

Topic : MOTION

Subject : Censure Of Chief Minister Ministerial Statement And Motion
Implications Of Mabo And Wik Decisions For The Northern Territory

Date : 02/18/1997

Member : Mrs HICKEY

Status : Opposition Leader

Information :

Mrs HICKEY (Opposition leader): Mr Speaker, I move that this Assembly condemns the Chief Minister for dividing Territorians, as the Country Liberal Party consciously did in 1990 and 1994, and for putting at risk the economic and constitutional development of the Northern Territory in order to attract votes at an early election.

There are 3 strands to this censure motion. As the Leader of Government Business said, it is the most important and the most serious motion that can be moved in this House. The opposition believes that it is time the government was brought to book for the way in which it runs elections and runs the Northern Territory and has done for the last 20 years. It is time that members opposite were challenged over the cheap and grubby tactics they employ continually before every election. The questions that the opposition asked in Question Time today, which were ridiculed by the government and which were greeted, by way of response, with the waving of a Wicking cartoon, were serious questions. They focused on the very essence of the tactic that the Country Liberal Party employs when in election mode, before and following elections. Before elections, it is into its black-bashing mode that says that 'these people' will take it all away from you. It is the politics of division and envy. It has been used in other places at other times to good effect. The Country Liberal Party knows that it can use it to good effect, and it is trying it again. We intend to raise the consciousness of Territorians about these grubby tactics because we are sick of them, Territorians are sick of them and Australia is sick of them.

For the above reasons, there are 3 strands to this censure motion. Firstly, the Chief Minister is consciously dividing Territorians one against the other. He is creating division in terms of greed, envy, fear and loathing. Secondly, by these means, he is stymieing the economic development of the Northern Territory for short-term political gain. Thirdly, and very importantly, he is putting at risk the constitutional

development of the Northern Territory and the move towards statehood by these tactics.

Last Friday, the Chief Minister launched an ugly and sustained attack on Aboriginal Territorians. He may have singled out one person as a focus, but his message, his mantra, was 'whingeing, whining blacks' and he meant every Aboriginal person. That was the message he received from his pollsters: 'Tweak these nerves, boys, and you will get there because it will instil fear in Territorians. That is how you have done it before and you can do it again'. He took his lines from the southern pollsters and he was out on the hustings as quickly as possible, putting out those lines. He has not stopped from that day to this. This is the man who, when elevated to the position of Chief Minister, promised Territorians that, under his leadership,

Page 10492

things would be different. As a person who has known the Chief Minister ever since I came to the Territory, I must say that I thought he could be capable of doing that. He has a legal background. He has an urbane approach and might have been someone who would not become involved with the rhetoric of black-bashing as a cheap political game. I thought he might be able to make changes, remove the redneck, racist image of the Territory and place us in a good position for the attainment of statehood. After all, that is what our endeavours have been moving us towards. We hoped that the promise meant that the Country Liberal Party would turn aside from the tactics it had employed previously in all bar one election. We hoped that we would see an end brought to the vilification of a particular group of people in the Northern Territory and the scapegoating of those people for cheap political gain.

Let us have a look at what happened at previous elections. Let us look at a letter from Marshall Perron, the previous Chief Minister and Treasurer of the Northern Territory government. Mr Speaker, I seek leave to table a letter that the previous Chief Minister sent to all Territorians.

Leave granted.

Mrs HICKEY: The letter commences: 'Let's secure our future together'. In the letter, he said that he would be speaking to Territorians of all races and colours who desired various things. One of those was that Territorians wanted the new fourth tier of government, the Aboriginal and Torres Strait Islander Commission (ATSIC) reviewed. Another issue was that Territorians were fed up with 2 sets of laws, one based on race. That was the sort of divisive rubbish that the Chief Minister of the day put out immediately before an election, and the same tactic is being employed today.

What else did he do? On 1 June 1994, he sent out another letter, and I seek leave to table this letter also, Mr Speaker.

Leave granted.

Mrs HICKEY: The letter was addressed to all Territorians. It began: 'This Saturday, you face a clear choice. It continued: 'If Labor is given the chance to govern, you will get: 2 sets of laws, 2 classes of Territorians; a battle for sea rights tougher than land rights; vital industries like mining forecast disaster'. That was the sort of rhetoric used by the previous Chief Minister. However, the present Chief Minister said the CLP government would lift its game and that a far better approach would be developed. He said that he would govern for all Territorians. Sadly, he appears to have become a little selective over recent weeks, especially since the focus groups did their work.

Let us look at another couple of disgusting pieces of propaganda that were put out at the time of the last election. Here is another one from the then Chief Minister. It related to sport and it said: 'Labor's land council mates want to cut the CLP's funding of our sports teams and athletes'. What arrant nonsense! There are no firmer supporters of sporting activity in the Northern Territory than Aboriginal people and their representatives. However, the CLP was prepared to grasp at anything in those days. We thought that things would change, but we were wrong. Here is another example. This is probably one of the most disgusting pieces of advertising that has ever been put out. I believe some members opposite, who have a shred of

Page 10493

decency, regretted this particular advertisement. They did not regret the result that it produced for them, but I believe they had the decency, for some months after the advertisement, to be unable to look the former member for Arnhem in the eye. This advertisement placed his image in the corner of a photograph, and the caption asked who would speak for Territorians on Mabo and sea rights, a 'tough experienced negotiator like Mike Reed' or the former member for Arnhem. There it is. It was a disgraceful and disgusting advertisement and I believe some members opposite are a little ashamed of it. Certainly, all Territorians should be ashamed of the way in which the government has constantly whipped up these issues.

We now have a Chief Minister who told us everything would be different. No more would we witness the poll-driven campaigns that gave us letters from Marshall Perron about the Labor Party supporting 2 laws. No more would Aboriginal parliamentarians of the stature of the former member for Arnhem be insulted on the basis, not of his political affiliations but of his race. No more would campaign

advertisements from the CLP talk about 'Labor's land council mates'. Perhaps not. Perhaps we will now see something worse. I believe the performance of the Chief Minister on the airwaves last week beat anything that Marshall Perron and his predecessors could have dished out because it introduced the poll-driven vilification of people for cheap political gain. He raised the spectre of greedy money grabs by people who are never satisfied and by people in our midst who are not the same as us, who hold different beliefs, who have a sinister agenda, and who have taken what is rightfully ours and are depriving us of what we could have had. That was the implication behind the words of the Chief Minister on the Fred McCue show. That was the message that he was trying to spread. The Chief Minister is so power hungry that he will say and do anything to attract votes in an early election. It is no coincidence that his attacks on Aboriginal Territorians started in the week in which the CLP was conducting its focus groups. This week, the CLP administration is continuing with this line. Its ministers continued with it in Question Time today, and they will continue to hop into Aboriginal people for their own benefit. The Chief Minister has carefully developed words and phrases which he repeats over and over. We hear the same words again and again: 'these people', 'whingeing, whining blacks'. The words are designed to cause the maximum ...

Mr Coulter: It was 'black' actually.

Mrs HICKEY: 'These people'. I remind the Leader of Government Business - 'these people'.

Mr Stone: It is in your own letter that you sent out.

Mrs HICKEY: He targeted one and he meant them all.

Mr Ah Kit: 'Whingeing, whining, carping blacks'.

Mr Stone: No.

Mrs HICKEY: Mr Speaker, he continued his outburst today. He shows no contrition. Let Territorians make no mistake - these antics are all about an early election. His tactics are cheap, nasty and cynical. This short-term strategy will hurt not only those against whom they are directed but also, in the end, all Territorians. The Chief Minister wants to create an enemy

Page 10494

in our midst. He has picked his target and he is going for it. Let us find out who is really the Territory's enemy. I think the enemies of the Territory are prejudice and ignorance. They are the enemies of reason. Lack of development and lack of a

future are the enemies.

I come now to the second strand of this censure motion which relates to economic development. The government suggests that, because of land rights, our efforts at development in the Northern Territory have been stymied over the last 20 years. That is absolute, arrant and utter nonsense. The development in the Northern Territory that has occurred since the inception of land rights has been phenomenal. The Chief Minister and members of his government constantly pat themselves on the back over the rapid expansion and growth in the Northern Territory. They cannot have it both ways. When land rights were introduced, these people said that it would be the end of civilisation as we knew it and there would not be a skerrick of development. They cannot say things like that and, at the same time, say that the Territory has the fastest growing economy in Australia.

Let us look at some of the people who have blazed the economic trail for all Territorians. Let us look at some of those people whom the Chief Minister chooses to vilify for his own cheap political ends - people like the respected Borroloola man, the subject of a condolence motion today, who passed away recently and who was responsible for bringing together the disparate groups in that region to forge an agreement that saw the successful development of the McArthur River mine; people like the member for Arnhem with his work on the Mt Todd mining development and the Nitmiluk tourist program; and people like the chairman of ATSIC, Gatjil Djerrkura who founded YBE. That is not to mention all of the talented sports people, musicians and entertainers who are ambassadors here and interstate. Let us never forget that those are the people who attract interest in the Northern Territory. They bring tourist dollars to the Territory because people are keenly interested in Aboriginal lifestyle and in the achievements of those outstanding people. Those are the people who further and sponsor our tourism development. They have assisted in the economic development of the Northern Territory. They are not enemies in our midst. Like ourselves, they too are Territorians. They want economic development and progress in the Northern Territory. It is only this grubby Chief Minister who wants to make them the enemy.

Mr Bailey: They got the vote and then they got land rights and now native title. Where will it all end?

Mr SPEAKER: Order! The Leader of the Opposition is on her feet and the member for Wanguri is making it extremely difficult for her.

Mr Bailey: My apologies.

Mrs HICKEY: I thank you for your support, Mr Speaker, but my colleague speaks only the truth.

Members interjecting.

Mrs HICKEY: Mr Speaker, if this is a subject on which members are unable to remain quiet, frankly I do not blame them.

Page 10495

This motion concentrates on economic development because that is what the Country Liberal Party will play with. It will put electoral gain before economic development. It refuses to negotiate over native title issues. We will be talking about that later today. It refuses to acknowledge that, whatever legislative process is put in place, at the end of the day people have to sit around a table and talk about things. The CLP has developed this schizophrenic attitude at every election, including this one. Immediately before an election, members opposite say that all is doom and gloom, that these are terrible people and they cannot and will not negotiate with them. However, despite that, it is safe to bet that, as soon as that election is over, they will say: 'Sorry fellas. It is all right. All bets are off. We will now sit at the negotiating table and sort things out'. That is the way in which they behave. Increasingly, Aboriginal people and others whom they mock and knock have come to the end of their tether too. After 20 years of the way in which CLP governments have treated them with contempt and ridicule and, for political purposes, have held them up as the scapegoats and the enemies of the Territory every time it suits them, they are saying that they have had enough. They will look now to driving a harder bargain.

Can anybody really blame them for the attitude that prevails among some of them? I do not necessarily condone it. Let me say quite clearly and categorically that, in relation to the Larrakia claim, I stand by what we said originally and what we have said subsequently. We oppose the blanket nature of the claim. We oppose the fact that the Northern Land Council insufficiently explained its position in respect of this claim. These people were instrumental in raising alarm in Darwin with the lodgment of the claim, but we accept their right to lodge claims under the Native Title Act. If there are parts of that claim that are inconsistent and wrong, they will be rejected. However, that cannot be done by the government turning its back on it. It will not be done by members opposite shouting: 'Shame! Horror! We cannot do anything about this'. The only way the government will resolve it will be to sit down at a negotiating table, and that is exactly what those blokes opposite do not want to do.

This government seeks to suggest that development is at risk because of Aboriginal people and the way in which they are looking for greedy money grabs. The government suggests that nothing will satisfy them, no matter what. Of course, that is what the CLP attempts to suggest at every election. If the economic development

of the Northern Territory is at risk, let us have see who has prompted that. Like the ravings of Pauline Hanson, the rhetoric of the Country Liberal Party does not bear up when the facts are examined. The government may sound strong and decisive on these issues but, in effect, it is weak and divisive. It is weak because it is throwing up its hands in relation to dealings with Aboriginals. It is saying that it does not have the skills to negotiate successfully. Members opposite are divisive because they are prepared to put that development that we so desperately need at risk by putting themselves and their cushy jobs first. For over 20 years, CLP governments have ignored the Territory's most obvious and consistent resource - its indigenous people. They have failed to make a dent in the appalling health and education statistics, factors not lost on the Public Accounts Committee of this parliament which investigated these matters and made recommendations that have not been acted on as yet.

With no help from the Country Liberal Party administration, there have been some spectacular success stories. I referred earlier to a few of the individuals who spearheaded some of those successful enterprises such as the joint agreements between the Jawoyn and the mining company MIM, the joint ventures with the Gulf people, the Tanami mining enterprises

Page 10496

etc. Consider what the Julilikari and Tangentyere Councils have done and what Aboriginal health organisations have done. What we could have done with cooperation rather than confrontation is inestimable. This place could have been the jewel in the crown of Australia. We could have had statehood now because everybody would have been with us. It would have been an irresistible force.

Mr Reed: We have a strong economy and the lowest unemployment. What more do you want?

Mrs HICKEY: You are the ones who are saying that land rights have obstructed development. You cannot have it both ways.

Mr Reed: It is our aim to keep it that way that worries us in light of native title.

Mr Bailey: Crawl back into the closet.

Mr SPEAKER: Order!

Mrs HICKEY: Mr Speaker, they cannot help themselves. The member for Katherine wants it both ways. He says the Territory has the fastest growing economy in the country, but that there is a problem because of land rights and

native title. It would have been better if we had not had those things. It could have been a darn sight better if members opposite had adopted the approach taken by the mining companies. They are saying that, if the legislation is there, they will work with it, and they have done that. Can members opposite imagine the concern with which the government's pronouncements on some of these matters have been greeted by Normandy Mining, Poseidon Gold, in my area? That company is headed by Robert de Crespigny who has tried very hard over many years to forge good links with Aboriginal people. It is succeeding in my region. After many years of negative dealings with the mining companies in the Tennant Creek area, Aboriginals came close to putting a stop to mining on their land. Poseidon Gold has turned that situation around. How will it regard the behaviour of the Chief Minister when it is trying hard to gain the cooperation of Aboriginal people in the Barkly area in relation to the development of mining there? If the people in the Barkly believe that the Country Liberal Party administration has their interests at heart, they had better tell the Chief Minister that he is going about it the wrong way. People will go into reverse and the mining companies will give up because they will say it is all too difficult.

What potential developers require in order to come into and prosper in an area is a stable economic and political climate in which to operate.

Mr Coulter: No. They need secure tenure for their land. That is what they need.

Mr Bailey: They do not have title to the land. They have mining leases.

Mrs HICKEY: That is what makes Australia such a favoured country.

Members interjecting.

Mr SPEAKER: Order!

Page 10497

Mr Coulter: That is true.

Mr Ah Kit: You had better talk to them or your railway will be gone.

Mrs HICKEY: When you have a government that is intent on creating division between one set of people and another, what are those ...

Members interjecting.

Mr SPEAKER: Order! There is too much interjection from both sides of the Chamber.

A member: The member for Arnhem just interjected that the railway will be gone.

Mr Finch: It was an interesting interjection.

Members interjecting.

Mr SPEAKER: Order!

Mrs HICKEY: Australia is a favoured country for the very reasons that I have outlined. It has a stable economic climate and it is stable politically. However, developers will not favour the Northern Territory as a potential area for activity when it has a Chief Minister who say that it is all too hard, that he cannot negotiate, that he does not know what to do and that he will run to the Prime Minister. That is not the action of a leader. It is the action of a cheap political opportunist, but that is what this man is and make no mistake about it. I do not mind debating proposals to make native title workable and fair for all. I believe we must have those debates and those arguments. That is happening all over the country. However, to seek to raise a spectre where none exists is merely to seek to create a monster for electoral purposes, and that is not a move that is guaranteed to create a favourable outcome in terms of native title.

The third point that I wish to make in this censure motion relates to constitutional development and statehood - something that all members of this House aspire to. There is a very strong bipartisan approach on that. Indeed, the Chief Minister and I have both been to Canberra arguing the case for constitutional development and statehood, as did our predecessors. The Senate committee hearing in Darwin covered more than the issue of whether the Territory could pass legislation on euthanasia. Both the Chief Minister and I would agree that the attitude of those Senators towards the Territory was dismissive and quite contemptuous. I remember that he was very disgusted with them when he returned from Canberra. He described them as 'those bitches and bastards'. Those people failed to recognise the importance of statehood and constitutional development for the Northern Territory. They failed to recognise the Territory parliament as a fit and proper place in which to enact laws. As I have said before, the problem is that this government is schizophrenic. Members opposite want to behave in a statesman-like manner when it suits them. However, at election time, they want to tell the rest of Australia to suspend its beliefs about the Northern Territory while they get down into the gutter for the campaign. However, there is no cause for concern because, after the election, they will become statesmen again. How do they think that affects people like the Prime Minister? He is already lukewarm about statehood for the Territory. There can

be no mistake about that. Nevertheless, our Chief Minister says to his southern masters that he is powerless in his own backyard to negotiate with anybody who does not share his views. How does he think the Prime Minister views that? Does he view that as the mark of the leader of a government fit to run its own affairs? I doubt it very much.

Let us look at some of the people who are supposed to have promoted the Territory as a responsible place. We have Max Ortmann and the member for Karama. There are the issues relating to Mr Dondas and his book, and the racial division that continually occurs in the Northern Territory. How are we to draw all Territorians together, how are we to convince them that we are moving together towards statehood when the CLP seeks constantly to separate a quarter of the population at election time? It talks about their being less than Territorian and less than Australian. Will that really further the cause of statehood? I doubt it very much. This is a very important issue for us because, unless and until we achieve statehood, we will be faced, not once but many times, with challenges to our legislation. The federal parliament has done it once. It is my belief that the Senate will uphold the Andrews bill and that our legislation will be defeated. That will be a tragedy for the Northern Territory because it will open the gates and allow any opportunistic backbencher in the national forum to say that the Territory is not fit to run its own affairs and other Territory legislation will be challenged. In that respect, this is the thin edge of the wedge.

If the Territory is to achieve constitutional development, it must have credibility in Canberra. I believe we conducted ourselves as ably as we could in relation the euthanasia debate, but other factors militate against our attainment of statehood and, of course, they reside most clearly in the Northern Territory. The division that the Chief Minister uses, and that his predecessors have used over the years, to achieve electoral gain may be all very well in the short term but, when it is used to attempt to divide 25% of our population against the other 75%, simply to score cheap political points, that does nothing to help the future of the Northern Territory either in terms of its cohesiveness as a community and its economic development or in terms of its aspirations to have equality with the states with all the rights and privileges that are accorded to other Australians.

I condemn this man opposite for the way in which he is behaving and I think all Territorians should do likewise. I do not know whether this is the right time to raise a censure motion of this kind but, by God, Mr Speaker, I can tell you that every member on this side wanted it to be moved because it is something that must be said. It should have been said years ago.

Mr SPEAKER: Order! The honourable member's time has expired.

Mr STONE (Chief Minister): Mr Speaker, the Leader of the Opposition claims that the government is schizophrenic. If anyone is schizophrenic, it is the members of the opposition - this very same opposition whose members said yesterday that they would not be proceeding down the path of a censure motion. The very fact that this motion of censure has been written out by hand, complete with corrections, in a burst of passion and in the heat of the moment, indicates that, despite having had the Christmas period in which to organise, focus and prepare themselves for the year, opposition members are incapable of doing so.

Mr Bailey interjecting.

Page 10499

Mr SPEAKER: Order!

Mr STONE: We saw the Leader of the Opposition on her feet, full of feigned indignation as she said in conclusion that every member of the opposition was so outraged that they wanted a motion of censure moved. However, it was quite evident from the very poor performance by the Leader of the Opposition this morning that she had not prepared anything on this topic. It was apparent that this motion of censure was written out and moved on a whim, and then she sought to create an atmosphere of concern.

Let us put this into its proper perspective, at least in terms of the Hansard record. Notwithstanding what the Leader of the Opposition has been pushing in Aboriginal communities, let us at least get the story straight in terms of the public record. This is from a report on the World Today program on 14 February. The reporter was Mark Bolling:

At the National Press Club, Galarrwuy Yunupingu had much to say about moves to extinguish native title and what he describes as a second attempt to dispossess indigenous people. Mr Yunupingu also expressed fear that Aborigines would suffer if the federal government refuses to sign a human rights clause in a trade agreement with the European Union. He warned that his organisation, the Northern Land Council, would send a dossier detailing Australia's human rights record towards Aborigines to the European Union.

There followed a quote from Mr Yunupingu:

Why aren't they pulling back? Because are they just sharpening up their spears to kill off the ethnics and

immigration and the indigenous people?

The reporter continued:

It was Mr Yunupingu's comments which sparked today's attack by Northern Territory Chief Minister, Shane Stone.

The report then quoted me:

Look, I described him as a whingeing, whining, carping black, and that is what he is. And Australians would view with some dismay any Australian, whether they were black or white, who would criticise their own country, threaten to disrupt the Olympics and go offshore to some European forum, Europe of all places with their appalling colonial history, many of those countries, to complain about Australia and Australians.

But to come back to the native title issue, it was clearly understood, including by the NLC who are part of the Aboriginal negotiating team, that pastoral leases extinguish native title. Now he is trying to have his cake and eat it too and, because territory and state governments won't roll over, he makes this threat of going offshore, he continues to refer to us as racist bigots, he continues, together with other Aboriginal people, to threaten the viability of the Olympic games in 2001 and, from where I stand, I just consider that unAustralian.

Page 10500

The reporter then posed this question

Would you say you've drawn a line in the sand which you won't seek to compromise in any way with Mr Yunupingu?

I responded in these terms:

Look, it wouldn't matter with Mr Yunupingu how much money you spent, how much land that you gave him or others, what sort of programs you put in place, it's just never enough. You can never satisfy them. And

the line needs to be drawn. They represent 1% perhaps 2% of the Australian population, there are many other Australians who are in need. There are many other Australians and Territorians who would have needs that have been ignored while Aboriginal people have done very, very well. And let's be clear about that. If you want to talk about how indigenous people have fared around this world, Australian Aboriginals have fared better, done much better than even the Red Indians of North America.

I was next asked:

Do you think you have wide support for your views across the Territory?

I responded in this way:

Look, I responded immediately to what Mr Yunupingu had to say. It had to be responded to. Any Australian that wants to go out there and bag their own country, who wants to run off to some European forum and tell the world that we're all a bunch of racists and bigots over here, deserves to be taken to task. It's he that has played the race card in all of this.

