of the Opposition has indicated to the Chair that he wishes to be concise. Members, please do not interject.

Hon TOM STEPHENS: The Labor Opposition supports the passage of this legislation amended. The leader of the Government in this place introduced into the debate on the amendment the reason for its being dealt with now; that is, the fact that the Queensland and New South Wales Parliaments have already dealt with legislation of this sort. He has ignored the fact that those Parliaments dealt with similar legislation prior to the decision of Justice Lee. That decision changes the needs of Parliaments in their response. For that reason I have been urging the Government to recognise the need for amendment.

Hon N.F. Moore: We heard that and we will debate it.

Hon TOM STEPHENS: The Leader of the House introduced this point into the debate on this amendment. The Labor Party will not support this amendment but the Government should not presume upon the commitments the Labor Party has made. I fully appreciate the enormous pressure the major parties are putting on the minor parties in this debate. I accept that an unfair request is made of them. However, having said that, the request is unfair but still stands. I hope that they are able to respond positively in the circumstances.

The PRESIDENT: Before I call Hon Helen Hodgson, I have explained to members that if they speak to the amendment, they will be deemed to have also spoken to the main question.

HON HELEN HODGSON (North Metropolitan) [5.18 pm]: I understand that that is the case. Therefore, I will begin by

canvassing the issues in the Bill itself and then canvass the issues raised by Hon Giz Watson in moving her amendment. I am well aware that this Parliament has the right and ability to override common law property rights. It does that whenever it deals with taxation legislation. This Parliament is still dealing with an issue about milk vendors and what happened when their property rights were overridden; the Government regularly impinges on people's rights. However, what I cannot come to grips with on this piece of legislation is the basis on which we are overriding people's rights. This legislation is undoubtedly based on a person's race. There is no way of getting around that. The federal Native Title Act, which is the umbrella under which this legislation has been brought into this place, specifically says in section 7, "Racial Discrimination Act" -

> (1) This Act is intended to be read and construed subject to the provisions of the *Racial Discrimination Act 1975*.

Subsection (2) is not relevant for the purposes of this argument. Subsection (3) states -

> Subsections (1) and (2) do not affect the validation of past acts or intermediate period acts in accordance with this Act.

In other words, the federal Native Title Act acknowledges that the federal Racial Discrimination Act exists. However, it makes an exception when it comes to the validation of title in respect of past acts and intermediate period acts. That is an acknowledgement in the federal legislation that we are in fact legislating on the basis of race. It is subject to this legislation that the Government has introduced this Titles Validation Amendment Bill. Section 19 of the Native Title Act specifically provides that laws of a State or Territory can contain provisions which will validate titles, with the rider that they must be consistent with the provisions of sections 15 and 16 of the federal Act. Therefore, this House is legislating in respect of property rights in a way that is specifically sheltered from the application of the Racial Discrimination Act. If that is not acknowledging racial discrimination, I do not know what is. The Australian Democrats cannot support legislation that is basically racist in its concept and construction. I know large sections of the community feel exactly the same way.

I have received many letters and faxes in the last few months. I will share a sample of those with the House. I have here a fax from the Uniting Church in Australia, Synod of Western Australia, which states -

> The Social Justice Commission is gravely concerned about the possibility of further loss of the right to negotiate by Aboriginal people. There is the potential that this legislation will extinguish native title where it might still exist. This is a further erosion of the human rights of an already oppressed people.

That is signed by Rosemary Miller, the Chairperson of the Social Justice Commission.

I have a letter here from somebody whom I have never met. I think his name is Ausgustin Engulta - I cannot read the signature. However, it is on the letterhead of an organisation called Republic 2000. It says in part -

> **These Bills are unjust and discriminatory**
>
> The State's retrospective validation of its unlawful "intermediate period acts" is immoral. To extinguish native title where it might still exist deliberately continues the process of dispossession of Aboriginal people today and is racially discriminatory because there is no equivalent removal of titles of other races. Permanent, blanket extinguishment of native title by reference to just the type of title without due process on a case by case basis violates the rights of native title holders.

I have received three or four letters from the Miriuwung and Gajerrong Families Heritage and Land Council. They are the people who were recently involved in the protracted proceedings to gain some recognition of their native title. That is now being jeopardised by the legislation that this House is dealing with today. In part, one letter dated 4 December 1998 says -

> Why then this mad dog approach to destroy native title wherever it appears?
> Why is WA continuing the tradition of targetting one race of people for discrimination by statute?
>
> If Strata or Torrens title was earmarked for extinguishment carte blanche the outcry would be of avalanche proportions despite the promise of compensation.
>
> The Labor Party cannot betray the indigenous constituents who have always ensured that the Party has had the representative mandate for the north and west of WA.

I share that call by the Miriuwung and Gajerrong families for the Australian Labor Party to stand up for the rights of indigenous people throughout this State, particularly those in the north, in the Kimberley region. I received a further letter from the same organisation on 30 November. It says -

> . . . the Federal Court has found that certain persons have been able to exploit invalid, possibly illegal titles in some respects. This Titles Validation Bill will simply allow white people to further exploit the Coalition's proposed statutory discrimination while indigenous people yet again have their legal rights snuffed out.

On 27 November I received another letter from the same organisation. It states -

> The proposed State Native Title Bill et al institutionalises statutory racism by blanket and unnecessary extinguishment of proven Native Title. The logical conclusion is that WA as a State can only operate on the basis of predetermined destruction of indigenous proprietary rights where they occur and are confirmed, while maintaining and supporting the acceptance of proprietary rights for the rest of the community.
>
> This is discrimination utter and abject and now intended to be made inherent in WA society.
>
> Reconciliation is dead and gone if Richard Court institutionalises statutory racism. This will result in a permanently divided society in WA and our children will be the social and cultural casualties of this legacy.

That is just a sample of some of the letters and comments that I have received over the past few months showing how strongly people feel about this legislation. Basically, it is because the sole reason for extinguishment is that the type of title is native title. By its very nature, that will discriminate against Aboriginal people in this State and it is therefore racist.

Several members interjected.

The PRESIDENT: Order! I cannot hear the interjections because of the fans. However, it is clear that interjections are being made. Hon Helen Hodgson has the floor, and she is the one I am trying to listen to.

Hon HELEN HODGSON: To sum up this argument, I have here a paragraph from the submission by the Aboriginal Legal Service of WA on the native title Bills which states -

> The *Titles Validation Amendment Bill 1998* and the *Native Title (State Provisions) Bill 1998* are the greatest attack upon the property rights of Aboriginal people since the *Land (Titles and Traditional Usage) Act 1993*. If this legislation is enacted by the Western Australian Parliament, it means arbitrary wholesale extinguishment of native title in some instances, and the diminishing of those native rights and interests that remain. Would the Parliament contemplate dealing with the property rights of non-Aboriginal Western Australians in this manner? It is a sad indictment upon the Western Australian Parliament if, 169 years after colonisation, the legislature does not recognise, much less protect, the property rights of Aboriginal peoples of this State.

The Titles Validation Amendment Bill does two things: It validates acts that were carried out during what is known as the intermediate period, and it validates past acts that were carried out prior to the introduction of the Native Title Act. Both of these validations have problems attached to them. Acts that were carried out in the intermediate period were supposed to have been dealt with under the regime that was put in place under the Native Title Act 1993. Members have already heard today about some of the things that occurred during that period. Firstly, there was the bun fight that ensued when this Parliament enacted the Land (Titles and Traditional Usage) Act, which purported to deal with some native title issues. During the time when that Act was in force, there was a system whereby the Western Australian Parliament was proceeding under its scheme of legislation, but that was not the same as the scheme of the Federal Parliament. That was dealt with when it was found that the Land (Titles and Traditional Usage) Act was invalid and unconstitutional.

From that time Western Australia has purported to comply with the Native Title Act. I say "purported to comply" as there are many indications that compliance has been reluctant, half-hearted and in some cases inadequate. Members in this place will know that over the past week or two I have been asking a series of questions about the demolition of Bennett House in East Perth, over which the Noongars claim native title, and there is at least one, and probably several, native title claims. In addition, because of its history, they claim the site is a place of significance culturally. I believe they have an application for that place to be registered on the Aboriginal heritage register, but I am not sure whether that has been placed firmly on the register. I did not get an answer to that question today, so I am still waiting for that piece of the puzzle. Basically, this land is of cultural significance to Noongars, and a native title claim has been lodged over it. When I asked whether the Government had complied with the Native Title Act before demolishing that structure, I was told that the Native Title Act had no relevance, even though that land is Aboriginal Lands Trust land, and is an area covered by a native title claim. Something is dreadfully wrong somewhere. If this land is held in trust for the Aboriginal people for their use, enjoyment, and benefit - whatever the conditions are - surely they should at least be consulted and notified when the property is to be demolished. It seems that neither the Aboriginal Heritage Act nor the Native Title Act have enough power to involve these people in a decision about the demolition of a place they consider to be a significant site. A state government agency is acting, maybe, within the letter of the Native Title Act, so there is either a major deficiency in the Native Title Act or a total lack of goodwill on the part of the Government to comply with the intention and spirit behind the Native Title Act.

The history of native title has been canvassed to some extent by Hon Tom Stephens, and I do not intend to go back over it, but I will comment on some of the most recent matters before the courts. I preface my comments by saying that native title is not a matter that is solely relevant in Australia. Throughout the world people, whether they are the Kurds, the native peoples of Canada and America, or our own Aboriginal people, are pushing for self-determination and acknowledgment of their rights under law where they have been affected by colonisation. It is not unique to Australia. This is why, in the history of the development of native title, one finds so much cross-fertilisation between jurisdictions, and why Canadian cases have

such a significant input in Australia. We are both common law regimes and therefore Canada's decisions are of relevance and are considered by the courts.

The first of the cases I would like to canvas is the Mabo No 1 case. In that case it was held that actions by the Queensland Government that affected the people of the Miriam Islands were contrary to the Racial Discrimination Act. In a sense this is where the saga started of getting some protection for Aboriginal people in terms of white man's law in this country. Mabo No 2 is the case most people think of as the Mabo decision. In June 1992 the High Court of Australia held for the first time that the prior land rights of Australian Aboriginal people were recognised under common law. Some principles have been distilled by Mr Justice Lockhart in the subsequent case of Pareroultja and Tickner in 1993. The principles were summarised at some length, but quite neatly. They are -

1. The common law of Australia rejects the proposition that, when the Crown acquired sovereignty over territory which is now part of Australia, it thereby acquired the universal and absolute beneficial ownership of all the land therein.

2. The common law accepts that the antecedent rights and interest in land possessed by the indigenous inhabitants of the territory survived the change in sovereignty; and those antecedent rights and interests thus constitute a burden on the radical title of the Crown . . .

3. The theory of terra nullius . . . is rejected by the common law of Australia.

4. The Crown's acquisition of sovereignty over the several parts of Australia cannot be challenged in an Australian municipal court.

5. The common law of Australia recognizes a form of native title which, in the cases where it has not been extinguished, reflects the entitlement of the indigenous inhabitants, in accordance with their laws or customs, to their traditional lands.

6. Native title to land survived the Crown's acquisition of sovereignty and radical title. The rights and privileges conferred by native title were unaffected by the Crown's acquisition of radical title, but the acquisition of sovereignty exposed native title to extinguishment by a valid exercise of sovereign power inconsistent with the continued right to enjoy native title.

7. Where the Crown has validly alienated land by granting an interest that is wholly or partially inconsistent with a continuing right to enjoy native title, native title is extinguished to the extent of the inconsistency.

8. Where the Crown has validly and effectively appropriated land to itself and the appropriation is wholly or partially inconsistent with the continuing right to enjoy native title, native title is extinguished to the extent of the inconsistency . . .

9. Extinguishment of native title by the Crown by inconsistent grant does not give rise to a claim for compensatory damages, at least to the extent of the inconsistency . . .

10. Native title to particular land, its incidents and the persons entitled thereto are ascertained according to the laws and customs of the indigenous people who, by those laws and customs, have a connection with the land. It is immaterial that the laws and customs have undergone some change since the Crown acquired sovereignty, provided the general nature of the connection between the indigenous people and the land remains. Membership of the indigenous people depends on biological descent from the indigenous people and on mutual recognition of a particular person's membership by that person and by the elders or other persons enjoying traditional authority among those people.

11. Native title to an area of land which a clan or group is entitled to enjoy under the laws and customs of an indigenous people is extinguished (a) if the clan or group, by ceasing to acknowledge those laws and (so far as practicable) observe those customs, loses its connection with the land or (b) on the death of the last of the members of the clan or group.

12. Native title over any parcel of land can be surrendered to the Crown voluntarily by all those clans or groups who, by the traditional laws and customs of the indigenous people, have a relevant connection with the land, but the rights and privileges conferred by native title are otherwise inalienable to persons who are not members of the indigenous people, to whom alienation is permitted by the traditional laws and customs.

13. If native title to any parcel of the waste lands of the Crown is extinguished, the Crown becomes the absolute beneficial owner.

14. The question of the validity of any purported exercise by the Crown of the power to alienate or to appropriate to itself waste lands of the Crown is left for resolution by the general law.

15. The power of alienation and the power of appropriation vested in the Crown in right of a State are also subject to the valid laws of the Commonwealth, including the Racial Discrimination Act. Where a power has purportedly been exercised as a prerogative power, the validity of the exercise depends on the scope of the prerogative and the authority of the purported repository in the particular case.

Those are the principles summarised by Justice Lockhart in the Pareroulja v Tickner case, which set the framework for subsequent legal decisions on native title. A matter not resolved in that case was pastoral leases, which, of course, was the basis for a later major decision.

In the meantime, federal legislation was enacted which recognised native title, validated titles upon which recognition had not previously been acknowledged, and ensured that Aboriginal people would in the future have a say in the way in which their land was dealt with. That was given by way of the right to negotiate. No binding authority on the subject of pastoral leases applied at the time. However, the Wik decision was made on 23 December 1996. A summary was prepared by *Australian Current Law* - it is certainly not a biased view - regarding an appeal by the Wik and Thayorre people; it reads -

> In allowing the appeal, the High Court held that:
>
> (i) Pastoral leases are the creature of statute and accordingly the rights and obligations accompanying them must be determined by reference to the language of the statute authorising the grant and terms of the lease.
>
> (ii) Legislative intention to extinguish native title must be clear and plain, either by expressed provision or by necessary implication.
>
> (iii) There is nothing in the Act which authorised the lease, or in the lease itself, that conferred upon the grantee rights and interests exclusive of all rights and interests of indigenous inhabitants. The Act, therefore, did not operate to extinguish all incidents of native title rights.
>
> (iv) The rights and interests conferred by pastoral leases are not necessarily incompatible with native title rights, unless shown by evidence to be inconsistent, in which case, the latter will be extinguished.

There is no contradiction between Mabo and Wik. In Wik the court considered the principles of Mabo and interpreted them in respect of a certain type of lease; namely, the Queensland pastoral lease. The significance is that the statute under which the title was conferred was considered to determine whether it was sufficient to extinguish native title. It set up the principles of coexistence as native title rights do not extinguish pastoral rights. In fact, if anything, it is the other way around: When an inconsistency arises, the statutorily granted rights will override the native title right, but only to the extent of that inconsistency.

The problem was that Wik threw a political spanner in the works and set up a hurdle for white Australians; that is, it was found to be difficult to cope with the idea of having to share a lease. It is clear in the decision that when an inconsistency arises, the right of the statutorily granted instrument will prevail. That means that a protection applies for the ordinary activities the leaseholder expects to carry out on the lease. The idea of not owning this title became a real problem. I have a difficulty understanding the problem. Every lease involves different forms of ownership. One person owns the property, and another can be the leaseholder. One can have other types of titles laid over the top such as mining leases. What is the fundamental difficulty in accepting another form of overlapping title? In this case, as it came first, native title is the underlying title on top of which the others are built. Why cannot people understand that this is not land rights? I heard the Leader of the House refer earlier to land rights. Land rights relate to freehold title and ownership. Native title is a different animal altogether; that is, it is one of an overlapping layer of interests in a parcel of land. It is not a case of ownership, but of rights to go in and exercise the native title, however that is interpreted in the case of the particular clan or family group involved.

The Wik Bill led to a prolonged political argument. In the process, the protections built into the original Native Title Act were gradually whittled away. I accept some of the criticisms levelled earlier that the original Act had some procedural issues which were unnecessarily complex and difficult to manage. When the Wik legislation was introduced, amendments to those procedural issues, for the most part, received unanimous support. In fact, 80 per cent of that Bill was agreed to by all members in the commonwealth Parliament. A number of fundamental differences caused the huge political storm surrounding the Wik legislation.

A number of significant decisions in respect of native title have been made this year. The Croker Island case considered native title rights relating to the sea. Justice Olney found in the Federal Court that communal native title exists in relation to the sea and seabed within the claimed area. His findings read -

> The native title rights and interests do not confer possession, occupation, use and enjoyment of the sea and sea-bed within the claimed area to the exclusion of all others.

The Croker Island case granted native title rights but recognised that they were not exclusive. That is exactly the point raised by the Australian Democrats: A native title right is a shared title which lends itself to coexistence.

In view of the hysteria surrounding the Wik case, how many people have heard of the Fejo case? This was Jim Fejo and David Mill on behalf of the Larrakia people versus the Northern Territory of Australia and Oilnet (NT) Pty Ltd. This decision was handed down on 28 February 1998 and pre-dates the Croker Island decision. In the Federal Court decision, Justice O'Loughlin determined -

> Native title is extinguished by an unencumbered grant of freehold, and once extinguished cannot be revived.

This finding was qualified to the extent that not all grants of fee simple would necessarily be inconsistent with the continuation of native title. Examples are then given of freehold title being given to the Larrakia people under Northern Territory legislation. This is not an inconsistent use. Therefore, we have confirmation that freehold title will extinguish native title, yet people still beat up the fear that a native title claim can be made over a person's backyard and that his or her property will be lost. It is untrue - it has been confirmed.

The most recent case is the Miriuwung-Gajerrong decision made by Justice Lee on 24 November 1998. We are acting with undue haste on this matter partly because this decision was handed down after this legislation passed the Legislative Assembly, and while it lay on the Council Table for consideration. I searched the Internet but I could find no references to Miriuwung-Gajerrong that would give me an unbiased summary of the facts and findings. The Select Committee on Native Title, which lasted a whole week, had the opportunity to hear evidence from some of the solicitors involved in that case. However, this Parliament does not yet have any unbiased analysis from commentators examining it from the outside. That is why it is acting with undue haste. It is a significant decision that most members in this Chamber are unlikely to have had the opportunity to read, let alone understand and interpret. Conflicting opinions have been given, including one of which everyone has heard; that is, a letter from the Crown Solicitor's Office that was leaked into the public arena. Members of the committee have heard an analysis of the case, but it has not been publicly debated enough for us to know what we are doing. The effect of the Miriuwung-Gajerrong decision shows clearly that this Parliament is going much further with the Titles Validation Amendment Bill than members thought it was.

In the second reading speech on the Wik legislation in the House of Representatives, the Government indicated that it does not seek to extinguish native title or to go beyond what can be inferred from the decisions of the High Court as to what acts extinguish it. It is on the public record that the Federal Government does not seek to go beyond what is defined as native title. In the event that it does, it will provide compensation.

However, we now have a decision that indicates that what the Government has done probably does go beyond those common law grounds as the Government understood them at that time. I appreciate that appeals will probably be lodged, but until they are finalised, Mr Justice Lee's decision is valid. He says that native title exists over certain properties in respect of which this Parliament is now intending to extinguish native title.

I was fortunate enough to participate in the first Select Committee on Native Title Rights in Western Australia, and I travelled to Canada with that committee. One of the things that struck me was the different approach taken in that country. I am not saying that it has sorted out its problems any better than Western Australia has. It still has significant problems in identifying which group of native title claimants is the native title holder and so on; there are many hot issues. However, Canada has included in its Constitution the requirement to provide protection for indigenous peoples. Their rights cannot be removed in the way that the Government is removing rights with this legislation. In fact, some people in Canada found it very hard to come to grips with the idea that Australia is using a legislative approach because that country's indigenous people have the protection of the Constitution. Of course, Australia has not afforded that right to its indigenous people - even to the extent that they were not able to vote until 1967.

Indigenous people are seeking coexistence; they are not seeking to turn people off their land. I refer members to the "Conference report - The Kimberley - Our place, our future", which is the product of a conference held in July 1998 in Broome. Copies of this report were tabled at hearings of the Select Committee on Native Title, but I am sure they are publicly available. The theme of this report is working together for a healthy Kimberley economy, social infrastructure and environment. Kenny Oobagooma is quoted in the report as follows -

> There's no point chasing after and fighting the government and ATSIC. That is not the future we want. We would prefer a future that we agree on and share together.
>
> We don't want to be on our own, as one tribe? No! That's not the way to go. That cannot last. The land is not for one people to take. We have to come together on this land and share.
>
> I can see a future for us all, for Aboriginal people, for non-Aboriginal people, for us all. So let us work together - because we have only one land, this country.

This conference was held in July, just a few days before the Wik legislation was reconsidered with the final batch of amendments. At that stage, people thought that the legislation would not be enacted. I have many submissions from Aboriginal groups that contain the same theme.

The April 1997 report entitled "Coexistence - Negotiation and certainty", detailing the indigenous position in response to the Wik decision and the Government's proposed amendments to the Native Title Act 1993, was prepared by the National Indigenous Working Group on Native Title. The executive summary states -

> The National Indigenous Working Group position is based on these key principles:
>
> . Respect for property rights of all titleholders on a non-discriminatory basis
>
> . The principles of non-discrimination, as set out in the *Racial Discrimination Act 1975*, must be respected
>
> . No extinguishment of native title without informed consent of native titleholders
>
> . Continuing protection of native title under the Native Title Act
>
> . No *de facto* extinguishment of native title by
>
> . unreasonable threshold test for the acceptance of claims
>
> . minimisation of native title rights through codification
>
> . "physical connection" tests
>
> . imposition of sunset clauses on claims
>
> . precluding towns, cities and waterways from claims or the right to negotiate process
>
> . native titleholders have a right to negotiate over development on native title land.

It is all about coexistence and sharing the land and the benefits of the land.

This Sunday is the third Sunday in Advent for those of us who attend a church that recognises that religious event. In my church, hope is the theme this Sunday. I believe that what we are doing with this legislation is removing hope from many of these people. Five months ago, the people in the Kimberley said that they want to work together, and see a shared future. However, the Select Committee on Native Title took evidence from Mr John Hoare, who stated -

> We find the Bills going through the Government areas now to be not only hurtful but also divisive. The community covering the whole of Western Australia must look higher than the financial mode as the previous speakers did because finances do not get a community together. It is enjoyment, and working, being part of each other, inter-related relationships and a whole basis of community living and excitement.
>
> We think that the extinguishment process will put on the horizon the certainty of large compensation claims.
>
> Our Noongar people are extremely excited to be part of this community of Western Australia, but our loss comes when we constantly see Governments which do not have any indigenous people involved, putting us down all the time, taking away our rights and trying to dis member us from society.