I was then asked a further question:

Do you accept though that, in the interests of reconciliation, your use of strong language is not the way to go?

I responded with this final comment:

The problem with the reconciliation process and the way that it's been run to date is that it's a one-way street, and that's the main difficulty with the approach.

That sets it in its proper context. While the Leader of the Opposition may choose to come in here, rise to her feet and say that I was talking about all the blacks, she cannot sustain that argument because it is quite clear from every transcript that I was referring to one person only - Galarrwuy Yunupingu.

Mrs Hickey: You said 1% to 2% of the population.

Mr STONE: It may come as some surprise to the Leader of the Opposition that I was talking on a national show in national terms to a national audience.

However, in relation to some of the things that have been said this morning by the Leader of the Opposition, it may surprise her to learn that a number of Aboriginal people have contacted me and endorsed my views about Galarrwuy Yunupingu. He is not exactly the most respected Aboriginal leader in the community. As I indicated during Question Time, he is not fit even to stand in the shadow of a person like Gatjil Djerrkura. It may even surprise the Leader of the Opposition to learn that not all Aboriginal people are happy with the Native Title Act or the way that it works. Indeed, many of those Aboriginal people who have secured their land under the Aboriginal Land Rights (Northern Territory) Act see this as a major complication for their future aspirations.

How easy it is for the Leader of the Opposition to come in here and denigrate my predecessor. She had never had the courage of her convictions to rise to her feet and say any of those things about him when he was in the Chamber. She could have done that even in her capacity as a backbencher. As a member of caucus, she could have raised those concerns if, in fact, she had them. Why has she waited until some 3 years after the event to reinvent what she perceives to be an election strategy?

What is clear from all this is that I was not responding in a particular way on the basis of any advice provided to me by a pollster. I was responding to the outrageous claims and outrageous statements of an Australian, namely Galarrwuy Yunupingu, who I believe was treacherous and disloyal. The question for the Leader of the Opposition is why she was not on her feet as well. Why wasn't she out in the public arena saying that she found his comments to be unacceptable?

Members interjecting.

Mr SPEAKER: Order!

Mr STONE: The Leader of the Opposition continues to apologise for the Territory and Territorians. If you are not happy here ...

Mr Bailey: Here it is - if you are not happy with the CLP, leave town!

Mr SPEAKER: Order!

Mr STONE: It is the Leader of the Opposition who uses words like 'racist redneck image of the Territory'. This is how she talks about the Territory and Territorians.

Mrs Hickey: Are you going to change it?

Mr STONE: This is what you promote, and you do not do it only in the Territory, but also when you are interstate. I hear about it. You go to the southern states and you bag the Territory. You bag Territorians, and you do not stand up for the Territory. You come in here and it rolls off your tongue - 'racist redneck image of the Territory'. You do it with glee. You love rubbishing the Territory. You love rubbishing Territorians.

Page 10502

How about this little gem? This was another one of hers - that the Territory could have been the jewel in the crown of Australia.

Mr Toyne: Absolutely.

Mr STONE: It is endorsed by the member for Stuart.

Mr Bailey interjecting.

Mr STONE: I told you before that you look like a rat looking over the top of a Weet-Bix packet. Why don't you be quiet?

The Leader of the Opposition comes in here and belittles the Territory. She talks down the aspirations of Territorians. To cap it off, she makes the threat that, if we do not play the game that she wants us to play, she will mess up our chances for statehood.

Members interjecting.

Mr STONE: I will quote from an article. This is particularly important in the light of the interjections from the member for Arnhem. I quote:

People who are Aboriginal and who are Australian-born have the main rights. Those cultures should be dominant. Instead of Australia being multicultural, it is an insult to say multicultural. You are trying to hide behind other cultural groups. This is Australia. It should have a culture of its own. Why do we have to hide it among the Chinamen, the Arabs, the Jews? What is wrong with the rest of us?'

Was that from Pauline Hanson? No, it was from Galarrwuy Yunupingu in an article that was read right around this country. The member for Arnhem said that

`Timmy Baldwin', in reference to the member for Victoria, `invited Pauline Hanson to the Territory'. He did not. The member for Arnhem did. He invited her and he did so on the public record. He invited her to come here and he would show her around Katherine.

Mr Ah Kit interjecting.

Mr STONE: That is what you said. In fact, when you were interviewed ...

Members interjecting.

Mr SPEAKER: Order!

Mr STONE: When you were interviewed on Drive Time on 13 February, this is what the reporter said: `You may remember the first person to issue an invitation was the ALP's member for Arnhem, John Ah Kit, and Mr Ah Kit is with me this afternoon. Good afternoon'. Jack came on. `Good afternoon. How are you, Suzanne?' That must have sent a thrill up her spine. The reporter said: `Well, thank you. Now, are you pleased to know that Ms Hanson will in fact be visiting Katherine? Jack replied: `Yes, I am. Yes, I am. I am very pleased.

Page 10503

And, you know, I certainly hope that she will have some ample time to have a good visit around the Katherine township'. That was the member for Arnhem. He cannot come in here with his interjections and try to rewrite history. He was in it up to his neck.

I turn to another little interjection from the member for Arnhem: `The railway is gone'. What did he mean by that? Is it part of the threat that they will fix constitutional development and statehood? Is that in the same league? Are these the sorts of threats that members opposite, the people who use expressions like the `racist, redneck image of the Territory', will make against the Territory and against Territorians? That is what they think of Territorians. That is what they think of the Territory and they are prepared to hold Territorians to ransom. This is where we part company because, as members opposite may have gathered, we will not be walked over by the use of ambit native title claims. We will not stand by and allow popular reserves and beaches, places such as Holmes Jungle Reserve and East Point Reserve, to be taken away from the people. They are there for all the people, for all Territorians.

Mr Bailey: Rubbish!

Mr STONE: The member for Wanguri says that it is rubbish. What happened in

Nhulunbuy? How do people get to use the beaches in Nhulunbuy? They pay! They pay \$50 a year for themselves and their family - that is, if they are white. Don't you come into this Chamber and tell us that you support these so-called rights. These 'rights' are not sustainable under the Native Title Act.

Mr Bailey: This has nothing to do with native title.

Mr SPEAKER: Order!

Mr STONE: They have no right to claim ...

Mr Bailey interjecting.

Mr SPEAKER: Order! You heard that.

Mr STONE: You know that, yet you say that we should be able to negotiate. Do you know what it costs in terms of the negotiating cycle? Do you understand that the Native Title Act ...

Mr Bailey interjecting.

Mr SPEAKER: Order!

Mr STONE: You are becoming excited again. Have you taken your medication this morning?

Do opposition members understand how the Native Title Act works? Do they understand that, the moment a claim is made, even on the most spurious grounds, and it is accepted by the tribunal, the parties will be into a 14-month negotiating process? Do they have any idea how much we are spending of the taxpayers' resources on all the officers and all the

Page 10504

legalities of the negotiating process? Do they think that is acceptable? Do they think it is all right?

Mr Bailey: How much did you spend denying every land rights claim?

Mr SPEAKER: Order!

Mr STONE: I will pick up your interjection. You want to write off the people of the Territory as a bunch of racists and rednecks. Show me anywhere in the world where 51% of a state or territory was handed over to indigenous people without a

shot being fired. I can show you many examples where the Northern Territory government has worked collaboratively with Aboriginal Territorians to secure land for them. You are very fond of referring to the Jawoyn and Nitmiluk. How do you think Nitmiluk came about? It was a negotiated settlement. What was done there subsequently was done cooperatively with the Jawoyn. Do not come in here and try to create the impression that we have fought every land claim. That is simply untrue.

Mr Bell interjecting.

Mr STONE: Oh, he is back! The bush Baptist, the member for MacDonnell, has re-emerged in the Chamber.

I consider this censure motion to be an absolute fraud. It was put together on the run after the opposition had said yesterday that it would not go down this path. The fact that it is simply a handwritten note, shoved to the Clerk at the last moment, is clear evidence of that. There is absolutely no merit in it.

Let me tell members opposite about the politics of division. The politics of division is the letters that they punch out into Aboriginal communities, the lies that they tell Aboriginal people as they did in the Stuart by-election. I will tell them what the politics of division is all about. It is about one of the ALP campaign workers telling an Aboriginal woman that she was brain-damaged simply because she had the courage to hand out how-to-vote cards for the CLP candidate. That is their politics of division.

Members interjecting.

Mr STONE: There you go! You may well say that, but I still wait for that campaign worker to stand up publicly and say that he did not do it. He never has.

Mrs Hickey interjecting.

Mr STONE: He has hidden behind your skirts. It is pathetic. The politics of division are being driven on that side.

In the last election campaign, why did the ALP not feature its Aboriginal members in the literature it used in the towns? Why were they used only in Aboriginal communities? Why did it pull that stunt? Was the ALP ashamed of them? Why weren't Labor members prepared to stand up and support them and say that they were good members of caucus and would make a contribution in government? They did not do it. They omitted them deliberately from the

advertising. Do not talk to me about the politics of division because members opposite run their own agendas on Aboriginal communities. They tell Aboriginal people: 'If you vote for the CLP, you will lose your land'. They tell the Aboriginal women: 'If you vote for the CLP, it will close your women's centres'. How do we know that? We know because those Aboriginal people come back and tell us exactly the sort of nonsense that the ALP peddles out there.

The absolute low point in this whole censure motion was the Leader of the Opposition being prepared to subscribe to the racist, redneck image of the Territory. Why does she keep apologising for us? We are what we are. A great deal has been achieved in the Territory, despite people like herself. A person can be anything they want to be in the Territory, be they black, white or brindle, but there are a few ground rules. It is all about working as a community and working together as one people. It is not about the politics of race and division as is driven by the ALP.

What a load of drivel we heard this morning from the Leader of the Opposition! She had the whole of the Christmas break in which to prepare for the first day of these sittings. This was an abject and absolutely appalling performance on her part. I suggest she keeps working at the smile. Mr Speaker, I move that the motion be put.

The Assembly divided:

Ayes 16 Noes 8

Mr Adamson Mr Ah Kit
Mr Baldwin Mr Bailey
Mrs Braham Mr Bell
Mr Burke Mrs Hickey
Mr Coulter Ms Martin
Mr Finch Mr Rioli
Mr Hatton Mr Stirling
Dr Lim Mr Toyne
Mr Manzie
Mr Mitchell
Mrs Padgham-Purich
Mr Palmer
Mr Poole
Mr Reed
Mr Setter
Mr Stone

Motion agreed to.

Mr SPEAKER: The question now is that the motion be agreed to.

The Assembly divided:

Page 10506

Ayes 8 Noes 16

Mr Ah Kit Mr Adamson
Mr Bailey Mr Baldwin
Mr Bell Mrs Braham
Mrs Hickey Mr Burke
Ms Martin Mr Coulter
Mr Rioli Mr Finch
Mr Stirling Mr Hatton
Mr Toyne Dr Lim
Mr Manzie
Mr Mitchell
Mrs Padgham-Purich
Mr Palmer
Mr Poole
Mr Reed
Mr Setter
Mr Stone

Motion negatived.

Mr STONE (Chief Minister): Mr Speaker, I rise in this Chamber today to address the most important issue facing the Northern Territory: the implications of the Mabo and Wik decisions. I give notice that, at the conclusion of this statement, I shall be moving a motion in the following terms:

that this Assembly:

(1) calls upon the Commonwealth parliament to give legislative effect to the undertakings and assurances of the former ALP government that native title has been extinguished by pastoral leases;

(2) supports proposals put to the federal government by state and territory leaders which call for:

- . identification of those types of leases which extinguish native title, including pastoral leases;
- . codification of native title rights by providing statutory access rights over pastoral lands for Aboriginals for traditional purposes - for example, ceremonial, hunting, site visitation;
- . removal of the future act process for claims over cities, towns and land set aside for public purposes;

Page 10507

- . validation of any acts made between the commencement of the Native Title Act and the Wik decision arising from the assumption and assurance of the former ALP federal government that native title had been extinguished by the grant of pastoral leases;
- . legislative assurance that native title cannot revive following extinguishment;
- . a renegotiation of financial arrangements proposed by the former federal ALP government with states and territories arising from the implications of the Native Title Act;
- . review of funding of the \$1400m National Indigenous Land Acquisition Fund established under the Native Title Act on the basis that the grant of pastoral lease automatically extinguished native title; and
- . the future act regime not to apply after a cut-off date of January 2000.

Territorians should be left in no doubt as to the consequences that will flow from the High Court's Wik decision. The impact on land administration and development in the Northern Territory has the potential to be far-reaching and profound. Clear, sound legislative action is required.

After 13 years of federal Labor rule, this nation has been left with a number of legacies - high unemployment, stalled micro-economic reform, an inefficient tax system and archaic industrial laws. However, the Native Title Act is proving to be the crowning glory of the former Labor government - the jewel in its crown. This legacy has the potential to outlive all the others as an enduring memento to its incompetence, its duplicity and its indifference to all Australians. In his dissenting judgement in Wik, Chief Justice Brennan sounded a clear warning:

It is too late now to develop a new theory of land law that would throw the whole

structure of land titles

based on Crown grants into confusion. Moreover, a new theory which undermines those doctrines would be productive of uncertainty having regard to the nature of native title.

Let me repeat the 2 key warnings expressed there: confusion and uncertainty. However, the warnings were not heeded by the rest of the court. The majority judgment provides that the grant of a Crown lease does not necessarily provide exclusive possession. Notwithstanding that the court acknowledged that 'avoidance of unnecessary doubt and confusion is a proper objective of land law', it conceded: 'It is true that this result introduces an element of uncertainty into land title in Australia, other than fee simple'. The primary impact of the decision will be on land administration, the bedrock on which commerce and industry is based and an area of the law where certainty and predicability are properly accorded the highest importance. That the decision will lead to doubt, uncertainty and confusion comes from the justices of the High Court themselves. The need for certainty was recognised by the former

Page 10508

Prime Minister. In a press statement of 15 November 1993, he said: 'We must maintain a system of land management in Australia which provides clear and predictable rules, security and certainty for people who hold land, and a capacity for dealings in land to proceed effectively'. At least he got that right but, once again, he failed spectacularly to deliver.

As I said to the Assembly in May last year, the Northern Territory government will not sit back and let the Territory flounder in a situation in which uncertainty is the order of the day. If the law remains as it stands currently, following Wik, there will be a real impact on our way of life in the Territory. There will be an uncertain future in which the only certainty will be an economy in downturn and fewer jobs for Territorians. The matters at stake are the viability of our live export trade, the viability of the mining industry and the viability of tourism. Members opposite and the ALP want to entrench the uncertainty. They want to place in jeopardy jobs, income and the way of life of Territorians. I am reminded of a comment by the former director of the NLC at the eco-politics conference held in Darwin late last year. He said words to the effect that uncertainty is good because it maximises one's negotiating position. The line of the Aboriginal spokesmen is that we must all sit down and negotiate acceptable agreements. They seek to deny the right of the parliament to introduce laws that will provide workable outcomes. Exactly what is an acceptable outcome for the Aboriginal leaders? No one will tell us. There are no parameters to what they are seeking. At a workshop for regional agreements in Australia, which was held in Cairns in July 1994, Noel Pearson had this to say:

Was it possible to translate the legal and political leverage, arising out of the Mabo decision, into settlements of land ownership and all other issues that Aboriginal people wanted settled with government?

The booklet, produced at this workshop, notes:

... the very uncertainties opened up by the High Court's decision on Mabo appear to be the strongest lever for negotiating successful regional agreements. Uncertainty is an anathema to the resource industry and it is that uncertainty which is forcing business to reassess their attitudes to negotiating royalty arrangements with Aboriginal claimants.

As Phillip Toyne put it at the same conference:

I think that [government and business] operate in terms of their outlook on certainties ... That is a very important element of ratcheting up the capacity of Aboriginal groups to produce outcomes which governments will tend to support on the basis that, even if they are not particularly enamoured of the sort of outcomes that are being proposed, it would at least produce certainty at the end of the day.

The leverage of uncertainty, the forcing of businesses to pay royalties, the ratcheting up of the outcome - these are powerful forces with which we are dealing. They have the potential to cause a massive freeze on development in the Territory and impose a huge increase in unproductive costs. Where might these negotiated agreement lead us? In July 1994, the former director of the NLC, Darryl Pearce, had this to say:

Page 10509

... It's about cutting out the Northern Territory government. We could be talking about self-government, about an Aboriginal parliament on Aboriginal land. We are talking about self-governing territory. We will control the resources. We will control the access. We will set up the police forces. We will set up the legal system.

That is the road that uncertainty leads you down. That is the road that has been

rejected by Territorians, and that is the road the Territory government will not take. Clearly, the former federal Labor government must be held responsible for the confusion and chaos that will be wreaked on land administration in the Territory. Unless the Labor opposition in this House supports us in our efforts to secure a reasonable legislative outcome, they too will be held forever accountable for the consequences.

What then is the real agenda? Contrary to what the ALP and speakers on behalf of Aboriginal groups would have the public believe, Wik has little to do with the issue of allowing Aboriginals to enter on pastoral leasehold property for traditional pursuits. All pastoral leases in the Northern Territory contain a statutory right of access and there is no intention to remove that right and there never has been. The main impact of Wik is that the complex procedures of the Native Title Act, in respect of future development, now apply to about 50% of the Territory and 50% to 60% of the nation, regardless of whether a claim has been lodged and regardless of whether any rights have been established. Given that the 50% of the Territory not directly affected is subject to an absolute veto on development and mining under the Commonwealth Aboriginal Land Rights (Northern Territory) Act, members will begin to appreciate the potential impact on our future.

Members will be aware of the impact of the Aboriginal Land Rights Act itself, a sad tale of missed opportunity. There has been only one new mine and one expansion of a mine on Aboriginal land in the 20 years that the veto provision of the Aboriginal Land Rights Act has been operating. The tragedy for the Territory and the nation is that Aboriginal land covers some of the most prospective areas of Australia. For every 20 exploration licences granted for non-Aboriginal land, only one is ever granted over Aboriginal land. It amounts to a fraud against people of the Northern Territory, and in particular Aboriginal Territorians. Yet these are the provisions that the ALP and the land councils would have us embrace and entrench for all time. One day soon, Aboriginal Territorians will see through the veil of deception and realise just what the ALP and the land councils have done to their future prospects, just as the voters of the Territory have long recognised the consequences of ever voting the ALP into office in the Territory.

A paper has been released by the Commonwealth Attorney-General's Department on the legal implications of the Wik decision in a rather understated manner, given the circumstances. It notes :

The proportion of Australia where native title has the potential to coexist with other interests has been significantly increased by the Wik decision from what was previously assumed to be the case.

Why is the ALP so desperate to convince the public that Wik is concerned

mainly with access rights to pastoral properties for traditional purposes? The answer is obvious - to divert

Page 10510

attention from the detrimental effect on future development across the nation and to divert attention from its failure to introduce an effective Native Title Act. It will not admit that the former Prime Minister, Paul Keating, messed it up. It is also to divert attention from its real agenda regarding coexistence on pastoral lease land. That hidden agenda contains aspirations for control over water rights and bores, co-management and defacto veto rights over parks and reserves, a share of profits without venturing any risk or effort, and upfront payments or the equivalent on any future development on land where native title is asserted. That is why there has been so much empty talk about the Cape York heads of agreement and the offer of a moratorium on claims over pastoral leases. Neither has the slightest bearing on the fate of future development in this nation. They are simply hollow proposals in respect of the coexistence issue, an issue to which I will return later.

The Cape York agreement is merely a document of agreement between some parties, who may hold an interest in land, to hold further talks about how they might organise their affairs. At best, it comes nowhere near the statutory reservations in Territory pastoral leases and it fails to address the most critical issue of future development. The moratorium is a hollow offer because, under the current act, potential native title holders accrue substantive rights without having to establish any substance to their claims. To be considered at all, the offer would have to extend to the suspension of the future act procedures on pastoral lease land.

I come now to the High Court decision. By a 4:3 majority, the High Court decided that the grant of pastoral lease under Queensland legislation did not of itself extinguish native title. This determination was made following an assessment that the Crown did not intend to grant pastoral lessees exclusive possession at the time it created the legislation under which the leases were granted - that is, the interest granted was not what was commonly known as a lease but merely a bundle of statutory rights. By this reasoning, the court's decision might extend also to crown leases other than pastoral leases. The judgment went on to say that, apart from the effect of the grant of the lease, action taken on the leased land in accordance with the terms of the interest might have extinguished native title. This is an important aspect of the decision. What it means is that there needs to be a judicial analysis of the terms of the legislation under which every single crown lease was issued - and there are literally hundreds of these - and block-by-block analysis of subsequent work undertaken on the land to see if that activity might have affected native title.

Over the years, governments around the country will have issued crown leases by

the tens of thousands. Even those who have never had cause previously to consider the land administration process will readily appreciate that such an approach cannot be the basis upon which to build an orderly and efficient system of land management, yet this is the approach being urged on us by the ALP. It tells us not to worry about the creation of jobs or the production of wealth. It urges us to sit down and negotiate what coexistence might mean, block by block. We must not try to come up with a fair legislative system that will provide certainty and security. We must freeze all commercial activity and embark on an endless talkfest. A brilliant strategy for the future - I don't think!

What are the implications then of the decision for the Territory? Leaving aside, for the time being, the 50% of the Territory that is subject to the Aboriginal Land Rights Act, almost all future development in the Territory, other than activity related to pastoralism, will be

Page 10511

subject to the complex and time-consuming processes of the Native Title Act. Experience to date with the future act procedures has shown clearly that the right to negotiate process and the national Native Title Tribunal is not a feasible model for day-to-day land administration. The process has resulted in a transfer of state/territory land administration functions to an inexperienced, underfunded and partisan Commonwealth agency. The Territory may set up its own bodies to administer future development, but only if we follow precisely the unworkable provisions of the Native Title Act and bear most of the expense.

The difficulties that will arise in respect of future development are exacerbated by the fact that we no longer know for certain when or where the complex and difficult procedures of the Native Title Act apply. The procedures may apply to any land that has ever been subject to a crown lease. We simply do not know. Numerous interests were granted by the Northern Territory in good faith after the commencement of the Native Title Act. This action was taken on the basis of our understanding of the act and, most importantly, the absolute guarantees and repeated assurances of the federal Labor government. The preamble to the Native Title Act supports the action taken by indicating that valid leases extinguish native title. I refer again to the January 1997 assessment of Wik by the Commonwealth Attorney-General's Department, and I quote:

... the [Native Title Act] was enacted on the assumption, based on comments made in Mabo ... that the valid grant of a pastoral lease [or other leasehold interest] extinguished native title.

The Commonwealth paper goes on to point out that the preamble to the act contains the following recital:

The High Court has: ... held that native title is extinguished by valid government grants that are inconsistent with the continued existence of native title rights and interests, such as the grant of freehold or of leasehold estates.

In the event that the Wik decision extends to crown leases other than pastoral leases, there may be some question mark over approximately 350 freehold titles issued since 1 January 1994 in the Territory alone. Delegates at the recent Cairns Wik conference expressed outrage that state and territory governments should seek to have titles of this nature validated. As usual, the ALP in the Territory has remained silent on the issue and I demand - in fact I give its members the opportunity to do it today - that it join our call for the restoration of some semblance of sanity to land administration in this country.

Numerous administrative actions and authorisations in the normal day-to-day course of government business have also been taken or given over land that we now discover may be subject to coexistence. Questions over the validity of these actions have now been raised and these actions need to be validated. In relation to the issue of validation of interests post 1 January 1994, Mr Hal Wooten QC, a deputy president of the Native Title Tribunal, the body that determines whether future development can proceed, had this to say:

... there is no reason why there should not be negotiation and a hard bargain driven. ... perhaps the time has come to revisit the question of sharing royalties.

Page 10512

... why should [native title holders] not have a share in whatever the development is?

I come to coexistence on pastoral leases and native title. The High Court has determined that native title may exist over land the subject of a pastoral lease. The rights of the pastoral lessee and the native title holder will coexist, with the rights of the pastoralist prevailing to the extent of any inconsistency, as Aboriginal spokesmen are fond of repeating. However, practical problems arise because the extent of a pastoralist's rights under the lease are usually defined only generally. Nor is there any prospect that the rights of native title holders will be defined for the foreseeable future. I come back again to the Commonwealth analysis of the decision:

There is therefore potential for disagreements to arise in particular circumstances

over whether the pastoral lessee's rights extend to a particular activity and whether particular native title rights are inconsistent with the rights or activities of the pastoral lessee under the lease. Such disagreements may be difficult to resolve, particularly where the issue is not whether the pastoral lessee can do some positive act, but whether the pastoral lessee can prevent native title holders from conducting particular activities which are seen to interfere with the pastoral lessee's rights and activities.

The uncertainty arises because the terms of pastoral leases are very general. Continuation of the existing access provisions for traditional purposes is not a problem and is not the issue. However, there is real risk that some normal day-to-day pastoral activities, such as the sinking of bores, the building of dams, sheds and residences, and the clearing of vegetation, may fall foul of the future act regime of the Native Title Act. The Commonwealth Attorney-General's paper notes:

It is possible, however, that the Native Title Act may cast doubt on the validity of acts over pastoral lease land, including perhaps lessees' activities done since its enactment.

The document continues:

... [this could] expose the lessee to potential liability for compensation or damages under the general law.

As a consequence, the paper concludes:

It may be necessary to consider amending the [Native Title Act] future act regime to address these potential implications.

Some of the suggestions the Commonwealth paper makes include substantially modifying or removing the future act regime as it applies to pastoral leases, and validating all actions done on pastoral lease land since the date at which the Native Title Act commenced. Any non-pastoral, commercial or industrial development on pastoral lease land, including exploration and mining, will be subject, of course, to the full-blown procedures of the Native Title Act compulsory negotiations, determination by an independent tribunal,

compensation - the works. I make the point as plainly and as simply as I can. The minerals of this country belong to all Australians. They do not belong to those who have an interest in the land where they are situated and their development should not be at the whim of any particular group. As a consequence of the rights that now flow from the Native Title Act, I confidently predict that every pastoral lease in the Northern Territory will be claimed.

The assessment of the Commonwealth paper is:

The Wik decision is likely to lead to an increase in claims over pastoral leases and the variation of some existing claims to include pastoral land.

The potential disruption to the day-to-day operation of pastoralists until the legislation is sorted out is at the lower end of the scale. There are other possibilities that are far more disruptive and damaging and which are of serious concern to the Territory government. Take, for example, one aspect of the Alice Springs native title claim. I quote from the claimants' own document:

... the claimed areas include all water which, from time to time, may be found within or beneath the claimed areas, whether such waters are at any time stationary or flowing, or located in natural or man-made water courses, dams etc. Such claims extend to the banks or bed, underlying or supporting such waters, and all natural resources found therein.

Some important issues are buried in this claim. The claim was prepared by Mr Keon-Cowen QC, counsel for the applicants in both the Wik and Mabo cases. Make no mistake, the claim to water is not just over-enthusiastic drafting - it is strategic and deliberate. The asserted ownership extends to waters beneath the surface, and therefore includes all bore water. It extends to all water held in dams. It extends to the beds and banks of rivers and to all resources in the water - in other words, the fish.

It is anticipated that claims to pastoral leases will contain similar assertions. Do pastoral leases state specifically that the lessee can use the water on the leased land? They do not state that specifically. Does it then follow that the pastoralist will have to pay every time he waters his stock from the dam he built or the bore that he sank, or from natural waters flowing across the property? Does it mean that the future act procedures of the Native Title Act apply every time a pastoralist wants to water his stock? The possibilities are mind-boggling.

I take no comfort from the comments from Tracker Tilmouth reported in today's Centralian Advocate. He would attempt to allay the concerns of people who may have an interest in this issue. If, in fact, it is as he says, why did he make the claim in the first place and in such detail? The Northern Territory government says that its legislation provides clearly that water in the Territory belongs to all people and that there is clear provision for pastoralists to use the resource. However, the question must be asked: if this is clearly provided for, why make such a claim? Is it to involve the Territory in endless negotiation or to seek to establish some sort of compensation claim?

Before I am accused of being alarmist or extremist or a paternalistic redneck, let us look again at the claims that are being made. The Territory government is told by the opposition

Page 10514

that it should not challenge these claims. However, if they are not challenged, they may succeed in full. The government will suddenly not be able to guarantee supplies of drinking water to Territorians. Should members opposite be in any doubt that I exaggerate the possible consequences of native title claims, they will find the assertions of the legal representatives of the claimants over the Spirit Hill pastoral lease in the Northern Territory illuminating. I quote from their correspondence:

The pastoral company may seek to develop parts of Spirit Hill Station for intensive feedlot, stocking and irrigation purposes without compliance with both the common law and the Native Title Act.

The legal representatives go on to state that their clients' position is:

- (1) that any such development would comprise an act or acts which are wholly or partly inconsistent of their exercise of native title rights and interests;
- (2) that such acts, taking place after 1 January 1994, would comprise future acts within the meaning of section 233 of the Native Title Act; and
- (3) as such, the proposed acts complained would clearly constitute impermissible future acts within the meaning of the Native Title Act.

There it is in writing from by the claimants' lawyers on their instructions. This is

the cutting edge of claims over pastoral leases. This is the expansion of the envelope. Each claim goes a little further. As a paper distributed at the recent Cairns Conference on Wik indicates, native title claims on pastoral leases may well include claims over the natural vegetation, and the right to take timber and to quarry sand and gravel. Native title claims have been made already to water and to minerals. From there it is only a small step to demands for economic rent from pastoralists and co-management. If coexistence were an option that would genuinely advance the interests of rural Aboriginal people, this government would give it clear consideration. I am convinced, however, that such a path leads only to litigation, unproductive expense and division. Land administration and industry would be severely disrupted with no lasting benefit for Aboriginal Territorians or anyone else, except lawyers.

I say again that if, as proposed in the ATSIC Wik guide, coexistence means 'rights to visit sacred sites, hold ceremonies and collect native foods', then this government has no problem with the concept. Territorians have coexisted in this manner for decades. The long-term future of rural Aboriginal Territorians cannot be based on an expectation that they are forever entitled to benefit from the labour of others. That is just another form of continuing dependency. Instead, it must be based, with all the help that the Territory government can give, on meaningful employment and utilisation of available resources. That is the critical difference between the view of members on this side of the House and that of those who occupy the opposition benches.

I turn now to compensation claims. Clearly, the Commonwealth financial assistance offer to assist states and territories to pay for the impact of native title was based on the assumption that pastoral and other crown leases extinguished native title. In light of the Wik case, Commonwealth financial assistance must now be completely renegotiated. It was

Page 10515

assumed previously that any lease issued prior to the date of the Racial Discrimination Act in 1975 extinguished native title, and that any interests issued subsequent to that date did not give rise to a compensation claim. Post-Wik, this assumption is now wrong. Any title issued post-1975, which is greater than the previous interest, may affect native title and give rise to a claim for compensation. Approximately half the development of the Territory is of this nature. For example, most of Alice Springs - Larapinta, Sadadeen and the new East Side - and most of Darwin's northern suburbs will fall into that category. In addition to the issue of previous titles, the Commonwealth did not offer any assistance for securing agreement that future development can occur, for example, by way of contribution to project agreements or to regional agreements. Given that almost 100% of the Territory will now be subject to special or restrictive Commonwealth land

administration laws, the situation is untenable and inequitable.

I come now to the interaction between the Native Title Act and the Aboriginal Land Rights Act. Approximately 50% of the Territory is already subject to the Aboriginal Land Rights Act. On this land, no development or mining can occur without consent. In other words, there is a veto. About 49% of the Territory is currently pastoral lease land and will now be subject to the future act procedures of the Native Title Act. Consequently, 99% of the Territory is subject to restrictive Commonwealth land administration laws. Unless rectified, this situation has the potential to produce a profound effect on the scope and pace of our development. To make matters worse, the Federal Court has indicated that titles granted under the Aboriginal Land Rights Act may be able to coexist with native title rights. To add to the inflexibility of the Aboriginal Land Rights Act and the uncertainty of the Native Title Act, the Territory may well be placed in triple jeopardy by having some unknown combination of both acts forced upon it. Even the Aboriginal Land Rights Act prevents claims to towns. As the people of Darwin and Alice Springs now know, not so the Native Title Act. Both of the Territory's major population centres are completely surrounded by native title claims which extend to freehold land, public reserves, recreational areas and beaches, and target land where major job-creating developments are planned.

I turn now to the issue of urban claims. Other ministers will address the specific problems being experienced as a result of the claims over Alice Springs and Darwin. There are, however, a number of points that I want to make. The basic functions of the Territory government and town councils include the delivery of services. These authorities need to deal with land administration matters every day, but are faced now with the prospect of being unable to perform these functions. The prospect that normal development and the delivery of services can be impeded is being used to ratchet up the demands, notwithstanding that native title claims will not be sustainable in relation to many town areas claimed.

Let me be absolutely clear: the Territory government is determined that service delivery and normal residential and business development will be allowed to proceed, that we will be able to provide water, roads, schools, sewerage, drainage, power and other services, that access to sporting and recreational facilities will not be impeded and that development of community facilities will not be held up, and further, that the public will not be prevented from having free access to our parks, beaches and rivers nor will recreational fishermen be denied access to our foreshores and waterways. This government will not negotiate on new land taxes or rates charges for Territorians to pay for claims, royalties, resource revenue-sharing and ownership of water matters put to us by claimants.

I come now to the 'midnight deal', as it has been referred to by the media who have covered the Mabo decision and the implementation of the Native Title Act. The midnight deal is the tale of the betrayal of a nation. It is a lesson to the people of Australia in the sheer two-faced hypocrisy of the ALP. It is a lesson that none of us should forget. As I reported to this Assembly in May 1996, just prior to midnight on 18 October 1993, the then Prime Minister, Paul Keating, negotiated a deal brokered in part by his special adviser on native title, Mr Phillip Toyne, the then executive director of the National Farmers Federation, Mr Rick Farley, and the so-called 'A' team of Aboriginal representatives. The deal was said to be historic. One newspaper called it the 'day that changed history'. The deal was well documented and there were banner headlines. The then Prime Minister was hailed as a hero and all the participants busily, proudly and loudly proclaimed their part in the deal. Given the government press release and the numerous newspaper reports which were so detailed that they recorded the times of critical phone calls, there can be no doubt as to the terms of the deal. It has been well documented.

ATSIC and the Coalition of Aboriginal Organisations agreed to forgo claims to native title over pastoral leases in exchange for the ability to convert Aboriginal-owned pastoral properties to native title. The attempt to rewrite history, to say that the deal related only to pastoral leases issued post-1975, is a nonsense. The theatrics surrounding the midnight deal did not relate to a dozen pastoral leases across the nation, particularly when the government's part of the deal was also to establish a \$1200m land fund. I quote the former Prime Minister on the 7.30 Report of 19 October 1993. In answering a question about the possibility of Aboriginal groups trying to establish rights over valid pastoral leases granted before 1975, he had this to say:

Last night, the Aboriginal community gave up that thin slither of uncertain rights to take from the government a better proposal and that was to turn Aboriginal pastoral leases, not non-Aboriginal, but Aboriginal pastoral leases into a form of native title. So to answer your question, let me come at it this way, Paul. If the Aboriginal community are not prepared or interested in challenging residual rights on invalid leases, why should they bother with valid leases?

In a media interview on 16 February 1995, the former director of the National Farmers Federation had this to say:

Mr Farley: We also need to understand that part of the deal that was done in the passage of the legislation, in which I was intimately involved, was that Aborigines conceded that a pastoral

lease would extinguish native title.

Reporter: But the pastoral lease itself is extinguished.

Mr Farley: Well, the deal that was done was that a pastoral lease extinguished native title. In return the Aborigines have achieved the ability to convert leases which were commercially purchased to a form of native title. And that deal was evident in the second-reading speech, and in the preamble to the act where the Commonwealth expressed the view that the valid pass granted for a pastoral lease extinguished native title.

Page 10517

The previous Leader of the Opposition in this Assembly was clear in his mind about the status of native title on pastoral leases. I refer members to the Parliamentary Record for 1 March 1994:

Mr Ede: Pastoral leases are free from native title.

Mr HATTON: The potential for some residual native title was raised in the Mabo High Court case.

Mr Ede: Yes, and it was wiped out.

It is also clear why he believed that to be the case. He took it from the statement made by the Prime Minister on ABC radio on 28 July 1993:

Reporter: ... you have been talking to the Prime Minister about this. Did you expect that residential, pastoral and tourist leases would extinguish native title?

Mr EDE: Exactly. That is what I have been saying all along. I mean I had that commitment from them many, many months ago, [and that is] why I get so angry every time that this one keeps getting raised.

Members opposite will not be allowed to rewrite history now. The time has come for members of the opposition to tell their federal colleagues that they must stand by their promises and their commitments. It is time for the ALP to honour its deals. It is time to make a commitment to the long-term future of Australia. If members

opposite are not able to do that, then they are hypocrites, and weak and duplicitous, as the Prime Minister has called them, and nothing more than those who have betrayed the Territory and Australia. Do members opposite propose to follow the perfidious line of the Labor shadow minister in federal government, Daryl Melham, who dares to say that to enact today exactly what Labor promised would be the result of the Native Title Act is racism? That is right. The states and territories have proposed legislation to produce precisely what the ALP promised the result would be - the extinguishment of native title by pastoral lease. That is exactly what members opposite said that the act meant, and yet they call us racists and bigots.

Members interjecting.

Mr STONE: Is that your position? We legislate to provide a reasonable resolution to a situation which the Chief Justice of the High Court said, in a minority decision, was unworkable, and you have the gall to call us racists. Is that to be your contribution to resolving this dilemma - to cry 'racist' and predict an election next month? Is that the best you have? It is an old, old tactic. It has never worked before and it will not work for you now. I say to honourable members on the opposition benches that they must stand by their promises or be forever condemned. They must stand by the deals they make or be held forever accountable for the consequences. I call on Territory Labor to support the package of legislative amendments that the Northern Territory government has proposed. If they do not, I challenge them to tell the citizens of the Territory exactly why they have gone back on their word, and the word of their previous leader, Brian Ede.

Page 10518

If, however, their response is that we should all sit down and negotiate what native title really means, let me remind them of 2 things. First, the last time the federal government sat down and negotiated with the Aboriginal Coalition and ATSIC, the result was the Native Title Act - a result that has wrought havoc with land administration across the nation. Secondly, the outcome of further negotiations, prior to the Native Title Act being passed, was the midnight deal - an agreement which, it seems now, the Aboriginal Coalition had never intended to honour. Simply, the nation can have no confidence that any negotiated outcome is worth the paper that it is written on. That is why it is necessary for the governments of this country, the elected representatives of the people, to find a reasonable legislative response.

I come now to the Northern Territory government's proposals. Over the past 2 months, I have held a series of meetings with the Premiers of the states to determine how best to deal with land administration problems arising from the Wik decision. All of our discussions have been premised on being fair and reasonable.

The remedial actions proposed by the Northern Territory government recognise the possible existence of native title interests in pastoral lease land. They seek to allow the continuation of traditional access rights while ensuring, at the same time, orderly land administration and the protection of a vital industry for the Territory. It is a balanced response that provides considerable benefits for native title claimants. It avoids doubt and confusion and provides certainty. On detailed examination, it provides a way forward, a way through the complexities. In framing the proposals, along with the states, the Territory is particularly conscious that, to date, the Native Title Act has not produced any real results for native title holders. With the certainty that the amendments will provide, there will be real opportunity for progress.

I will broadly outline the proposals that have been put before the Prime Minister by the states and territories. Firstly, it is necessary to identify clearly the types of land over which native title has ceased to exist. This will ensure that all those activities which rely on secure tenure, be it residential, commercial, industrial or public works, have certainty. It is necessary also to validate all potentially invalid acts carried out between the date of the commencement of the Native Title Act and the Wik decision. Until the Wik decision, a number of tenures were assumed to have been granted exclusive possession and, in good faith, both government and industry organised their affairs accordingly. This was the basis on which the Native Title Act was enacted. It is not feasible to undo the last 2 years of the business of government.

The next proposal is to remove any uncertainty about the possibility of revival of native title rights following an extinguishing event. Following the original Mabo decision, everybody assumed this to be the case. However, not even that is clear. It is simply one more issue to be left up in the air. Governments cannot afford any more surprises from the courts. To clarify that pastoral leases extinguish native title is a legitimate matter for the Commonwealth parliament. It is also proposed to provide a cut-off date of 6 years after the commencement of the Native Title Act, being January 2000. The benefits of the act would apply only to those who had lodged their claims prior to that date. While there would be an ability for the courts to extend this period in special circumstances, this provision would assist negotiations with those with a claim, particularly where there are competing claimants, a problem of particular relevance to the Darwin region. Before members opposite claim that that is a racist measure, in fact that is the model introduced by President Mandela in South Africa and it works well.

Page 10519

The states and territories are also calling for the Commonwealth financial assistance offer to be renegotiated. The previous offer was based on the assumption

that native title did not exist on pastoral leases. Now that this is no longer the case, the whole issue of costs needs to be re-examined. There will now be more claims and a far greater impact on future development than previously thought. The Territory is facing substantial loss of revenues, increased land administration costs and litigation expenses. Under our proposals, laws of general application, and in particular those relating to conservation and the protection of flora and fauna, are to apply equally to all citizens regardless of the presence of native title.

In recognition of the possibility of coexisting native title rights on pastoral leases, the states and territories propose a responsible and fair system. Native title rights would be codified. A process would be established for dispute resolution between interest holders. If a change of land use or a development project affected the codified rights, there would be non-discriminatory procedural rights and compensation. The rights would be available to those able to demonstrate a continuing physical and traditional association with the land. The rights recognised by statute could be varied by agreement between the interest holders and the relevant Aboriginals. The submission to the Prime Minister proposes that cities, towns and land set aside for public purposes be excluded from the operation of the future act regime of the Native Title Act. This would not prevent reasonable and responsible claims being made over such land. Use of the land inconsistent with any established rights would give rise to a right of compensation. It is also proposed that the test regarding what are permissible future acts on land where there are coexisting interests be amended. Clearly, on such land, native title cannot be the same as freehold and so the current test should be amended. There are other options that would be acceptable to the Northern Territory. For instance, the Commonwealth could remove itself from the field entirely and allow the states and territories to enact their own non-discriminatory land processes. Alternatively, the Commonwealth could allow states and territories to legislate for pastoral leases to grant exclusive possession, with compensation to be paid where applicable. The Territory's preferred option is the codification of traditional access rights - that is, to define exactly, by way of legislation, what native title means and thereby provide the certainty we were promised. It is an option that has much to recommend it. It provides something for everyone.

In conclusion, the native title process is a subject that attracts huge levels of attention and analysis. Much less attention is focused on estimating what may be described as the long-term outcomes that can be expected from the implementation of native title. If, for the sake of argument, the native title legislation results in a process of negotiation for every single project development, what might be the outcome in 20, 30 or 50 years time? Of course, there are widely different agendas when it comes to outcomes. Some Aboriginal leaders have the objective of some kind of separate sovereignty for Aboriginals. Others focus on the spiritual and

cultural importance of the land. However, I would argue that the outcome that most Australians would seek from native title is that it genuinely assist Aboriginals to overcome social and economic disadvantage. To attain that end, Australians may be prepared to bear some economic sacrifice and dislocation.

The Northern Territory, through the Aboriginal Land Rights Act, has had almost 20 years experience of native title-type legislation. That experience strongly suggests that land rights is far from a solution to the economic, educational and health disadvantages of Aboriginals. Native title legislation may provide land and rights to negotiate without making

Page 10520

any real impact on the economic and social status of most Aboriginals. The fact is that, contrary to the beliefs of many commentators, in the developed world the occupation of lands has not been the key to advancement. On the other hand, there is little doubt that native title could have a major negative impact on the economic development of large parts of Australia, including almost all of the Northern Territory. That would affect all Australians, hence all Territorians, both Aboriginal and those who are not Aboriginal.

It is now commonplace for major Australian companies to include in their projects for the future a reference to native title. To give an example:

WMC directors noted yesterday that the majority of its Australian interests were likely to be affected in some as yet undefined way by the nature of the native title issue.

In the Territory, native title is already exhibiting a paralysing effect on almost every area of development. When huge sections of Australian industry are sacrificed on the altar of native title, it will be clear that, as a nation, we have lost perspective.

It is somewhat alarming that some misguided Aboriginal activists have so lost the plot that they act as if they believe that, by harming Australia's overseas trade and international representation, they will advance their own interests. Some seem bent on simply extorting as many dollars as they can from the opportunities served up by uncertainty and legislative mismanagement. We run the risk that the attempt to turn back the clock through native title will not serve anyone in the end, nor Australia as a whole. Native title may produce the mother of all lose-lose outcomes: a seriously damaged environment for investment and development, and an Aboriginal population that remains trapped at the bottom of every economic and social indicator ladder.