The extinguishment concept and the message it delivers is very clear to indigenous people, that indigenous people have never had any connection to the country over which that extinguishment is to apply. The Government is attempting to restate in another way the odious connotations that were part of that offensive concept of terra nullius that so readily affected the relationships between indigenous and non- indigenous people in the past 100 years.

The committee also heard evidence from Mr Patrick Dodson. His theme was that people in the Kimberley would be totally devastated by the loss of their land. They would be devastated by the loss of the native title right that gives them access to their country and helps them to protect and preserve their traditions, culture and language. That is a significant part of trying to keep a community together. In all subgroups in our community people need something in order to retain their identity. To a large extent, for Aboriginal people that is connected with their country. The legislation removes all hope.

Sitting suspended from 6.00 to 7.30 pm

Hon HELEN HODGSON: Earlier Hon Giz Watson asked whether we should defer consideration of the Bill. In that context I refer members to the report of the Select Committee on Native Title which was tabled last week. A minority report was presented on the time that had been made available to the committee to deal with the legislation. All issues that were raised in that minority report apply equally to the process now before the House. There have been fundamental problems with the timing with which the legislation has been presented to members. We have not had an opportunity for full and proper consultation with the Aboriginal community. We have had only limited time to examine the current provisions. We have had no time to consider items specifically dealt with in the Titles Validation Amendment Bill. I appreciate that we have not yet had the committee stage, but it is possible for concerns that will be raised in committee to be dealt with during the interim if the Bill is deferred until March. That would give members an opportunity to come to grips with certain provisions. We have had no information about compensation, especially in the context of the Miriuwung-Gajerrong decision and its

implications for extinguishment. The Titles Validation Amendment Bill, as I have indicated, appears to go much wider than the Federal Government originally intended. The legislation is being considered with undue haste.

The fact that we are extending sitting hours may give us more time to debate it in this place, but it does not give us more time to consider the implications of the legislation as a whole. The legislation was presented in this place only about four weeks ago. It is not uncommon for Bills to be debated for much longer than that before we can consider the detail of those Bills. The issue of validation will be dealt with by the way the Bill is structured. We are dealing with intermediate acts or past acts. It does not matter whether the validation happens in December, January, February, March, April or whenever. The fact is that these acts will be validated. There is no reason why we cannot take more time to consider the implications of the legislation that is before us tonight.

[Leave granted for the member's time to be extended.]

Hon N.F. Moore: Do not be so surprised; it will be the last time.

Hon HELEN HODGSON: I was surprised that leave was granted.

Hon N.F. Moore: You have nothing to say.

Hon HELEN HODGSON: Many more comments could be validly added at this stage of the debate. As I indicated in the committee last week, we did not have time to adequately debate a lot of issues. I have asked the chairman of the committee whether I could look at some of the documents that were tabled at the committee. I know that *Hansard* cannot record visual evidence, but the documents I want to look at overnight are in a file box which is about three inches thick and it is full. We could not look at those documents in the committee properly. We will not be able to discuss those documents in the Committee of the Whole properly. If we had extra time, if we had until March to look at these issues, we would be able to give a fairer analysis of what is before this House.

I also take issue with a comment by Hon Norman Moore, the Leader of the House, when the motion for deferral was moved. He suggested that the reason for deferring the Titles Validation Amendment Bill was based on the prospect of the change in the balance in the Senate next July. The change of the balance in the Senate next year is totally irrelevant to the Titles Validation Amendment Bill. The so-called Harradine amendments mean that when the State chooses to set up a commission, its legislation is examined by the federal minister and an instrument is laid before the Senate and that instrument is disallowable. That has nothing whatsoever to do with the Titles Validation Amendment Bill. The power has already been set out in the legislation which has given us the authority at the state level to proceed with legislation. As I indicated earlier, that authority is found in section 19(1) of the Native Title Act. It states -

> If a law of a State or Territory contains provisions to the same effect as sections 15 and 16, the law of the State or Territory may provide that past acts attributable to the State or Territory are valid, and are taken always to have been valid.

There is no disallowance. The disallowance is in respect of a totally different Bill and a totally different mechanism. There is no guarantee that the matters that will be referred to the Senate by way of that instrument will be disallowed because it takes a majority of the Senate, believe it or not, to disallow a matter. Nine Democrat Senators do not make a majority; a majority requires the Australian Labor Party to join with them. The ALP has not yet made its feelings on the matter known to us; and until that happens, there is no prospect of disallowance. Therefore, it is inappropriate to suggest that the Australian Democrats are stalling on the Titles Validation Amendment Bill because of the prospect of disallowance next year.

Hon Tom Stephens: Who suggested that?

Hon HELEN HODGSON: The Leader of the Government, Hon Norman Moore, suggested that in his initial response to Hon Giz Watson's motion. That demonstrates that the Leader of the House still has a lot of misunderstanding about this legislation, even though he is the minister who will be dealing with this legislation in this House. Obviously members need more time to understand the scheme of the legislation. I have said already that the Titles Validation Act is validated under the federal Native Title Act. The federal Native Title Act involves a schedule. That schedule has been distributed to members of this place by way of the explanatory memorandum. However, that schedule is almost as big as the explanatory memorandum. That explanatory memorandum was distributed in this House yesterday, for debate that was expected to commence at the beginning of this week. I acknowledge freely that the members of the committee have had access to that memorandum, but other members of this place who want to participate in the processes and in the committee stage of this Bill have had access to that explanatory memorandum and the material attached to that only since yesterday. Given the supposed haste with which we need to deal with this legislation, that information should have been circulated to members well before this time. To turn around now and say that this legislation must be dealt with before Christmas is quite inappropriate. The ALP cannot be absolved from blame, because it was the ALP that set this Christmas deadline. That deadline is totally arbitrary. There is no reason that Christmas should be the deadline. What is the difference between 24 December and 25 December - although 25 December is Christmas Day, and I do not want to be here on Christmas Day -

Hon Mark Nevill: The difference is 24 hours!

Hon HELEN HODGSON: The difference is a political difference. The difference is that the ALP has told the Government that it can have its Bills through by Christmas -

Hon Tom Stephens: Bill.

Hon N.F. Moore: Bills.

Hon HELEN HODGSON: It is for that reason that we are being kept here, under the pretext of an urgency that does not exist -

Hon N.F. Moore: Repeat the word "Bills", because that is what I understood the ALP said.

Hon Tom Stephens: We said Bill in the singular.

Hon HELEN HODGSON: I am not sure that I am allowed to refer to the *Hansard* of the other place to clarify that matter, and I do not have it in front of me anyway, but even if it were "Bill" in the singular, it was "Bills" in the plural that the ALP agreed to have back from the committee by 10 December. The committee was given a 10-day report back date to deal with three complex and detailed pieces of legislation. The outcome of that committee process was that we had a day of hearings. That day of hearings was very useful. The report is less useful. In saying that, I acknowledge the efforts of the committee staff, who worked extraordinarily long hours and went to great trouble to prepare a report that could be presented to this House by the report back date. However, the fact remains that that short time frame did not allow the committee to undertake a decent analysis of the evidence. The members of the committee were presented with the draft report on the morning of the report back date. That was because of the deadline imposed by the ALP, which had agreed with the Government to send to a committee three very complex pieces of legislation, with a 10-day report back date. I could have lived with one piece of legislation. However, to be presented with three pieces of legislation meant that in addition to the hours that we have spent in this place in the past week -

Hon Greg Smith interjected.

Hon HELEN HODGSON: There are two reasons why the debate this week has not been going as well as I would have hoped. The first reason is that last week I spent 20 hours, above and beyond time spent in this Chamber, as a member of a committee that did not achieve anything. That was time I could have spent working on the Bills, the legislation and the alternative propositions that were put forward. I participated in that because -

Hon Greg Smith interjected.

Point of Order

Hon TOM STEPHENS: Mr President, I believe the member is entitled to be heard in silence and I ask that you provide her with that courtesy in this House.

The PRESIDENT: Firstly, the Leader of the Opposition is right that members are entitled to be heard in silence. I hope the Leader of the Opposition was not suggesting that he was not interjecting, as were other members. Assuming that he was referring to Hon Greg Smith, I cannot hear, regrettably, what Hon Greg Smith says from time to time. However, Hon Helen Hodgson seems to be coping well with the less-than-robust debate that is continuing currently.

Debate Resumed

Hon HELEN HODGSON: I am working on the assumption that Hon Greg Smith will make his feelings known when he has the floor in his own right.

The PRESIDENT: And Hon Helen Hodgson will interject on him, will she?

Hon HELEN HODGSON: Given the impact that this legislation has had on me emotionally and given the state of my physical tiredness, I would rather not enter into debate that might cause embarrassment to people in this place. Therefore, I will revert to what I was saying.

Two things have limited my ability to prepare for this debate this week, one being the time I spent as a member of the select committee which considered this Bill and which did not achieve anything. The committee could have achieved good results if it had had the time to consider the matter. That in no way reflects upon the staff or members of the committee, all of whom put in extraordinary efforts. It was simply a task that could not be accomplished. The second thing is the impact of another piece of legislation which we dealt with in this place last night and which meant that the resources available to me were being spread far too thinly.

The point is that we need time to look at these things; we need time to get the opinion of the community; we need time to examine the impact not only of the legislation but also of the Miriuwung-Gajerrong decision and the proposals that are being

put before us. Supplementary Notice Papers and explanatory memoranda became available to us only yesterday. At this stage it is better for us, better for the State and better for the legislation if we all say, "We do not need to do this today. Let us all go home, spend Christmas with our families and come back in March and do it properly."

Basically, I have covered most of the issues that I wish to raise on this point. I thank the House for the courtesy of granting me an extra 15 minutes, of which I have used only 12. The Australian Democrats will not be supporting this Bill. We are not yet convinced that it is salvageable in any form. We do not support the principle of extinguishment, and this is a Bill for the extinguishment of native title.

HON JOHN HALDEN (South Metropolitan) [7.44 pm]: I advise the Leader of the House that he will not have to extend a similar courtesy to me by extending my time.

Hon N.F. Moore: But you know that I would! It is Christmas, Mr Halden.

Hon JOHN HALDEN: I know. However, I will not be calling on the Leader of the House's generosity.

The PRESIDENT: Order! Members, let us get on with the debate.

Hon JOHN HALDEN: If I may speak for others on this side of the House, whenever conservative Governments bring into Houses of Parliament issues to do with Aboriginals, one must treat that with great scepticism and caution. There is no doubt that the history of how Parliaments and white people have treated Aboriginals in our nation since the days of the earliest white settlement cannot be described in any other way than systematic brutalisation. Part of that systematic brutalisation has been murder and rape, and their dispossession from their land, their culture and their children.

Hon B.K. Donaldson: That is outrageous.

Hon JOHN HALDEN: It is not outrageous. If the member thinks it is outrageous, he is living on some other planet. The member is the epitome of what I am talking about. I am so pleased that some fool opened his mouth to prove my point.

Hon B.K. Donaldson interjected.

The PRESIDENT: Order! Hon Bruce Donaldson will cease interjecting.

Hon JOHN HALDEN: It proves that in this place some on the conservative side of politics are apologists for that disgraceful part of our history. I will not say, and I do not want anyone else to say, that it has not happened because we all know it has.

Hon N.F. Moore: You are not suggesting that only conservatives are responsible for this?

Hon JOHN HALDEN: No, I am saying that I exercise extreme caution when conservatives come to Parliament with such Bills.

Hon N.F. Moore: I was about to remind you of the white Australia policy.

Hon JOHN HALDEN: Let us not go down that path.

There can be no doubt that Aboriginal people have been systematically brutalised for at least 200 years. When those opposite say that this piece of legislation will provide certainty and equity for Aboriginal people, we are very sceptical. May I suggest that we do not have to go back further than 1993 when we had the Land (Titles and Traditional Usage) Bill presented to us. It was the conservatives' baby, if I may say so, and their creation. It was an attempt to establish native title in one clause and then a clause later to extinguish it.

Hon BOB THOMAS: Clause 4 extinguished native title.

Hon JOHN HALDEN: Exactly. That was the conservatives' recognition and contribution to native title. Of course we will treat those opposite with caution on this matter. I am sorry if those opposite get offended by my caution and scepticism of their motives. However, that is not dominated only by 1993. I remember sitting in here when one of their members made the most disgraceful, racist comment I have ever heard inside or outside of this place. The now Senator Lightfoot referred to Aboriginals as the lowest spectrum of the social scale, and went on to justify his thoughts - not a once-off, stupid comment of which he made many. He repeated them in the Senate, I think in his maiden speech.

Hon Bob Thomas: I think he apologised for that.

Hon JOHN HALDEN: He did.

Hon Mark Nevill: Was it the social scale or the evolutionary scale?

Hon JOHN HALDEN: It may well have been the evolutionary scale. With that sort of historical attitude being presented from the other side of politics, we must look at this matter with some scepticism and concern. I know this is a complex issue. The other week I was reading a book entitled *The Justice Game*, written by Geoffrey Robertson, which I thought typified the history of the law and our attitude toward Aborigines. I refer to a very short passage from it which states -

> The first case we took up was that of Nancy Young, a mother who had been jailed for the manslaughter of her baby who had died, so the police doctor said, from malnutrition. She lived in abject poverty on an unsanitary Aboriginal reserve behind a prosperous country town in Queensland: her all-white, all-male jury ignored expert evidence that the child had died from disease rather than neglect, and so did the local Court of Appeal. There were student protests, a television programme and my first articles for serious newspapers about this wrongful conviction. The Queensland authorities found a pretext to reconsider the case and quash the conviction on a technicality, without any apology or any misgivings: the next time it happened they hoped that nobody would notice. It was my first inkling about how often justice only gets done when someone does notice.

That is another example of how Aboriginal people historically have been treated. It appears to me that there is a lot of technical detail in both this Bill and the next Bill, and I hope the Government has got it right. This is ultimately its Bill. I want one thing on the public record: This is the Government's Bill and its responsibility. Normally I would not be at pains to refer to a story about Sir Garfield Barwick; however, this book also tells a story about him when he acted in an appeal to Her Majesty's Privy Council by 12 Malay communists who were convicted of sedition or treason, I presume, and sentenced to hang. In fact, of the 13 people who were sentenced to hang for the same offence, only 12 engaged Sir Garfield Barwick to act for them. He was smart enough to know that, in fact, the initial execution warrant was not delivered according to the law. The result was that 12 of those 13 convicted people did not hang because he got the detail right; however, the thirteenth was hung because his lawyer did not get the detail right. I say to members opposite that this is their Bill. If the detail is not right, be it on their heads.

This is a complex legal and political issue. There is little in this Bill that would ever suggest this Government is doing a great deal about providing justice for Aborigines. I understand there is a necessity for the concept of certainty for both sides in this argument. We are now developing a legalistic framework which hopefully will deliver that certainty. Rather than providing fair and reasonable legislative mechanisms for identifying and determining native title rights, I fear this Government will go down its old path, that of the 1993 Land (Titles and Traditional Usage) Act, where it developed a bloody-minded and ham-fisted approach to try to legislate out of existence the common law property rights of native title. That blunt instrument did not work. We all know the results of that blunt instrument: It cost the taxpayers of this State $4m, did not create any form of certainty whatsoever, and was an unreasonable and unnecessary step based upon a rumour, probably developed by the late Bob Pike or the now senator to whom I referred earlier in my comments, who got it from some mindless source in Canberra. However, the Government was so jumpy about native title that it did not investigate the totality of what was being said and realise quickly that that was a fallacy. On that occasion, the Government's legal advice - it told us it was the best advice available from the most senior people in the private and public sectors - was that the Bill was legal. Seven-nil and $4m later I suggest the Government sack those lawyers because they were not worth a crumpet. I fear the Government has done it again. To be honest, I hope it has not.

The most nasty, wicked thing the Government did was to run its campaign. Do members opposite remember the campaign about how native title claims would be made on freehold backyards? The Government knew that was a fallacious claim but it proffered it around everywhere because it saw political advantage in doing so. The Government did nothing but use the political advantage it saw stemming from that. It did not matter how much the Government was encouraging ridicule or distrust of Aboriginal people or fermenting intolerance towards them, it saw the campaign as being to its political advantage. The Government's political backers ran advertisements on television. The Government did not criticise them; it supported them. The Premier was out there day in and day out supporting and perpetuating the falsity of the campaign. Not one Government member said exactly what it was. Blind Freddy knew exactly what it was.

Hon Greg Smith: They were accepting claims over freehold land at that stage.

Hon JOHN HALDEN: However, the Government knew what the Mabo decision said.

Hon N.F. Moore: We thought we knew what Mr Keating said.

Hon JOHN HALDEN: He did not know; nobody knew it until Wik.

Hon N.F. Moore: He told us in no uncertain terms that it would extinguish freehold.

Several members interjected.

Hon JOHN HALDEN: Nobody knew the exact position of pastoral leases until Wik clarified it.

Hon Bob Thomas: Keating said it had to be tested in the courts.

Hon JOHN HALDEN: Whatever Paul Keating said, it did not have the divisiveness or the falsity with the specific purpose of pitting black against white, as did the comments of the Government's Premier and backers, supported by government members.

Based on what the Government has said and done before, it is hard to accept that this Bill, shaped by the Premier and this Government, does not contain an in-built prejudice. I hope that is not the case. I want this issue resolved in the interests

of all Western Australians. I want it resolved fairly and equitably. I do not distinguish between pastoralists, mining companies or Aborigines. I am sure that no matter what they may have said before, all members, all 34 of us, want that result. How we get to that point is the question. The pattern of past mistakes can be described simply as the Government having a fundamental disregard of the existence of native title. It is a common law property right and the Government continues not to accept that and to distort what it is. An earlier speaker described it aptly in terms of the tears. I will not go back over that, but it was a very apt description.

Unfortunately for Western Australia and the indigenous people of this State, this Bill could be seen to be following the pattern of the original 1993 Bill. The purpose of this Bill is to validate certain titles to land and waters in Western Australia which were granted in what could be termed the intermediate period. Hon Bruce Donaldson referred to the 10 000 titles which were previously validated illegally but which are now to be validated legally. Quite clearly, they have an effect upon native title. What this House will do is abolish native title for those claims.

Hon B.K. Donaldson: Churches were on some of those lands.

Hon JOHN HALDEN: I do not know that for a fact. However, if the member tells me that, I am happy to accept it. In some instances there is a need to do that; there is a need to do it equitably. A number of serious consequences would inevitably arise if this legislation were passed in the Government's desired form. The second reading speech does not adequately address these consequences. It touches on them, but that is all.

Firstly, this legislation is born out of the Government's need to address the legal status of its actions in the so-called intermediate period, to which I have referred; secondly, this Government seems fundamentally unwilling to acknowledge that the recognition of native title by the courts must be legislated for in a way which is not inconsistent with either the rights available to citizens under the common law of this country or with the provisions of the Racial Discrimination Act. Some problems exist, and I want to be assured that during the committee stage we will not fall foul of those fundamental areas.

There is no doubt that we will fundamentally change the common law, and there will be substantial extinguishment of native title. The difficulty could well be - I wonder whether this is one of the examples - I refer to Hon Bruce Donaldson - that we will extinguish native title where none currently exists. If we do that, I do not know why we are doing it.

Hon Mark Nevill interjected.

Hon JOHN HALDEN: Exactly. However, the argument will be put forward. If the argument is one of certainty, and if the process is equitable, I have no problem with that. There seem to be a couple of areas about which members should be clear. We need to be clear about the issue of pastoral leases and the inconsistent usages; we need to be clear about reserves. As I said previously, we need to do that for the sake of all of the players. However, if the Opposition is not clear, and the Government is not clear, because it is responsible for this Bill, then the consequence is that this matter will be back in the Federal Court of Australia, firstly, and then it will be in the High Court. Members talk about certainty. If this matter goes to the Federal Court and the High Court, there will not be much certainty.

Hon B.K. Donaldson: There will eventually be certainty, but it comes at the other end.

Hon JOHN HALDEN: Yes, there will be certainty at the other end. As a Parliament, we must be convinced that we are getting this right. If we are not, we are wasting our time. I notice the Leader of the House look up rather sharply. If we are not convinced that this is the right process, we are wasting our time.

Hon N.F. Moore: I was just wondering whether you had the same problems with the Queensland legislation, for instance.

Hon JOHN HALDEN: I do not know whether the Queensland legislation will hold up if it is challenged. I hope it does.

Hon N.F. Moore: It was your Labor colleagues in Queensland who passed that in three seconds flat. If there were to be any High Court challenge, it would have happened by now.

Hon JOHN HALDEN: No.

Several members interjected.

The PRESIDENT: Order! Hon Tom Helm and Hon Norman Moore might be good enough to let Hon John Halden have some of his time.

Hon JOHN HALDEN: If we do not get this right we are wasting our time. More importantly, to say that we want to achieve commonality is an absolute fallacy and that will be, and should be, on the Government's head. The Government does not have a good track record, and if this legislation is rolled over in the High Court or the Federal Court, the Government will have no-one to blame but itself. The Government knows that the situation in Western Australia is far more complex than it is in New South Wales, so there is no point in using the NSW legislation as an example. No comfort can be taken from that, or from the Government's track record in these matters. The Government's supporters will not thank it if it gets it wrong.

I have been requested to ask a series of questions to which I would like the minister to respond. I have four pages, and I do not know whether I should read them out.

Hon N.F. Moore: Read them out. Hon Tom Stephens has about 4 000 question, so why not you. There were many opportunities to ask questions. The member can give them to me or read them out. However, he must appreciate that it might take me a while to get all the answers.

Hon JOHN HALDEN: I do not think it will, and I hope that it will not. Mr President, we do not want to be here on Christmas Day. As much as I would enjoy sharing your good company on that day, I would prefer to share it with others. I will hand these questions to the Leader of the House, who is responsible for the Bill, and I would appreciate his dealing with those matters in his summing up. I do not want to bother everyone with constant and repetitive statements about what must be the outcome of the Bill.

Hon N.F. Moore: These are questions from the Aboriginal Legal Service. I thought they were your questions. You should have said that and I would have known they were coming from a particular point of view and it was not you seeking information for youself. The ALS could have easily asked questions.