Is it not time for parliaments to start putting the interests of all Australians above the cocktail of inflated egos, guilty consciences and misdirected altruism of some politicians, judges and spokespersons that has landed us in this current mess? Notwithstanding threats of global condemnation and disruption to the Olympic games, or the death of reconciliation - whatever that may mean - surely we cannot accept every ambit claim without debate? Regard must be given to the consequences of what is being asserted and the overall effect on society and our wealth-creating industries. To force the nation down the road of endless litigation, to allow people to take whatever advantage possible of the confusion and uncertainty that has arisen, is not a basis upon which to establish a strong and healthy partnership for the future. It is for governments to come up with a fair and workable land administration process. That is exactly what my government is undertaking. We need to get it right this time. If we do not, they will still be trying to sort it out in 100 years time.

Let us be clear about this. Neither the Prime Minister nor I seek to do Aboriginal people in the eye. If native title comprises simply those traditional rights of access for the purposes of hunting and gathering, observing spiritual practices and visiting sacred sites, no fair-minded Territorian or Australian has a difficulty with that. However, if it is a back-handed or backdoor approach to controlling the future development of this country, then we have a major difference of opinion.

Page 10521

Mr Speaker, I move:

that this Assembly:

(1) calls upon the Commonwealth parliament to give legislative effect to the undertakings and assurances of the former ALP government that native title has been extinguished by pastoral leases;

(2) supports proposals put to the federal government by state and territory leaders which call for:

. identification of those types of leases which extinguish native title, including pastoral leases;

. codification of native title rights by providing statutory access rights over pastoral lands for Aboriginals for traditional purposes - for example, ceremonial, hunting, site visitation;

. removal of the future act process for claims over cities, towns and land set aside

for public purposes;

- . validation of any acts made between the commencement of the Native Title Act and the Wik decision arising from the assumption and assurance of the former ALP federal government that native title had been extinguished by the grant of pastoral leases;

- . legislative assurance that native title cannot revive following extinguishment;

- . a renegotiation of financial arrangements proposed by the former federal ALP government with states and territories arising from the implications of the Native Title Act;

- . review of funding of the \$1400m National Indigenous Land Acquisition Fund established under the Native Title Act on the basis that the grant of pastoral lease automatically extinguished native title; and

- . the future act regime not to apply after a cut-off date of January 2000.

Mrs HICKEY (Barkly): Mr Speaker, if the Chief Minister had been serious about eliciting some support from the opposition for the statement, a copy of which he gave us less than 24 hours ago, and the motion that he gave notice of moving less than an hour ago, he might have done it all a little earlier. However, he failed to do that, and today he has failed to deliver to this House a statement of any substance. It highlights his failure to lead responsibly, his failure to govern for all Territorians and his failure to tackle sensibly the complex issues of land management and the legal issues facing Territorians today.

Page 10522

I do not step back from the fact that the issue of native title is one of the great challenges facing Australia, and I certainly agree with the Chief Minister that this is the most important issue facing the Northern Territory today. However, if it is the most important issue, why is the Chief Minister not talking to people who may have an interest in this matter? He does not talk to the opposition, he does not talk to the native title claimants and he does not talk to the land councils. He remains among his own little coterie, his own little interest group. Why does he do that? He does it because he has no real interest in resolving this situation. This matter is one that responsible governments need to tackle in a calm and rational fashion and, sadly, that has not been done by the Chief Minister.

Since the Australian High Court brought down its decision on native title in 1992, governments of all political colours have tried to come to terms with that decision.

Governments have tried to negotiate and legislate on native title. The issues have been very complex and the stakes high. A careful balancing of interests and rights has been required. Some people have come to the debate in good faith and others have come in bad faith. It is a serious process and one in which no side will achieve all the outcomes it seeks, and a balanced outcome is needed. The reality of the Mabo decision has made it clear that no easy fixes are available. A winner take all scenario is neither possible nor desirable. In his statement today, the Chief Minister has been inflammatory. In fact, I would say 75% of the statement that we heard today consisted of inflammatory rhetoric, not of consistent, clear messages to Territorians about the steps that he wants to take. Consistent with his strategy of attacking Aboriginal

Territorians, which began in earnest last Friday, the Chief Minister has taken to the extreme every argument and issue to damage Aboriginal interests. Territorians expect their government to assess these matters in a balanced way, recognising that there are many competing interests. Where is the balance in this paper? Why did the Chief Minister fail to talk about the legal facts relating to freehold title? Why does he avoid matters where certainty is offered? Why does he presume implicitly that native title will be established on each and every pastoral lease in the Northern Territory? Why does he take this extremist view? Why not point out that native title claimants have to establish their claims?

The Chief Minister has pursued this strategy purely and simply because he wants to hold an early election. He sees an opportunity to divide the community in the way that one of his predecessors, Paul Everingham, did over Uluru. He sees an opportunity to divide it in the way his immediate predecessor did over ATSIC, and then with the false 2-laws campaign. We have seen it before, and we are seeing it now in 1997. The Chief Minister knows that, the day after the election, the issue of native title, the Wik decision, the Larrakia claim and the claim relating to Alice Springs will all still be there. It is interesting to note that, in June 1995, in his vision statement, the Chief Minister had this to say in relation to native title:

Subject to the federal government entering into appropriate financial arrangements, my government will pursue regional agreements with a view to resolving the outstanding and emerging native title claims.

What happened to that?

Mr Stone: They changed the rules.

Page 10523

Mrs HICKEY: The Larrakia issue has not changed and the Chief Minister knows that full well. The Wik decision, for instance, has nothing to do with the claim over

the Larrakia area. He knows that, at the end of the day, he will have to deal with that issue but, in the meantime, he wants to use it to run an early election campaign. His failure to end the speculation about an early election confirms this. Every day that he comes into this House with issues to do with impediments to development in the Northern Territory, and every day that he repeats the words 'carping, whingeing blacks', a phrase that he used on Fred McCue's radio program on Friday, we all know that that election is imminent. Those comments will end after a Territory election because this man opposite knows really that negotiation is the only way to get through these issues.

The Chief Minister has refused to guarantee that this Assembly will run its full course. He would not guarantee that when asked clearly to do so on radio. Everything he does must be viewed in the context of an early election. For that reason, he is seen by all sides in the argument as a force of destruction in this native title debate. He will not negotiate with native title claimants. He will not talk to the opposition. The hypocrisy of his approach is patent and clear for all to see. If the Chief Minister wants any greater confirmation of the view that he is creating a problem in the community, he should talk to business leaders in Darwin, in Katherine, in Tennant Creek or anywhere else in the Territory. When I have spoken with them, they have made quite clear what they want. When I spoke with members of the mining fraternity, and I referred to that earlier today in relation to the Tennant Creek area, they told me they want certainty and clarity. When I talk with Aboriginal people, they also tell me that they want certainty and clarity. In fact, there is only one group in the Territory which does not want certainty and clarity - the Country Liberal Party. Let us make no mistake about it - it is in the electoral interests of the Country Liberal Party to have division and argument, but it is not in the interests of the Northern Territory.

So great is this deception that the Chief Minister has refused to tell Territorians that his own Department of Aboriginal Development has been negotiating these very issues and seeking to draft a framework of agreement. I seek leave to table a page from the Office of Aboriginal Development Annual Report which refers, under a heading 'Results Achieved in 1995-96', to 'ongoing negotiations and monitoring of native title claims and issues in all regions of the Northern Territory'. It goes on to refer to 'progress for the development of a draft Larrakia negotiation framework to resolve issues flowing from native title and land claims through a future comprehensive agreement'. Later, it refers to 'negotiation of native title and similar claims to the sea'. In those 3 paragraphs, the Office of Aboriginal Development, and presumably the Minister for Aboriginal Development, have put the lie to the statements being made by the Chief Minister today.

Leave granted.

Mr Stone: It shows we are acting in good faith all along.

Mr Bailey: Where was it in your statement?

Mrs HICKEY: It has been very conveniently forgotten in the Chief Minister's statement because the CLP administration is in election mode. It will not negotiate and it will

Page 10524

not admit that it ever has or ever would because it wants to beat this up into an issue out of all proportion to the seriousness of the so-called threat to development in the Northern Territory.

The Chief Minister says his government will never negotiate. His Deputy Chief Minister was reported in the Katherine Times as saying that negotiation is not the answer. I quote the member for Katherine in May 1996:

It is all very well for the Leader of the Opposition to say we should find some means of setting in place regional agreements and negotiation with traditional owners to find a solution.

Later he said:

I am not sure that the taxpayers or the people of Australia are prepared to accept that responsibility.

The costs relating to this are absolutely enormous, and they have clearly gone unnoticed by members opposite.

Perhaps they have gone unnoticed also by the Office of Aboriginal Development in the time that it has been negotiating a settlement with the Larrakia. The member for Katherine wants 2 bob each way. He always did and he always will. Despite all of this, his own government is negotiating. As one of the highlights in the annual report, it is claiming the progress made on negotiations. Perhaps the Chief Minister will tell us today exactly what those negotiations are about. Will the Chief Minister tell us today what framework the department has come up with? Will he tell Territorians the truth before or after the election? If the Chief Minister does not tell us the truth about what the department is up to, he is a fraud.

Under Territory Labor, native title claims would be handled responsibly. I can guarantee that to the people of the Northern Territory. A Territory Labor government would be committed to achieving the following outcomes:

. service delivery and normal residential and business development will proceed;

- . water, roads, schools, sewerage, drainage, power and other services will be delivered;
- . access to sporting and recreational facilities will not be impeded;
- . the development of community facilities will not be held up;
- . free access to our parks, beaches and rivers will continue;
- . recreational fishermen will not be denied access to foreshores of waterways; and
- . Territory Labor will not raise new land taxes or rate charges for Territorians to pay for claims, royalties, resource revenue-sharing and ownership of water matters.

Page 10525

The Country Liberal Party administration's response to native title has been a betrayal of all Territorians. The Country Liberal Party administration has set out to mislead Territorians and potential investors by exaggerating the negative impact of native title claims. The Country Liberal Party administration's strategy on native title has been over the top. It is simplistic and it will not work. It is driven by the polling being conducted by the Country Liberal Party's advertising agency. The Country Liberal Party's proposals make it clear that it wants the native title controversy to continue in the Territory for years and years, enabling it to twitch the nerve every time an election comes around. We have already seen the approach advocated by the Deputy Chief Minister in the Katherine Times. Under the Country Liberal Party administration's approach, native title claims, such as the one in Darwin, will be drawn out in lengthy legal processes. Under the Country Liberal Party administration's approach, the Larrakia claim will hang over Darwin for years and years.

Mr Speaker, I notice that the Mayor of Tennant Creek is in the gallery. I am sure he will well remember the length of time that the Warumungu Land Claim took to process and resolve. Members will recall that, when Justice Maurice made his findings in that particular matter and recommended that land be granted all around Tennant Creek, which provided absolutely no room for future expansion of Tennant Creek, he said that, irrespective of the fact that the claimants were entitled to the land and that he intended to recommend that it be granted, he urged all interested parties to negotiate for change to allow for expansion of the town and the establishment of a buffer zone. He saw that negotiations would be needed to attain those ends. I know that the Mayor of Tennant Creek will well remember that the Tennant Creek Town Council - and I was serving on it at the time - was intent

on having some agreement reached between the claimants and the interested parties on that matter. It was certainly of importance to the people of Tennant Creek that the progress and future expansion of the town should not be put at risk. Who were the dogs in the manger on that issue? Was it the land councils? Was it the town council? No, it was the Northern Territory government. It had to be dragged screaming to the negotiating table, and members opposite know it. What was the reason for that? It was to whip up the elements of fear and loathing that it is trying to whip up at the moment. It sickened me then and it sickens me now, but it is doing it all over again.

In all of these issues, it is only Territorians who will suffer, and only the lawyers will benefit. Territory Labor believes constructive negotiations with native title claimants, such as the Larrakia, should be explored. Legislative changes to accommodate the Wik decision should be explored in the same vein. Extinguishment of native title on pastoral leases is not on. However, legislative changes to ease legitimate concerns of pastoralists, miners and Aboriginal interests should be explored in a bona fide fashion. There is no doubt that those issues need to be explored and those interests need to be considered because there is no doubt that aspects of the native title legislation are disadvantaging all of those groups. The workability of the Native Title Act, as a consequence of the Wik decision, must be improved in a balanced and sensitive manner.

Mr Speaker, you heard the howls of glee which greeted my statement that extinguishment of native title on pastoral leases is not on as far as the Labor Party is concerned. You can bet your bottom dollar that members opposite will put that around the countryside as quickly as they can. They like to claim that there is a bond between the Labor Party, the Northern Land Council and the Central Land Council. That is a fraud. It is not true.

Page 10526

Mr Stone: We have seen you running campaigns out there. Didn't you use the Tangentyere bus?

Mrs HICKEY: And whose bus did you use?

In government, I shall act as a responsible Chief Minister. I shall govern for all Territorians rather than for a select group. I shall meet with all sections of the community, including miners, pastoralists, the police, Neighbourhood Watch, employers, employees, groups of all shapes and sizes and, I imagine, the land councils that exist in the Territory at that time. I shall listen to them all, but I shall always govern for the good of the Territory.

That is what legislators are for, but the current Chief Minister has failed to do it.

He wants an early election, and he will say anything and do anything to win short-term political support. As I said at the outset of my response, if he had been genuine in his desire to bring the opposition along with him on this matter, he would have been talking to and negotiating with the opposition long before he slapped this on my desk less than 24 hours ago. If he had been earnest in his desire to obtain support for the motion that we have before us today, he would have told us about it a little earlier than 30 minutes ago, when this was slapped on our desks. I reject the Chief Minister's motion on the basis that it is nothing more than a cheap electoral stunt. It is not a constructive effort to bring all Territorians along. It is not in the same vein as that in which we have approached the issue of statehood or the issue of euthanasia. It is not a common approach that the Chief Minister has sought. He has sought division for his own political purposes.

Mr Bailey: It is not standing up for Territorians.

Mrs HICKEY: Mr Speaker, I move that all words after 'that' in the Chief Minister's motion be deleted and the following inserted in their stead:

this House recognises that the future economic development of the Northern Territory is in the hands of Territorians;

(1) that as such this House demands that the Country Liberal Party administration begin immediately a process of negotiation with all parties involved in the issue of native title; and

(2) that those negotiations must be aimed at an outcome designed to improve and enhance the economic development of all Territorians.

So much of what we see of the ramifications of native title could be behind us now if members opposite had moved to the negotiating table earlier. They have stopped doing that in the context of seeking a Territory election. They want to bring one on early, and let us make no mistake about why they want to do that. They want to bring on an early election because they do not want to face another federal budget that will do them even more damage than the last one did.

Page 10527

I urge members to support my amendment and to reject the Chief Minister's motion. His is a divisive act intended to fuel the fires of an election that he wants to call as soon as he can get away with it.

Mr REED (Treasurer): Mr Speaker, we have just witnessed an attempt to sell Territorians short by means of the Leader of the Opposition's suggested amendment to the Chief Minister's motion which essentially defends the rights of Territorians and is directed at injecting a level of security into the land tenure system in the Northern Territory. It is the land tenure system that forms the foundation for the continued high levels of economic development that we have been experiencing in recent years. That is a circumstance that we want to see continue over the coming years. I suspect that is what Territorians generally are seeking. That economic activity creates the jobs that Territorians want both for themselves and for their children. That economic activity and those jobs lead to the assurance that we can ...

Mr Bailey: Isn't that what the 5-year plan of the Jawoyn is all about?

Mr REED: ... continue with the ...

Mr Bailey: And on which the Chief Minister congratulated them.

Mr REED: You will have your turn in a minute if you want to contribute to this debate.

That economic activity and those jobs maintain the lifestyle that we treasure so much.

The member for Wanguri interjects and seeks to introduce red herrings into the debate. That is precisely what the Leader of the Opposition did. She did not focus on the issues. She did not tell us precisely what the opposition's position is in relation to native title, although she ditched the former Leader of the Opposition's position in relation to the extinguishment of native title by pastoral leases. That is something that, thankfully, we now have on record, and Territorians can digest that piece of information. The Labor Party does not support the extinguishment of native title by pastoral leases. Not only have members opposite walked away from the beliefs of their previous leader, but they walked away from the beliefs of the previous Prime Minister, and that was the basis on which native title was introduced in this country ...

Mr Bailey: And it was wrong.

Mr REED: The preamble of the native title legislation indicates ...

Mr Bailey: And the High Court has shown that to be wrong.

Mr REED: ... that native title is extinguished by pastoral leases.

Mr Bailey interjecting.

Mr SPEAKER: Order! The Deputy Leader of the Opposition will have an opportunity to speak later.

Page 10528

Mr REED: Mr Speaker, it was the expressed intention of the federal parliament that pastoral leases would extinguish native title. If the courts have determined to interpret that in another way, that problem has to be overcome by the federal parliament. However, it is only right that that be done, and that it be done quickly. This country cannot continue to live with the uncertainty that is generated by native title claims to the extent of the one that has been placed over Darwin. It is a tragedy. It makes a travesty of development in the Northern Territory. We are unable to offer land with secure tenure to developers from interstate. A number of them have come here. It is on the public record that we have received approaches from aquaculture developers and banana growers. Other developments include that at Douglas/Daly which is held up currently because of the inability to subdivide pastoral leases.

Mr Toyne interjecting.

Mr REED: If you want to live in a museum, you can live with native title. I suggest that the Territory lifestyle will not be maintained if we have to live in the museum of the current land tenure system and the doubts that surround it.

In the interests of pastoral lessees, it is essential that the wishes of the Leader of the Opposition and other members opposite - that pastoral leases cannot extinguish native title - do not prevail. If we are to continue, as the likes of the member for Arnhem and the land councils suggest, on the understanding that pastoral leases are secure and can continue to be used as they are, even that is in doubt now. Beyond that is the fact that we cannot change the tenure of pastoral leases. We live in a time of improving technology, improving farming practices and improved bloodlines among livestock. We have the ability to undertake viable agricultural and pastoral activities on smaller areas of land. The land can be made more productive with the application of modern technology and farming practices. It can be subdivided and settled more closely. It can be utilised by more companies, individuals and families to establish farming enterprises and contribute to the wellbeing of the Territory's economy. That is what the development of this country should be about. However, under the current native title regime, we are in a time warp as far as pastoral leases are concerned and we do not have the ability to alter the tenure. That is the guts of the issue with native title and pastoral leases.

If people want to continue as they are, perhaps there is the ability to do that. However, there are now suggestions that, following the Wik decision, the ability to put in simple infrastructure such as small dams, fencing, roadworks and additional farm buildings on a pastoral lease is in doubt, and that the need to pay compensation may well exist. That will have an enormous impact on the ability of farmers and pastoralists to develop their pastoral leases further.

We have heard a great deal from the member for Barkly and others about negotiation. They ask why the government does not negotiate and work through this. There are a few reasons why. One is that to negotiate suggests immediately that native title exists, and that has not been proven. The Larrakia need to establish that. There is another difficulty in relation to negotiation - the question of whom one should negotiate with. At the moment, there appear to be at least 2 parties - the Larrakia, as they call themselves, and the splinter group led by Tibby Quall who has other claims scattered around the country. In the workings of the native title legislation, no limitations apply in terms of language groups or traditional groups in relation to lodging claims. Anyone can lodge a native title claim. Once a negotiation process

Page 10529

has commenced, there may be any number of people to negotiate with. In addition, negotiation takes some 14 months. A company, which might want to invest \$1m or \$2m or \$10m or perhaps billions of dollars, will not hang around for 14 months with the uncertainty that currently exists with our land tenure system. That is the complexity of the problem that we face and, until members opposite realise that, I am afraid they will not be able to advance the cause of Territorians very far.

Let us assume that we take their advice and 'negotiate' - to use the wonderful word that they use. Consider the experience we have had in negotiating with the Larrakia in the past. The former Minister for Lands and Housing tried to negotiate a regional settlement with the Larrakia in relation to native title, and that process got nowhere. There was no response of any importance from the Larrakia people. There is another example, just across Darwin Harbour, where the principal claimants in the existing Larrakia claim have been involved now for almost 20 years in the Kenbi (Cox Peninsula) Land Claim. The last time the Northern Territory government tried to negotiate with them was more than 2 years ago to enable that land claim to be resolved. We are still waiting for a response to our offers. How does a government negotiate with a group of individuals and an administrative body like the Northern Land Council if it has to wait more than 2 years for a response to an offer of settlement? It is an impossible task. That is a classic illustration that the parroting of the word 'negotiate' may sound meaningful when it is used on the airwaves, repeated to the media or presented on television or in print as a solution. Members

opposite know the difficulty that we have experienced in negotiating with the Larrakia and the Northern Land Council in relation to these matters. They know that because it has been described in detail on numerous occasions in this House. If they do not recall it, they are either silly or not doing their jobs. Those are the facts and the difficulties that we face.

The member for Barkly said that pastoralists and miners are looking for certainty. They certainly are. However, after today, I do not think she will find many pastoralists embracing the cause of members opposite now that she has walked away from the extinguishment of native title by pastoral leases. She will find a pretty cold reception in the pastoral industry when word of that gets around. Let us not oversimplify this. The clichés about negotiation and people 'just being difficult', and the nonsense about early elections are a demonstration by the Leader of the Opposition that she has nowhere to go, that she has no issues to pursue, and that she is trying to create a smokescreen to cover important issues over which there are enormous differences in her own party. The Leader of the Opposition does not want to talk about native title. She was dragged kicking and screaming to do it a few weeks ago after maintaining her silence on the issue since before Christmas, and the best way for her to do that is to keep raising the spectre of an election. There is no requirement for an election in the Northern Territory until June 1998. The only person talking about an election is the Leader of the Opposition. Doesn't that convey the message that she has nothing else to do?

The first 3 questions asked by members opposite in Question Time this morning showed that the most important issue they had to talk about was a possible election. During this debate on native title, which is probably the most important issue facing Territorians today, the Leader of the Opposition said there will be an election before the federal budget is brought down, which I believe is to occur on 13 May. Let us see who will be right. I suspect we can predict whose face the egg will be on. The Leader of the Opposition will not get anywhere

Page 10530

with this election argument. People can see through the smokescreen effect that she is trying to create, and it will not do her any good to try to duck the issue.

We had the experience late last year, when the Larrakia native title claim was announced, that the people who had to negotiate with the Larrakia people had to pull them kicking and screaming to advise Territorians precisely what the extent of the land claim was. I recall that I made a prediction, on the Friday leading up to the announcement by the land council, that I believed there would be a major announcement from the land council over that following weekend of a native title claim over Darwin. As a result of my comments, the media attempted to contact the Northern Land Council and the Larrakia people and they all went into hiding.

They would not talk to anybody. There was deafening silence on the matter. These are the people we are supposed to negotiate with. Subsequently, an announcement was made by the Northern Land Council that a major native title claim was being made over Darwin. It was described in the barest detail so that Territorians had concealed from them information that should have been made available to them about the extent of the claim and how they would be affected by it. Members will recall the shock, the horror, the indignation from members opposite and their friends in the Northern Land Council when I had the Department of Lands, Planning and Environment produce maps depicting the extent of the Larrakia claim. It was portrayed as a disgrace by the Northern Land Council that the government, having seen the Northern Land Council's failure to do so, produced information for Territorians about the extent of the claim and the effects it would have on them. It was information that the Northern Land Council and Larrakia people should have made available to Territorians in the first instance. However, they concealed it from them.

Mr BELL: A point of order, Mr Deputy Speaker! I ask the Deputy Chief Minister to table the document.

Mr REED: I am happy to table the map, Mr Deputy Speaker. The document to which the member for MacDonnell refers was distributed to all Darwin MLAs to enable them to provide to Territorians the information that the Northern Land Council was not prepared to give. It was very interesting to hear the responses from people who sought information. When I say 'Darwin MLAs', I refer to the independent member, CLP members and Labor members. The member for Sanderson has the map on the wall of his office. Some members affixed it to a window of their offices. The member for Nelson has advised me that she has had an incredible response from people who want to find out about the extent of the claim. On the other hand, if you want to look at it at the electorate office of the member for Fannie Bay, you have to ask to see it. She or her electorate officer will dig it out of the cupboard because they are playing the Northern Land Council's game of keeping the information concealed from Territorians.

That is the guts of this debate today. Members opposite are not prepared to be upfront about this debate. When they are provided with the information, they become defensive about the Northern Land Council and the extent of the Larrakia claim. If they want to be apologists for the Northern Land Council and are not prepared to have demonstrated to the people of the Northern Territory the extent of this claim ...

Members interjecting.

Mr REED: Exactly! Members opposite trumpet about freedom of information, but they say: 'I have that hidden away in the cupboard. It is a bit embarrassing actually, but my Northern Land Council friends do not want it to be on display'.

I am committed to making this sort of information available to Territorians, given that the land councils will not do so. I am committed to releasing the information that Vestey's Beach, Lee Point, Casuarina Beach Reserve, Marlow Lagoon, the popular fishing and crabbing spots around Darwin and freehold title land that is not available for claim but which, because it has been claimed, has been tied up and is not available for development, are all affected by this ridiculous claim. I support the Chief Minister's statement and his motion.

Mr AH KIT (Arnhem): Mr Deputy Speaker, the current Chief Minister has made it clear that he wants an early election.

Mr Stone: You are the only ones talking about it.

Mr AH KIT: He will say anything and do anything to win short-term political support. I emphasise the description 'current' Chief Minister because goodness knows what will happen at the next election. If, by some mishap or misfortune, we are not in power, we would all be very concerned if the current Deputy Chief Minister were to wrest control of the government from the member for Port Darwin.

The Chief Minister's statement related mostly to what I would call gloom and doom. He talked about many negative things.

Mr Stone: Just the truth.

Mr AH KIT: He has raised some barriers and is seeking to promote racial disharmony. He is seeking to get rid of the fine Territory lifestyle that we have enjoyed to date. He raises barriers and creates problems. He talks about huge compensation payouts. He talks about lengthy delays. Why not look at the positive side? Why not look at the good things that have been achieved? Similarly, good things can be achieved again now. He rubbishes the Cape York agreement. In his statement, he referred to 'some organisations.' A couple of months ago, he was committed to supporting regional agreements ...

Mr Manzie interjecting.

Mr AH KIT: I attended the Wik summit on behalf of our leader. At the time, no ministers or backbenchers from the government saw fit to be represented ...

Mr Manzie: We were represented.

Mr AH KIT: I was able to talk to people about this particular agreement.

Mr Manzie: Did you put the Territory people's view or your own?

Mr AH KIT: It is something that the current Chief Minister and the Deputy Chief Minister do not wish to see created here. They rubbish that particular agreement.

Page 10532

Members interjecting.

Mr AH KIT: As I understand it, the agreement is between the pastoralists, the native title holders through the prescribed body - the Cape York Land Council - and environmentalists.

Mr Stone: Have you actually seen a copy of this agreement?

Mr AH KIT: Obviously, for political reasons, it is not supported by the Borbidge government. The agreement has brought people together to talk about issues of common concern and about a way of circumventing section 29 of the Native Title Act. In essence, it is a regional agreement which those participants can be very proud of. It is something that the rest of Australia, and in particular this government, should look more closely at. One minute, we hear that the Chief Minister is supportive of it but, the next minute, he has a change of heart. He has shown once again that he does not know where he stands in relation to regional agreements.

On Cape York, many pastoralists are entering into that type of agreement. We have the Mt Todd example. I know that it irks the member for Katherine and he becomes rather uncomfortable when some of my colleagues and others mention the credit given to me, along with the elders, for establishing the Jawoyn association and making it what it is today. It may be significant that the Deputy Chief Minister did not make a mention when the 5-year plan was launched 3 weeks ago. The Chief Minister was there, as was the Deputy Chief Minister and many others. It is not something that the Territory government should skate too much about. Speaking from memory, very little input was provided by the Northern Territory government to the Mt Todd negotiations and the outcome. While that does get up the nose of the government, it is something that I thought I should clear the air on.

Mr Reed: Yes, and you think you should take the credit for it. Okay, we will give it to you.

Mr AH KIT: I pick up the interjection from the member for Katherine.

Along with the elders and Robert Lee, I do take credit for putting that agreement together. No role was played by the member for Katherine. As for the member for Katherine getting it wrong with the television crew that was sent there, the member should be careful about remarks he makes to the media. I am led to understand that he stated that no native title claim will be made over Katherine. I do not know whether that is really the Jawoyn position. That is something that the Jawoyn will need to take up with the member for Katherine who is trying to lock people into positions. After a great deal of work, a very good agreement was arrived at. The joint venture with Nitmiluk Tours and the Mirrkwork joint venture are, as everyone is aware, working very well. There is also the success of the McArthur River mine. That rated a mention this morning when we spoke of the former chairman of the Aboriginal Areas Protection Authority.

What astounds members on this side is the attitude displayed just 5 or 10 minutes ago by the member for Katherine. 'Who are the Larrakia? Where are the Larrakia?' Members on this side are concerned about this display of disrespect. He asked whom the government should negotiate with because there are '2 parties'. For goodness sake! The Chief Minister has to

Page 10533

realise that he has been put into a position of responsibility where he has to lead by example. I know he has a problem because sometimes he does not obtain much assistance from his deputy. That is something that he has to live with, not members on this side. He can point the finger and lay blame as much as he wishes but, in reality, he leads the government. He is the Chief Minister. He and his Cabinet need to deal with the native title issues in order to provide a better Territory for all Territorians.

In respect of the native title claim over areas of Darwin, for a Chief Minister to think that it is best politically to take the road of raising barriers and indulging in black-bashing and getting stuck into the Larrakia people is something that concerns most Territorians. It is a real concern because he chooses not to lead by example. If that is the politics they wish to play, that is their prerogative. However, members on this side wish that the Chief Minister would take a leaf out of the Prime Minister's book. As I understand it, the Prime Minister is dealing with the problem. He is in no hurry. As I understand it, he is not using the situation to run a political exercise. He is demonstrating that he is a responsible leader of this nation by bringing the parties together to sit down and discuss the matters and try to negotiate an outcome that is acceptable to all parties. That is true leadership and it is in contrast to what the Chief Minister is up to - playing politics and dragging out this story that there is no certainty. Members on this side want certainty, and we see that being obtained by the government sitting down and discussing with the Larrakia people, and their prescribed body under the Native Title Act, the Northern

Land Council, an outcome that will clear the native title issue up once and for all ...

Mr Reed: Negotiate? Town camps?

Mr AH KIT: ... in and around Darwin.

The Deputy Chief Minister has finally got it into his head - yes, negotiate. Negotiations are nothing to be frightened of, Mike. I think responsible leaders can sit down and negotiate outcomes that will arrive at a win-win situation for all parties.

If economic development is restricted now and in the near future, the government and the Chief Minister in particular will be to blame for that situation. If investors take their dollars and walk away, nobody will be to blame but the Country Liberal Party administration. These people have their heads in the sand. They are not showing the maturity that they have been elected to show and provide in terms of governing on behalf of all Territorians. When it suits them, they govern for all Territorians, including Aboriginal people. However, when they want to run their political lines, they choose not to include Aboriginal people. They push them aside and say that they are standing up for the real Territorians. I am confused by their tactics. They confuse me because they themselves do not know where they stand. They think they can continue to divide Territorians, but I can tell them that Territorians are waking up to their little game. I think that Territorians are growing sick and tired of the black-bashing. I think we will see a turnaround at the next Northern Territory election, whenever it is held.

In this situation, the Chief Minister and his government have turned around and blamed others. They say that they are not in the wrong. They blame Paul Keating, the former Prime Minister.

Mr Hatton: Didn't he make the undertakings?

Page 10534

Mr AH KIT: Possibly Paul Keating made some undertakings.

Mr Manzie: Possibly?

Mr AH KIT: The fact is that they did not end up in the legislation.

Mr Hatton interjecting.

Mr AH KIT: I will pick up the interjection from the member for Nightcliff. He should know that the problem is with the Prime Minister, and the Prime Minister is

dealing with it. Members opposite are lobbying the Prime Minister, as are the state governments.

Mr Hatton: We asked Keating to confirm the deal in legislation.

Mr AH KIT: You have a decision from the High Court - a 4:3 decision. You do not like that because that decision was not in this government's favour. Your members rant and rave about that. The Chief Minister stood up this morning and became very angry towards members on this side who were accusing the government of being redneck and racist.

As I said earlier, I became confused because I am pretty sure that, at the last sittings, the member for Katherine stood in here and said that he was a redneck and proud of it. These varied assertions confuse me as members opposite run their different lines. I think the Chief Minister should speak to his deputy from time to time when he steps out of line.

One wonders whether there is a real sense of fair play and a sense of responsibility on the part of the Chief Minister in respect of holding negotiations with the Larrakia people. One wonders whether the real Shane Stone will stand up. He has been exposed as a poll-driven, short-term politician.

Mr Manzie: Oh, come on! Who wrote this for you?

Mr Ah KIT: I will pick up the interjection from the member for Sanderson. In this Chamber, members opposite tend to put across to us and to people in the galleries the impression that one has practically to be a Harvard scholar to be a member of parliament. Given the backgrounds of some members opposite, one wonders how academically qualified they are. They are in government, of course, and they have resources available to them which we certainly would like to have equal access to. That is not possible because, the fewer resources we have, the fewer headaches we provide for them. However, what goes around comes around. Our day will come and we will see what will happen when the boot is on the other foot. In the short time that I have been a member of the Assembly, I pride myself on having been able to stand on my feet and talk off the top of my head to points that are made. I will continue to do that.

In conclusion, I give one word of advice to the Chief Minister - he should give certainty by showing maturity.

Mr PALMER (Aboriginal Development): Mr Speaker, I rise to speak in support of the motion moved by the Chief Minister. I make it clear from the outset that I will read this

speech because I consider this to be a very important debate. We have just seen how across issues the member for Arnhem is today. In this parliament, he has illustrated his interest clearly. Within 2 days of his entering this Chamber, there was a major debate on the future of the horticultural industry in the Northern Territory. In her contribution to that debate, the Leader of the Opposition spoke at length about the Ord River scheme and tens of thousands of hectares in the Territory being involved in that scheme. This morning, the member for Arnhem accused me of not knowing what I was talking about in relation to the Ord River scheme. His ignorance was breathtaking. His ignorance has been breathtaking since he entered this place. If it becomes any more breathtaking, we will faint from lack of air.

I carry responsibility for 3 portfolios, 2 of which members opposite will undoubtedly regard as being conflicting in terms of the interests served. I do not represent the interests of Aboriginal people at the expense of pastoralists or fishermen, nor do I advocate the interests of the rural industry at the expense of the Aboriginal people of the Territory. I am part of a government that serves all the people of the Northern Territory. I have an obligation, along with my colleagues - and indeed along with all honourable members - to foster a climate in which all people may prosper and live in harmony. Making decisions for the future requires the exercise of judgment in the present. Much is said about the High Court, and the independence of the judiciary etc. There are those who say that the High Court is there only to interpret the law. Others, including Justice Kirby of the High Court, seek to justify the activism of the court. Obviously, the truth lies somewhere in between - or it should.

In the Mabo decision, the High Court came to a view about the rights of the Merian people of the Murray Islands, a people whose culture was based on sedentary agriculture. To reach that decision, the High Court used precedent from international law and the application of British law in other countries to say that the Australian common law was capable of recognising the concept of native title. Not only did the High Court say that the Merian people hold their title 'as against the whole world', but it said also that native title continued throughout the whole of mainland Australia unless otherwise lawfully extinguished. In doing so, the High Court left open many questions about land administration in Australia. Justice Brennan, now the Chief Justice, left a time bomb ticking when he said:

Native title is extinguished to the extent of the inconsistency. Thus native title has been extinguished
by grants of freehold or of leases ...

That rang alarm bells in many quarters. In the Northern Territory, we were very

familiar with the concept of statutory Aboriginal rights. They are to be found in all manner of legislation dealing with pastoral land, crown land, fishing, conservation and park administration. How would the courts regard these statutory rights? Would they be rights capable of being taken away by statute? Would they be considered the remnant of native title? Would they be regarded as something in lieu of extinguished native title? This was the time for the federal parliament to come to the fore to take on board this judicial development and pass a law for the good of Australia - a law to identify the rights of people and a law to provide clarity and certainty. Did the federal parliament do that? Indeed, it did not. In June 1993, the erstwhile Minister for Aboriginal and Torres Strait Islander Affairs said:

The decision does not pose a threat to non-Aboriginal Australians. I have prepared this paper to rebut the myths about Mabo which have appeared in some

Page 10536

sections of the media and which have been voiced by some of the more extreme interests in the current public debate.

The document Minister Tickner was referring to was Rebutting Mabo Myths. He went on to say:

Myth 2: The Mabo decision allows Aboriginal people to gain ownership of Australia's farming and grazing lands. Wrong! Almost all farming and grazing land in Australia is held under freehold, perpetual leasehold or long-term leasehold titles. As a result of the High Court's decision, these lands cannot be successfully claimed because the grant of these titles extinguishes any native title.

The federal Labor government passed a law that was unclear and uncertain. There was the gobbledygook about validating pastoral leases rendered invalid by the interaction of the Racial Discrimination Act and native title, but valid pastoral leases issued prior to 1975 would somehow be invalid. Quite honestly, the Australian Labor Party sold the nation a pup. Despite what federal Labor parliamentarians said then and are saying now - that is, that they believed pastoral leasehold extinguished native title - I tend towards the conspiracy theory. Keating, Walker, Lavarch, Collins et al knew they could not sort out the issue without offending their Aboriginal constituency, the left and the feel-good golden triangle. They knew they had little more than 2 years left in office. At the very time when the government of the day was required to pass a law for the benefit of the nation, it squandered the opportunity in one last desperate bid to look good in its

remaining days. In its 1996 election policy statement, the Australian Labor Party said:

Whilst the government's legal advice is that the grant of a pastoral lease extinguishes native title, Labor considers that, like all other Australians, Aboriginal people are entitled to their day in court to assert what they believe are their equal rights.

The trouble is that it is not simply about people having their day in court. The mere lodgment of a claim, no matter how spurious, is accepted, and the claimants accrue the right to negotiate what is effectively a veto right. As someone who knows something about the way the system works, Sugar Ray Robinson said on ABC radio that 'any alien from the moon or wherever could lodge a native title claim' and the government had to do something about it.

Before I discuss the impact of native title on the pastoral and agriculture industries, I want to look at the fishing industry. In July this year, the next big judicial development will get under way. The Federal Court will hear argument in the hearing of the Croker Island native title claim. This is a claim to the sea and to the seabed, and the resources in and under the sea. This case will ultimately set the precedent for Australia about the application of native title to the sea. The Northern Territory government met with the applicants in this case under the auspices of the Native Title Tribunal. At the time, these talks seemed to be productive. As members will know, Aboriginal people have a range of statutory rights in the sea under the laws of the Northern Territory. They can use the marine resources according to Aboriginal tradition. Their sites of significance in the sea can be protected. They are able to obtain special community fishing licences that are not available to others, and they can even close the seas up to 2 km from Aboriginal land.

Page 10537

The government was prepared to expand on these rights, to reinforce them to include Aboriginal people in the range of industry consultative forums and to provide assistance to marine enterprise development. The Croker Island people seemed to welcome these proposals, but did they come to pass? No, they did not. The Northern Land Council correspondence following each meeting was always at variance to the constructive atmosphere at those meetings. The Northern Land Council wanted its day in court to expand the envelope of native title. The Croker Island application now seeks full proprietary ownership of the sea and its resources. On behalf of the claimants, the Northern Land Council said:

In this matter, the applicants are claiming substantial rights. The application

expressly asserts rights of
`ownership' ... the courts may be prepared to recognise both proprietary and
usufructuary rights and interests
under the concept of native title.

This attitude is clearly a source of concern to both the Commonwealth and
Territory governments as well as to the fishing industry.

Since the Wik decision, one commentator said recently:

... coexistence of these interests is not in itself remarkable or problematic. The new
elements that have
been introduced are, first, native title as an interest in land and, second, pastoral
leases are among the
interests with which native title may coexist.

How glibly that phrase rolls off the tongue - coexistence with native title rights. Let
us look at the legal advice provided by the Commonwealth Attorney-General's
Department on the implications of the Wik decision:

Existing pastoral leases and rights granted under them are valid. The rights of the
pastoralist prevail over
native title rights to the extent of any inconsistency. However, there may be
uncertainty in particular cases
as to the extent of a pastoralist's rights, and as to the extent to which native title
rights are
inconsistent with such rights.

There is also a possibility that activities of the pastoralists and the exercise of
rights under the lease
may now be restricted by the Native Title Act 1993, particularly where such
activities are conditioned on
further government approval.

Is this a recipe for certainty and clarity in the land administration and the good
management of our pastoral lands? I think not!

The Northern Land Council recently entered the myth destruction business. It is in
the process of distributing a pamphlet entitled The Wik Native Title Decision
Explained: Exposing the Myths. It states: `Myth - the Keating government
extinguished native title on pastoral leases'. The NLC responds: `Neither the Mabo
decision nor the Native Title Act dealt with the pastoral lease issue'. This might be
strictly correct, employing the post-modern deconstructionism with which the
Northern Land Council is intimately familiar, but how often

were the pastoral lessees of this Territory told by the federal Labor government that the grant of long-term leases did extinguish native title?

Mr Bell interjecting.

Mr PALMER: Here is one of the great modern exponents of post-modern deconstructionism asking what it is. You are one of the geniuses, and you are seeking explanations?

The Northern Land Council creates a new myth of its own. In this pamphlet, the NLC states: 'It was always understood that the Wik decision would resolve the issue'. Has the Wik decision resolved the issue? Again, I think not.

I referred earlier to the very extensive statutory rights in pastoral leases held by Aboriginal people. These rights were created at a time when the predominant form of pastoral activity was based on open range grazing. Progressively over the years, management techniques have evolved in response to changing markets, the eradication of brucellosis and tuberculosis and the need for more responsible land care. This has resulted in more artificial waters, improved pastures, lot feeding, fencing, more roads, clearing, cultivation and so on. The Pastoral Land Act defines pastoral purposes as:

The pasturing of stock for sustainable commercial use of the land on which they are pastured, or agricultural or other non-dominant uses essential to, carried out in conjunction with, or inseparable from, the pastoral enterprise, including the production of agricultural products for use in stockfeeding and pastoral-based tourist activities, but does not include a use under section 91 which is declared by the board not to be used for pastoral purposes.

The act also provides that the reservation in a pastoral lease in favour of Aboriginal people cannot be interfered with without just cause. 'Just cause' means reasonable action to ensure the proper management of the lease for pastoral purposes. I offer a couple of simple scenarios. A pastoralist sets about building a bore, erecting a tank and bulldozing a turkey's nest dam in the middle of a registered sacred site. Would that be a reasonable act? Of course not! Apart from any rights flowing to the custodians from the Pastoral Land Act, it would be a criminal offence against the Northern Territory Aboriginal Sacred Sites Act. Secondly, the pastoralist proposes to clear a paddock to plant cavalcade in order to bale hay for stockfeed. In the

middle of the paddock is a bush which is used as a traditional medicine. Would the ploughing up of this bush be good pastoral management? Would it be a reasonable act or would it require negotiations under the 'future act' regime of the Native Title Act? The Northern and Kimberley Land Councils have noted that 'pastoral lease reservations protect pre-existing native title rights, however they do not create or define the extent of those rights'.

This is code for a further expansion of the native title envelope. The Wik decision has not delivered any further certainty. The Mabo decision told us that the Australian common law recognises the concept of native title. The Wik decision told us that the grant of a pastoral lease does not necessarily extinguish native title. The Wik decision did not define native title rights or even state that the Wik people held native title. Indeed, the claimants have now to return to the Federal Court to prove their case. In Wik, the High Court stated that the extent

Page 10539

to which native title has been extinguished by the prevailing and overriding rights of the pastoralists has to be determined on a case-by-case basis. Are we to wait another 4« years for the High Court to advise the nation of the next legal principle? In Wik, Mr Justice Kirby said:

It is true that this result introduces an element of uncertainty into land title in Australia, other than fee simple.

Chief Justice Brennan said:

It is too late to develop a new theory of land law. That would throw the whole structure of land titles based on crown grants into confusion. Moreover, a new theory, which undermines those doctrines, would be productive of uncertainty having regard to the nature of native title.