Hon JOHN HALDEN: I said that. The Government has told the House that there is considerable demand across an enormous area of the State for this matter to be resolved. I concede that, and wholeheartedly support that. However, it must be resolved with fairness and with total clarity. If at any time after this day I hear it said that the efforts of the 34 people in this place were not directed to achieving that, I will disregard that. The 34 people in this place have acted with integrity. I will not accept, principally from the Premier - a man who has distinguished himself with gutter politics in this debate from start to end - any criticism of any one of the 34 members in this place, or particularly of any subgroup in here. The Premier's role in this debate from go to whoa is worthy of nothing more than total condemnation, because his attitude to the people of Western Australia, and particularly Aboriginal people, has been nothing more than fallacious. Another word, or a series of words, could be used which the President would make me withdraw. If that is the game, which is wrong, it will be an extension of the Premier's tactics which he has used again disgracefully today. I hope he will stop using them at this moment.

HON MARK NEVILL (Mining and Pastoral) [8.15 pm]: Some complaints have been made about the time allocated to debate this Bill, but adequate time has been allocated. We had part of last night, most of today and will have tomorrow to deal with this Bill. Similar Bills have been dealt with in other States in less time than that allocation, and those States have not had the benefit of a select committee, albeit sitting over only 10 days, which produced an informative report for members. The issues are clear.

The potential effect of the Muriuwung-Gajerrong judgment will not be known for years. I do not believe that one can sensibly anticipate the outcome of that judgment in this legislation. In fact, I consider that the Muriuwung-Gajerrong judgment does not affect this legislation very much. A suggestion was made that other States did not have the benefit of that judgment before passing their validation Bills. However, this validation Bill has always involved extinguishment, despite a contrary suggestion. It is only the judgment of Justice Lee which seems to have created that conflict. This Bill has always contained extinguishment as well as validation. That is allowable under the federal Native Title Act. The issue is examined from a position of public policy and competing interests. The extinguishment in the Bill relates to special leases and such matters, and competing interests arising between Aboriginal interests and petroleum and mining interests. This legitimate public policy position is allowed for by the federal Native Title Act. In fact, we have previously validated and extinguished native title in a previous validation Bill. It will also happen in the future when land is compulsorily resumed to build roads and other future acts are anticipated which are incompatible with native title. I do not see the Muriuwung-Gajerrong decision affecting the basic issues in this Bill.

I doubt whether the Government's Bills or the proposed amendments will result in certainty in titles. I am convinced that nothing much will change as the courts and the National Native Title Tribunal have ensured, and will continue to ensure, that uncertainty exists by the way in which they deal with these issues. Common law will necessarily evolve further, which will cause us to adapt. Both the courts and the National Native Title Tribunal have continually interpreted the legislation in favour of the claimant. I do not say that in derogatory sense - it is a clear fact.

In the Mabo No 2 decision, Chief Justice Brennan and a majority of the judges found that a lease that contained a sardine factory extinguished native title. Although Eddie Mabo and others won the case in the High Court, Eddie Mabo's personal claim for native title failed because of that former lease which was occupied by a sardine factory. Chief Justice Brennan used those famous words that have been quoted ad infinitum in judgments since - especially in the Miriuwung-Gajerrong case: Extinguishment occurs only when there is a clear and plain intention to do so. In Mabo No 2, Chief Justice Brennan must have considered that there was a clear and plain intention to extinguish native title by the provision of a lease for a sardine processing factory that no longer existed. Yet a situation has evolved such that mining leases like the Superpit in Kalgoorlie, which will be about 400 metres deep, will not extinguish native title because no mining lease does so under the current interpretation of common law. We have partial extinguishment on pastoral leases, revival of native title on leasehold land and various other combinations and permutations of what may happen. It is bewildering.

In 1991 I undertook a master of laws unit under Professor Richard Bartlett at the University of Western Australia. That was after Mabo No 1 was decided and before Mabo No 2 was argued. I followed the law in this area with great interest. After one or two years of the operation of the original Native Title Act, I lost interest in this area of the law because I thought that the Act was a dog's breakfast. It is now 500 pages long and an even bigger dog's breakfast. If the next edition is not given to us on a compact disk, it will be wheeled in. I will take bets from members on what date and year it will reach 1 000 pages. This area of the law is out of control. There are so many exceptions and variations that it is now impossible for an experienced practitioner to have a real handle on the Act. Who do we get these days to provide a good, objective, professional opinion on the Native Title Act? Most practitioners work with only parts of the Act and they are on one side of the fence or the other. This Act is all about native title and the mining industry, although it does deal with land use agreements.

There has been talk about the new registration test solving many of the problems. I do not believe that it will solve problems. The lawyers working for Aboriginal interests are running rings around the lawyers working for Governments; that is, private and public lawyers. They will drive a truck through that threshold test or get around it comfortably. Some very experienced lawyers who work in that area have said that to me. In the Miriuwung-Gajerrong decision the threshold test has dropped way below that which people expect it to be. Some Balangarri people visited Lacrosse Island in the Joseph Bonaparte Gulf in 1948, and that has been enough to establish joint native title between the Balangarri and the Miriuwung-Gajerrong people. In my view that is a very low threshold test. Anyone who thinks that John Howard's Wik amendments will solve the problem will be disillusioned. I do not think much progress will be made with this series of Bills because people will find that whenever there is litigation, it will be determined in favour of the claimants. It has always been that way, and I think it will continue. That is the way the courts and the National Native Title Tribunal deal with these issues.

People have been given assurances from time to time that are rarely realised. Time lines in the original Native Title Act were never met. People have been assured that this new threshold test will sort out multiple and overlapping claims. However, someone who wants to make a claim and who has a good lawyer will be successful, even if there is an existing claim, because that is the way the courts will deal with these matters. I have little confidence that all the assurances we have been given will be realised. This State can get itself into a chronic mess with this legislation. I am concerned about the potential inconsistency between the state and federal laws.

I have looked at some of the amendments and find them very difficult to follow. The report on the Select Committee on Native Title, which was tabled in this place last week, contains a very instructive passage. I will read it into *Hansard*, although I do not like to make a habit of reading material into *Hansard*. I refer to section 5.1.6 of the report under the heading "Potential inconsistency between Federal and State laws", which states -

> The Titles Validation Amendment Bill 1998 provides for Western Australia to declare the extinguishment of native title in respect of its dealings under State legislation with respect to the matters set out in the Native Title Act which includes all the "Scheduled interests."
>
> The Western Australian Aboriginal Native Title Working Group commented upon a proposed amendment to the Titles Validation Amendment Bill 1998 which would delete reference to the "Scheduled interests" and re-insert a small proportion of them . . .

They are four generic descriptions of leases, and include -

> a conditional purchase lease in Agricultural Areas in the South West Division under clauses 46 and 47 of the Land Regulations 1897 which includes a condition that the lessee reside on the area of the lease;
>
> a conditional purchase lease in an Agricultural Area under Part V of the Land Act 1898 which includes a condition that the lessee reside on the area of the lease;
>
> a conditional purchase lease of cultivatable land under Part V, Division (1) of the Land Act 1933 in respect of which habitual residence by the lessee is a statutory condition in accordance with the provisions of the Division; or
>
> a perpetual lease under the War Service Land Settlement Scheme Act 1954.

The report goes on to state -

> The Committee heard evidence from Mr van Hattem that an attempt to provide for different consequences for "previous exclusive possession acts" to those provided for under the Commonwealth *Native Title Act* may be unconstitutional . . .

The report goes on to quote Mr van Hattem's evidence -

> "Just as the state provisions Bill comes about because specific provisions are already in the Native Title Act which contemplate and, in a sense, authorise the making of that legislation, so too the Titles Validation Act, the

> amendments to that Act and the Titles Validation Amendment Bill arise because of specific provisions in the Native Title Act which contemplate and authorise that sort of legislation. The confirmation of extinguishment provisions arise under part 2 division 2B of the Native Title Act which commences at section 23A. Members of the committee will find that on page 20 of the reprint.

That is, the Bill. Mr van Hattem went on to state -

> The scheme of that division is to identify certain things as previous exclusive possession acts. There are also things identified as previous non-exclusive possession acts, but they are not relevant to this discussion. The approach in relation to previous exclusive possession acts is that if they are attributable to the Commonwealth by virtue of the Native Title Act, and nothing more, they are deemed to have extinguished native title. What that seems to be intended to do is to introduce certainty where presently the only rules relating to this topic are common law rules developed by judges on a case by case basis. There is considerable uncertainty as to the precise scope and extent of those rules; for example, there have been decisions like that in the Mabo No 2 case, where comments were made about the effect of grants of freehold and leasehold titles, the effect of public works and of land being reserved, all of which were from a legal point of view not central to the decision in that case, so are not binding but rather an expression of opinion of the court.
>
> This expression of opinion had been relied upon and it was widely considered that a freehold grant or the grant of a lease would extinguish native title. We have since seen that not all freehold grants do extinguish native title. The common law has developed and said that there are different types of freehold grants; some extinguish and some do not. We have also seen, principally through the Wik decision, the common law recognising that there are different types of lease; some extinguish and some do not. From the original statement of principle in the Mabo No 2 case, the common law has developed exceptions and qualifications. There is a considerable amount of uncertainty as to what it is. The confirmation of extinguishment provisions seem to be intended to identify particular types of tenures or past acts which comply with common law principles as they were understood at that point in their development and to say that these are deemed to have extinguished native title.
>
> The Native Title Act does not do that in relation to State grants. It does not deem then to have extinguished native title. It says that the category of grants which can have this effect are the previous exclusive possession acts, and they are defined in a particular way. If they are attributable to the Commonwealth, they extinguish native title and there are certain consequences in terms of procedural rights and compensation rights which are expressly provided for. The Act then goes on to say in relation to titles granted by states and territories that if the law is to the same effect as these provisions, it has effect.

They are important words. Mr van Hattem went on to state -

> The Titles Validation Amendment Bill has apparently been drafted with the intention of giving effect to that.
>
> Part 2 of the Bill starting with proposed section 12H does precisely that; it picks up the Commonwealth definition of this notion of previous exclusive possession acts and it provides for consequences in identical terms to those in the Native Title Act; in other words, the state Bill in the form it was introduced is drafted in a way that is consistent with, in a constitutional sense, the Native Title Act. The proposed amendments seek to take the notion of a previous exclusive possession act and divide it into three categories and prescribe different consequences in relation to those categories, so that we end up with legislation providing for the effect of previous exclusive possession acts attributable to the State in a way which differs from the effect of those acts which are attributable to the Commonwealth. For precisely the same reasons I have mentioned in relation to the future act provisions, we end up with inconsistency within the meaning of section 109 of the Constitution. The result, in my opinion, is to the extent the State provisions provide for consequences other than those provided in the Native Title Act, those provisions will be of no effect. They are inoperative as long as the inconsistency continues. That is my legal view of the effect all of this."

The other States have deliberately legislated identically to the provisions in the Native Title Act. However, we are moving away from the Native Title Act with these amendments, and I am not sure that we will not create more problems than we solve. The overview of division 2 of the Native Title Act, which is in section 23A(4), states that -

> This Division also allows States and Territories to legislate, in respect of certain acts attributable to them, to extinguish native title in the same way as is done under this Division for Commonwealth acts.

Section 23E, which is headed "Confirmation of extinguishment of native title by previous exclusive possession acts of State or Territory", states -

> If a law of a State or Territory contains a provision to the same effect as section 23D or 23DA, the law of the State or Territory may make provision to the same effect as section 23C in respect of all or any previous exclusive possession acts attributable to the State or Territory.

Section 23C is identical to new section 12I in clause 7 of the Bill. I am concerned that by changing the definitions of "exclusive agricultural lease" and "exclusive pastoral lease", this legislation may fall foul of the federal Act. We will see what eventuates, but it is a real problem that must be dealt with.

The committee reviewed all the equivalent pieces of legislation in the other States of Australia. The equivalent legislation in Queensland, New South Wales, Victoria and the Northern Territory mirrors the provisions of the Native Title Act in every respect. The Northern Territory legislation goes even further and states specifically that in the event of an inconsistency between section 23B of the commonwealth Act and the Northern Territory Act, the commonwealth Act will prevail. Therefore, the Northern Territory was not taking any chances that it would get it wrong. Those Bills were dealt with fairly expeditiously in those States. They certainly did not receive the exposure and analysis that our Bills have received.

The list of scheduled interests that will be extinguished contains three groups. One group encompasses mining tenements which do not extinguish native title. Those tenements appear to be the major bulk of the scheduled list. There is also a large list of other lots in towns. They are mostly Homeswest and Government Employees Housing Authority residences in towns which the scheduled interest would extinguish. Then there is the more contentious list which are Land Act leases. Many of those are roads and that type of thing and would therefore not be caught by the provisions of this Bill. The amount of extinguishment, in some respects, is not as great as people may fear. Only a small number of leases would be involved. Moving from the schedule list to a generic description, as we may decide to do, could also cause problems.

In the report by the Senate's Joint Parliamentary Committee on Native Title and the Aboriginal and Torres Strait Islander Fund is evidence given by Mr Orr, who was the commonwealth officer dealing with the issue of schedule leases. At page 128 of the report of the Select Committee on Native Title Rights in Western Australia an extract from the Senate's report shows that Senator Bolkus asked Mr Orr -

> Could there be scheduled interests which do not extinguish native title under common law included on the schedule?

Mr Orr replied -

> As you will hear when we give the evidence as to how it has been developed, we have been aware of that possibility and we have taken steps to put the schedule together on the basis of what is the legislative intent as set out in the legislation and other objective factors which we have garnered in the process.
>
> It was originally intended in the government's thinking that in the bill there would just be some generic descriptions of leases which provide exclusive possession, and there would not be any specific listing. But in discussion with the states and territories they indicated that this approach would leave considerable uncertainty with regard to the land management system of Australia and that it would be a much preferable course to proceed towards a listing of specific types of leases in the bill to enable there to be certainty with regard to those types of leases.

There is a problem in having generic descriptions, because we could find that one particular lease is outside the scope of that generic description. If that is the case, it could result in argument about the scope of the generic description.

Hon Greg Smith: That committee looked at 600 individual bits of state legislation.

Hon MARK NEVILL: Yes, that comes out in the Senate report. However, as I said, it could result in argument about the scope of generic leases which provide exclusive possession. The result is to create uncertainty and possibly litigation on a lease-by-lease basis. The committee's recommendations deliberately moved away from that. There are risks in having generic descriptions. If leases in Kalgoorlie are left as generic leases restricted to residential and commercial leases, there will be a great deal of argument about whether that description will extinguish those lists. It is preferable to list all the residential, commercial, agricultural and community purpose leases so that there is absolutely no doubt.

The way that this could evolve is that there could be no certainty of which types of leases are covered by undefined terms, such as "residential" and "commercial". We are asking for trouble. Already in Kalgoorlie-Boulder people who have perhaps been living for 70 years in residences on leasehold land have been caught up in the Federal Court. Hon Helen Hodgson said earlier that no-one's backyard is under threat. Pensioners who have lived all their lives on some of those properties have now found themselves in the Federal Court because the land is subject to claims. Some Aboriginal groups have been very reasonable and removed those leases from claims but others have not - one group in particular has not. Because Kalgoorlie has overlapping claims in it, those pensioners have found themselves in the Federal Court. One can imagine the stress that causes them. A lot of these people do not know the difference between freehold and leasehold. They simply see it as their block of land which their family has had for 70 years. People are getting caught up in this, so I have reservations about the use of generic leases.

I have reservations also about what will happen with special leases and general purpose leases if native title is not extinguished on those leases. They are mainly affected mining and petroleum companies, and I do not apologise for that, but those special and general purpose leases cover a lot of mining towns in the State. I believe that the failure to extinguish

there will put at risk millions of dollars of assets that companies have spent on infrastructure. Places like the BHP's hot briquette iron plant in Port Hedland could also be put at risk. Enormous amounts of money are invested in these infrastructure projects. They are now at risk of potential future act proceedings; that is, the right to negotiate and the right to consult. Whenever they want to vary the purpose or terms of the lease, each title must be examined individually. That will obviously cause enormous delays, costs and litigation. These leases are being validated but if native title is not extinguished, I see more problems. I have seen the problems in the goldfields with the right to negotiate. When there are anything from 20 to 30 different groups, the question can be settled and then along comes another group. As I said earlier, I do not believe the new threshold test will be all that significant at the end of the day. If someone wants to lodge a new claim, that will trigger the same process again.

I intended to speak at length about residences on leases. Some amendments say that people must reside on a lease, particularly the conditional purchase blocks. In his decision, Justice Lee says that native title is extinguished where the homestead is located. We are leaving it wide open for a claim to be made on the remainder of that lease. If those leases are validated, native title is not extinguished. Simply because all those conditional purchase lots have a house on them does not mean they will not be affected. The opportunity is there for a native title claim on that part of the agricultural lease that does not have a homestead on it.

I have been looking at some information from the Indigenous Land Corporation over the past few days. I am very concerned about the equity for Aboriginal people. The people who run the Aboriginal organisations do not always have a strong sense of equity. In many cases they look after their own first, the people in their areas. I suppose looking after our family is cultural. There is clear evidence that Aboriginal people have been -

Hon J.A. Scott: Don't most people do that?

Hon MARK NEVILL: They do; however, these are taxpayers' funds and these people are charged with the duty to treat people equitably. I looked at where funds have been spent to purchase Aboriginal stations and land. In the Port Hedland area, the Peedamulla, Kangan, Coongan, Carlindie, Callawa, Pippingarra, Strelley and Mt Welcome stations have been purchased. In the Derby area, land at Millijiddie and Mt Pierre as well as Noonkanbah, Mt Anderson, Leopold Downs, Louisa Downs, Bohemia Downs, Gibb River, Mt Barnett and Fairfield stations have been purchased. There is a proposal to purchase Brooking Springs station at Geikie Gorge. Although I have heard that $6m will be paid for it, I do not believe that because I do not think it is worth that much; however, I imagine $3m will be paid. Another $3m to $6m is being spent in that area this year. In the east Kimberley region Bow River, Carson River, Elvire, Koongie Park, Lamboo, Carranya, Billiluna, Doon Doon and Lake Gregory stations have been purchased, and Mt Barnett and Gibb River stations are also partly located in this region; I might have missed some. On top of that, this year $14m will be spent to purchase Alice Downs and Bedford Downs, I think, from E.G. Green and Sons.

Let us look at the poor old Noongars in the south west, who do not own much land there. The indigenous land fund was set up for Aboriginals who were dispossessed. The Noongars there have virtually nothing left of their culture. There are disorganised. From what I can see, they have no leadership. There are about 10 leaders, and as soon as a new leader is appointed, that person is overthrown by someone else. Their land council is not effective from what I can see; and gauging by the letter they wrote to members, they do not know much about public relations. The properties owned by the Noongars in the south west are shown by only a few little dots on the map I have in front of me. I suspect most of them are Aboriginal Lands Trust blocks that have been there for 20 or 30 years. No funds have been spent on land acquisition in that area recently. The bigger blocks have been handed back by the church. These properties include land at Mogumber and Wandering, and Marribank. They have virtually nothing. I read the most recent annual report, which noted that they got the West Swan Primary School, much to the horror of all the people there. Good on them, I say. I am glad to see them getting something.

The Indigenous Land Corporation's response to the Kimberley land needs states -

> The ILC recognises that the possible impact of native title claims on pastoral leases is of particular significance in the region.

That is the Kimberley region. It continues -

> Extinguishment or major impairment of native title rights on pastoral leases . . . would have the effect of removing a significant mechanism for Aboriginal peoples in the region to control or access their traditional lands.
>
> As a result, there may be a marked increase on the demand for ILC funds to acquire pastoral leases for traditional owners and the ILC will monitor developments in the native title area.
>
> The ILC recognises the need to work closely with Aboriginal organisations in this Regional Council area to maximise the objective of meeting land needs through all available mechanisms.

The indigenous people in the Kimberley have a very good chance of establishing native title while the people in the south

west have virtually no chance. That is where the money has gone over the years. Peter Yu, the director of the Kimberley Land Council, is deputy director of the ILC. It is incumbent on the ILC to ensure that the bulk of that money goes to the Noongar and Yamatji people from Leeman north to Geraldton where their title has been extinguished. I suspect that the people who have influence within Aboriginal organisations and the Aboriginal and Torres Strait Islander Commission are diverting the money to areas where they have a good prospect of getting native title. A refocus of their efforts is needed. The ILC's strategy and annual reports show that the focus will still be on the pastoral areas, particularly in the north west and the Kimberley.

It would be nice to tell someone "I told you so" in six months but I will not get any pleasure out of that. I am concerned about these Bills. However, at the end of the day, I have a considered view that we will not remove the present uncertainty. The courts and the National Native Title Tribunal almost instinctively come down on the side of the claimants every time except in the Fejo decision which covered the Larrakia claim. In every other case they have been successful. I wonder where it will all end and when we will see an improvement in the quality of life of Aboriginal people. Nothing that I have seen done in the past 20 years gives me great confidence that we are doing the right thing. We are all in the lap of the courts and at the end of the day, we will not have much effect on what happens.

HON GREG SMITH (Mining and Pastoral) [8.58 pm]: I hope the Democrats have been listening to Hon Mark Nevill's speech because as much as Hon Helen Hodgson seems very passionate about her stance, Hon Mark Nevill made some factual statements which may enlighten the Democrats about the reality of the native title issue, especially in the Kalgoorlie area. I will begin by repeating what Hon John Halden told us. He said these are our Bills. He is dead right. At the moment, they are the Government's Bills. If they are passed unamended, we will claim ownership of them, that is not a problem. However, once they begin being amended by people on the other side of the House, those members must be prepared to accept some ownership of them.

The Bill will simply validate acts that were done in that intermediate period. It concerns every single act. Very few of them were actually done outside of the Native Title Act. There are subdivisions in the northern suburbs, for example. Some of them may have been on freehold land; some of them may have been on vacant crown land, Department of Land Administration land or LandCorp land. It is purely validating all the acts that were done during that period. Therefore, everybody who has a title to that land knows exactly where they stand. The acts are validated, native title does not exist, and their title is legitimate - beyond doubt. That is all that the validation section of the Bill seeks to do. The confirmation part of the Bill simply confirms that native title has been extinguished on certain types of leases.

Hon Mark Nevill referred to the report and the way in which the committee compiled the schedule. When I read it I was quite surprised. It was not just a slapdash list of titles; it was a calculated way of describing a list or a schedule of interests. As I said, the committee considered over 600 pieces of legislation in every State. For example, it took into consideration the size of leases. It examined the 20 smallest leases and the 20 biggest leases, because when the committee was compiling the schedule it was mindful that leases of, say, 100 000 hectares were not intended to be exclusive possession leases. They were just pastoral leases; they were not for intensive farming or for residential purposes.

Therefore, the schedule has been compiled in a thorough and methodical way so that the current Bill conforms with the federal Native Title Act. The difficulty when reading these native title Bills is that they have all been drafted to conform with the Native Title Act. Therefore, they must be read in conjunction with the Native Title Act.