This time, the Commonwealth government needs to act decisively. It needs to act in the interests of the nation as the federal Labor government refused to do. The Chief Minister's proposal does not mean that this government fails to recognise the legal existence of native title. It means the recognition and preservation of those rights and interests already described in Northern Territory law which must represent the native title rights of the Aboriginal people of the Territory. We need a legislative solution to serve the pastoral industry, including the ever-increasing number of Aboriginal pastoralists, in order to continue the industry's valuable contribution to the development of the Territory. We cannot afford to wait for the

outcomes of the next High Court case, nor can we depend on the open-ended and convoluted processes of the Native Title Act. I support the Chief Minister's motion.

Mr BURKE (Attorney-General): Mr Speaker, in rising to support the statement by the Chief Minister, I would like to emphasise again that the fundamental effect of the High Court's judgment in Mabo No 2 and the subsequent Native Title Act is that the burden of proof has been reversed totally in relation to land ownership in this country. Under these 2 decisions, all of Australia is native title land and continues to be until it can be proven that that title has been extinguished, either partially or totally, or that there are no longer any claimants. The latest ruling of the High Court, in Wik and Thayorre, is that the amount of land where native title could be said to have been extinguished, by valid or validated government actions, has now shrunk considerably. The pastoral estate of Australia, some 42% of our land mass, has now been thrown into this basket.

Just as land is now perceived to have a native title attached to it until a determination is made to the contrary, so also there has been a revolutionary change in the way people can claim to exercise native title rights. Once a claim is accepted by the Native Title Tribunal, the claimants must be treated, to all intents and purposes, as if they are the actual holders of native title. They continue to have that status until it is resolved that native title has been extinguished or it is determined exactly what 'rights and interests that are possessed under the traditional laws and customs of the Aboriginal people' pertain to the relevant piece of land and whether indeed the claimants are the people who possess those rights. Under the Native Title Act, those rights 'can confer possession, occupation, use and enjoyment of the land or waters on their holders to the exclusion of all others' or lesser rights including those that can coexist with the interests of other title holders.

Page 10540

This is the problem with the native title regime we have been bequeathed by the late Labor government, and it is a problem that has been exacerbated now by the Wik decision. Before any use can be made of the land or any change made to the use of land, negotiations must take place, and they must take place even where the continued existence of native title has not been determined. They must take place in a situation where the actual dimension of native title has also not been decided. It may be that the underlying native title is simply the right to hunt across the land and that that is what negotiations should be about. They should be limited to how the planned actions will affect that right to hunt. However, under this system, we do not know if that is the underlying native title, and whether claimants would be prepared to say that that is the only right their native title rights include. Under these conditions, what claimants would not bring a claim for exclusive possession? How is it possible to negotiate the

use of land in good faith when it is not known what rights the native title holders have or even whether or not their rights have been extinguished? How can a compensation scheme be negotiated when what is to be compensated for is not known? This imposed system has put the cart before the horse. For any system to work, we must have certainty.

Sacred sites should be protected. They are protected already in the Northern Territory. The right to hunt and fish, to traverse land and to conduct cultural activities should be available to the descendants of the original inhabitants of the area. They are available to them already on pastoral leases in the Northern Territory. If a native title right is extinguished for the greater good of the community, adequate compensation should be available. The mechanisms exist now for this to happen. Why then do we need a mandated 14 months of negotiations and then court cases of indeterminate length before any decision can be made?

It was the belief of those who inflicted this act on Australia that - and this was said by the then Attorney-General, Michael Lavarch - 'in much of Australia, native title has been extinguished and the native title holders dispossessed'. That appears in the foreword to the federal Attorney-General's official publication of the Native Title Act. This belief was reinforced by the establishment of a land fund to address the social and economic needs of the 'many Aboriginal peoples and Torres Strait Islanders because they have been dispossessed'. That quote is from the preamble to the Native Title Act. The decision of the High Court on the eve of Christmas Eve 1996 has meant that dispossession was nowhere near as extensive as was first believed. The Chief Minister has mentioned already a number of the conflicting statements made at the time of the introduction of the Native Title Act and the situation we now face post-Wik.

May I suggest a further one by reference to section 47 of the Native Title Act? This is the section put into the act to allow Aboriginals to convert pastoral leases they own already into native title land. This was the end result of the infamous midnight deal of which the Chief Minister reminded us. The late Prime Minister, Mr Keating, said in his second-reading speech ...

A member: The 'late' Prime Minister!

Mr Bell: He is still alive, I hope!

Mrs Padgham-Purich: Haven't you heard?

Page 10541

Mr BURKE: I like the term 'late'.

He said:

The bill provides that Aboriginal people who own or acquire a pastoral lease, and who also would satisfy native title criteria but for the prior extinguishment of their rights, may choose to claim native title.

I suggest that it was quite clear in Mr Keating's mind that he needed to include that particular section in the act because the grant of a pastoral lease itself extinguished native title rights and interests. However, that notwithstanding, post-Wik, we face a regime over that half of the Territory that is not already Aboriginal land under another federal government-imposed act. That means any decision on land use now is hogtied by a 14-month negotiation timetable followed by court hearings and the burdens and costs of those processes irrespective of any compensation that may or may not be required. There are 4 claims presently in the Federal Court that include areas in the Northern Territory, some of which have been alluded to already in this debate. Each raises different factual and legal issues that need to be worked out by the court before the parties can know what native title is and what evidence is needed to prove it. The claims are to Keep River, Alice Springs, Croker Island seas and the Urapunga township.

At the moment, the land councils say mere generalisations about prior occupation give them complete rights of exclusive possession of land, sea, air and water and all living and growing things. In the Wik case, the existence of native title rights was assumed for the purposes of legal argument, but nothing was said about the content of those native title rights. What is or is not a native title right? If I am fishing from the wharf with many other people and we are all catching fish, are some people possibly exercising a native title right while others are merely fishing? Is killing a goanna for tea the exercise of a native title right or just providing a good feed? How can those decisions be taken? Justice Toohey, in the leading judgment in Wik, talked about inconsistency between the rights under a pastoral lease and native title rights. He said:

Inconsistency can only be determined, in the present context, by identifying what native title rights in the system of rights and interests upon which the appellants rely are asserted in relation to the land contained in the pastoral leases. This cannot be done by some general statement; it must 'focus specifically on the traditions, customs and practices of the particular Aboriginal group claiming the right'.

The last comment is a direct quote from the recent Canadian Supreme Court

decision of Van der Peet.

What must happen in the Northern Territory cases is to go beyond general statements. Detailed evidence, focusing specifically on the traditions, actions and practices, is needed before native title can be determined. The question of inconsistency and possible extinguishment can be considered and decided only when the native title rights are decided. Justice Toohey then said:

Page 10542

Those rights are then measured against the rights conferred on the grants of the pastoral leases; to the extent of any inconsistency, the latter prevail. It is apparent that, at one end of the spectrum, native title rights may 'approach the rights flowing from full ownership at common law'. On the other hand, they may be an entitlement 'to come on to the land for ceremonial purposes, all other rights in the land belonging to another group'. Clearly there are activities authorised, indeed in some cases required, by the grant of a pastoral lease which are inconsistent with native title rights that answer the description in the penultimate sentence. They may or may not be inconsistent with some more limited right.

In the Alice Springs claim, the government offered to negotiate concerning that part of the claim, including the actual town of Alice Springs, which was not covered by pastoral leases, but that offer was rejected. What needs to be done is to have the land council produce evidence and identify what the traditions, customs and practices are that give rise to a native title right as opposed to a right anybody can exercise such as fishing from the wharf.

Justice Toohey quoted from the Canadian case of Van der Peet which was itself a fishing case and one of 3 landmark cases decided in August last year by the Canadian Supreme Court. The tests applied by that court required that, to be an aboriginal right, an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right. To be integral, a practice, custom or tradition must be of central significance to the aboriginal society in question - one of the things which made the culture of the society distinctive. A court cannot look at those aspects of the aboriginal society that are true of every human society - for example, eating to survive - or at those aspects of the society that are only incidental or occasional to that society.

In the Alice Springs claim, the content of native title is said to include rights to

hunt, fish, forage, possess, use and occupy, and traditional rights to all ochres, soils, minerals, ores and associated substances found on or beneath the claimed areas. Is camping in an area a native title right? How can that be said to be integral to a distinctive culture? We will not know until the evidence is heard and the judge decides. What about the bearing and rearing of children? This is a claimed native title right. Is this something distinctive that is of central significance to the applicant Aboriginals? This must be determined by evidence.

In the Croker Island claim to the seas, the legal question raised by the Commonwealth, the Northern Territory and all other non-claimant parties is this: can common law native title exist in the seas, the seabed, the marine resources of the sea, the air above the sea and the sub-seabed resources such as oil and gas? That is a vitally important question that has to be decided sooner or later and this is the case to decide it.

The third case is Keep River which covers not only the Keep River National Park, where it is said evidence of occupation goes back 160 000 years, but also huge areas of the Ord River on the Western Australian side of the border. On the Territory side, there are living areas excised from the national park and we have very good relations with the residents. This sounds like a good case to settle, but to settle with whom? The Aboriginal Legal Service of Western Australia, the Kimberley Land Council and the Northern Land Council are fighting over who represents whom and that is no climate to negotiate in. One of the central characters in the claim, although not a claimant, is Mr Bob Hannon who is threatening all sorts of action

Page 10543

to prevent parks and wildlife officers from doing even maintenance work in the national park. He is opposed in this by the claimants resident at Keep River. In that climate, negotiations are really not possible. Therefore, we litigate. This will spill over to the North-West Pastoral Leases Claim by the same claimants over Spirit Hill, Bullo River, Newry and Legune pastoral leases as well as Edward Island. These are working pastoral leases and raise very different questions to those involved in the Wik claim. Can you or can you not build a yard, construct a dam or seed a paddock, or must each activity be negotiated with some or a great deal of compensation here and there? These questions need definitive answers. No one knows yet what they are.

The fourth claim is to Urapunga and is made over a declared township with its own untested legal questions. We litigate because, in the light of these uncertainties, how can anyone negotiate? There is no firm foundation from which any party can negotiate. The Canadians negotiated first, and only years later did they obtain the definitive statement from the Supreme Court. The negotiators assumed and

conceded far-reaching rights over fisheries only to find, in the Van der Peet case, that those native title rights had not existed. There is uproar and pandemonium in Canada over this. This government will not go down the same path. Litigation is necessary to establish the ground rules. It is unavoidable. We have our best legal people working on these cases and we will do all we can to replace the present chaos and confusion with certainty and clarity. However, it takes time. It takes case after case to resolve the issues. What happens to development in the meantime? What happens as each pastoral lease is claimed and the existence or otherwise of native title has to be tested? What happens when there is a conflict over any coexistence of rights?

This government has said many times that it accepts that Australia was not terra nullius at the time of European settlement - that native title has existed and, in some cases, continues to exist. Surely we must be able to come up with a better system than this present shambles which not only allows frivolous and ambit claims but positively encourages them. I have grave doubts that this system promotes reconciliation in any way. I note the recent comment by Professor Marcia Langton that not all Aboriginal leaders are in favour of reconciliation although, when referring to Noel Pearson, when speaking on ABC radio on 31 January and as was reported subsequently in the NT News on 1 February, she said: 'Noel does have a tendency to be reconciliatory'. On the contrary, however, this system encourages Aboriginal people to believe the way has been opened for them to claim exclusive possession of vast tracts of land or at least millions of dollars in compensation. It encourages Aboriginal people to hold developments to ransom in order to achieve this. Conversely, it promotes antipathy in the non-Aboriginal community to what appears to them to be a land grab or a greedy claim for money, or both. While the chaos and confusion exists and the only reasonable solution is in taking every issue to court, we have achieved what Chief Justice Brennan warned us about. We have thrown the whole structure of land titles, based on crown grants, into confusion. To my mind, there has to be another way. The Chief Minister spoke about the tragedy involved in these native title issues. To my mind, the tragedy is the regime we have created, not the right.

A truism of all Australians is that they believe in a fair go for all. I think it was in the spirit of a fair go that Australians generally accepted the Mabo decision which overruled the concept of terra nullius. What has flowed from that is not a fair go. How can any Australian of any colour claim possession, occupation, use and enjoyment of the land or waters to the exclusion of all others - or even lesser rights - in an atmosphere where the rights claimed are

Page 10544

not determined, or the continued existence of native title has not even been determined? To my mind, this is not a fair go. The fact is that Australians are not

divided on this issue, but are overwhelmingly opposed to such a notion. The tragedy of native title is not that it is new and that this government refuses to acknowledge it. It is not new. The experience in Canada and the United States provides sufficient documentary evidence of working with native title. The tragedy of native title is not the outcome. I point to the Canadian experience in determining what are extant native title claims. After years of negotiation, litigation has overturned some of those poor decisions that were made through hasty negotiation. The tragedy of native title is the regime we have created and the resultant time that we are wasting in dealing with that regime - time that ticks away inexorably and that confines Aboriginal children, Territorians and Australians who have rights and aspirations. They should be our first consideration.

As Minister for Health Services, I sometimes become despondent when I think of the energy we spend on debate and the money we waste on arguing issues that will deliver these children very little. Statesmen in Australian politics have said that no Australian child should live in poverty, that every Australian is entitled to a job and that access to health care should be determined by need. These are the issues we should be addressing. These are the matters we should be devoting our energies to. We should be looking for agreement in this House, but I do not believe that agreement is possible. I suppose that is one of the pragmatic facts of politics in the 1990s. However, if we approach these discussions at least by opening our hearts to what are the real issues, to the tragedy that is in Aboriginal communities and to ways by which we can really address their hopes and aspirations, then surely we can find a way forward without such a complicated regime. I support the motion.

Mr MANZIE (Mines and Energy): Mr Speaker, I rise to support the Chief Minister's statement which has reviewed the outcomes of the High Court's Wik decision. In summary, the court found that native title could coexist with pastoral leases. That will affect almost 50% of the Territory which is pastoral land. In fact, the High Court's decision is actually much more complicated than it appears on the surface. First, the court implied that a pastoral lease was not necessarily a lease in the true sense of the word because the terms of the lease did not give exclusive possession. That is no doubt correct. In fact, lessees share their land with a number of other people who can obtain rights to use it, including miners who may have exploration and mining title granted over pastoral leases without being subject to a consensual veto or having to pay punitive compensation. The relationship in the Territory between pastoral lessees and miners is generally very constructive and it is set down in a code of conduct which is agreed to by their peak representative bodies.

Secondly, the court determined that the specific pastoral leases in the Cape York region that were subject to the Wik and Thayorre native title determination claims did not necessarily extinguish any native title, and that native title would be

extinguished only to the extent that it was inconsistent with the rights of the pastoral lessee. The High Court has left it to the Federal Court to determine if, and by how much, the terms of the lease are inconsistent with the rights of any native title claimant. Each pastoral lease may have different conditions, and each Aboriginal claimant may have traditions that create different rights. This means each claim must be considered individually and, if it is over a pastoral lease, must be considered against the terms and conditions of the lease to determine if native title has survived the grant of the lease. This will have to be determined on a case-by-case basis. The decision of the High Court cannot be applied necessarily to all pastoral leases, not even in Queensland and certainly not in

Page 10545

any other state or territory. Thus, in a legal sense, we still do not know whether Territory pastoral leases extinguish native title. If we leave it to the courts to determine on a case-by-case basis, it could be generations before we know where we stand.

Thirdly, the court implied that extinguishment may be affected by the extent to which pastoral lessees actually exercise their rights. If a pastoral lessee chooses not to do something which is permitted in the terms of the lease, native title holders may continue to exercise their rights and interests in parallel with the lessee. This raises the spectre that native title may be suspended only, to be revived on expiry or termination of the inconsistent rights such as the lease and its use. This assumes, of course, that there has been continued Aboriginal traditional connection with the land. A paper written in January by the Commonwealth Attorney-General's Department notes: 'It is not easy to reconcile such a result with the general principle that native title is extinguished by the grant of inconsistent rights'.

Notwithstanding the need to determine each situation on a case-by-case basis, the position of pastoral leases in the Territory - that is, in regimes other than that in Queensland - is unlikely to be so different as to confer a right of exclusive possession in the eyes of the Federal Court. The existence of reservations conferring rights of access and usage on Aboriginal people in the Territory enhances this conclusion. This poses a difficult question for Territorians: what is the future of mining on pastoral land in the Territory? Since 1988, when statistics were first kept, 3046 exploration licences have been granted - 2951 on pastoral leases and 95 on Aboriginal land. I present those simple statistics to demonstrate that the overwhelming majority of exploration tenure has been granted over pastoral lease areas. Any impediment to the grant of tenure on pastoral lease land will impact severely on exploration in the Territory.

The mining industry spends about \$70m annually on exploration in the Northern

Territory. In addition, since 1978, 51 onshore petroleum exploration permits have been granted in the Territory. The Commonwealth Native Title Act and subsequent Northern Territory amendments to the Mining and Petroleum Acts validated all titles granted in the Northern Territory prior to 1 January 1994. Since the Native Title Act came into force on 1 January 1994, the Territory government has operated under the clear directive of the then Prime Minister, and the preamble to the Native Title Act, and legal advice from many quarters, that a pastoral lease extinguished native title. Mining and petroleum tenure was granted over pastoral leases. From 1 January 1994 to the date of the Wik decision, 23 December 1996, 1126 titles were granted of which 809 are still current. The current titles include 448 exploration licences, 263 mineral claims, 3 mineral leases, 75 extractive mineral permits or leases and 10

authorities. During that period, 2 petroleum exploration permits were granted. One implication of the Wik decision is that the validity of these grants is in question. In addition, 385 mining tenure applications are outstanding and more than 1100 renewals are due on pastoral leases. In addition, 10 petroleum exploration permits are outstanding. In the current circumstances, no action can be taken. Unless something is done to resolve the pastoral lease situation, it may be some considerable time before the backlog is cleared, if ever. As I demonstrated before, we do not know if native title exists over a pastoral lease in a particular locality until native title determination claims are resolved.

The current Native Title Act requires that miners negotiate with every native title claimant registered by the Native Title Tribunal, whether or not their claims are valid. In

Page 10546

proposed amendments to the Native Title Act, detailed by the Commonwealth last year, the federal government proposed some helpful streamlining changes, particularly for the management of mining tenure. These included: greater scrutiny of native title claims to prevent inappropriate or vexatious claims; only one claim per area; once-only negotiations for projects; no requirement for right to negotiate for exploration; and recognition of existing agreements. Obviously, we were still awaiting passage of those proposed amendments when the Wik decision intervened. There is a clear need for a legislative solution to the current dilemma. A solution is required that provides a speedy and robust solution to the grant of valid tenure, and equity to all concerned.

At this moment, there are projects in the Territory that have been placed on hold because of the uncertainty. Two of the 10 current applicants for petroleum permits have accepted the proposed offer of the permits, but they cannot now be granted. They are EP70, to Mataranka Oil NL, and EP76, to Sweetpea Corporation. Sweetpea is a major North American player attracted to the Territory by its

prospectivity and our positive approach to development. In fact, Sweetpea was attracted as a result of a mission by the previous Minister for Mines and Energy to the United States to sell the prospectivity of the Territory in respect of oil and gas. A number of imminent mining developments are delayed similarly. The Merlin diamond mine is proposed by a joint venture managed by Ashton Mining. This project requires tenure and access to resources near Borroloola. A Rustler's Roost mine expansion is proposed by the Canadian-based Williams Resources. This project is awaiting the grant of a mineral lease to expand production. Three other significant expansions on new developments are in the wind and may have imminent tenure and access problems.

Another of the major consequences of the Wik decision that is having an immediate effect on developments is the delay imposed on the grant or renewal of extractive mineral titles. These short-term titles are literally the source of the building blocks of society. Sand, gravel and rock are the lifeblood of the construction industry. For example, the supply of rock facing for the East Arm port development has been impeded. It is the small miners who are significantly penalised by the impact of the Native Title Act. They are the most vulnerable to the delay in grant of tenure and the cost of consultation. These people have avoided working on Aboriginal land because of the difficulties and the costs involved. They may be cut out of work in the rest of the Northern Territory because the same impediments may apply to pastoral leases. Some of the small miners, the industry entrepreneurs, are already working for wages on other projects and not developing their own projects.

All honourable members are aware of the intensive discussions under way in Canberra at present to try to resolve the legal and political stalemate. There is little to be gained by the Territory taking pre-emptive, unilateral action which may be unnecessary in the end. At this stage, the Territory government intends to: delay the grant of new exploration licences pending resolution of the status of pastoral leases; continue to renew tenure which was granted prior to 1 January 1994; await developments before providing further advice about the validity of title to holders of titles granted after 1 January 1994; and consider, on a case-by-case basis, procedures for the grant of urgently required developmental tenure. While it is not possible for the Territory government to initiate changes to the Native Title Act itself, there are certainly initiatives that we can take to ensure that the mining and petroleum industries do not lose the tenure they have acquired since the Native Title Act commenced. In these sittings, we will introduce an amendment to the Mining Act to provide a means to re-grant any tenure deemed

to be invalid as a consequence of the presence of native title. This is an action we

promised the industry some time ago. In the meantime, the Territory government will liaise closely with the Commonwealth government to ensure it is aware of the impact of the native title and Wik decisions on our industry stakeholders in the Territory.

In addition, the uncertainty caused by the Wik decision poses potential problems for the Power and Water Authority. It can certainly not be assumed that the Wik decision creates uncertainty only for pastoral leases. In fact, it may apply to all forms of crown leases. In every case, the entire history of land use for the relevant area will need to be examined in detail to determine whether native title has been extinguished. This means there is potential for future development of power and water infrastructure to be affected by native title. This is particularly the case with the construction of power transmission lines and water and gas pipelines on land which is now, or was in the past, a pastoral or other crown lease. Similarly, planning for expansion of Darwin's future water supply, requiring the construction of additional dams, could be affected by native title under the confusion that now surrounds the issue. I am concerned the Territory government, through the authority, could be placed in an undesirable negotiating position and held to ransom by native title interests to the detriment of other Territorians.

The current uncertainty is intolerable. The potential for delays, the uncertainty of process and the quantum of compensation which may be payable are all unknown. There is no precedent. There has already been an example of the authority, and therefore Territorians, being adversely affected by the Wik decision. The authority was in the process of negotiating a deal to supply electricity to a mining company. The deal made good commercial sense until native title intervened. Because the agreement would have required a transmission line to be built over a number of properties held under a range of crown leases, the authority could not guarantee completion by the date required by the mining company. The authority had to make an offer heavily conditional on being able to negotiate its way through the native title minefield in a tight time frame. The company regarded the risk as unacceptable and the deal was lost.

It is believed that most of the authority's existing assets are not at risk during their lifetime. However, if they fell into disuse, the non-extinguishing principle could apply and the land on which the asset was built could revert to its previous status. Assets built since 1 January 1994 may be at risk if the land is or was a pastoral lease if native title does exist and has not been extinguished. The act of constructing these assets may be invalid to the extent that they affect native title and compensation may be payable. The authority's main aims are to improve the level of services to Territorians and to contribute to the economic development of the Territory. The current uncertainty can only undermine those aims.

It has been said today in this House that, last year, members opposite were quite enthusiastic about proclaiming their support for the processes regarding native title. They made it extremely clear that they believed that pastoral leases extinguished native title. The words of the previous Leader of the Opposition were quoted. He made it very clear that he was totally satisfied that pastoral leases cancelled native title. In fact, he said that he had been given personal undertakings by the Prime Minister in that regard. The member for MacDonnell is another who has been quite specific in his support of this. I quote from the Parliamentary Record of 13 October 1994. He said:

Page 10548

For example, I note the concern about pastoral leasehold tenure. It is important that pastoral leasehold tenure be preserved because people whose families have been working pastoral leases in my electorate for generations, such as the Hayes family, the Moreton family and many others, deserve the security of pastoral leasehold tenure. In my view, that needs to be worked out.

I would like to hear if he still sticks with that view or whether he has done an about-turn in relation to the commitments he made to Territorians in his own electorate on this matter, and instead is now toeing the land councils' line to the detriment of Territorians. To quote again from the member for MacDonnell, on 15 May 1996, he said in reference to the Minister for Lands, Housing and Environment:

We heard him say that the shortage of serviced land in the towns of the Northern Territory is a direct result of native title claims. That is so breathtakingly dishonest it cannot pass without comment.

What has happened since that time shows that to be absolutely a fact. I wonder if the member for MacDonnell will withdraw his accusation of the minister being dishonest. It has been found that the minister spoke the truth. We cannot have this uncertainty in the Territory. We must have a firm decision in relation to these matters. We must have only one system of land tenure. I support the Chief Minister's statement.

Mr HATTON (Sport and Recreation): Mr Speaker, I rise to speak in support of the motion moved by the Chief Minister in relation to native title claims. In doing so, may I say that the Chief Minister's statement is probably one of the most comprehensive outlines of a very sad history of attempts to resolve a very complex problem in Australia. If members listened carefully to the words of the Minister for

Primary Industry and Fisheries, they will have heard him describe very clear and detailed examples of the problems in the rural and fishing sectors of the economy. The Attorney-General has outlined the tortuous path required to be followed through under the native title legislation. We heard from the Minister for Mines and Energy of the complex difficulties that exist and of the threat to the economic development of the Northern Territory, particularly in respect of the mining and power industries.

I want to speak more generally about some of the claims and allegations that have been made today. I outlined in Question Time this morning my position in so far as sports facilities are concerned and I will repeat those comments for the purposes of this debate. I believe the development of public facilities, such as sports infrastructure, are for the benefit of all people. The land that is set aside for the benefit of all people should be used for the benefit of all people. It is a long-held maxim that the government holds the land on behalf of the people generally for public purposes and for general use. The Marrara Sports Complex is an example of that. All Territorians, irrespective of their race, clan or tribal background, have the benefit of those facilities and services. Similarly, areas such as the Nightcliff foreshore are there for the benefit of all Territorians who choose to cycle, walk, exercise generally or enjoy the beach. The Casuarina Coastal Reserve is the most visited public area in the Northern Territory. People from all walks of life enjoy and take advantage of the facilities provided by the government for the benefit of all.

Page 10549

I do not believe those areas should be the subject of a claim by any individual or group to proprietary rights. I am not saying that people do not have a legal right to lay claims as a consequence of the Mabo decision or the Wik decision or the Native Title Act. However, I do say that it is improper that such claims should be made, and that they should be allowed to proceed. The Chief Minister is asking for legislative action to ensure that such areas cannot be claimed, thereby allowing people to get on with their lives, the community to develop and wealth to be generated to pay for the social services, health and education and other facilities for the benefit of all people. At the end of the day, all of those services come from wealth generation. They do not come out of thin air. Without wealth generation, there is no capacity to deliver those services to the people who need access to them.

Mr Ah Kit: Try talking to them.

Mr HATTON: The member for Arnhem says that we should try talking to them. I intend to deal particularly with that and to destroy the furphy that has been run by the opposition today and over the last month or so. I have been involved directly in

this process. When the Mabo decision was brought down, the Northern Territory government approached the Arrernte people in central Australia and sought to resolve by negotiation the issues of native title in respect of Alice Springs. It tried to avoid the nightmare that potentially could result from a confrontationalist, legalistic battle. Similarly, in the Darwin area, the Northern Territory government approached the various people who claimed to represent the Larrakia group in order to bring them together.

Let me outline a couple of things. In Alice Springs, a meeting was organised by the Arrernte Council and held at its office. It invited all the people who claimed to have some interest or involvement. The purpose of the meeting was to discuss who were the traditional owners of Alice Springs. I attended that meeting which was chaired by Mr Charles Perkins on behalf of the Arrernte Council. It nearly turned into an open fight with people disputing among themselves who were the right people to speak for Alice Springs. We did not want to pick sides. We asked the people to determine the people who spoke for Alice Springs or parts of Alice Springs to enable us to sit down with them and try to resolve the native title issues. That was an agreed position.

Interestingly, as they were moving towards a solution, out of the blue came an ambit native title claim over Alice Springs. It was filed on behalf of the Arrernte people by the Central Land Council. From that moment, all negotiations ceased. I have spoken to Tracker Tilmouth and asked why we could not get together and talk about it. Frankly, he was waiting for the Wik decision because he said it would strengthen his hand. He knows that the longer he can constrain Alice Springs, the better his negotiating position to screw a deal for more money or more benefits for the Alice Springs people. He has told me that himself. That is what they are about. The members from Alice Springs and those who visit Alice Springs well know that we have watched with some dismay over the last 2 or 3 years the rapidly increasing land prices and the inability to release new subdivisional development in Alice Springs as the noose is tightening around the negotiating process there.

Turning to Darwin, I was present with the previous Chief Minister, Marshall Perron, at a meeting on the ninth floor of NT House at which all the relevant groups were present. The meeting was not quite as potentially violent as the one in Alice Springs, but certainly the

Page 10550

arguments were alive and well about who were the Larrakia and who could speak on behalf of the Larrakia. We had been working for 2 or 3 years with the Northern Land Council - and we thought cooperatively - towards finding an agreed group of people with whom we could talk in an attempt to resolve this issue. Did we fall out of our trees when the native title claims were lodged in respect of Palmerston and

we had to refocus our subdivisional development in that town? We did not. We continued to try to talk. We wanted to work out a regional settlement, hopefully one that included Kenbi. Anyone who has been following that land claim will know there is a dispute over Kenbi now whereby the Wagait people say they own the ceremony, not the Larrakia. There is a fight between the Larrakia and Wagait people over Kenbi. The member for Arnhem is aware of that. This is the third time that the matter has gone before the Aboriginal Land Commissioner. We tried to sit down and talk in order to avoid ending up with confrontation or a fight. What happened? A claim was made for every square inch of Darwin over which the claimants believed they might be able to lodge such a claim.

Mr Bell: I thought you organised that just before the election.

Mr HATTON: That is how wrong you are.

Mr Speaker, I can sit on my balcony now, look across the road at the bicycle path on Casuarina Drive and ask myself why that land is under claim. The members opposite will say that they do not want to stop people using that area. The chairman of the Northern Land Council tells me that they do not want to stop sports development. Is he not aware of what the Native Title Act says, or is he trying to use the economics of the situation to screw a better dollar value from the Northern Territory government? If he does not want to stop development, why has he lodged the claim? If he does not want to stop people using the Nightcliff foreshore, why has he lodged a claim? If he does not want to exercise some proprietary rights over Casuarina Coastal Reserve, why has he lodged a claim?

I believe I have been fairly reasonable in trying to work through and accommodate the needs of Aboriginal and non-Aboriginal people in the Northern Territory. I have avoided becoming caught up in race debates over 20 years or more. However, I will tell the House how I feel. This claim says to me that, as far as the Northern Land Council is concerned, I am less of an Australian, I have fewer rights and I am a second-class citizen. That is how I feel, and it is threatening me, my wife and my kids. I have had a gutful of it. I think the Northern Land Council is dishonest and untrustworthy in its whole approach. The NLC has gone back on its word.

However, if anyone thinks this is just the Northern Land Council, I urge them to look again at the Chief Minister's statement. I want to raise a few points. A deal was under way, the so-called 'midnight deal' with the 'A' team. There was some dispute about pastoral leases and they said they would not make native title claims over the pastoral leases. They would accept that native title was gone, but the government was to put \$1200m into an indigenous land fund to enable them to buy properties and then create a form of native title on the properties they had purchased. The Prime Minister and everybody else confirmed that that would solve the problem. What happened then? Did the Aboriginal organisations stay true to

their word? No. What did they do? They brought on the Wik case, and the High Court ruled that some native title rights remained on pastoral leases. Forget the deal everybody made,

Page 10551

forget the \$1200m, forget those discussions with the previous Prime Minister, the Aboriginal organisations decided to go back on their word and lodge a claim because the previous Prime Minister did not tighten up the legislation to ensure that they could not. It has thrown the whole land tenure system in Australia into absolute chaos.

If they go back on their word, is it fair that the government should decide now that it will no longer provide the \$1200m indigenous land fund? That was a quid pro quo. If they break their side of the deal, the deal is off. But no, they want it both ways. They want the money and the box ...

Mr Ah Kit: Did they move the legislation through parliament?

Mr HATTON: Who?

Mr Ah Kit: The Aboriginal agencies.

Mr HATTON: They came close to it. They were all part of the midnight deal - the 'A' team. The member for Arnhem was part of the action behind the scenes action, as were Darryl Pearce and Tracker Tilmouth. They were all there, running around Parliament House, doing their deals. They were all boasting of how they tipped this deal, as part of the 'A' team. They broke their word on the deal, and they do not deserve to obtain the other side of the deal as far as I am concerned.

If the Larrakia people are saying, through the Northern Land Council, that they are trying to sort this out cooperatively, why did they lodge the claim rather than continue with the negotiations? They told us they did not want to claim these public purpose lands. They told us they did not want to stop people enjoying the land. They told us they did not want to stop development. Why did they turn around and whack in a claim that will frustrate development? Was it simply to screw up the wick a little in an attempt to obtain a better deal from the government? Dollars are what it is about. I feel we have been betrayed. We are not the ones who did not want to negotiate. We were negotiating. It was the Northern Land Council, as the representative of the Larrakia people, that reneged on the process. It has called it on. I believe it is incumbent on us now to find out whether the so-called claimants have a legitimate right to lay the claim. Can those people demonstrate that they are Larrakia and that they are ...

Mr Ah Kit interjecting.

Mr HATTON: That is what we need to do. How many years will it take to do that? Why did they not simply follow the process laid down in the first place? Why are they tying up Alice Springs? Why are they tying up Darwin? Why are they blocking all sorts of developments? Anyone who reads the Native Title Act will know that there are some proposals that, as a result of that claim, cannot be implemented.

Mr Ah Kit: Because the government does not want to talk.

Mr HATTON: There is no other reason. They did not have even to lodge a claim to be able to talk. Talks were proceeding. They stopped the talks by taking the matter to the courts.

Page 10552

Mr Ah Kit: Who?

Mr HATTON: The Northern Land Council reneged on the process, not us. It was the Northern Land Council that took the provocative, confrontationist approach, not us. We were trying to work this through, but the NLC went behind our backs. I met with the NLC a week beforehand. We thought matters were proceeding nicely, and the NLC did not even mention that it was lodging a claim. It just hit us from left field. It was as simple as that. Its mates opposite are now revving us up, asking why we do not talk. What do members opposite think we have been doing for 3 years? Why did the NLC lodge the claim with the tribunal and tie us up in all that bureaucracy and legalism? Maybe it wants to secure some funding for its lawyers, because that is all this will achieve.

We could have been sorting this out now. We would have been a mile down the road towards resolving it and putting in place a regional settlement without this nonsense occurring. The NLC is not true to its word, and has not been for 20 years. I am sick of the Northern Land Council.

Ms Martin: What about the Larrakia?

Mr HATTON: I would like to be able to talk to the Larrakia people, but I will not talk with this threat over my head.

Mrs PADGHAM-PURICH (Nelson): Mr Speaker, before I begin, I congratulate the Chief Minister on the statement he delivered today. I found it very difficult to read, and I will be reading it again. His remarks seemed to swing from one side of the clock to the other. On certain pages, he seemed to make statements that

agreed with the Larrakia native title claim and, on others, he was violently against it. However, I also congratulate the Chief Minister on his remarks to and about the chairman of the Northern Land Council. It is time somebody made remarks of that kind, and it is time Australians in the community heard what is really happening.

Mr Bell: The member for Nelson means real Australians, not the black ones.

Mrs PADGHAM-PURICH: When we hear the term 'racist', it is usually directed at Australians, not at Aborigines. I make that difference because I have decided I am sick and tired of being called a 'non-Aboriginal'. Why should the main descriptive adjective be 'Aboriginal'? I am Australian. They can call themselves 'Aboriginals' if they want to, but I am an Australian and my constituents are Australians.

What the Chief Minister said was descriptive of the attitude that prevails these days. It is unfortunate because it creates divisions in the community. It is a continuation of this thinking in society that people are victims and therefore should be given handouts and plenty of consideration. It does not apply only to Aborigines. In situations like the night the Chief Minister was describing, it describes other people in the community who are too lazy to work and fight circumstances to try to improve themselves.

Mr Ah Kit: There are 7000 working for the Community Development Employment Program in the Northern Territory alone.

Page 10553

Mrs PADGHAM-PURICH: Yes, I know what working for the CDEP means. It is better than nothing, but I know how much work is done.

To return to this Wik decision, the Mabo decision and the Larrakia native title claim, the claim is just a lawyer's delight. It has been cultivated, instigated and nurtured by lawyers for lawyers. The lawyers have done this to ensure that they will be living in the lap of luxury for years to come. This is a cynical way of looking at it, but they are the only ones who will make any money from it. Money is at the bottom of this claim and every other claim that is made.

I would like to make particular reference to rural Australia. I read a few rural newspapers, newsletters and magazines. Coming as it does on top of the Mabo decision, the recent Wik decision is the last nail in the coffin of rural Australia. I am not distinguishing between pastoralists, farmers and horticulturists: I simply mean rural Australia. There are great divisions in society between urban and rural Australia, and they are growing wider. Rural Australia is the underdog everywhere and it has been for many years - since Labor was elected in 1972. I thought the federal government would do something about rural Australia, but it has done little

or nothing to date. Like the rest of us, rural Australia is burdened by higher taxes.

There are fewer and fewer services provided to rural Australia. I refer to the condition of the roads, if any, rail services being discontinued, banks closing and hospitals closing. The hospitals and dental clinics usually close because trained specialists in the field will not work in the rural areas because life is too hard. However, some people have all their assets, however small, tied up in their rural property and they cannot leave. When the providers of these services leave, they have to put up with fewer and fewer services in their lives. There are higher costs of farm input. Fertiliser, machinery parts, seed, building materials for fencing, sheds and other buildings all cost more. Rural Australia has to deal with natural disasters. In different parts of Australia, there are floods somewhere, bushfires elsewhere and droughts in other parts. We read about them in the newspapers. We politicians receive very good salaries. However, for people, who are trying to scratch their living from the soil, without rain, life is very hard.

World commodity prices are lower and this is not because Australian farmers cannot manage their farming practices correctly. Australian farmers are among the best, if not the best, in the world. Our rural industry is less subsidised than the industry in any other country in the western world. I think about the only subsidy that still holds - I know it holds in the Northern Territory - is the fertiliser freight subsidy. Very few other subsidies are available. There is drought and disaster relief, but little else. Our Australian rural people are the most competent in the world, and they have the lowest costs per hectare of production or per kilo of wool or apples or whatever they are producing, and they are the most innovative. On top of this, we now have the Wik decision which has created great uncertainty, and the farmers and the people on the land do not know what to do.

Mr Bell: Oh, that is nonsense, Noel.

Mrs PADGHAM-PURICH: In Queensland ...

Mr Bell: That is just utter rubbish.

Page 10554

Mrs PADGHAM-PURICH: Oh, you shut up! You will have your turn to speak.

There are many forms of agricultural and pastoral leases in Queensland. I cannot name them all, but they have many more forms of agricultural leases than there are in the Northern Territory. Each lease has 9 different forms of tenure. Thus, the situation is very complicated and it is very difficult for people to work their way through it. The Northern Territory has pastoral leases, crown leases, perpetual

leases and a few other forms of land tenure. Our situation in relation to land tenure is relatively easy to understand compared to that in Queensland. However, there is now utter confusion and uncertainty, and it is frustratingly obvious that the rural industries in Australia will be going slowly and surely downhill because of this uncertainty.

In Queensland, it has been admitted that no major improvements can be undertaken on any lease properties because of the Wik decision. This has been conceded from both sides of the fence. In the Northern Territory, if a pastoralist lessee wishes to change the use of his pastoral lease, he cannot do so. That means his hands are tied. I am not talking about anyone building a motel on their lease property, but I am talking about more intensive agriculture. If the lessees want to engage in more intensive agriculture, along the lines of improved pastures and putting more bores down, there may be some uncertainty as to whether or not they have the ability to do that.

Previous speakers have spoken in general terms only about whether they agree or disagree with the Larrakia native title claim, but I know what ordinary men and women in the Darwin rural area think - and they do not think much of it at all. In fact, it took a long time for different people who spoke to me about it to understand what it really meant. They thought it related to something that the government was doing. They saw the map displayed in the window of my electorate office. They asked me what it was all about, and I told them.

I would like to touch on another subject that is aligned with this but not directly concerned with it. Other people have said this before me, but not many. I believe it is past the time when a genuine definition of 'an Aboriginal' was decided on - and it is not somebody who is slightly fairer than I am. In that circumstance, who do they give precedence to in terms of their genealogical make-up? If a person is fairer than I am, they must have had more people of white skin than black skin among their ancestors. If they decide they are Aboriginal solely on the basis of the benefits they can claim as a result of the black component in their make-up, they do so by completely disregarding and having no respect for the part of them that is white.

In addition to that, the federal government could give some consideration also to the judges. I believe some of them are past their use by date. I feel able to say that because some of them are younger than I am, but at least I am reasonably active mentally.

Mr BELL: A point of order, Mr Speaker! I am prepared to sit and listen to the member for Nelson trot out all sorts of rubbish, but I really do not think it is acceptable for a member of the Legislative Assembly to reflect during the deliberations of the Assembly on judges of the High Court. I am not sure what

standing order applies. I think it is standing order 62, but I am not sure what it states about reflecting on High Court judges or any other member of the judiciary. Before the member for Nelson continues, it might be appropriate if we consulted the relevant standing order to clarify what is and what is not acceptable.

Page 10555

Mr SPEAKER: There is a point of order. In fact, the member for Nelson should not reflect on a member of the judiciary even as she should not reflect on members of parliaments. The judiciary are included under the standing order. I ask the member to withdraw her reflection on members of the High Court.

Mrs PADGHAM-PURICH: Mr Speaker, I defer to your decision and I retract whatever you think was not nice in what I said about these dear old chaps. If I may not say that, I would like to say that, if they are not past their use by date, they must be passing through that time of their lives that causes them perhaps to make unusual decisions.

In supporting the claim today, Labor members said that negotiations should take place. I believe negotiations should occur only when there is some justice to the claim in the beginning. Negotiations take place only when there is a reason for negotiating, and the reason for negotiating is money. Negotiations take place only when they believe something may be obtained and, in the end, that will be money, money, money.

I would like the Chief Minister to take the bull by the horns - since I keep goats, 'the buck by the beard' might be a more appropriate metaphor - and do something. Instead of being reactive, let him be pro-active for a change. I know his hands are tied because he is the Chief Minister of a territory, not the Premier of a state but, even so, he has numerous clever advisers behind him and he should be able to come up with some form of action that is pro-active and not reactive.

In relation to the Larrakia claim, we have heard a great deal about land that has not been claimed and land that has been claimed. I would like to list briefly the land that is being claimed in my electorate and, as I see it, the results this claim would have if successful. In Girraween Road, 2 areas of 320 acres each have been claimed in section 4449. At the moment, and for many years previously, these 2 sections have been crown land used for sand mining. As I understand it, if the claim is successful, these leases for taking sand will be able to continue but no one can convince me that, when the leases come up for renewal, the payment of royalties will not be sought. You can bet your bottom dollar that they will be.

Claim has been made to land on both sides of Thorngate Road, which is near where I live, and between Thorngate Road and Wallaby Holtze Road and down to

Taylor Road. This is a strange claim because that land was freehold land. Along with my land, it was freehold in about 1870 or 1880 or thereabouts. Nonetheless, it is still under claim. That land is a prime area for the extractive mineral industry. If that claim is successful, the same situation will apply. When the present leases expire, if the mining companies wish to continue their operations there, they will be required to pay royalties.

It is no good members of the ALP saying that I am speaking through the back of my head because I know that I am right on this matter. Howard Springs Reserve is under claim. The hunting reserve next to it is also under claim. The proponents of this claim will say that they will not prevent people from going there. However, I have heard that said before. I did not come down with the last shower. They will hold the government to ransom. As I interjected this morning, this whole native title claim is blackmail, and I do not consider that as a pun but as a reality. The claimants will want the government to pay blackmail to use Howard Springs Reserve and the hunting reserve.

Page 10556

I have to say that the Territory Wildlife Park and Berry Springs Reserve have not been claimed yet but it is probable that they will be. However, while the outline of the claim on the map is a little unclear, I am almost certain that part of Rooney's mango orchard in Whitewood Road is under claim. The Micket Creek Shooting Complex is claimed. That was worth \$7m which is a considerable amount to claim blackmail over and they hope to obtain something on that. The land around that complex and around the police headquarters, which is in the same area, has also been claimed. That is the land that Dr Grahame Webb had earmarked for future development for Crocodylus Park. Will he or the government have to pay the blackmail on that? He has proved himself over and above what is necessary for any scientific venture. His crocodile operation at Crocodylus Park is beyond comparison with anything in the Top End or anywhere else in Australia. Why should people like him be held to ransom? Leanyer sewage ponds are claimed. I do not know where we will put our what-d'ye-call-it. I suppose we will have to pay to dispose of our refuse.