Hon Ljiljanna Ravlich: What is the point? Everyone knows that.

Hon GREG SMITH: The point is that if this House amends the Bill and moves outside the parameters of the Native Title Act by inserting some bits and deleting others, it will not conform with the Act. That is the reason that this Bill has been presented in its current form. This is the Government's first step in the native title process. For the last six years we have had an unworkable process. Claims have been made and accepted. A negotiation process and a future act process is then entered into. In many cases things get bogged down and stop. Matters have been referred to the National Native Title Tribunal or to the Federal Court of Australia, but, as members are aware, six years later there has been only one determination.

The other thing that members should bear in mind is that if we start excluding land from the Bill, what we are doing is repossessing land for native title claimants. Therefore, land will be repossessed from one group of people and there will then be another group of dispossessed people. That is what it amounts to. People will think that they hold valid titles to land, and if their title is moved out of the valid title status into one in which native title exists, those people will be dispossessed of their title.

Hon Mark Nevill referred to the Aboriginal Lands Trust. I do not know where it has been spending the money, whether it has been buying stations. However, it was designed for people who cannot claim native title.

Hon Mark Nevill: Not the Aboriginal Lands Trust; it was the indigenous land fund.

Hon GREG SMITH: The indigenous land fund has initially been allocated $1.2b, and $47m per annum in perpetuity, for

the purchase and maintenance of properties. We did some back-of-the-envelope calculations, and with $47m a year the fund could buy every pastoral property in Western Australia in about three years. As Hon Mark Nevill said, the fund was set up for Aboriginal people who cannot claim native title because one of the titles we will validate may inadvertently extinguish native title. We do not know if native title exists on any of them; it may exist. Those people will have access to the fund to purchase land for themselves or for their incorporated body. A few of the controversial leases include the hot briquette iron plant, the Chalice goldmine and four or five others. I doubt whether anyone in this House would say the Government should not have given Broken Hill Proprietary Co Ltd the authority to start construction of the HBI plant in Port Hedland. With hindsight, if the Government had not required BHP to indemnify it against native title claims, and BHP had to go through the future-act process before it could build the plant, it would have been going through that process when the Asian financial crisis occurred, resulting in a drop in iron ore prices, and in the availability of finance, and the HBI plant would not have been built. I hope that no-one will cast aspersions on the Government because it went outside the Native Title Act and the future-act process to grant that land to BHP.

Hon Ken Travers: Did it break the law to do it?

Hon GREG SMITH: There is no state legislation, and if a determination is handed down, native title holders will be compensated.

In debate yesterday, Hon Tom Stephens quoted the committee's report fairly selectively, although some of what he said was relevant to what the Government is trying to achieve. He said that the committee concluded that a workable system should provide respect for the property rights of all Australians. Nothing in the Bill says that Aboriginal people's land is excluded from being validated. We will validate the titles of Aboriginal people. This Bill will say to people that they have a valid title; it is beyond question. Hon Tom Stephens said that we must have certainty, efficiency and equity for all parties in the administration of land tenure issues. That is what the Bill will do. Hon Tom Stephens said that we need security for industry operating on lands on which native title may exist. As Hon Mark Nevill said, some commercial leases in Kalgoorlie were granted 80 or 90 years ago. The businesses operating on those leases now have doubts about the validity of their titles. We are trying to remove that doubt. Hon Tom Stephens also referred to the need to avoid costly, lengthy and disruptive litigation which is unpredictable in its outcome. That is exactly what the Titles Validation Amendment Bill will do. I had the opportunity to ask questions of Michael Baker, QC. I asked how we would figure out which titles are valid and which are not. He said that since the Miriuwung-Gajerrong decision, we would have to figure that out in the courts.

It is good for lawyers as it guarantees some work in the future. We want to avoid that conflict and say that all these titles extinguish native title. Members should bear in mind that it is not extinguishing vast tracts of land. It involves commercial leases and housing blocks with 10 000 title validations, and not one of the 10 000 titles was done outside the Native Title Act. In that period, 10 000 titles were granted, many of which were blocks in subdivisions in Hon Ken Travers' region in the northern suburbs of Perth. It will validate the titles to put them beyond question.

Some speakers tried to claim that the Miriuwung-Gajerrong decision has clouded the water. I suppose one could say it has. However, my questioning of people from the legal profession has indicated that the decision has not changed anything with the Bills; they are no different from how they stood before the Miriuwung-Gajerrong decision. The select committee report indicates that I asked Peter van Hattem the following question -

> Has the Miriuwung-Gajerrong decision changed anything regarding the state Bills' conforming to the NTA?

His reply was as follows -

> The Federal Court decision cannot alter the Native Title Act. The issue is whether the state legislation is consistent with the Native Title Act. Nothing the Federal Court does can change that. It is either consistent or not consistent.

I reiterate that point. As Hon Mark Nevill said, and witnesses at the committee's hearings indicated, the validation Bill has narrow parameters, which members should bear in mind if they wish to amend it. One cannot move within it. It was drawn up only to comply with the Native Title Act and validate the scheduled interests and other acts within the parameters of the Native Title Act. Major amendments cannot be made to it, as we have seen with other major legislation in this place in recent weeks. What one sees is what one gets. Members opposite should not muck around with it. Hon John Halden said that this is the Government's legislation, and that government members will be responsible for it. If the Opposition mucks around with the Bill, and it does not work, it must bear that responsibility.

Hon Ken Travers: If we can change it in a way you do not like, then vote it down.

Hon GREG SMITH: That is a stupid statement. Hon Ken Travers must not change everything just because he is in opposition. We know how to do some things on this side of the House. We certainly know a lot more about native title than does anyone from the northern suburbs.

I do not wish to speak for long as I would like to get on with this legislation. Emotion has been drawn into this debate by people like the Greens (WA) members implying that pastoralists and everybody else involved in the land do not care about

the land. My three children were born on and grew up on a sheep station. They love it. When in the bush, they run around and pick up sandalwood nuts, eat sandalwood and quandong nuts and chase bungarras and all sort of creatures. To suggest that Aboriginal people have a mortgage on an affinity with the land is offensive. I have lived on the land all my life. I love the land. When I go back to the station, I ride around on the motor bike or drive just to look at how it is going. That probably sounds stupid to someone from the city, who would not understand what I mean. Hon Christine Sharp probably understands: One drives around the station and farm to see how it is going because one cares for it.

Hon Christine Sharp: That is why you should understand the position of Aboriginal people.

Hon GREG SMITH: We are not trying to take vast tracts of land off Aboriginal people.

Hon Christine Sharp: They are not trying to take vast tracts of land off you either.

Hon GREG SMITH: The most frustrating aspect of dealing with the Greens on this legislation is that, in making an effort to validate legitimately granted titles, which people believe they legitimately hold, the impression is created that somehow we are taking vast tracts of land away from Aboriginal people, and that we will exclude them from entering parks. Nothing could be further from the truth. We want to say, "Titles are valid on this land, and native title exists on that land." As I said, we are trying to establish a workable system comprising one portion of land on which the titles that exist are valid and another portion over which native title exists. We will then set up the state provisions detailing how to deal with it.

The major problem with native title in the past has been that there is no set procedure for dealing with it. I said last week or the week before that if a person wants a mining tenement, he must follow due process. If he wants land excised from a pastoral lease to develop housing blocks on the outskirts of Karratha, he must follow due process. However, there is no due process for native title. We go as far as the future-act process, but there is no legislated process for dealing with it. It then goes into a negotiation process that has no rules. If a resolution is not reached after negotiation, the parties must move to the National Native Title Tribunal, and then everything seems to stop.

Hon Ken Travers: Those examples are trying to create something. Native title already exists.

Hon GREG SMITH: The member knows nothing about native title, so he should stay out of the argument. Rita Joseph wrote an article entitled "Wik: Sacrificing the bush to ease city consciences", in which she states -

Hon Christine Sharp interjected.

Hon GREG SMITH: It is not a racist article. Why can we on this side of the House not say "Aboriginal" without being called racist? Members opposite say "Aboriginal", "Aboriginal", "Aboriginal", and it is all right. When one is on the high moral ground there is no problem with the word. The article states -

> Putting aside a few atypical lease-holders like the Sultan of Brunei that have served to characterise the debate so far as the "wealthy pastoralists" versus the dirt-poor Aboriginals, we are left with a miserably small, powerless group of struggling farming families unfortunate enough to have made their homes and built their livelihoods on leasehold land.
>
> This group of bush families is being singled out to carry the whole burden of reconciliation with the Aboriginal people. And via this small sacrificial group, we in the cities, our leaders in the Churches, our judges in the High Court of Australia, see an easy way to pay our debt to the Aboriginal peoples without it costing one skerrik of *our* security of home ownership, *our* land tenure, *our* comfortable lifestyles.
>
> Does secret relief that our own wellbeing is not at stake explain some of urban Australia's vast enthusiasm for the plan to single out certain rural leaseholders and force them to share their land titles with loosely defined and, in some cases, competing Aboriginal groups? How easy is it for us to place tacky fake hands in the manicured green lawns of Parliament house? How many of us in the cities have known the sheer physical exhaustion of wrestling a living from a dry, dusty, drought-ridden land? How many of us have known the heartbreak of droughts and floods, and pests and disease that wipe out crops and mobs of livestock? How many of us understood the suffering of social isolation, the uncertainty of emergency medical help arriving in time, the ongoing uneven struggle with bank loans, the ever constant threat of being sold up?
>
> Are these the "greedy pastoralists" that we are being led by public rhetoric to denounce?

That sums up what pastoralists have to put up with. They are not millionaires driving around in Rolls Royces, living in the city and flying up to see how the men are working.

A friend of mine owns a station called Challa, which has been in the family for three generations. They love it more than they love each other. The property next door came up for sale and I asked why they did not buy it. They said they could not buy it because then it would not be Challa. That is how much they felt for their little patch of dirt. It is very offensive to people like me, and I imagine all country people, to be told that we do not have any affinity for the land and that we just want to rape and pillage it. Aboriginal people do the hunting, fishing and gathering, but white people have exactly the same

instinct. Recreational fishing is one of the biggest sports in the world, and certainly in Australia, and people like fishing not because they must catch fish in order to survive, but because it takes them back to the hunting and gathering of food. It is part of their nature. The forebears of white people had to hunt, gather and fish to survive, but we have been living in a westernised culture for more generations than have Aboriginal people. Within the Aboriginal communities in Western Australia there are immense variations. For example, the Noongars have been associating with western culture for probably three generations.

Hon Ken Travers: Do you reckon that is all?

Hon GREG SMITH: It might be five. At Wiluna there are Aboriginal people who have only just encountered white people. Some elderly Aboriginal people in that area had perhaps never seen a white man until 20 years ago. Even within the Aboriginal community there is an enormous spread of exposure to European styles of living. However, every one of them would like to hunt, fish and gather, and I do not believe anyone has a mortgage on that activity.

I will lay to rest a claim made by an academic and social activist, Sister Veronica Brady. She stepped up the fight against the State's native title legislation yesterday by likening the imminent passing of the laws to the persecution of the Jews in Nazi Germany.

Hon B.K. Donaldson: It is an outrageous claim.

Hon GREG SMITH: The irony of the debate is that it is always a mistake to assign to any one group of human beings a superior capacity for sensitivity and feeling. It is ironic how often it is implied that the non-indigenous country people do not love the land, and that the land has no deep meaning for them and no real significance other than to make money. That, remember, was one of the major claims that Hitler made. He said the German Jews had no feeling for the fatherland and were only there to make money. This easy assumption that races other than indigenous people cannot love the land is both wrong and offensive. I will say no more. If this Bill is amended or is not passed, this Parliament will dispossess another group of people. That is not right. Two wrongs do not make a right, so I urge every member in this House to support the Bill.

HON CHRISTINE SHARP (South West) [9.24 pm]: I will explain to the House why I oppose this legislation. First, I do not like the title of the Bill because it is highly hypocritical. It is called the Titles Validation Amendment Bill, but the Bill is all about title extinguishment. Proposed new section 12B -

> . . . extinguishes all native title in relation to the land or waters concerned.

Proposed section 12C(1) -

> . . . extinguishes the native title in relation to the land or waters on which the public work concerned . . . was or is situated.

Proposed section 12D(1) -

> . . . extinguishes the native title to the extent of the inconsistency.

Part 2B relates to the confirmation of past extinguishment. Proposed section 12I relates to the confirmation of extinguishment. Proposed section 12J(1)(a) relates to the confirmation of extinguishment and states -

> . . . the act extinguishes native title in relation to the land or waters on which the public work concerned . . .

Proposed section 12J(1)(b) states -

> the extinguishment is taken to have happened when the construction or establishment of the public work began.

The Bill is all about title extinguishment, not title validation. I find the title to be hypocritical and offensive. Let us make it clear that the Bill is about the extinguishment of native title, and what that means for Aboriginal people has been lost.

Hon Greg Smith interjected.

The DEPUTY PRESIDENT (Hon J.A. Cowdell): Order! We are not having a dialogue.

Hon Greg Smith: Oh! The member's land is freehold. I am a disgusting person.

The DEPUTY PRESIDENT: Order! Hon Greg Smith might not be a disgusting person but he might be out of order.

Hon CHRISTINE SHARP: As Hon Greg Smith explained at length, the Bill also affects the rights of other groups apart from indigenous people. For example, it refers to the rights of pastoralists, about whom he spoke in such a sweet way. I profoundly disagree with Hon Greg Smith and with the direction of the Bill because the Mabo and Wik decisions are about not the extinguishment of anybody's property rights but the possible coexistence of native title rights alongside other people's property rights.

Hon Greg Smith interjected.

Hon CHRISTINE SHARP: The notion of exclusive property rights is outside Aboriginal culture, anyway. Before white people arrived, Aboriginal people did not even have a notion of exclusive property rights. I refer members to page 15 of the report of the Select Committee on Native Title Rights in Western Australia.

Hon Greg Smith interjected.

Hon CHRISTINE SHARP: I want to explain to Hon Greg Smith why I agree as well as profoundly disagree with him. That report refers to the "docking of two systems of law" and it quotes the evidence of Justice Robert French to the inquiry. The report states that Justice Robert French explained -

> . . . the recognition of native title by the common law as a "docking of two systems of law" and put the relationship between the two thus:
>
> > "*The recognition of native title is one system of law speaking to another. The recognition is limited and qualified by the fact that native title is recognised subject to all our laws and the private rights that are created pursuant to those laws.*"

In other words, there are traditional property rights and, as Justice French says, we are trying to dock them with common law rights, and that is an extremely difficult and complex process. On top of that there is another union of systems. We are trying to dock the system of common law rights with a statute system. Of course, we are creating a statute which speaks from the statute to the common law right. However, that common law right also has to speak to the native title right. Therefore, we are talking about vast conceptual systems that do not mesh with each other easily. That is why this subject is so difficult to grasp not only intellectually but also emotionally. If I learn anything from the passage of this Bill, it will be how irrational we human beings are, and how men in suits who look so rational and who try to sound so rational can be so steeped in hysteria about some very simple notions. That is because some of the concepts with which native title is trying to grapple are very foreign to our culture. The notion of sharing is very foreign to our culture. That is what Hon Greg Smith finds so difficult when he waxes lyrical and romantic about the pastoral lifestyle. Nothing in the native title legislation is trying to remove the pastoral lifestyle. All that the Mabo and the Wik decisions are saying is that the pastoral lifestyle can co-exist with native title rights. It is very difficult for non-Aboriginal people to come to terms with the concepts of coexisting and sharing. One of the reasons that we have overlapping native title claims is that Aboriginal people have a collectivist culture rather than an individualist culture. In traditional usage, areas of land did not belong to one person; therefore, the ownership was never very clear. Aboriginal people are now finding that as they try to grapple with our concepts, our lifestyle and our laws, they are getting themselves into the situation of making overlapping claims. However, that is partly to do with the overlapping conceptual frameworks.

I will give an example that may help us to get our heads around how Aboriginal thinking is different from our highly rationalised thinking. I am perhaps being very pretentious here, because I should not pretend to have a deep understanding of Aboriginal thinking. However, I was very struck by a text on Aboriginal lifestyle that described how white settlers, when they first came to Australia, were staggered by how Aboriginal people appeared to have an extraordinarily primitive system of numeracy. In fact, they appeared to count from one to three, and from there they went to mob, and after that to big mob. That was Aboriginal numeracy in the early days. I do not wish in any way to suggest that Aboriginal people are still using these concepts. I am using this example to describe the differences between our two cultures. When white people first made contact with Aboriginal people, they thought that the Aboriginal numeracy system showed clearly that Aboriginal people were incredibly ignorant and stupid and that our culture was greatly superior to their culture. For white people these days, it is not enough to count to a million; billions are commonplace, particularly when we talking about dollars. The difference between Aboriginal numeracy and our system of numeracy, where we can accurately count in billions, has to do with our attitude to property.

Aboriginal people were nomadic. That meant that they had very little individual property. In fact, individuals owned only what they could carry with them as they were walking around the countryside. They might have a spear, or perhaps two or even three spears, or they might have a few containers or carriers, but never many. Usually these were implements that they would carry with them to pursue their hunting and gathering lifestyle. They would not even describe them in numerological terms. They would say, "I have two spears. One is the one that uncle made and the other is the one from the so-and-so tree." In other words, things had their own unique properties because the Aboriginal people themselves had a very one-to-one relationship with a small quantity of things that actually belonged to them.

I give this story because it is very interesting and also a good example of how our two conceptual systems find it hard to understand one another. When an Aboriginal with his one, two or three spears was confronted with some kangaroos, he or she did not need to be able to distinguish whether there were in fact 29 or 32 kangaroos. All he or she needed to be able to say was there was a mob there. That fitted their lifestyle. It was totally appropriate; whereas, for example, in many Aboriginal language systems there are 30 or 40 words for water, in English we may have only half a dozen. Therefore, concepts fit lifestyles, lifestyles fit cultures; and here we are in this incredibly difficult situation of trying to make traditional

Aboriginal communal ways of relating to the land mesh with our common law rights and using our statutes to somehow reflect the meaning of those common law rights or our political agendas for extinguishing common law rights. No wonder we are all finding it difficult.

I will quote from the second report of the Select Committee on Native Title Rights in Western Australia. I commend both committees for their work on native title. This year in the Parliament I have found the reports, even though I have not read completely the second report, interesting and useful documents for anyone trying to grapple with what native title is all about. I notice that Hon Greg Smith has used these reports extensively also.

I will move on to the vexed issue of compensation and to some extraordinary statements made in the second report on the Select Committee on Native Title Rights in Western Australia about compensation. On page 32 are the words of Mr John Clarke, who, as we all know, is a consultant to the Ministry of the Premier and Cabinet, and specifically to the native title unit of the ministry. Mr Clarke said -

> In terms of a commonwealth contribution, the agreement between the State and the Commonwealth is yet to be finalised. There are officials working on this, but what the State does have is a written undertaking from the Prime Minister that future compensation for that type of event, whether it is paid as a result of a confirmation exercise or it is paid at the time of a lease being renewed or extended, is covered by the 75/25 deal.

Hon Mark Nevill then stated -

> If you go ahead with the titles validation in its present form generally, this problem of compensation would come up if Justice Lee was correct.

Justice Lee, of course, was the judge in the Miriuwung-Gajerrong case. I ask members to note Hon Mark Nevill's question -

> Would it be better to settle that issue up front by getting the courts to actually make some pronouncements on that or would you be just deferring the problem by excluding those forms of lease to avoid engaging that decision and putting it off to another day? Is that not the choice we have got?

Mr Clarke replied -

> . . . The advantage of proceeding with the validation -

That, of course, as members realise, is what we are doing tonight. The answer continues -

> - and the confirmation provisions now is that the matter is settled and if it is shown that Justice Lee's approach is correct and everyone else is not, then there will be additional compensation liability.

I will repeat those words: Then there will be additional compensation liability. In other words, in pressing ahead with this Bill tonight, this week before Christmas, we are precluding the possibility of the Federal Court determining in a more definite way exactly what compensation the State is incurring in this. We are jumping off the cliff with no idea, and we want to do it urgently. I want to refer to one sentence on page 19 of the report. The committee finds that the State is exposed to a compensation liability that cannot be quantified. I find that extraordinary.

I also find extraordinary that all this is happening without consultation with Aboriginal people. I noted that Hon Norman Moore, the Leader of the House, I think in the second reading speech and certainly in the past day or two, claimed that the Government consulted with Aboriginal people on this Bill. I find that an extraordinary statement. I have a letter addressed to me as a member of Parliament from the Deputy Director of the Ministry of the Premier and Cabinet. The letter was sent to all members, informing us of the release of the two draft state Bills, which are the Titles Validation Amendment Bill and the Native Title (State Provisions) Bill. The letter is dated 18 August of this year. It says that comments on the draft State Bills can be made until 10 September. From 18 August to 10 September is exactly three weeks. The community and members of Parliament had that time to comment on the draft Bills. My understanding from speaking to Aboriginal people is that at that stage on 18 August and even a week or two later, most Aboriginal people would not even have known about the release of the two draft Bills let alone been able to prepare a response to government in three weeks. Because of the urgency and the importance of the task, my colleague Hon Giz Watson and I, with our meagre resources, sought to write to every Aboriginal corporation in Western Australia that we could find on the database to inform them of the existence of the Bills, where they could access copies and the timetable in which they had to respond. It is an absolute disgrace that we two non-government backbenchers had to go through the consultation process and do our best to try to alert over 600 Aboriginal corporations in this State of what was going on with rights and their future. The Government should be ashamed to use the word "consultation".

Hon J.A. Scott: Are you saying those people had not been contacted by the Government?

Hon CHRISTINE SHARP: Yes. If we had not taken the initiative of contacting Aboriginal corporations, many of them would not have known. Some were highly aware of the Bills and are highly trained legally because of their experience with the Federal Parliament on two occasions. The average Aboriginal people have a very decentralised culture. They do not

have the fine network we have to communicate with each other, and most of them did not have a clue about what was going on. Quite a lot of speakers have talked about whether these Bills are urgent. In his speech in the second reading stage, Hon Tom Stephens challenged Hon Norman Moore - he has still not responded to the challenge, but we hope he will - to explain the urgency in this matter. So far we can find no reason whatsoever for describing the passage of these Bills as urgent. Hon Tom Stephens referred to a comment by Mr John Clarke, one that I wanted to use, when he explained to the committee that with regard to the titles validation Bill, there has been a misunderstanding and that it is not urgent.

Hon N.F. Moore: Were you a member of the committee?

Hon CHRISTINE SHARP: I am quoting from the committee report, from which Hon Tom Stephens quoted in his -

Hon N.F. Moore: I am just inquiring as to whether you heard all his evidence.

Hon CHRISTINE SHARP: Only what is in the report. This afternoon when Hon Giz Watson sought to move an amendment to defer the passage of this legislation, the Leader of the Government jumped up and accused the Greens (WA) of having a motive that was highly politically motivated and hypocritical, saying that we were all about slowing the Bill down so it would not get to the Senate in time before its numbers changed next June. The extraordinary thing about this comment is that this is the Government's motive, not just that of the Greens. I admit that we have this motive, that little old us would like to slow this down and prevent the passage of these Bills, and we make no bones about that. The Government's yucky motive for having us sit here for week after week, hour after hour is so that it gets its Bills through the Senate while Mal Colston and Brian Harradine can give them a quick tick. That is the urgency.

What can we expect from the Australian Labor Party when this legislation gets back to the Senate? If it is anything like what happened with the native title Bill amendments in line with the 10-point plan last year, we can expect very little at all. From my understanding of what happened in the Senate with those amendments, the 10-point plan, the federal Labor Party went out of its way totally to control the native title indigenous working group. When the lawyers of that group attempted to make some analysis of the situation which somehow might have embarrassed the ALP, it was hauled over the coals and quickly brought back into line. The same lawyers who were giving advice to the native title indigenous working group were also giving advice to the ALP.

Hon Ken Travers: Are you suggesting we should support the Government's position?

Hon CHRISTINE SHARP: No. I want to comment on the remarks of Hon Tom Stephens who said in this Chamber - I might add, in the presence of Senator Dee Margetts, the federal representative of the Greens - that during these events, the Greens failed to rise to the test of the occasion. I would just like to explain to members what that meant. Over the dinner break, Senator Dee Margetts was keen to remind me of what that meant. Her passionate recollection of these events was that she felt she could never deny, never sell out, the principle of the spiritual connection between Aboriginal people and the land. She felt she could never look Robert Bropho in the eye and tell him that she was sorry for letting him down and not accepting that his people have a spiritual connection; that she could not say she wanted to stick to some techno-legal fix of saying "straightforward physical connection or you are out". She could not in all integrity stand up and say that; Hon Tom Stephens describes that as failing to rise to the test.

Hon J.A. Scott: It might be the expediency test.

Hon CHRISTINE SHARP: The Australian Labor Party does not have the courage to stand up for the principles of this matter, partly because it has somehow caught the Government's ideology and thinking of assuming that the benefits of native title exclude benefits to pastoralists and the mining industry. That is a myth which has been mentioned several times in this debate. There is nothing in recognising native title which prevents the development of the mining industry and nothing to prevent the pastoralists from continuing the romantic lifestyle Hon Greg Smith shared with us tonight. Native title is not an exclusive approach, it is an approach of coexistence.

When I worked on the Environmental Protection Authority I remember reading some reports on the state of environmental degradation in the pastoral region. That is approximately 93 million hectares of land and it is estimated one-third is degraded and another third is badly degraded. These people living their romantic lifestyles contribute less than $1m in rent to this State. The pastoral industry is collapsing financially and it has nothing to do with native title. I was concerned to read in the *Countryman* of 17 September the remarks of the new chairman of the Pastoral Lands Board, Max Cameron. He told the Pastoralists and Graziers Association annual conference -

> Pastoralists can expect plans to destock their leases to be closely scrutinised by the new upgraded Pastoral Lands Board.

The article continues -

> Mr Cameron said leaseholders allowed to destock would not be able to abandon the property . . .

I wonder whether that has any connection with native title. When I was thinking about what to say tonight, I was reminded

of the first time native title was discussed in this Chamber during the current wave of native title legislation. That was in the Governor's speech at the opening of Parliament on 11 August. I remember sitting in this Chamber listening to His Excellency make the speech prepared for him. He told the Parliament that the most important legislation that we would be passing this year - I remember his words clearly "we would be passing"; I thought it was up to Parliament what we passed but they were his words - was the native title legislation. The poor man then had to read a page and a half of text about why it was so important and urgent to move to legislate on native title. The whole thrust of the comments, the whole page and a half of the text - members can check it because they would all have a record of the Governor's speech - concerned the need for the economic development of the resource sector, the need to take the foot off the hose, the need for nothing to create any kind of impediment to resource development. In itself, there is nothing wrong with that. I do not know if any of us would necessarily disagree with that. However, what was so offensive was that within that page and a half along those lines, there was not half a sentence, not a single word, about the needs, the rights, the problems, the incredible challenges, the connection of Aboriginal people to the land and how important the settlement of native title is for their culture - not a single mention.

This Bill goes far beyond validating titles during the so-called intermediate period, in the years 1994 to 1996. In fact, the schedule appended to the Bill goes far beyond the extinguishment of title for those specific land transfer acts in that intermediate period. During the debate in the Federal Parliament when that schedule was first introduced - it is now contained in this Bill - there was no mention whatsoever about the schedule. The schedule has now come to this House, and there is still no concrete information about exactly which areas of land and how much land we are talking about. There is no account of the actual reality on the ground of what we are doing. To quote an example used by the Native Title Working Group, if a special purpose lease for one year only was granted many years ago to build a stockyard, native title rights to that little section of land will be extinguished forever if this Bill is passed. The fact that there is no identification for members of Parliament of how much land we are talking about is extraordinary. As I have already mentioned, it is doubly extraordinary that the amount of compensation that the taxpayers of Western Australia will have to fork out as a result of this Bill is unknown. This is hysterical behaviour. It is also racist and profoundly unjust.

I will conclude by quoting the comments of Richard Bartlett, the University of WA law professor, which appeared in *The West Australian* of Monday, 7 December. He said -

> Ever since its foundation the State has sought to deny the right of Aboriginal communities to their traditional land.
>
> The State is unable to accept that the property rights of Aborigines should be accorded the same respect as the rights of non-Aborigines.
>
> It places an ideological blindfold over their arguments in court and their policies in government.
>
> Other jurisdictions, such as the US and Canada, have addressed the question by entering into regional agreements which have provided long-term and workable solutions.
>
> They have rejected legislative resolutions entailing the unilateral and arbitrary extinguishment of native title.
>
> It is time the State stripped away its prejudices and sought a rational and workable solution, rather than the emotional and ideological.

I plead with members tonight to stand up for sanity and for principle and to let this place be not only the House of review but also the House of principle.

HON TOM HELM (Mining and Pastoral) [10.00 pm]: I support the Bill as it will be amended by amendments on the Notice Paper. I do this with some embarrassment, because it has always been my view that negotiation is a far better course to take to resolve disputes than litigation. The Bill, whether amended or not, will not give any comfort to Aboriginal people.

I do not know about you, Mr Deputy President (Hon John Cowdell), but this has the same smell about it as the second wave of the Industrial Relations Act. The same smell was in the air when we debated the Land (Titles and Traditional Usage) Bill. It has the same smell because we are faced with the same circumstances: An obnoxious piece of legislation is being forced through by the manipulative Executive. There was no need for the House to sit tonight, given the commitment from the Australian Labor Party that the Bill would be debated and passed before Christmas. Alarm bells went off in my head about the Government's ownership of the Bill when we were advised that the Leader of the House had refused the offer of the Leader of the Opposition to spend four more hours debating the issue than was allocated. The Leader of the Opposition was prepared to sit two more hours on Tuesday night, and two more hours last night to debate the Bill. Then we had to sit here and listen to the whingeing of the Attorney General about how awful members of the Opposition were in not allowing the Government to govern, how we dared to question the Executive on legislation it wanted passed in this place, and how we dared to move amendments to the Government's legislation. I asked my research officer and my wife to check the Parliamentary Library for the number of hours that we have sat in this session. From 11 August 1998 to 30 November we sat for a total of 151.53 hours. In that time we spent 49.88 hours in debating second readings of Bills. They were not non-government Bills, but government business.

Hon Norm Kelly: We did not debate non-government Bills.

Hon TOM HELM: I did not think so. We spent nearly 50 hours of 151 hours on government business. In that time the Government spent 22.42 hours; the ALP 15.31 hours; the Australian Democrats 7.08 hours; and the Greens (WA) 5.7 hours debating the second readings of government Bills. Interestingly, in the same time frame, the lower House had a total of 235.04 hours' debate. Here we are on Thursday night after dinner debating something referred to in the Governor's speech at the opening of Parliament. We have only just received the Bill, although it has been in the pipeline for some time. The Government could have taken advantage of the four hours the ALP offered to expedite the matter, so I wonder what we are doing.

Members know I am a reluctant supporter of the Bill. I am a member of the Labor Party. Debate on this measure took place in Caucus, and I had a contrary view to that of Caucus and the party leadership. I expressed my views as fully as possible, but I was defeated. The leadership felt that the politics of this Bill are that the Labor Party did not win the federal or state elections and, therefore, the Government is entitled to introduce this Bill, and we are obliged to do what we can to make it work better.

No-one has hidden from the fact that this Bill has only one purpose; that is, to take away indigenous people's rights. We should not be surprised by that as we have been doing it for over 200 years. We took their children away; we took their land away; and we hunted down and shot and burned Aboriginal people. This may even have occurred in the lifetime of some members in this Chamber. Therefore, we should not be surprised that the conservative element in our society supports these native title provisions and titles validation Bills. We should not be surprised that something can land on our desks which will take away rights which Aboriginal people thought they had gained.

In response to comments from members opposite that we waste time and do not help to expedite government business, I thought we should consider the legislative program. The truth is on the record. It can be seen that we have been as cooperative as possible. I have tried to analyse why the Government has been tardy and not allowed more debate on the Bills. Why was the Government so unhappy at the idea of the Bill going to a select committee, and why did it demand that the select committee report in an inordinately short time? I can only be suspicious that the Bill is flawed.

I heard members tonight talk about how similar Bills in Queensland, Victoria, New South Wales and other States have passed without too much of a whimper. My quick analysis indicates that this is because we have taken a holus-bolus approach and done as much as permitted under the federal Act. We have taken the opportunity to undertake the work of the National Native Title Tribunal. Other States adopted a minimal approach to native title under what is permitted under the federal Act. We approach it in some detail. That is also a concern and, obviously, unnecessary. My suspicion is emphasised by the philosophical drive behind the Bill. The Government believes that the Bill will maintain the imbalance always imposed on Aboriginal people; that is, they will do as they are told and have no rights at all in this State. I spend much time in the Pilbara, where I was first exposed to the benefits Aboriginal people receive from mining companies.

The Ieramugadu group in the town of Roebourne established a resource agency that provided landscape gardeners to Hamersley Iron Pty Ltd's seven-mile railway facility. That was done as a sop. However, that group is now a reflection of the way Hamersley Iron has behaved towards the Aboriginal people in its mining operation. There is no doubt that the spirit of the Native Title Tribunal's findings and its terms of reference have been followed through by Hamersley Iron very successfully. Although I suspect it will be obliged to treat Aborigines somewhat differently as a result of the provisions of these Bills, amended or unamended, I must give that company credit where it is due.

The view of the leadership of the Australian Labor Party and the politics of this matter dictate that we honour the undertaking given to the Federal and State Governments that we will provide the opportunity to put their legislation in place. The policy of the legislation is not changed very much by our amendments, but we hope to convince members that those amendments will include justice and equity in an otherwise obnoxious piece of legislation.

The idea that these Bills, particularly this Titles Validation Amendment Bill, will introduce some certainty into our lives is tragic. I facetiously made the remark that the only certainty is that Aboriginal rights will be trampled into the dirt. Even that may not be the case. Obviously, there will be challenges in the courts and the uncertainty will go on. The only certainty about our commitment to recognise the myth of terra nullius is the ability to include provisions that should have been included years ago and to recognise the common law rights of Aboriginal people, our first inhabitants. Those rights will be realised when all sides of the argument are aired around the table, when people are treated equally and when justice can prevail. Only then will both sides achieve a satisfactory outcome.

It has been shown in the past that when claims go to the courts or the Parliament for resolution, the chances of success are severely diminished. We deserve success in this State with continued development and Aboriginal people should share in the wealth generated from industry and resource development as of right rather than as it was in the past when they were given a bag of flour and a piece of beef.

I share the concerns expressed by Hon Mark Nevill. He is concerned that the Bill, even with the ALP's amendments, may

not bring about the results that people think it will. This Parliament should put in place procedures that will allow the work to be done. The National Native Title Tribunal was starting to do the work people thought it could do. Of course, it took a long time for the tribunal to get it right because the whole issue of recognising Aboriginal rights in this nation is so new. It has been mentioned by previous speakers that the longer it takes for this legislation to be passed, the more chance there is that it will be right. I will vote for the Bill, but it is only fair to express my doubts about it.

The House is certainly aware that in the view of Aboriginal people and their advisers these Bills should be thrown out without further debate because they contain nothing for Aboriginal people. Once again, the Labor Party is demonstrating that when it comes to the politics of the matter it acts according to what it believes is in the best interests of its constituents. I hope they will understand that and that, if this legislation goes through with the right amendments, it will go some way to ensuring that the aspirations of Aboriginal people will be achieved in the distant future.

I remind the House of the debate yesterday on workers compensation. The Labor Party was told by the Trades and Labor Council that the path being taken was not in accord with its view of the workers compensation amendments. However, once again, the Labor Party must make some decisions with which some of its constituents may not agree. Sometimes it must take the view that although a decision is not particularly popular, it is in the best interests of the State and those people that the Labor Party is proud to represent.

I refer to the comments made by Hon Greg Smith. I remind him of his comment that fences and gates will be erected in the Kimberley and people must pay to go through them. That comment, with regard to the decision by Justice Lee, has been on my mind. I remind Hon Greg Smith that in his electorate the only people who have put up fences and gates are officers from the Department of Conservation and Land Management, and people must now pay to get into national parks. Far from Aboriginal people erecting gates and fences, government departments are doing it and charging people to go to places they used to visit for nothing.

Hon Greg Smith: There has not yet been a lawyer who has told them they cannot.

Hon TOM HELM: If CALM has land rights, comrade, what is wrong with indigenous people having land rights?

The DEPUTY PRESIDENT: Order! The member may wish to address the Chair.

Hon Simon O'Brien: The member may wish to address the motion.

Hon TOM HELM: That is what I am talking about. It certainly relates to the validation of title and the extinguishment of native title on the vast areas of land about which we are speaking. The decision has been made by Justice Lee, but the member cannot show me any evidence that people have put up gates and fences, other than government departments. No Bill was before this House when that happened.

Hon Greg Smith: They could not.

Hon TOM HELM: They can fly to the moon and people can do many things, but perhaps the law does not support them. That is the kind of statement I expect from Hon Greg Smith, so I will let it go through to the keeper.

Hon Greg Smith: Five legal opinions have said that they cannot say no.

Hon TOM HELM: Really? So there we are. That is the way it goes. That is my position.

A question without notice today related to exploration in greenfield and brownfield sites. The explanation was that because of native title, exploration had been severely reduced in this State. By coincidence, I happened to be reading a brochure that was put out by the Aboriginal and Torres Strait Islander Commission. It is a paper written by Ian Manning from the National Institute of Economic and Industry Research. Page 16 of that document states -

> In the four years up to the Mabo decision in June 1992 an average of 18.5 per cent of Australian mineral exploration expenditure was on production leases (or brownfields) as distinct from greenfields (or sites away from production leases). Four and a half years after that -

That is, the Mabo decision -

> - this rose to 23 per cent . . .

He quoted the Australian Bureau of Statistics report 8412.0 and stated -

> Industry representatives have blamed this trend on native title, and claimed that it will result in fewer new mines being discovered.
>
> The trend must be set in context, however. When statistics on mineral exploration were first collected in the years 1965 to 1967, brownfields exploration comprised 33 per cent of the total, well above the present proportion. With the boom in mineral exploration in the late 1960s, the proportion fell to an average of 15 per cent in the decade

> beginning 1968-69, and then to a low of 8 per cent in 1981-8, at the peak of the early 1980s mineral boom. The proportion has been slowly rising since then. The turning point came ten years before the Mabo decision.

Hon Greg Smith: Is that brownfields or greenfields?

Hon TOM HELM: It is brownfields. Ian Manning went on to explain -

> As a result of the high level of mineral exploration since 1968, an increasing proportion of Australian greenfields has been explored by modern methods. This has resulted in fewer greenfields sites being available and a relative rise in brownfields exploration.
>
> Australia has an increasing proportion of middle-aged mines, particularly mines that opened as a result of exploration during the 1970 and 1980 mineral booms. Given that mine plant is already in place, it makes economic sense to try to extend the life of these mines by intensive exploration at depth and in the immediate vicinity. Accordingly, there are sound commercial reasons for the trend to brownfields exploration. The Mabo decision and the NTA had no discernible effect on the trend.

Hon Greg Smith: Are you saying that mining companies do not want to do greenfields exploration?

Hon TOM HELM: No. Perhaps I will take Hon Greg Smith through it slowly. We read in the newspaper - obviously Hon Greg Smith does not read the same papers as I read - that we have an overcapacity of gas at the moment. For example, the Gorgon project has been put on hold because there is an over-supply of gas. Hon Greg Smith knows that there is a problem in South East Asia because people are not taking our minerals and resources as much as they used to. He cannot blame that on the black fellows; it is not their fault. He can blame them for lots of things, but he cannot blame them for that. There is less need to discover more resources because we do not have a market for them at the moment - we might get one later. Therefore, we do not explore for something that we cannot sell. Anyway, we know that there is plenty of iron ore. I think there are iron ore deposits for about 3 000 years in area C and around the Pilbara alone. There are 100 years of 68 FA top-grade ore.

Hon Greg Smith: Are you saying that mining companies do not want to support greenfields?

Hon TOM HELM: I am saying that mining companies can explore to their hearts' content. Hon Greg Smith should know that as well as I do because he is from the same area. Mining companies such as ERA, CRA, Hamersley Iron and BHP -

Hon Greg Smith: They do not want to explore greenfields?

Hon TOM HELM: The member should listen to what I am saying and pay attention. Most of them want to explore. There are intense discussions -

Hon Simon O'Brien: Hon Greg Smith should take the Chair.

The DEPUTY PRESIDENT (Hon J.A. Cowdell): Order! Members should remain in order.

Hon TOM HELM: There is close negotiation and discussion with the Aboriginal people in that area. We do not have a lot of multiple claims in the Pilbara and the Kimberley, and it is generally easier for the mining companies to negotiate with the local people to get the job done. There is no problem. The companies do not do a lot of exploration in St Georges Terrace. They do it where the minerals are likely to be. We do not have an oversupply, but we also do not have the market to export at the same rate as we have in the past.

Hon Greg Smith: Are you saying that mining companies do not want to explore greenfield sites?

Hon TOM HELM: I am not saying they do not want to. I am saying that mining companies do not have the burning desire to explore greenfield sites that they once had. They may want to explore those sites in the future. Responsible mining and exploration companies are already discussing with the indigenous people in their area the possibility of exploring and then mining. Hon Greg Smith should not need me to tell him that. He represents the same area that I represent. He should be aware that Hamersley Iron and BHP - and I am not sure about Robe River - have a good record -

Hon Greg Smith: I look forward to showing people what you have said in *Hansard*!

Hon TOM HELM: Please do! I loved it when the mining companies were asking us not to amend the Act that Richard Court had already amended in the other place and I was mentioned in an article in the newspaper. When the mining companies spend their money to put my name in the paper, I reckon that is good value! Hon Greg Smith is worried that I am saying things in the Chamber that I would not say outside. Most of the things that I say in this place I would say outside, although I would not say defamatory things outside; and my Labor Party branches watch what I am saying quite carefully and tell me when I am out of order.

Let us talk about another myth. We need to listen to people who are experts in the field. It has been said that exploration will go offshore. There is an interesting explanation for that too. Ian Manning states at page 16 of his paper that -

> The Minerals Council of Australia (MCA) regularly surveys the major Australian mineral companies. In 1995-96 these companies spent $995 million on exploration (Gold 1997). Within Australia they spent approximately $587 million. This means that the MCA companies were responsible for 61 per cent of total minerals exploration expenditure as estimated by the ABS (8412.0). On the other hand, at $408 million the overseas expenditure of the MCA companies was considerably greater than the comparable ABS estimate of $168 million for the overseas exploration expenditure of Australian mining companies (ABS 8412.0). The major reason for the lower ABS estimate is that the Bureau includes only overseas exploration of Australian-resident companies which also have exploration activities in Australia. This definition is preferable to the MCA definition of expenditure by major mining houses with operations in Australia, since it represents decisions taken in Australia, and from which any resulting profits will accrue to Australia. The proportion of exploration funds spent overseas by MCA companies has fluctuated, and in 1992 passed its previous peak of 30 per cent, rising to 41 per cent in 1995-96.

According to the Australian Bureau of Statistics, Australian mineral exploration abroad rose from $89m in 1993-94 to $168m in 1995-96. Although admitting that various factors were involved in the change, the Association of Mining and Exploration Companies argues that native title was significant and further argues the eventual result will be the development of new mines offshore rather than in Australia.

Hon Greg Smith: It was down by 3 per cent in 1997-98 in Western Australia and exploration was up by 8 per cent for Australian companies.

Hon TOM HELM: Is that right? If the member shows me his statistics, I will show him mine.

According to the ABS data on exploration expenditure, Western Australia was the only State in the June quarter of 1998 with an increase in exploration expenditure. There was a 6 per cent fall in exploration expenditure Australia-wide on the previous quarter, with Queensland the main contributor to the fall with a 22 per cent drop. According to the Department of Minerals and Energy, WA accounted for 60.2 per cent of Australian exploration expenditure. Therefore, Hon Greg Smith is right. However, at the same time, exploration in WA has increased by 6 per cent.

Hon Greg Smith: Yes, but overseas exploration has gone up even more.

Hon TOM HELM: One argument for that is that it has become cheaper to explore in places with political stability. It was always thought that in some places where the cost of labour is cheaper, the only reason that exploration and mining companies were not exploiting those countries was their political instability.

Hon Greg Smith interjected.

Hon TOM HELM: And also because of environmental issues. It seems the member thinks it is the Aborigines and the greenies who are stopping all the exploration.

This document contains a great many statistics which I recommend members look at. I would not be so hypocritical as to say that I rest my case on those statistics because we know what statistics can do. I am just an ordinary bloke like Hon Greg Smith; I am no academic; I did not go to college; I do not do much writing either. However, we do have to take into account what we read and see. What we read and see are that these types of activities in this State have reduced; that the economic state in our area has changed significantly.

Hon Christine Sharp made a telling point about native title: The High Court decisions on Wik and Mabo were all about us working together. As Pat Dodson said on the steps of this place, it is about getting away from the welfare culture that Aboriginal people had. On both sides of the equation - and I do not talk about white or black; it is Aboriginal and non-Aboriginal - we are all tainted by the culture of the handout mentality.

Hon Greg Smith interjected.

Hon TOM HELM: Is the member reflecting on the Chair, Mr Deputy President?

The DEPUTY PRESIDENT: No, and it is up to me only to say that.

Hon TOM HELM: That is right. I am putting these arguments forward to encourage members in this place to support the Labor Party's amendments to the Bill.

Hon Greg Smith: Do you think that the Government should have granted those leases with indemnities? Do you think they should have broken the leases?

Hon TOM HELM: I did not criticise Century Zinc in Queensland when it came to an agreement with the same sort of indemnity. I would not criticise anyone for doing that because it will be subject also to court decisions. When it is broken down like that, it would be a wise and sensible thing to give those indemnities in case something happens, as the Government did when it broke the law in doing what it did with the hot briquette iron plant.

Hon J.A. Scott: Even if they broke the law or didn't break the law.

Hon TOM HELM: We are in the process of unbreaking the law, which is one of the things we have not talked about. If we are to encourage these negotiations between indigenous people and developers who are willing to go into untried areas, they deserve some sort of scrutiny and certainty. The Bill before the House does not provide that certainty, even though some members on the other side of the Chamber certainly want to undermine the aspirations of Aboriginal people.

Hon Greg Smith: How can a confirmation and validation Bill have anything to do with uncertainty? No two words have more connotations of certainty than confirmation and validation.

Hon TOM HELM: Perhaps we might discuss that later, rather than going down that track and away from the purpose of the Bill. I hope that people will listen to what we are saying as a party and that people do not get the view that the Labor Party has turned its back on Aboriginal people. We cannot agree with those indigenous people and their advisers who think that holus-bolus we should kick the Bill out. We do not accept that. We think we can salvage something with the amendments that are before the House. I support the Bill.

HON NORM KELLY (East Metropolitan) [10.37 pm]: I will start my speech with a quote I came across during my research on the Bill. It is from Robert Williams in an article by David Ritter written for the *Sydney Law Review*. It pretty well sums up the basis of my opposition to the Bill. According to my notes it states -

> The Western colonising nations of Europe and the derivative settler colonised states produced by their colonial expansion have been sustained by a central idea: the West's religion, civilisation, and knowledge are superior to the religions, civilisations, and knoweldge of non Western Peoples. This superiority, in turn, is the redemptive source of the West's presumed mandate to impose its vision of truth on non Western Peoples.

I feel that is the basis of what I will be talking about tonight. I will reiterate the comments of Hon Helen Hodgson and make it perfectly clear that the Australian Democrats do not support this Bill. It is impossible to support legislation that is racist based, discriminatory, unjust and immoral. Wiping out legitimate land title rights with a mere stroke of the Governor's pen on the basis of racial discrimination shows how very little our society and culture has advanced, if at all, in the past 170 years of settlement in this State by Europeans. As I have expressed before, the time frame that members have been given to consider Bills such as this in this place is absolutely scandalous. That has been highlighted by the bizarre decision of allowing a select committee less than 10 days in which to consider this matter. I will refer to the terms of reference of the Select Committee on Native Title Rights in Western Australia. It was given less than 10 days to -

> inquire into and report on any bill or bills referred to it in this session that proposes or propose to enact law under, or in reliance on, the *Native Title Act 1993* of the Commonwealth.

For this serious and important legislation to be given such scant regard by a select committee scrutinising it in a very short period will compound the problems this House has in determining the fate of this Bill. For that reason, I will support the amendment to the motion of Hon Giz Watson that this debate continue until 11 March next year. We are talking about two and a half months in which proper work can be done, and members can look at the report of the select committee which was tabled only a week ago and also the explanatory notes which were delivered to this House only a night or two ago. It will do justice to the legislative process and save time in the long run. The end result of such scrutiny will enable stronger legislation to be produced. Even if members vote against the Bill, we will have had the opportunity for detailed input into the make-up of the Bill and to produce something that is far better for all Western Australians. A stronger Bill will have a far better chance of standing up to the judicial scrutiny it will inevitably have.

The work of the select committee is commendable. It was carried out under much duress, for not only the members who had to do this work in the midst of a long sitting, but also the committee staff members who worked extraordinary hours during that week to produce a report within the unrealistic time frame they were given. In that short period they were able to garner a good amount of evidence from a large variety of witnesses, which we would expect in looking at the legislation, such as those from the Crown Solicitor's office, the Western Australian Native Title Working Group, the Chamber of Minerals and Energy of Western Australia, the Pastoralists and Graziers Association of Western Australia - in fact, Mr Barry Court from that organisation gave evidence, so I am sure that family will discuss a few interesting things over Christmas lunch - the Aboriginal Land Council, the Noongar Land Council, the Kimberley Land Council, and others. I am appreciative of the widespread input the committee has been able to get within that short time frame.

The ability for the select committee to do this job adequately is probably best summed up in the sole recommendation of the report - "That the evidence included in the committee report be considered during the debate of this Bill in the House." Instead of giving the select committee a realistic time frame within which to do the work, the legislation and the evidence will come back to the House for us to work our way through the Bill methodically. It would be far better for the select committee to do that work and to produce a report which would be very useful for other members in this House. Thankfully, members of the committee also saw fit to provide further direction by way of a number of dissenting and minority reports. One finding in one of those minority reports, which was signed by Hon Helen Hodgson, Hon Giz Watson and Hon Tom

Stephens, is that the proposed legislation will not provide certainty, and risks opening new areas of legal ambiguity. It is quite a significant finding and one which shows that this Bill requires a good amount of work before we can let it pass this place with a degree of confidence that it will do the job the Government wishes it to do.

It is interesting to note that we have a lack of indigenous people who could contribute to this debate on the floor of this Chamber.

Hon Ken Travers: Lack of anyone at the moment.

Hon NORM KELLY: I do not blame them. That lack means it is impossible to fully consider the different values of those cultures and the spiritual belief systems of indigenous people in order to do justice with this legislation. We are from white, mainly Christian middle-class backgrounds with mainly Anglo-Saxon ancestries. We have a sadly mistaken belief that with that history we have a right to trample over the rights, the culture, the very fabric of the indigenous peoples of Western Australia. The different level of attachment indigenous people have for land can be difficult for western minds like ours to understand, especially with the western system of singular ownership of land and the greed which is inevitably attached to that system. I have spent some time working with Aborigines in their native lands in the north of this State but it was not nearly enough time to fully understand their attachment to the land. However, I have seen and heard enough to appreciate that the western judicial and legislative systems fail Aboriginal peoples miserably.

I will relate to members some of my experiences working at the Kintyre site in Rudall River. The Aboriginal history and dreaming of that area was explained to me and that had a profound effect on my understanding of their culture. Within a kilometre of the Kintyre uranium site there is a claypan about half a kilometre in diameter with a sand dune running along one side. To white people it is just another claypan but to the Aboriginal people it is a significant site which was the resting place of a certain person of their dreaming. I do not recall the name but the sand dune was the pillow for this person's head. It is hard to understand how to sufficiently recognise the Aboriginal people's value of the land. The Kintyre uranium deposit site is recognised as "bad country" by the Aboriginal people and they never camp in that area. These people know the boundaries of the uranium site because to them it is bad country. A person I was working with discovered some boundary sticks in a cave slightly to the east of the claypan. They had been lost by the indigenous people for many years. We told the tribal elders that we had found the boundary sticks which show the limits of their tribal lands and they took the sticks to another cave for safekeeping. Their way of determining boundaries is so different from the way the boundaries of the Rudall River National Park, where we were working, were determined. The white man's way is to work out some numbers of longitude and latitude and draw the boundaries on a map without having visited parts of the land and call it a national park. It is a completely different system of determining lands and of subsequently determining land rights.

A little further afield on Kiana Station in the Northern Territory I came across a site of overhanging ledges. Aboriginal skeletons covered in bark and rocks were laid on these ledges. It struck me how incongruous it was to be scouring huge holes in the earth less than 100 metres away searching for diamonds for the company for which I was working.

The overriding principle is that indigenous people are with and of the land, whereas white people are more on or possessive of the land. The western judicial system has not been able to accommodate this difference in connection with the land. Because of this failure, it has been decided that it is much easier to legislate away any difficulties, with blatant disregard for human rights and social justice.

The Government's response to the High Court Wik decision was really the next step in a series of measures from this Federal Government which have targeted those who are most marginalised in our community. The Government's response demonstrates a profound lack of respect for decisions of the High Court, and surely that sends a message to every Australian about the surety of their own rights as upheld in law. As Noel Pearson has pointed out a number of times, are not these white traditional laws the very laws and traditions that apparently we are all taught to revere and respect?

The High Court Wik decision was fair and just. It achieved a compromise. Unfortunately, what this Government is saying is that if we do not like the court's decision, we should change the law to suit ourselves. The consequence of the Mabo No 2 decision was that doubt was thrown onto the validity of freehold and other land grants made by State Governments under State legislation which may have completely or partially extinguished native title. The Federal Government's response to that decision was the Native Title Act 1993 which validated all grants prior to 1994. The Western Australian Government challenged the validity of the Native Title Act, and in 1995 the High Court handed down the decision which found that the Native Title Act was in fact a valid exercise of commonwealth powers. Between 1 January 1994 and 16 March 1995 the Western Australian Government granted interest pursuant to the now overturned Land (Titles and Traditional Usage) Act 1993. The Native Title Act did not deal with the relationship of validly granted pastoral leases and native title. The assumption was made that pastoral leases extinguished native title. On 23 December 1996 in the Wik Peoples v Queensland case, it was found that at least some Queensland pastoral leases were of such a nature that they would not have necessarily extinguished native title when granted. Surviving native title could coexist with a pastoral lessee's rights, giving way to them in the event of conflict. The majority left open the question of whether native title might revive after an inconsistent title to land issued under statute had expired. It is this ability to revive native title with which I will deal later.

The Wik debate has centred on two issues: Coexistence, and the consequence of States renewing leases without regard to the Native Title Act; that is, the validity of post-1993 titles granted by Governments. The federal Native Title Amendment Act provides for the validation of intermediate period acts; that is, those acts occurring between 1994 and 23 December 1996, when it is purported that the grant of pastoral leases extinguished native title. Division 2A permits States to validate intermediate period acts, and division 2B allows States to legislate to declare the extinguishment of native title in respect of their dealings with state legislation.

The Mabo decision is neither threatening nor radical, as it is often made out to be. Despite this, both the Federal and State Governments have sought to water down the effect of that decision. The Titles Validation Amendment Bill represents the validation of past acts, many of which were done deliberately to preclude access to native title rights. The issue of validation of intermediate leases has dominated the Wik debate, because it is the key to protect native title interests in this country from blanket validation, which is the de facto extinguishment of native title rights. Once again I am amazed that the explanatory notes to the Bill were provided to us only in the past couple of nights. Although I appreciate the detail that is contained in those notes, I am alarmed by what I have read in them. The schedule of interests in schedule 2 makes interesting reading. It sets out the leases that will be validated by the Bill. I will not go through the 500 or so in detail, although I will refer to a couple in order to question the Government on how the schedule will operate. Section 41 of the Land Act 1898 includes leases for such things as golf links. We often see occasionally-used golf courses at the edge of country towns. In such a circumstance I question whether we should always extinguish native title right. A lease under section 152 of the Land Act 1898 refers to a lease of town or suburban land. I refer to this because of places such as the Goldsworthy townsite, which I have not passed by for quite some time. After the mining has extracted all the iron ore, the town is packed up and shipped away and the site is rehabilitated as close as possible to its original state. Therefore, I question why any native title right should be extinguished on that land when it has been returned to its original state, and for all intents and purposes has no further use for the white people who sought to lease it in the first place.

When we talk about these leases we do not specify whether they have been used for the purpose for which they were granted. A lease might have been granted and the land over which this Bill would extinguish any native title right might never have been used for that purpose. It could be virgin land that has not been used by white people. Other leases which would be validated include aerial landing grounds. Once again, in remote areas that could include an occasionally-graded strip, which has a low impact on the area and does not restrict access for indigenous people in the area. I question why such leases should be validated.

These leases cover not only land, but also waters, including water leased for the use of ferries. Again, this is minimal impact and very negligible usage in some cases by white people. However, yet again, that activity can extinguish any native title right. Leases include the purpose of a mine buffer zone. A mine buffer zone, by definition, is specifically not used because of the impact of an adjoining mining area. If a mine is mined out, why should that activity negate any native title right over that land? The validation also includes land for grazing or pastoral purposes. It includes remote areas such as Balfour Downs station at the start of the Tanami track. This station is on the edge of the Great Sandy Desert east of Newman. This legislation will affect remote areas and stations which have negligible impact from white settlement, but are used by indigenous people in their traditional hunting ways.

A number of state agreement Acts will negate any right to native title, such as those involving various mineral sands state agreements to allow mineral sands to be mined. It is often pointed out that environmentally the land needs to be rehabilitated following mining. It is often strip mining requiring the replacement of overburden or soil into the area. By its nature, these operations should return land to its original use. Again, I question whether such acts should negate any native title rights. I have not heard a good reason for all the leases to automatically extinguish native title rights.

Also when looking at the need for indigenous people to show and prove a continuous connection to the land, we see a great hypocrisy: Without showing any continuous connection to the land, white settlement is honoured by extinguishing the rights of indigenous people. Proposed part 2A of the Titles Validation Amendment Bill deals with the validation of intermediate period acts. The justification used is the uncertainty arising out of Wik as a result of the fact that it was widely believed that native title had been extinguished on land for which pastoral leases had been granted.

I understand that the State Government has been enacting crown-to-crown grants so this form of extinguishment can take effect as soon as possible to rule out various areas of land so any possible right to native title can be extinguished. The Australian Democrats see this very much as a concentrated attack on Aboriginal people. The Government's comments about competing claims highlights its lack of commitment to dealing with difficult issues. The Democrats do not say that it is easy; however, surely this is not the best way to approach the issue. We see the comments resulting from colonialism. It is a basic form of if not racism, then ignorance, to not appreciate or conceive that indigenous people are of more than one race. In fact they are a polity based on various identity categories. There are many peoples and conflicts between those peoples. This diversity must be acknowledged rather than suppressed or extinguished. We talk about having to acknowledge the diversity and multiculturalism of other peoples in this country. We should equally acknowledge the diversity and multiculturalism of the indigenous peoples of this country.

I have grave concerns about the prospect of permanent extinguishment of native title by the passage of this Bill. That is particularly in light of the Miriuwung-Gajerrong decision in which Justice Lee countenanced the revival of native title interests in certain circumstances. Part 2B of the Titles Validation Amendment Bill is a deliberate and actual extinguishment despite the Government's claim that it is about confirming already extinguished native titles.

The Select Committee on Native Title report includes evidence from Pat Dodson of the Western Australian Native Title Working Group, in which he states -

> The extinguishment concept and the message it delivers is very clear to indigenous people. . . . that indigenous people have never had any connection to the country over which that extinguishment is to apply. . . . The Government is attempting to restate in another way the odious connotations that were part of that offensive concept of terra nullius that so readily affected the relationships between indigenous and non-indigenous people in the past 100 years.

The Western Australian Native Title Working Group stated that the notion of extinguishment is an assault against indigenous people as a distinct people of this State.

It is interesting to note the different standards applied when changing other land tenures. I refer in particular to metropolitan region scheme amendments, with which this House has been familiar over the past 18 months. We go to great lengths to protect freehold tenures, yet we cannot comprehend that indigenous people can have a far stronger connection to their land, but in a different way from those with freehold title.

Earlier this evening Hon Greg Smith talked about due process in dealing with native title issues. We have developed due process in the handling of freehold tenure, and we are still developing how best to deal with that due process for native title. However, that task is not assisted by rushing legislation through this Parliament in the way that the Government is currently attempting to do. It may sound like a broken record, because I have recently spoken in similar terms in respect of the Health Amendment Bill, but we are being required to deal with legislation that has been introduced very late in the year.

Hon Christine Sharp mentioned the draft Bill being released for public comment. People were able to make public comment for only three weeks. I remember a question being asked in this place about how many submissions had been received by the closing date. The number was small; fortunately more were submitted late. I prefer to think that the Government's expectations were unreal rather than that it had a more sinister reason for allowing such a short period for public comment. There were so many late submissions because it was difficult for people to go through legislation to determine a legitimate position. Very shortly thereafter, the legislation was introduced in the other place, and it quickly moved through this place when we would normally look at rising for the year. At this very late stage we are told, after a 10-day select committee, that we must decide very quickly on the Bill.

The Australian Democrats do not see the urgency for this Bill to be processed through the Parliament before Christmas, although the Government and the Australian Labor Party regard it as urgent. Comments have been made about the makeup of the Senate next year and the various reasons that the Bill should reach the Senate at different times. As my colleague Hon Helen Hodgson said, the Australian Democrats have seven votes in the Senate currently, and will have nine votes from 1 July next year. That will roughly represent its support in this country. The Democrats will use those votes to represent those people and, to the best of their ability, represent all Australians. However, what happens in the Senate will be determined by the majority of senators and we shall not know the result until a later date. The Western Australian Aboriginal Native Title Working Group's submission to the Select Committee on Native Title also stated -

> So called "confirmation" to remove uncertainty is nothing more than the racially discriminatory removal of the rights of Aboriginal people both now and in respect of future generations.

A clear message was given about the views of Aboriginal groups on this legislation. In legal advice provided by Professor Bartlett and Ms Sheehan, quoted at page 24 of the report, it is stated -

> The Titles Validation Amendment Bill represents a fundamental change to the common law position, and on any view will amount to substantial extinguishment.
>
> The Validation Bill and the Ten Point Plan . . . is founded on fundamentally false premises as to the nature of common law extinguishment. The Validation Bill seeks to declare extinguishment where none would arise at common law.
>
> The principle false premises are:
>
> > The notion that exclusive possession is the criteria of extinguishment . . .
> >
> > Leases extinguish rather than suspend.
> >
> > Leases will generally be entirely inconsistent with native title.
> >
> > Vesting of reserves extinguishes native title.

These are the issues with which this House should be dealing, and they should not be treated lightly. It would have been far better if the select committee had been given the time to do a proper job on this legislation and provide members with better direction, rather than its recommending that people read the report. Some direction can be seen in the minority reports but, due to the lack of time, the bulk of the report does not contain that direction. Unfortunately, because of the rash decision by the majority of the Legislative Council, it will be forced to spend more time than would otherwise have been necessary to work through the detail of this Bill.

The legislation provides that compensation is payable when native title is found to exist and is extinguished. The select committee report has asserted that this compensation cannot be quantified, so that problem remains. Given the overriding theme of supremacy in western ideas - that money dominates everything else - why not allow for all economic benefits derived from the land, such as mining profits, to be paid as compensation? Although to some people's minds that is a radical suggestion, we are yet to see a way of resolving the values that indigenous and non-indigenous peoples place on the land. Until we try to resolve that matter in a more cooperative spirit, we will continue to have such fights over compensation.

There are several international aspects to the legislation. Many international covenants are relevant to the issues. They include the International Covenant on Civil and Political Rights, the International Convenant on the Elimination of all Forms of Racial Discrimination, and the International Covenant on Economic, Social and Cultural Rights. Our performance on native title impacts heavily on our national ability to participate in the ongoing development of the United Nations draft declaration on the rights of indigenous peoples and on our international credibility. We will be judged internationally on how we resolve the issues. From what I have seen, such issues have been resolved far better in countries such as New Zealand. Despite all the problems that that country has had, the indigenous culture has been encouraged even though it was almost wiped out in the earlier part of the century. It has come back strongly and is a highly respected force - far more so than the indigenous culture in this country. Australia is happy to ratify such international conventions, but it has a poor record when it comes to honouring them.

I regret that the Bill is a late twentieth century version of what happened in the early nineteenth century in Tasmania when it came to trying to wipe out an indigenous people's culture. The Bill is not sufficient to grant or respect the rights of indigenous peoples of Western Australia, and for that reason I will not support it.

HON J.A. SCOTT (South Metropolitan) [11.17 pm]: I certainly will not support the Bill, but I will support the amendment that was moved by my colleague Hon Giz Watson. No member should support the Bill, particularly because it validates acts which were carried out when it was known that invalid grants of freehold land were being made to various people. Other Bills have validated errors that were made in the past. Without going into details, a current Bill validates a particular position because someone made several decisions and signed documents which would cause problems if that person's appointment were not validated retrospectively by legislation. That was an accident of nature. However, what we have here is a deliberate act on the part of this Government to break down the native title rights of the indigenous people of this State. It is a deliberate act, and that is what gets up my nose, and that is one of the reasons that I cannot in any way support this Bill. It is ironic that in question time today, Hon Norman Moore gave a touching answer about how some English tourists who had been robbed at Perth Airport had had their problems largely compensated for by the wonderful actions of his department, which is to be congratulated.

Hon N.F. Moore: You misunderstood what I said. I was trying to demonstrate to the House that the tourism industry has gone to extraordinary lengths to try to make it up to those people. It is not the department.

Hon J.A. SCOTT: It is ironic that the minister thinks it is very good that these people who had been robbed have now been given back something, when tonight he is looking at robbing Aboriginal people and not giving them back anything, and he thinks that is wonderful!

Hon N.F. Moore: That is your judgment. You have heard about compensation.

Hon J.A. SCOTT: The Leader of the House has said also that he does not want to delay the Bill, and that the Greens and the Democrats are trying to hold up the legislation until such time as the new Senate is in place. A number of speakers have already dispelled that notion. It will make no difference whatsoever to this Bill, as the Leader of the House knows. Further, the Leader of the House will get a reputation as a premature legislator, because what we have before us is a piece of legislation that gives little indication of what land area will be involved and what will be the liability of the taxpayers of Australia to pay compensation to the people who are dispossessed. I have asked questions in this place about that matter and have found that the Government has no idea about the level of compensation that will be payable as a result of its effort to dispossess Aboriginal people of their land, because there is no doubt that that is what we are talking about. I find it extraordinary that this Government would do that. It reminds me of the previous Liberal Government, which got the State into the position with gas supplies in the north west of this State where it ran up a liability of about $8b, and it took some time and the quick sale of a lot of cheap gas to get the State out of it. We are getting into the same position right now.

Hon Simon O'Brien: That matter went to a royal commission, which threw it out in five minutes flat. Are you saying that we have not reaped the benefits from the North West Shelf gas project?

Hon J.A. SCOTT: I am saying that we could have done a lot better out of the North West Shelf gas project had the then Liberal Government thought about it more carefully and had it not promised to take 90 per cent of the gas whether we used it or not. The problem was the overexposure of the SEC. I am getting off the point. I am trying to draw a parallel with what we are doing here. We are going into something not knowing where we will end up financially. Is it to benefit citizens of Australia? When I asked questions in this place about, for instance, who were the pastoral owners in this State, the ministers could not give me answers on how many people were not actually residents of Australia or Western Australia. Therefore, either they do not know how many, or they probably do but they do not want to give me the answer. I certainly do not know how many of them are local people to whom this benefit will go.

As some speakers said previously, we are carrying on a historical dispossession and maltreatment of the original population of this country. The Court Government is not the first to do this. I can remember a number of efforts in the past to bring about Aboriginal land rights in this State. A Labor government was prepared to do it but was frightened out of it by a previous Liberal leader, Bill Hassell. I remember very well the advertisements in the paper when exactly the same line was being pushed at that time about people's backyards being under threat and the huge portion of the State that would be taken over by these Aboriginal people. Unfortunately for Mr Hassell and the Liberal Party, it turned out that Aboriginal people had the right to that land all along and it was Mr Hassell and his ilk, who also had very large holdings of lands as it turned out, who were wrong.

The present Government in its last term started to move towards a position of dispossession. I believe that it was at the Kalgoorlie meeting of the State Conference of the Liberal Party at which the idea was first put forward to get rid of Aboriginal land rights in Western Australia. At that time the Premier had a shaky hold on the leadership and was being called a wimp in the press. He needed something to build up his muscle in the party and his image in the community. I know some Liberal members were not happy with the position that he took. Nevertheless, he took that position and brought into this House eventually the Land (Titles and Traditional Usage) Bill. In fact, when that Bill was brought in, I remember people bursting through the doors of this Chamber and rushing about with messages that they had to hurry and get the legislation through this House because the Greens in the Federal Parliament were moving to have retrospectivity brought into the federal native title legislation which turned out to have little foundation. Therefore, we have the same old position. Every time we see this type of legislation brought forward, we are told we must do it in a hurry, that it must happen this week or never. In fact, in that case we told the Government over and over again, speaker after speaker, that it was racially discriminatory, and it was thrown out in the High Court, as has already been said a number of times.

When Mr Court had that decision imposed upon him after vast expense, we saw a new round of efforts to undermine native land title in this State. There were prodigious efforts to prevent agreements taking place between pastoralists, mining companies and Aboriginal land title aspirants or owners. The same occurred in Queensland where agreements were arrived at. There the Premier at the time moved to break down those agreements because that Government did not want native title to succeed. Its members had a deep-seated resentment of Aboriginal people being seen as their equals.

The next progression following the Wik decision was every member of the Liberal and National Parties in Australia running around telling people that the sky was falling down and that their backyards would be taken from them. Of course the Wik decision did very little to change the situation in Western Australia.

Hon Derrick Tomlinson: At long last one person on the other side has recognised that simple fact.

Hon J.A. SCOTT: I have said it on a number of other occasions. People were certainly beating down doors saying that it would be a disaster, yet it made almost no difference at all to pastoral leases in Western Australia.

Hon Derrick Tomlinson: At last you have said it.

Hon J.A. SCOTT: I am talking about the court decision.

Hon Derrick Tomlinson: The Richard Court decision?

Hon J.A. SCOTT: No.

Hon Derrick Tomlinson: He will tell you that there is no difference.

Hon J.A. SCOTT: Richard Court did not like the decision at all.

Hon Derrick Tomlinson: He loved it.

Hon J.A. SCOTT: Did he indeed? It threw the Liberal and National Parties into a frenzy but it gave them a wonderful weapon with which to beat somebody around the ears because of their Government's failure in Western Australia, especially rural Western Australia where we have seen the effects of the years of economic rationalism causing significant problems. A massive number of farming communities were breaking down and moving. Their facilities were breaking down. Bank branches were closing and banks were moving away rather than closing down because banks seemed to be getting bigger and bigger profits. Everything was becoming more centralised under the coalition policies. The ability to have somebody

to whip and to blame for this was wonderful for the coalition. Instead of dealing with our problems in rural Australia, it was much easier to find someone to beat up.

We saw in Western Australia that the push for the extinguishment of native title was not really for pastoralists because the Wik decision recognised that coexistence was a real fact. A pastoral lease enabled people to do little more than graze animals on the property and set up a residence. Obviously they were allowed to fence those properties but they were asked to coexist. The Wik decision said that while coexistence was in place, where the two interests came into conflict, the interests of the pastoralists would prevail. There was no difference. That had always been the case in most of the pastoral leases in this State, yet there was this huge campaign. It almost led to the destruction of the party in the end because it gave rise to Pauline Hanson and what one might describe as Hansonism in this country. It gave her the niche that she wanted, and enabled her to blame the Aboriginal people - as well as Governments, rightly - for failing rural people. Instead of the Government dealing with the problem, it made it worse. In Western Australia there is no pretence that the extinguishment of any level of native title will be for pastoralists. We are talking about the mining companies. This is the nitty-gritty. Western Australia is the mining state, and if something is not to be mined, it is not worth having. It is about time the Government refocused a little. Mining does a great deal for this State in economic growth and the wellbeing of many people throughout this State.

Hon Ray Halligan: Don't shoot yourself in the foot.

Hon J.A. SCOTT: I am not. I recognise that fact. Unlike the member opposite, I also recognise that other things in life are also important. Tonight members like Hon Greg Smith are saying that validation will let people know where they stand. They will know that native title is extinguished. It is all very well for people to know where they stand, but just as some people in Iraq yesterday and today have found that it is not very good to be standing in Baghdad, it will also not be very good to be standing in the position of Aboriginal people who have their native title rights taken away from them.

Hon Greg Smith also expressed a strange understanding of what his pastoral lease was for. He seems to forget that historically pastoral leases were not for people to have ownership of the land, but were set up to do something about the squatters who had set up cattle and sheep runs throughout this country and were paying nothing to the State. It was a way for the State to have some control and to obtain some revenue from the pastoralists. They were given the right to let their sheep or cows run over the country. Hon Greg Smith seems to think it is rather more than that. He says that he should not be treated differently from Hon Christine Sharp, who has a freehold block. I imagine she would have paid for the land. There is quite a difference. Hon Greg Smith was looking for freehold land at leasehold price, and that is pretty good if people can get it. This is what the Government wants the taxpayers to fund. Hon Norman Moore would very much like that situation to be put in place.

Hon N.F. Moore: What situation is that?

Hon J.A. SCOTT: It is that we get changes to land title in this State so that pastoralists can have freehold rights to land for the price of the leasehold land.

Hon N.F. Moore: Why would you say that?

Hon J.A. SCOTT: I say that in response to the interjection of the Leader of the House when I was talking about how Hon Greg Smith seemed not to understand what leasehold meant.

Hon N.F. Moore: In fundamental principles why do you expect that freehold title should extinguish native title and leasehold should not?

Hon J.A. SCOTT: Every time we have seen that issue in a major court where that freehold has not been deliberately put in place by some Government, like Western Australia's mischievous Government, to cause a breakdown, freehold has not been under threat.

Hon N.F. Moore: I am not suggesting that. I am just asking as a question of basic principle of native title, why do you personally accept that freehold should extinguish native title but leasehold should not?

Hon J.A. SCOTT: None of us should have freehold of land. The State should continue to own all land and we should be required to look after it properly when we lease it. We would be better off from an environmental point of view.

Several members interjected.

Hon J.A. SCOTT: We cannot continue owning land. At the end of the day, the Crown owns the land.

Hon N.F. Moore: How do you reconcile the view that the Crown should own everything with your support of native title?

Hon J.A. SCOTT: For exactly the same reasons Hon Christine Sharp was talking about. We have two systems which do not mesh. In one, the people are of the land rather than owning the land and the other is a system of ownership. Hon Christine Sharp said that Aboriginal concepts of numbers and ownership are very different.

Hon N.F. Moore: It is also a misunderstanding of the attitude a lot of people have to land. It is not simply as you say that Aboriginal people are of the land and everybody else simply wants to own it. That is not factual.

Hon J.A. SCOTT: It is largely correct.

Hon N.F. Moore: No, it is not. It is a total misunderstanding of the attitude people have about land.

Hon J.A. SCOTT: Each and every one of us is different whether we are in here or are Aboriginal people somewhere else. That is not the point. I am being distracted from my line of thought. Hon Greg Smith jumped from lease to freehold status without paying for it forgetting that Wik reinforced what we knew about the co-existence of Aboriginal title and pastoral leases. He is quite at liberty to travel and look around his pastoral lease. He can probably leave his car and go for little walks at times as he has been known to do in Perth. That is all right by me.

Hon Christine Sharp: He is on his bike.

Hon J.A. SCOTT: He can leave his bike and go for little walks. I was puzzled by some of the statements from members of the Australian Labor Party. I have heard some passionate, strong arguments from people like the Leader of the Opposition. Hon Tom Stephens, Hon Tom Helm, and Hon John Halden all spoke passionately against this Bill but they want to support it. I find it quite remarkable that they can be so against the Bill and still want to pass it. This is an interesting situation. The truth is that the Labor Party is frightened of being seen as a poor economic manager. When it comes to being seen as upsetting the industry of the State in some way -

Hon Max Evans interjected.

Hon J.A. SCOTT: That is right, it just wants to be in office. The Labor Party wants to leave its principles behind and go for office.

Several members interjected.

The PRESIDENT: Order! Hon Jim Scott has the floor and is addressing the Chair.

Hon J.A. SCOTT: The Labor Party is prepared to sell out its principles and social objectives. The Labor Party knows that at election time it needs to give some support to the mining industry. As Hon Christine Sharp has already pointed out, this is not something which is exclusive.

Hon Ken Travers: We need to find a balance between the two extremes in this place.

Several members interjected.

Hon J.A. SCOTT: It is called sitting on the fence, the same as people do in the forests. The Labor Party needs to see some certainty. Hon Mark Nevill wants to see the certainty of extinguishment for traditional Aboriginal owners of the land. Hon Mark Nevill's speech was interesting. He made some good comments about the need to ensure that some of the funding for Aboriginal land purchases should be available in the south west of this State where people have been dispossessed. I agree with that. I do not know the reasons behind that dispossession, although I have heard a number of propositions put forward.

Hon Ken Travers: But you cannot understand why Hon Mark Nevill put it forward.

Hon J.A. SCOTT: Partly.

Hon Ken Travers: It is because he cares about Aboriginal people.

Hon Greg Smith interjected.

Hon J.A. SCOTT: Hon Greg Smith does not know the difference between leasehold and freehold.

The PRESIDENT: Order!

Hon J.A. SCOTT: As I said, Hon Mark Nevill made a couple of good points. Native title law could be described as a dog's breakfast. That is partly because of the unwillingness of many people to recognise that terra nullius did not exist in this country, and there were efforts to make convoluted and extraordinary problems out of something which could be resolved much more simply. There are problems in meshing the two systems. However, what is needed to do it is goodwill. I do not think that the winner-take-all proposition ever brings goodwill. Unfortunately, that is mostly what we see in this place.

I am surprised that the Labor Party is supporting this Bill. I was in this place during the fiery debate on the Land (Titles and Traditional Usage) Act. Usually when Hon Mark Nevill speaks in this place, he speaks on a technical level. If it is not an area in which I have portfolio interests, I do not always listen with incredible interest. However, in the debate on the Land (Titles and Traditional Usage) Act, his comments were fascinating and he was very fiery indeed, as were a number of speakers from the Labor Party on that occasion. I find it difficult to understand how they have turned around so far to take this new position. However, I have seen in the Federal Parliament that Labor Party members have some sort of cringe about

backing up their principles in the way in which Labor Party members might have done a few years ago. That is prior to the Burke Government, of course.

Hon Ken Travers: It is the only Government that ever tried to introduce land rights in this State. Is that what you are going on about?

Hon J.A. SCOTT: I know that the Labor Party did not introduce land rights in this State.

Hon Ken Travers: It was stopped by the mob on the other side.

Hon J.A. SCOTT: No, it was not stopped by the mob on the other side. The Labor Government chickened out when the pressure was put on it by the Bill Hassell-led Liberal Party.

Hon Ken Travers: It tried to introduce it, and that mob were not going to pass it, and you know that is the reason.

Hon J.A. SCOTT: It was not only that. I did read the newspapers at the time about the backdown by the Labor Party. It could have gone ahead with that legislation.

Hon Ken Travers: It would have been defeated in this place.

The PRESIDENT: Order! Hon Jim Scott has the call.

Hon J.A. SCOTT: Hon Tom Helm said that in the light of the murder, dispossession and the taking or stealing of Aboriginal children, we should not be surprised that we have this Bill before us. What surprises me is that Hon Tom Helm and his party intend to vote for it. I am fairly distressed by that, because this Bill is not just a Bill of dispossession but also one which asks us to validate a number of deliberate acts by the Government to break down native title agreements in this State. I have spoken many times to people who work in the area trying to achieve those agreements - people from the Aboriginal Legal Service and the National Native Title Tribunal. I heard that the only thing coming from the Government was obstruction. When people tried to reach agreement the State Government tried to break down those agreements. The Government has resourced the tribunal so poorly that it has insufficient anthropologists to properly examine the validity of claims. There are simply not enough people to do the work, which is one of the reasons we have seen such a big backlog of claims in this State.

Not so long ago the Aboriginal Legal Service took the State Government to court because it strongly believed that the State Government was not seriously attempting to negotiate with Aboriginal claimants. I was surprised that claim was not upheld. I will quote one of my Greens colleagues, Senator Dee Margetts, in debate on the Native Title Amendment Bill that was passed to the Senate as a message. She states -

> As Aboriginal people have been excluded from the negotiations between Senator Harradine, the federal government, the National Farmers Federation, the mining industry and the state governments--and because Aboriginal people are silenced in this place--I now will read a series of statements made in recent days by various Aboriginal people to the media. Hopefully, it will help to record for history the indigenous opposition to this sordid little deal of political convenience. Mr Noel Pearson stated:
>
> > Aboriginal people have taken a mighty fall, a horrific fall in relation to the Mabo decisions. Ninety per cent of Mabo is now gone.
>
> Adam Ridgeway stated:
>
> > The Wik amendments essentially mean that not only have indigenous people been locked out of the process, but we haven't been consulted and haven't consented to anything that's been agreed to in this package.
>
> He continued:
>
> > We are living in historic times where indigenous rights are in fact being taken away by a decision of the government and an independent senator who believes that it's his right to trade on indigenous rights and to deny us an ability to negotiate a beneficial outcome for our people.
>
> He then stated:
>
> > Equality for black people in this country is an illusion and it's an illusion that's been created a long white history that continues to perpetuate injustices against indigenous people.
>
> He further stated:
>
> > It is an unconscionable act on behalf of Senator Harradine to be trading on indigenous rights for political expediency and on the fear of a double dissolution race election.

Gatjil Djerrkura stated -

> I remain concerned and dissatisfied with the fact that indigenous Australians were specifically excluded from the process of negotiations about our rights. The miners, farmer, states and territories were all consulted - our people were left outside in the Canberra cold.

A further speaker was Gladys Tybingoompa from the Wik people who said -

> I said to him if you walk across or if you change your mind it will be a shame . . . not only now but in a 100 years. He is betraying us like Peter betrayed Jesus in the garden of Gethsemane. What is the disgrace for me is to be seen in the eyes of all Australians and internationally to dance with the man who holds the . . . key for the senate and for me to be fooled by him to put on the traditional arm band on his arm.

That armband is a symbol of unity. I will not read a number of other statements. I read these comments because Hon Norman Moore said earlier that the Greens wanted a change in the balance in the Senate before these Bills were passed, because somehow that would stop the Bills coming into effect. When the Senate made its decision on the Wik Bill, the Government of the day was prepared to buy the vote of a Senator by promising wonderful things for Tasmania. He agreed to the Bill. The Federal Government has done that on a number of occasions.

Hon N.F. Moore: Do you know why Tasmania needs a bit of help? It is because of people like you.

Hon J.A. SCOTT: Is that right?

Hon N.F. Moore: The Greens in Tasmania have given that State negative growth.

Hon J.A. SCOTT: Australians need a lot of help because of people like the Leader of the House: This debate needs some ethics and integrity, rather than being based on taking care of sectional interests which support certain parties in government. People used as scapegoats by Governments and dispossessed in this way are certainly not helped by the paternalistic solutions offered in this Bill.

I know that the Federal Government, after getting the Wik legislation through quickly, has now accepted the vote of Senator Colston, who has been a constant visitor to Western Australia as he had some trouble finding a direct way back to Queensland - I understand that a problem arose with his directions. The Government was still prepared to take his vote even though he was not elected -

Hon N.F. Moore: Do you think he is not entitled to a vote in the Senate as an elected Senator?

Hon J.A. SCOTT: Originally, the Government had an ethical position and did not use his vote as it was known that he was a disgruntled member of another party. However, when it appeared Senator Harradine was not about to cave in on certain issues, the Government decided it needed Senator Colston. As with its core promises, the Government's integrity and ethical base did not extend to the point of losing a vote.

Hon N.F. Moore: It had a strange view that it had been elected to office as the Government and was entitled to pass legislation!

Hon J.A. SCOTT: If that is the parliamentary situation Hon Norman Moore wants to rush towards, it shows something about him. The current thinking of Australia is to have a coalition Government without a huge majority in the lower House and a minority in the Senate. On current Australian thinking, whatever the new Senate -

Hon Barry House: Are you saying that with your 5 per cent of the vote you will hold the country to ransom?

Hon J.A. SCOTT: Not at all. The Government needs 50 per cent plus one.

Debate adjourned, pursuant to standing orders.

ADJOURNMENT OF THE HOUSE

Special

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [11.59 pm]: I move -

> That the House at its rising adjourn until 10.00 am on Friday, 18 December 1998, and proceed immediately after motions without notice, if any, to Order of the Day No 4.

I indicated to the House earlier this afternoon that I would be seeking to sit tomorrow from 10.00 am until the afternoon tea adjournment, which is at 3.45 pm. That was an unfortunate comment to make - I just read about it in the newspaper. I have asked that journalist occasionally to ask me why I do things before she writes about them. I picked that time because that is when the House would be adjourning for a purpose, and it seemed like a good time to stop in order for the staff to attend the Parliament House Christmas function.

Hon Norm Kelly: It is starting at 2.00 pm.

Hon N.F. MOORE: I know, but I tried to find a time that was fair and reasonable. It would be ridiculous to sit tomorrow at 10.00 am and adjourn at 2.00 pm. I tried to find a balance between the two and arrived at 3.45 pm. I stupidly mentioned afternoon tea; I will never mention it again. I happen to have this strange opinion that afternoon tea is not a bad idea. I hope it is a tradition that persists, even though I am a grumpy old conservative according to the Leader of the Opposition.

I hope that the House will sit tomorrow, that we will proceed to Order of the Day No 4, which is the Titles Validation Amendment Bill, and that we will make progress. I understand Hon Jim Scott might be the last speaker on this Bill. In that case I will sum up tomorrow and perhaps we can move into committee and make a decision about this very important Bill.

Question put and passed.

House adjourned at 12.02 am (Friday)

QUESTIONS ON NOTICE

Answers to questions are as supplied by the relevant Minister's office.

WHITTAKERS TIMBER GROUP - STOCKPILE

521. Hon CHRISTINE SHARP to the Minister for Finance representing the Minister for the Environment:

(1) What is the volume of timber that has been supplied to Whittakers over the past 12 months?

(2) What is the volume of jarrah that is stockpiled at Whittakers Mill in Greenbushes -

(a) for whole unprocessed logs; and
(b) for dried and/ or milled jarrah?

Hon MAX EVANS replied:

(1) 149 627.96 cubic metres of jarrah, karri and pine logs was supplied by CALM contractors in the 1997-98 financial year.

(2) (a) The company provided the following advice on 8 December 1998 - Approximately 1 260 m^3

(b) The company provided the following advice on 26 November 1998 - Approximately 8 600 m^3 of dry finished product, product in the process of being dried and green milled timber.

The volume of stockpiled timber at any sawmill varies on a daily basis.

PREPRIMARY PLACEMENTS, ALBANY

643. Hon BOB THOMAS to the Leader of the House representing the Minister for Education:

With reference to five year old pre-primary placements -

(1) Has any child ever been placed on a waiting list in the Albany Education District for pre-primary classes during 1998 at -

(a) Albany;
(b) Flinders Park;
(c) Little Grove;
(d) Mt Lockyer (one);
(e) Mt Lockyer (two);
(f) Spencer Park;
(g) Yakamia (one);
(h) Yakamia (two);
(i) Yakamia (three); and
(j) Yakamia (four)?

(2) If yes, how many and from which pre-primary?

(3) What is the longest period a child has had to wait for placement in each of the pre-primary schools listed in (1) above?

(4) Has any child been placed on a waiting list for the 1999 school year at any of the pre-primary schools listed in (1) above?

(5) If yes, how many and from which pre-primary?

Hon N.F. MOORE replied:

(1)-(2) The following information refers to numbers of children requesting a pre-primary place in Albany in 1998 who were not offered a place at any local area pre-primary centre.

(a) Albany Primary School: No. This included the off-site centre at the Albany Community Kindergarten.

(b) Flinders Park Primary School: Yes, 1 Child

(c) Little Grove Primary School: No.

(d)-(e) Mt Lockyer Primary School: No.

(f) Spencer Park Primary School: Yes, 3 Children

(g)-(j) Yakamia Primary School: Yes, 2 children (this applies to total number of children requesting a pre-primary place at the school, not to each pre-primary centre at the school).

(3) Flinders Park Primary School - 5 months
Spencer Park Primary School - 3 months
Yakamia Primary School - 2 weeks

In each of these cases the children were offered placement at other pre-primary classes in the district but chose to remain on their local schools' waiting lists.

(4) No. All children requesting a pre-primary place at schools in Albany for 1999 have been offered a pre-primary place.

(5) Not applicable.

QUESTIONS WITHOUT NOTICE

NATIVE TITLE (STATE PROVISIONS) BILL

807. Hon TOM STEPHENS to the Leader of the House:

Some notice of this question has been given.

(1) Is the Commonwealth Government still raising issues of concern with the State Government regarding its Native Title (State Provisions) Bill?

(2) If yes, what issues have been raised by the Commonwealth that have yet to be addressed by the State Government in its proposed legislation?

Hon N.F. MOORE replied:

This question is asked of me representing the Premier in the written form but not in the verbal form. I am not responsible for native title issues.

Hon TOM STEPHENS: I ask the question of the Leader of the House in his capacity as minister representing the Premier.

Hon N.F. MOORE: I thank the member for some notice of this question.

(1)-(2) The State Government will have ongoing discussions with the Federal Government on the Native Title (State Provisions) Bill and the two other native title Bills before this House. If the legislation is passed, it must make a compliance submission to the Commonwealth Government.

CANCELLATION OF DRIVERS LICENCES

808. Hon TOM STEPHENS to the Minister for Justice:

Some notice of this question has been given. Of the 43 570 Western Australians who have had their driver's licence cancelled because of non-payment of fines -

(1) How many of those cancellations were the result of non-payment of traffic fines?

(2) How many of these people had their licence cancelled because they could not be located at the address indicated on their licence?

Hon PETER FOSS replied:

(1) Of the 43 570 referred to, approximately 9 625 represented traffic infringement notices issued by the police.

(2) Approximately 16 per cent of notices confirming licence suspensions are returned to the fines enforcement registry unserved. The figure is therefore approximately 7 000 unserved notices. The fines enforcement registry is unable to provide details in respect of individuals.

I probably should provide some other details. Interestingly, this year more licences have been restored than cancelled - about 13 000 have been cancelled and 15 000 have been restored. Obviously people are adjusting to the system. In addition, it has been very successful in increasing the number of fines payable without any form of

enforcement. Infringement notices are now up to 95 per cent and court fines have increased from under 50 per cent to 76 per cent. The other very positive result is that we have gone from 6 000 people a year imprisoned to 400 in all. That is a very significant decrease. Given that there were 180 000 outstanding warrants at the time the new system was implemented, the Government can say it has been extremely successful.

THIRD PARTY INSURANCE CLAIMS

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

(1) Has the Insurance Commission of Western Australia failed to meet any third party insurance claims of drivers who have had their licences cancelled under the Fines, Penalties and Infringement Notices Enforcement Act?

(2) What steps is the Government taking to advise the public about the insurance ramifications for a driver whose licence is suspended whether under the Fines, Penalties and Infringement Notices Enforcement Act or otherwise?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) If the unlicensed driver is not at fault and does not cause the accident, no. If the unlicensed driver is at fault and causes injuries to others, the Insurance Commission compensates the injured parties then institutes a right of recovery action against the driver and/or the owner, to recover the cost of the injured parties' claims. Drivers at fault have no entitlement to damages for their own injuries, irrespective of whether they are licensed.

(2) A media release was planned to be issued today. In 1995, the Insurance Commission published a series of advertisements in community newspapers as part of a third party insurance public awareness and education campaign. The advertisements warned owners and drivers of the risks and ramifications of driving unsafe or damaged, or unregistered and uninsured, vehicles or of allowing unlicensed drivers or drivers under the influence of alcohol to drive their vehicle. In addition, information printed on the reverse of every combined motor vehicle licence and third party insurance policy renewal notice identifies that driving without a valid driver's licence is a breach of the warranties and conditions of the third party insurance policy.

CORONIAL AUTOPSIES

810. Hon J.A. SCOTT to the Minister for Justice:

(1) What individuals and organisations made submissions to the 1992 Committee of Inquiry into Aspects of Coronial Autopsies?

(2) Will the minister table a copy of the submission made to that committee by Professor Kakulas?

(3) If the minister cannot, why is that submission unavailable?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1),(3) When public submissions to the Inquiry into Aspects of Coronial Autopsies were called for, it was made clear that they would be made and received in confidence. That is understandable when the nature of the subject matter could result in the possibility of very personal and highly sensitive information being available publicly.

(2) No.

BENNETT HOUSE

811. Hon NORM KELLY to the Minister for Finance representing the Minister for Aboriginal Affairs:

I ask this question on behalf of Hon Helen Hodgson. Some notice has been given.

(1) Was the minister aware prior to Sunday, 25 October 1998 that the East Perth Redevelopment Authority was going to demolish Bennett House on that date?

(2) Is the minister aware that Bennett House is a registered Aboriginal site?

(3) Is the minister aware that no consent was sought under section 18 of the Aboriginal Heritage Act 1972 to destroy or disturb a registered Aboriginal site?

(4) Will the minister prosecute the East Perth Redevelopment Authority for this breach of the Aboriginal Heritage Act; and, if not, why not?

The PRESIDENT: I call on the Minister for Finance. I assume the minister referred to is the Minister for the Environment.

Hon NORM KELLY: The document I have refers to the Minister for Finance representing the Minister for Aboriginal Affairs.

The PRESIDENT: That is my problem. When the question is asked, "Is the minister aware?" I do not know whether it is the Minister for Finance that the member is asking. There is a very big question when the minister answers of whether he is answering for himself or the other minister. That is not to say that clearly when a minister answers in this House he takes responsibility for the answer. I will take an answer from any minister who can provide one.

Hon M.J. CRIDDLE replied:

It is my responsibility to answer on behalf of the minister, but I do not have the question or the answer.

PERTH INTERNATIONAL AIRPORT SECURITY

812. Hon RAY HALLIGAN to the Minister for Tourism:

Some notice of this question has been given. As a result of the armed robbery of an English couple at Perth International Airport on 1 December, will the minister inform the House -

(1) What steps has Westralia Airports Corporation taken to improve security at the Perth International Airport?

(2) Was any assistance provided to the family involved?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Police and airport security met immediately to examine measures to improve security at the airport. The Westralia Airports Corporation has instituted more regular patrols of car parks by WAC security personnel and continued surveillance of exit areas and booths.

(2) The Western Australian Tourism Commission, together with the tourism and hospitality industry, offered a large range of complimentary tours, wine, passes to attractions, meal vouchers, cruises and a host of other things to the couple and their family whom they were visiting. The WATC has been in frequent contact with the family to ensure that their stay is as fondly memorable as possible. In fact, the WATC received a letter today from Mr and Mrs M Cumbers, which states -

> On behalf of my wife and my family I would like to thank you for your most generous supply of complimentary tickets after our unfortunate incident at Perth Airport.
>
> We cannot express our thanks too deeply for the way the people of Western Australia have shown their compassion and caring attitude towards people with a problem. We have been approached by people in the street expressing their regret and offering sympathy. When we return to the UK I think one of our fond memories will be the tremendous response we have received from the whole state -

Several members interjected.

Hon N.F. MOORE: It is actually a good-news story.

Hon Tom Helm: What about the letter from granny?

Hon N.F. MOORE: I do not have a letter from anybody's granny. I was just going to say what the two in Western Australia have done. As I was saying, the letter states -

> When we return to the UK I think one of our fond memories will be the tremendous response we have received from the whole state and its inhabitants. Once again I would like to thank you and your operators and would like you to pass on our feelings to all involved.
>
> Have a great Christmas and a Happy New Year.

That typifies the generosity of Western Australians and the tourism industry in particular. A broad cross-section of businesses, ranging from restaurants to boat cruises to wineries, representing the industry have united in showing the friendly face of Perth and genuine Western Australian hospitality.

Several members interjected.

Hon N.F. MOORE: I am a bit embarrassed at the response of members opposite.

Hon Kim Chance: Not half as embarrassed as we are at the question and your answer. This is question time, man.

The PRESIDENT: Order! I know it is question time, and Hon Kim Chance happens to be on the list of members who wish

to ask a question, but if he wants to interject he will not ask his question. If the Minister for Tourism can conclude, other members will be able to ask questions.

Hon N.F. MOORE: I have not quite completed my answer.

It was an unfortunate event that happened to that couple. I am trying to outline to the House, in particular to Hon Kim Chance, who normally is a more generous soul than he appears to be at the moment, that the Western Australian tourism industry is very concerned about the effect of that event. It has gone to extraordinary lengths to try to indicate to that couple that they are indeed welcome in Western Australia. A vast number of companies offered help. I will not read out the names now as I wish to save time, but members who want to see what was provided by various tourism operators will be very pleased at the generosity and concern expressed by Western Australian industry and companies for that unfortunate couple. They have left now and have expressed their gratitude for the support they received from a large number of Western Australians, bearing in mind that it was a traumatic experience.

MISSION CRITICAL SYSTEMS YEAR-2000 COMPLIANT

813. Hon E.R.J. DERMER to the Leader of the House representing the Deputy Premier:

I refer to the Auditor General's December 1998 report on audit results 1997-98 which stated that two of the sampled WA government agencies are not scheduled to have their mission critical systems year-2000 compliant by July 1999.

(1) Is the Deputy Premier concerned at that finding of the Auditor General?

(2) Which government agencies are not scheduled to have their mission critical systems year-2000 compliant by July 1999?

(3) What action does the Deputy Premier propose to ensure that the mission critical systems of all government agencies will be year-2000 compliant by July 1999?

(4) Is the Deputy Premier completely satisfied that July 1999 is a sufficiently early date by which all government agencies need to ensure that they are year-2000 compliant?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Yes.

(2) The Auditor General does not report individual agency names in reporting on that type of investigation.

(3)-(4) The chief executive officer of each agency is responsible for ensuring that the agencies identify and effectively manage their year-2000 risks. CEOs are required to keep their ministers advised of progress. Some systems have been required to be compliant since as early as 1995 - for example, those for five-year drivers licences. For some other agencies compliance does not have a critical effect. Each CEO has a responsibility to ensure that the business of the agency will not be unduly affected by the change of century. That gives CEOs flexibility to manage their year 2000 problems in the most effective and efficient manner to avoid disruptions to government services.

YOUTH CHARITIES TRUST INC

814. Hon CHERYL DAVENPORT to the minister representing the Minister for Youth:

(1) Has Youth Services Trust Inc recently been awarded a tender worth $150 000?

(2) If so, what is Youth Services Trust Inc?

(3) What previous experience and/or expertise does the organisation have to be awarded the contract to work with young people?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The tender for the Office of Youth Affairs' community and peer support pilot program to promote life-enhancing skills and prevent self-harm in young people has been awarded to Youth Charities Trust Inc.

(2) Youth Charities Trust Inc is a non-government organisation which has been active in Western Australia for many years. It was previously known as Youth Focus.

(3) Youth Charities Trust Inc has many years experience of working with young people.

ESPERANCE POWER GENERATION SITE

815. Hon GIZ WATSON to the minister representing the Minister for the Environment:

In respect of the Esperance power generation site, given that licence 7162 states that A4(c) Australian miniature smoke chart - that is, Australian standard 3613 1989 - should be used for testing smoke emission, and Standards Australia advises that AS 3613 1989 is not the Australian miniature smoke chart but is a data communication - 15-pin DTE/DCE interface connector pin assignment, an electrical connection standard -

(1) How does the minister expect the test to be carried out?

(2) Will the minister ensure that the licence is altered to reflect that the Australian miniature smoke chart is actually Australian standard 3543 1989?

Hon MAX EVANS replied:

I thank the member for some notice of this question. It is not possible to provide the information in the time required, so I request the member to place the question on notice.

DAIRY INDUSTRY AUTHORITY, PRODUCER REPRESENTATIVE

816. Hon KIM CHANCE to the minister representing the Minister for Primary Industry:

(1) Is it correct that nominations for the producer representative on the Dairy Industry Authority of Western Australia were opened on 14 November 1998 and closed on 7 December 1998 and that only one nomination has been received?

(2) Is it correct that the vacancy was advertised only in *The West Australian* and not in any rural or regional media?

(3) Was the Western Australian Farmers Federation advised of the forthcoming vacancy either at the Dairy Council in late November or at any other time?

(4) Will the minister allow for late nominations this year as he has in the past?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1)-(4) The Minister for Primary Industry has already extended the nomination period to 22 January 1999, and an advertisement to that effect will appear in *The West Australian* on Saturday, 19 December 1998.

MINING EXPLORATION

817. Hon GREG SMITH to the Minister for Mines:

Is the minister able to comment on the increasing incidence of Australian mining companies shifting their exploration dollars overseas at the expense of exploration within Australia?

Several members interjected.

Hon N.F. MOORE replied:

Obviously it is that time of the year when the mean-spiritedness of some members comes out. I thought that the good-news answer that I gave a moment ago might have given members a reason to feel enthusiastic about something for once in their miserable lives.

Hon Bob Thomas interjected.

The PRESIDENT: Order! Hon Bob Thomas is also on the list. If he does not want to ask a question, he can tell me and we will move to the next question. Has the Minister for Mines an answer to the question?

Hon N.F. MOORE: I do, and I would like a chance to give it. A recent survey carried out by Price Waterhouse Coopers established that, in comparing the fiscal years 1996-97 and 1997-98, reported exploration expenditure in Australia fell by 3 per cent in contrast with an 8 per cent rise in overseas exploration expenditure. The nature of exploration expenditure within Australia in recent years should be emphasised. The survey found that there has been a reduction in greenfields exploration, which discovers the mines of tomorrow, and a greater concentration on more costly brownfields exploration on production leases which have been held by companies for some years.

Regarding the extent of greenfields exploration, the survey found that in 1997-98, 96 per cent of overseas exploration expenditure was greenfields exploration. In Australia only about 50 per cent of exploration expenditure in recent years has been on greenfields exploration. The survey found also that sovereign risk and the cost of access to land are two of the main

factors considered by companies in deciding to explore in Australia or overseas. I am informed that surveys carried out by the Australian Bureau of Statistics have produced similar findings regarding overseas exploration expenditure.

WESTRAIL, SPECIFICATION OF TIMBER SLEEPERS

818. Hon CHRISTINE SHARP to the Minister for Transport:

Further to my question without notice on Tuesday about the reason that Westrail is using native-timber sleepers, can the minister provide the technical specifications for timber sleepers that reassure him that only second-grade timber is being used?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. The specifications are in accordance with the Australian standards for visually graded green-sawn Western Australian hardwood sleepers which allow millers to cut sleepers from a minimum of third-grade timber.

DEPARTMENT OF COMMERCE AND TRADE, CONLAN CONTRACT

819. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Commerce and Trade:

I refer to a $200 000 contract awarded to a Mr Kevin Conlan to represent the Department of Commerce and Trade in Canberra.

(1) Why has the department contracted out one of its core functions?

(2) Was the department represented in Canberra before this contract was awarded?

(3) If yes to (2), who represented the department and what was the cost of this representation?

(4) Is the successful tenderer a former Western Australian public servant; and, if yes, for whom did he work?

Hon N.F. MOORE replied:

Did the member provide that question today?

Hon Ljiljanna Ravlich: Yes.

Hon N.F. MOORE: I do not have a copy of the question.

MINISTER FOR REGIONAL DEVELOPMENT, COUNTRY TEACHERS

820. Hon TOM STEPHENS to the Leader of the House representing the Minister for Regional Development:

(1) Is the Minister for Regional Development aware of the difficulty which country and, in particular, remote country schools are having in attracting staff?

(2) If yes, what is the extent of this problem?

Hon N.F. MOORE replied:

Again I do not have that question or an answer. I do not know whether the system has broken down at the Government's end or at the Opposition's end. I will seek to find out.

WESTERN AUSTRALIAN PLANNING COMMISSION, CHAIRMAN'S REMUNERATION PACKAGE

821. Hon TOM HELM to the Attorney General representing the Minister for Planning:

With regard to the Chairman of the Western Australian Planning Commission, Mr Simon Holthouse -

(1) What is the total remuneration package received by Mr Holthouse?

(2) What was the total WAPC remuneration package received by Mr Holthouse when he was initially appointed to this position in February 1995?

(3) What was the total remuneration package received by the former Chairman of the WAPC in 1994-95?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The remuneration package provided to the Chairman of the Western Australian Planning Commission as from 1

July 1997 is $108 736 per annum, comprising a payment of $94 236 per annum and a fully maintained motor vehicle valued at $14 500 per annum.

(2) The remuneration package provided to the Chairman of the Western Australian Planning Commission from 1 March 1995 was $101 745 per annum, comprising a payment of $78 097 per annum, employer's contribution to superannuation - which should be taken up by the chairman, but was not taken up by Mr Holthouse - of $9 372 per annum, and a motor vehicle valued at $14 276 per annum to which Mr Holthouse contributed $1 550 per annum under the Government's executive vehicle scheme.

(3) Prior to March 1995 there was no Western Australian Planning Commission. The predecessor, the State Planning Commission, had no full-time chairman. During the 1994-95 financial year three individuals occupied the position of chairman. They were Mr Peter Willmott, Mr Stan Parks and Mayor John B. D'Orazio, as reported in the annual reports of the commission. It is not possible to provide a single figure for remuneration paid in the capacity of "chairman".

ROAD SAFETY COUNCIL, ADVERTISING SERVICES

822. Hon KEN TRAVERS to the Minister for Transport:

(1) Is a tender currently pending award by the Road Safety Council for the provision of advertising services?

(2) If yes, what are the names of the companies which tendered for the contract?

(3) When will the contract be awarded?

(4) What is the estimated value of the contract?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) Yes.

(2) Transport supply policies and procedures require all information related to the tender process to be confidential until the successful tenderer has been advised and has acknowledged receipt of the advice. Therefore, at this time it is inappropriate to disclose the names of the companies which tendered for the contract.

(3) At the conclusion of the tender process, which is expected to be early January 1999.

(4) The estimated value is $6.8m a year.

BRENNAN CASE, NO REPORT ON STOLEN ROLLS ROYCE

823. Hon MARK NEVILL to the Attorney General representing the Minister for Police:

(1) Why did Detective Senior Sergeant I. Brandis not report the Rolls Royce belonging to Mr R. Brennan as being stolen?

(2) Why did internal affairs officers when in Sydney four years ago interview Frost but not bother to sight Brennan's Rolls Royce, which was listed as a stolen car?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) As Mr Brandis has now retired from the Western Australia Police Service, it will be necessary to examine the brief held on this vehicle by the Director of Public Prosecutions to determine whether Mr Brandis' knowledge of the theft is disclosed therein. Due to work commitments by the DPP prosecutor, additional time will be required to provide an answer.

(2) Inquiries indicate that two internal affairs unit officers travelled to Sydney on unrelated investigations. At the request of the motor squad case officers, one of the internal affairs unit officers interviewed Mr Frost. There was no request to inspect the Rolls Royce, and the internal affairs unit officers did not carry out such an inspection.

POLICE DEPARTMENT, DRIVERS LICENCE QUERIES

824. Hon N.D. GRIFFITHS to the Attorney General representing the Minister for Police:

In relation to the cancellation of licences under the Fines, Penalties and Infringement Notices Enforcement Act -

(1) Has the Police Department changed its policy on answering queries from insurance companies about their clients' eligibility to drive to the effect that this information is no longer being provided?

(2) If yes, when did this take place and why?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1)-(2) Fines enforcement falls within the ambit of the Ministry of Justice. Motor drivers licences are the responsibility of the Department of Transport. The Western Australia Police Service has never supplied this type of information and is not in a position to do so.

MINISTER FOR PLANNING, PERTH BUSHPLAN DOCUMENT

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

(1) Does the Minister for Planning fully endorse the recently released Perth bushplan document?

(2) Is the minister aware that the Perth bushland document identifies the System 6 M91 conservation reserve as regionally significant bushland and recommended for protection?

(3) Will he carry out the bushplan recommendation to protect reserve M91 by withdrawing the metropolitan region scheme amendment 1001/33, which seeks to destroy much of this regionally significant bushland?

(4) If he will not, what confidence can the people of Western Australia have in the Perth bushplan?

(5) Will the Perth bushplan reserve exclude mining from areas of regionally significant bushland?

Hon PETER FOSS replied:

(1) "Perth's Bushplan" is a draft report recommended to the Government by the Western Australian Planning Commission, the Environmental Protection Authority, the National Parks and Nature Conservation Authority of WA and the Water and Rivers Commission Board. It has been released for public comment. Following public comment and review by an independent reference group, a final bushplan will be prepared and this will be considered for endorsement by Cabinet.

(2) Bushplan site No 346 which includes System 6 area M91 is recognised in the bushplan report as having some level of protection by virtue of much of the site being in an existing parks and recreation reserve.

(3) Metropolitan region scheme amendment No 1001/33 proposes the removal of 10.5 hectares from the parks and recreation reserve which constitutes 1.7 per cent of the bushplan site No 346. This is compensated for by the proposed additions to parks and recreation reserves of 42 hectares through the south west omnibus MRS amendment No 991/33.

(4) Bushplan is one of the most significant conservation initiatives undertaken for Perth, and although minor adjustments to its recommendations for some sites may occur in balancing other important factors, this should not detract from its comprehensive regional context.

(5) "Perth's Bushplan" recognises areas with approved mining leases and seeks to achieve retention of bushland within this constraint where possible.

CHEMISTRY CENTRE (WA)

826. Hon TOM STEPHENS to the Minister for Mines:

I refer to the minister's submission to Treasury on 9 April for a Treasurer's Advance totalling $1.2m for the Chemistry Centre (WA), upon which submission Treasury officials wrote the following comment -

If I were a Board Member receiving the attached report I would simply deny the request and sack the author!

(1) Will the Minister for Mines take the necessary steps and resign because of his mishandling of the Chemistry Centre, or will he wait for the Treasurer to accept the advice of the Treasury officials that the person who is ultimately responsible for a submission with regard to the Chemistry Centre - that is, the Minister for Mines - be sacked?

(2) Does the minister accept that the corporatisation strategies that he has unleashed upon the Chemistry Centre have placed at risk its continued operation and its provision of a much needed community service obligation with regard to the forensic work that it carries out for the State of Western Australia; and what will the minister do to protect that centre?

Hon N.F. MOORE replied:

(1)-(2) The comment that has been placed by a Treasury officer on the letter that I forwarded to Treasury is ridiculous, absurd and totally out of order, and I have sent a message to that officer's department to indicate that that is my view of his comment. My view of that comment is shared by the Director General of Mines. Interestingly, Treasury has agreed to the submission, regardless of the handwritten comment that that rather silly officer has put on an original document. There is no question about whether Treasury will support the submission; it has supported it. Therefore, the suggestion by the Leader of the Opposition that someone be sacked is just nonsense. The Department of Minerals and Energy made a submission to me, as the appropriate minister, that some additional funding be provided to the Chemistry Centre to enable it to overcome a shortfall in revenue.

As I explained in answer to a question asked by Hon Tom Helm a week or so ago, the Chemistry Centre is a very successful operator in providing a chemical assessment of various substances, and the Government has sought to make its operations more commercially appropriate and sensitive. There is no need for the Government to have a Chemistry Centre unless it can do things that no-one else can do. We are now getting to the stage where the Chemistry Centre is doing those things that no-one else in the commercial world wants to do. Much of that work is forensic work, and the Chemistry Centre has done some extraordinarily good forensic work in assisting the police. However, the tasks that it has been performing over the years are now increasingly being done by the private sector, and the customers that it had originally are now turning to the private sector for that business. I am seeking to preserve the Chemistry Centre as a viable entity within government. However, it has not been able in the past year - I will need to be reminded of the previous year - to meet all of its funding commitments from the services that it provides. That is the reason that I sought additional funding from Treasury, and to my knowledge there has been no problem in Treasury about providing that additional support, other than the quite outrageous, incorrect and unacceptable comments that have been made by a Treasury officer. As far as I am concerned, because Treasury has agreed to my request, it has also supported the veracity of my request and concurred that the submission that has been made is proper and appropriate.