This land claim is not supposed to affect freehold land. Nonetheless, 6 houses and the land they are on in Stowe Road have been claimed. These houses were built originally for prison officers. The land was freehold in October 1986, and I am pretty certain that it was made freehold well before that. I believe they were owned by a Mr Fitzgerald before they were claimed by the Commonwealth in World War II. Marlow Lagoon has been claimed. That was part of the 32-square-mile acquisition area that was made freehold land in about 1870 or 1880. Freehold blocks along the Elizabeth River have been claimed. Do not tell me that freehold land has not been claimed. From a cursory examination of the map, I can tell that it

has been claimed in my electorate.

It is very easy for the Northern Land Council to say that it made a mistake, as it did over the first Finnis River land claim when it claimed all the miscellaneous leases between the Stuart Highway and Adelaide River. However, between lodging the claim and admitting to having made a mistake, it does not take into consideration the uncertainty and the unhappiness that is inflicted on people who have properties there and who do not have as much money as the Northern Land Council has to fight the claim in court.

Finally, it is regrettable that, in its support for this ambit claim and possible future claims, the ALP has been carried away by ideology with no regard for political reality. Labor will not win the next 2 elections. I am sorry to say that because I believe the Country Liberal Party needs some opposition. This will divide the community completely, without any help from the Country Liberal Party, but merely through people learning about it and thinking about it. It will divide urban people as well as rural people. The ALP will not win the next election. Its members may think they will, if they are carried away by ideology, but they have no good political analysts in their following. They will not win the next election. They cannot see that this has completely divided the community. The Australian community will not stand for it. The Chief Minister does not have to do a thing. He simply has to call the election and sit back. None of the people in his party will have to do anything because they are fighting this claim on behalf of all Australians, and I hope they will win.

Mr POOLE (Asian Relations, Trade and Industry): Mr Speaker, I rise to speak tonight in support of the Chief Minister's statement on native title. There is obviously no question that the Wik decision has created massive uncertainty for the economic wellbeing of the Northern Territory. There is no better illustration of that than a recent report prepared by

Page 10557

the economic analysts Access Economics. This report, released late last month, highlights the strength and the potential of the Northern Territory. In fact, it identifies that northern Australia looks set to lead the way in national economic performance over the next few years and into the next century. A director of Access Economics stated:

The Territory has a very solid outlook. It is benefiting from the resources boom in Australia at the moment. Obviously, the Territory is rich in natural resources. It also obviously has developing tourism assets that will make an increasing impact on the Territory economy.

The report says that solid job growth of nearly 3% per year this year should lower the Territory's unemployment rate further below the national average. I am sure honourable members heard more good news reported this morning on ABC radio - that the recruitment firm of Morgan and Banks is predicting for the next few months the strongest period of job growth in 18 months. The Access Economics report also highlights what it describes as 'developmental opportunities galore in the top end of the Northern Territory'. However, it then warns that the only possible problem in realising the Territory's potential is that 'the development opportunities may be jeopardised by the uncertainty created by the High Court's Wik decision on native title'.

We have heard already today from the Chief Minister that almost half of the Territory is within the ambit of the Aboriginal Land Rights (Northern Territory) Act and that the Wik decision means a further 48% to 49% of land is open to native title claim. What does that leave for future economic growth and the jobs and the wealth that it generates? Today, in Darwin, a cloud of uncertainty hangs over our future prosperity as a result of the first native title claim ever lodged over an Australian capital city. For the past 2 years, in my home town of Alice Springs, we have had to live with the fear that this type of uncertainty brings. As members may recall, in August 1994, a claim was lodged by Mr Bob Liddle on behalf of 2 of the local Aboriginal groups. This land claim includes all vacant crown land in the Alice Springs town area, including the Larapinta development which was to be a residential development. The claim was accepted even though it included large areas of pastoral land previously thought to be excluded from such claims by virtue of the fact that pastoral leases were believed to extinguish native title. The fear that we have had to live with has been compounded by the revelation that Aboriginal claimants want control over one of central Australia's most precious commodities - water. I cannot think of any westernised country that allows anybody, apart from government, to have control over a resource such as water. This is particularly pertinent to the Alice Springs region, an area that has endured nearly 4 years of drought. Water is the lifeblood on which our pastoral industry relies for survival.

However, the claim is not only over water resources. Claim has been made to all vacant land surrounding Alice Springs. Government agencies are reluctant, therefore, to release further crown land for development in the area. This has created a shortage of land available for development and that has increased land prices. Of course, increased land prices are not only detrimental to the residential population, but also to attracting businesses. That affects our population growth, leads to a shortage of skilled labour and inhibits Alice Spring's economic growth.

We have already heard today from the Chief Minister the potential for disagreements arising in particular circumstances over the rights of pastoral lessees. They may be difficult to resolve, particularly the issue of whether pastoralists have to pay every time they water their stock or take water from a dam or a bore that they have built on their property. What sort of certainty does the pastoralist, the businessman or the investor have when faced with the knowledge that native title claims can be made to crown land or pastoral leases? Very little. Why would a pastoralist or investor make the decision to work the great tracts of land available in northern Australia when the very real prospect exists of somebody knocking on the door and announcing that they will be their new business partners?

It is not surprising, therefore, to learn that the Wik decision has quickly resulted in the stagnation of interstate business investment in the Northern Territory. The proponents of several projects put to my department's national group, preliminary to well-advanced developments, have advised that they consider it prudent to wait before proceeding further until the implications of the Wik decision are made clear. Take the example of the \$10m Chambigny garnet project at Harts Range in central Australia. Already it is well advanced, having secured approval from the Northern Territory Land Corporation to lease the pastoral land. However, because of the uncertainty resulting from the Wik decision, interstate investment in the Northern Territory in projects of this kind has been put on hold. A number of other projects, which have the potential to bring interstate investment as well as significant employment and economic benefits to the Territory, including an \$8m biotechnology operation and horticultural developments to produce both bananas and asparagus, are also redefining their position on investing in the Territory as a result of the uncertainty introduced by the Wik decision.

As if Pauline Hanson and the subsequent media coverage in Asian centres had not done enough to dampen investor confidence in Australia, and specifically in the Northern Territory, the issues pertaining to native title will further erode it. Overseas investors may not understand the Native Title Act, but they are concerned about the security of ownership of their potential properties, whether they be residential, pastoral or commercial. The loss or the threat of loss of ready cash flow, capital investment and security of tenure over properties are impediments to the steady development of the Northern Territory in both the industrial and the resource development areas.

The opposition is telling Territorians that they must not fight for what they have invested their future in. They are telling Territorians and business investors to negotiate with people who have established no proven right in the land, the water, the parks or the beaches. This is an effort to divert attention from the very real issue that affects all Territorians and Australians generally - that native title is a threat to the economic prosperity of all Australians. Sitting down and negotiating

claims does not offer certainty. It impedes development, drains valuable time and money and erodes investor confidence. The Labor Party stands condemned for the pitiful way that it has defended the Northern Land Council's right to lay claim over Darwin when it is clearly attempting to win areas of land it is not entitled to. Labor's concern for the welfare of Territory business and for future job prospects is appallingly insincere.

As honourable members are all well aware, the Territory government, along with local and Australian business people, has endeavoured to promote the Territory's outstanding opportunities in an attempt to create jobs and wealth for Territorians. This is evidenced by an

Page 10559

outstanding rate of growth, comparable to that of the Asian tigers - growth in 1994-95 of 10%, in 1995-96 of 8%, and further growth for 1996-97. Exports were worth more than \$1200m in 1995-96 - at least 50% more per capita than the national average. We have one of the lowest rates of unemployment in the nation, as low as 4.4% in June and October and 5% in December last year.

Mr Stirling: It would be even better if you bought locally.

Mr POOLE: Known major projects for the Territory in 1997 and beyond total more than \$4200m.

Did I hear the best student-driver teacher say something?

Mr Stirling: If you are so sincerely worried about business, why don't you buy locally and support it?

Mr POOLE: All this positive momentum is now in danger of being not only stopped but dragged back to nothing. The competitive advantage on which the Territory prides itself is destined to be negotiated away if the basic assumption outlined in the assessment of the Wik decision by the Attorney-General's Department is ignored. The assumption is that enactment of the Native Title Act was based on comments in the Mabo judgment that the valid grant of a pastoral lease, or other leasehold interest, extinguishes native title. I agree with the Chief Minister in his assertion that, if native title is not legislated on in the very near future, the confusion and uncertainty in Australia will mean missed opportunities for the Territory and all of its industries. It will mean missed opportunities in regional development, farming, job-creation and continued economic growth - opportunities for the majority missed for the sake of the minority. Where does this leave the young job-seekers, the young adults who are desperately seeking stable, long-term employment? It

leaves them continuing to struggle to find jobs.

This is not an over-exaggeration. The flow through in the Northern Territory's economy is no accident. Natural advantages have been explored and acted on. Possible future Territory industries are showing enormous potential - for example, the commercial farming of citrus, Asian vegetables, exotic fruits such as rambutans, lychees and durians, cashew nuts and dates, in addition to the wider range of produce being grown currently in the Northern Territory. These industries are now placed in extreme doubt as a result of the possible consequences of the Wik decision.

The Chief Minister outlined the Northern Territory government's proposal to the Commonwealth to put in place some remedial action to allow the continuation of traditional access routes while ensuring, at the same time, orderly land administration and the protection of vital industry in the Territory. These proposals, including the identification of the types of land over which native title exists and the validation of invalid acts made between the date of commencement of the Native Title Act and the Wik decision, will avoid doubt and confusion by providing certainty. Unlike the Labor Party, which does not seem to care even about the creation of jobs or the production of wealth, the Country Liberal Party is about creating a better life for all Territorians. Territorians must be wondering whether the rights they thought they had to water, public beaches, parks and the land are disappearing, and where the

Page 10560

opportunity to negotiate a business deal has gone. Let me tell Territorians that the Country Liberal Party will continue to fight to ensure these basic rights are not lost to a greedy few, and that the 'sit down and negotiate' mentality that the Labor Party has is simply not accepted here in the Northern Territory.

Mr SETTER (Jingili): Mr Speaker, I rise to support the Chief Minister's statement on native title claims. I must say that I agreed with the comments by the member for Nelson when she drew attention to the fact that members opposite were not really involving themselves in this debate. She warned them that they will lose the next couple of elections on this issue alone, and she is probably right. I have been absolutely stunned that those members opposite who are directly affected, such as the member for Fannie Bay who has East Point in her electorate and the member for Wanguri who has the Casuarina Coastal Reserve in his electorate, have not said boo. What will they say to their constituents when they are told, if this claim happens to succeed, and I hope it does not, that it will cost them \$50 or more to visit East Point ...

Mr Stirling: A bit like the problem you have at Port Keats.

Mr SETTER: ... or \$50 or more to enter Casuarina Coastal Reserve. As the member for Nhulunbuy well knows, his constituents in the town of Nhulunbuy have to pay if they want to access any of the beaches adjacent to the town or to fish in any of the local creeks. They may be able to get away with it in Nhulunbuy, but I can assure them that, if it is tried in Darwin, there will be such a reaction that the Labor Party will disappear off the face of the earth, in this town at least.

In relation to land tenure in Australia, if one goes right back to the beginning of European settlement, the doctrine of terra nullius applied. It applied in all land matters with regard to native title, and it was applied by the courts until it was overturned by the Mabo decision about 5 years ago. The Mabo decision was brought down in relation to a claim by Mr Eddie Mabo concerning his native land on Murray Island in the Torres Strait. Mr Mabo won that after a decade or more spent going from one court to another but, from that decision, flowed the Native Title Act. The Mabo case was a one-off. It did not have to flow on. It applied to a Torres Strait Islander whose cultural situation was quite different from that of many of the Aboriginal people on the mainland of Australia, particularly if they lived in a place like Redfern. Nevertheless, the federal Labor government of the day saw it as an opportunity to introduce native title legislation for Torres Strait Islanders and Aboriginal people throughout this country. Regardless of the circumstances in which they lived, where they came from in this country or anything else, it was a simple, blanket decision. Aboriginal people, who believed they could lodge a native title claim, could do so. The Native Title Act went far beyond the recommendations and decisions of the Mabo case.

Post-Mabo, in the lead-up to the Native Title Act, officers of this government, public servants who had skills in this area, went to Canberra and discussed and negotiated with federal bureaucrats. I am sure that other states sent their representatives as well. Many months were spent working it through and developing a draft act that would have been quite reasonable and that everybody could have lived with. However, the Prime Minister of the day, Paul Keating, under pressure from various Aboriginal groups around this country, undertook to sit down with those representatives. Over a period of 3 weeks, we went from a situation

Page 10561

that all of the states and the Commonwealth bureaucrats thought was a fair deal to what eventually ended up being the Native Title Act. It was a quantum leap from a negotiated situation to where we eventually ended up. Despite that, we all believed - and this included the Aboriginal people - that there was no provision for claiming pastoral properties. Everybody believed the act would extinguish native title on pastoral properties. As we have found out since, that was not the case because

along came the Wik decision. The Wik decision, albeit by a 4:3 majority, was that native title and pastoral leases can coexist, but that each case has to be judged on its own merits. What a nightmare that will be if it continues!

Since early European settlement, clearly defined and stable land title has been the basis on which the prosperity of this country has been built. Clear land title has been the linchpin of good governance and sound, stable economic development. As a result, Australia has developed from a small settlement of convicts in 1788 to be the very prosperous and dynamic country that it is today. I just hope that we can negotiate or legislate or do whatever we have to do to solve this problem. If we cannot, Australia will stagnate and become the laughing-stock of every other country in this region. It will go nowhere.

The Chief Minister summed it up very well in his statement when he described secure land administration as the 'the bedrock upon which commerce and industry are based, and an area of the law where certainty and predicability are properly accorded the highest importance'. He went on to quote Chief Justice Brennan, in his dissenting judgment on Wik:

It is too late now to develop a new theory of land law that would throw the whole structure of land titles based on crown grants into confusion. Moreover, a new theory, which undermines those doctrines, would be productive of uncertainty having regard to the nature of native title.

He was saying that, after 190 or so years of secure land title in this country, we are now going to turn the whole thing on its head, go back to square one and try to negotiate it all through again. As the Chief Minister said, the Chief Justice issued 2 key warnings related to confusion and uncertainty. We see them reflected everywhere around this country today.

Because of its incompetence, the federal Labor government left this country in an absolute mess in terms of land tenure. Even Paul Keating said - and I am sure opposition members will be very keen to hear this because he is one of their idols: 'We must maintain a system of land management in Australia which provides clear and predictable rules, security and certainty for people who hold land, and a capacity for dealings in land to proceed effectively'. He said that in a press statement on 15 November 1993. Of course, he was referring to the Native Title Bill as it was being processed through parliament. They were admirable sentiments on the part of Mr Keating, but the fact is that his legislation did not reflect them even though he thought it did. Where he fell down was either in misunderstanding his own legislation or else in taking the advice of bureaucrats who told him that the legislation covered this issue. The biggest snow job this country has ever seen was done on him, and not only on him but

on the rest of us as well.

I believe Australia's sound future is at stake unless this issue can be sorted out quickly. I also believe that the federal government has no option but to legislate, and to legislate quickly, to solve this problem. I know the Prime Minister has been talking with state Premiers and

Page 10562

business leaders, and he is currently in the middle of discussions with Aboriginal representatives. I believe he is following the right path in going through this period of negotiation, letting everybody put their point of view. However, at the end of the day, he will have to go away and make a decision. I hope that commonsense will prevail and that he will make the decision to legislate to provide what Mr Keating said the act would provide - security and certainty for people who hold land. It behoves the Prime Minister to do just that. I believe that, if he does not do it, this issue has the capacity to divide this country as it has never been divided before. The member for Nelson alluded to that.

I walk around the streets and I talk to people. Regardless of political background or beliefs, the average person is extremely upset about this matter, and particularly about the ambit native title claims that have been made around Darwin and Alice Springs. This comes on top, of course, of a couple of decades of the Northern Territory being subject to the Aboriginal Land Rights (Northern Territory) Act. We have seen title to something like 49% of the Territory passed already to Aboriginal people. This is the straw that will break the camel's back.

Unfortunately, I believe some Aboriginal leaders are doing their cause an enormous amount of damage. People like Mr Yunupingu, Mick Dodson and a range of others make emotive, threatening and racist statements about non-Aboriginal people in this country and their intentions. They make accusations that are wildly inaccurate. When the average person, sitting in the northern suburbs watching the television, hears and sees this, or when they pick up their paper in the morning and read it, they are not impressed. It does not help the cause of Aboriginal people at all. What we need in this country is goodwill on all sides. If the Aboriginal leaders come to this discussion with goodwill and governments and others approach it with goodwill, we will solve the problem. However, if people continue to make emotive statements that do not help the cause, we will continue to go around in circles.

I believe that most native title claims, particularly those around Darwin, are nothing more than land grabs. They are ambit claims. We have heard that, even though the act prohibits claims on freehold title, people have lodged them over land that has freehold title. There are numerous blocks in the rural area, many in

the member for Nelson's electorate, where freehold land has been claimed. Land is power. There is a very old theory that, if you control the land, you control everything that happens on that land.

Of course, we have heard Mr Yunupingu, Mr Pearson and a whole range of other Aboriginal leaders say that they have made the claims, but they are happy to sit down and negotiate. Of course they are because they do not want to go to the tribunal where they would have to prove their ownership of that land under the Native Title Act. We know, and they know, that many of those claims are frivolous. They will not be able to prove those claims because the act sets out clearly that they have to prove that they are descended from the original traditional owners. In many instances, that cannot be proven. We have seen the case of the Kenbi claim over Cox Peninsula. On a couple of occasions, the claimants have been unable to prove their lineage from the original traditional owners. That is why that claim has remained unsettled for so long. However, I suspect that some of the same people are lodging native title claims to land around Darwin. I believe that most of them will not be able to prove that link in lineage. That is why they want to sit down and negotiate. They want to do a deal before it goes to the tribunal. This is not only about land, but also about compensation. We

Page 10563

have seen a number of instances where they want to negotiate with the leaseholders or the owners and do a deal. They want to walk out the door with a bucketful of money without having been required to prove that they are legitimate claimants under the act. I agree with a previous speaker who said that all of these claims should be proven, as indeed many of the land claims were under the Aboriginal Land Rights (Northern Territory) Act.

To confirm the point I am making, some 6 months or more ago, a particular case was covered by a national current affairs program, either 60 Minutes or 4 Corners. It was about a mine in the far north of Queensland, north-west of Mt Isa, where an ore deposit had been discovered. I think it was Charles Perkins who said he was negotiating on behalf of the local people. It was alleged by the company - and I stress 'alleged' - that Mr Perkins had said in his discussions with it that, if the company was prepared to compensate the local people to the extent of some \$30m, they would not lodge a native title claim over the area of land proposed for this mine. The company went public on the matter and, of course, Mr Perkins denied that he had ever said that. I do not know whether or not he did.

Let us look at the proposed Century zinc mine in that same north-west Queensland area. Negotiations broke down the other day after 2« years. That is where negotiation takes people. The Chief Minister quoted Mr Hal Wootten QC who is, I

understand, deputy president of the Native Title Tribunal. That is the same Hal Wootten, or Justice Wootten as he was in those days, who represented Mr Tickner in reviewing the negotiations on the proposed flood mitigation dam in Alice Springs. As a result of Mr Wootten's recommendations, that dam was never built, and 2 people died in the Alice floods last week. That is what I think of Mr Wootten.

Mr Deputy Speaker, I support the Chief Minister's statement and the motion.

Mrs BRAHAM (Braitling): Mr Deputy Speaker, I rise to speak in support of the Chief Minister's motion and statement. Although a number of members have mentioned the Alice Springs claim already, I wish to put on public record some of the concerns that I and constituents in Alice Springs have about it. I note that the Larrakia native title claim over Darwin has sparked an enormous response from the people of Darwin, but it should be remembered that the Alice Springs population has lived with a native title claim over their town since August 1994. There is no doubt that the claim put a damper on the development and expansion of our suburbs. It has caused prices for available land to increase ridiculously, which has meant that young families have been virtually excluded from the marketplace. There is a great need to free up more land and expand some of the suburbs in Alice Springs. At the moment, developers are simply not game to proceed with that development because they do not know the ramifications of what will follow from the final decision.

The latest claim on the Alice Springs water supplies has caused a far greater reaction than anyone could have imagined, let alone expected. In the original claim, it was not spelt out as clearly as it is in the further paper. There is no doubt of the claimants' intention, as can be seen from the application which states:

To dispel any doubt, the claimed areas include all water which, from time to time, may be found within
or beneath the claimed areas, whether such waters are at any time stationary or flowing, or located
in natural or manmade water courses, dams

Page 10564

etc Such claims extend to the banks and beds underlying or supporting such waters and all natural
resources found therein.

The water supply in Alice Springs is many metres below the ground and cannot be accessed other than by the application of modern technology. This claim has been considered very carefully. It is aimed to stretch the boundaries of the Native Title

Act to the limit. It is a blatant example of opportunism. There is no doubt that these people have set out to take every advantage and every opportunity that they can. If this claim is successful, it will place the claimants in a very powerful position over the people of Alice Springs.

The potential for this to happen was foreshadowed by Aboriginal Land Commissioner, Mr Justice Maurice, as long ago as 1987. As part of his findings on the successful Ti Tree Station claim under the Aboriginal Land Rights (Northern Territory) Act, he stated that the Northern Territory government, which has all the responsibilities of a state in so far as meeting the diverse needs of the entire community is concerned yet lacks the power of compulsory acquisition that the states enjoy, is at the mercy of those with whom it must negotiate. He went on to say that, while the claimants could be expected to behave reasonably and responsibly in such negotiations, there was no reason to believe that they were any more responsible or any more reasonable than the rest of the community would be if it had such an advantage. How true his words have proven to be.

Why have the claimants elaborated on their original claim to specify the water supply of Alice Springs? Would that be considered a reasonable, responsible approach? In talking about the Ti Tree claim, Justice Maurice said also there was concern that the power to control water resources in the area could be used for purposes other than simply to ensure that no undue disturbance was caused to the Aboriginal community on Ti Tree. If we take his comments in the context of this native title claim, they certainly are ringing true. The claim on the Alice Springs water supply has incensed many people in Alice Springs. It does suggest a threat. Why else has it been made? Why should 14 claimants seek to claim this essential resource that should be available to everyone?

I noted that the Central Land Council issued a media release in response to an article in the Centralian Advocate. The director of the CLC said: 'The report in the Centralian Advocate, suggesting that the town's water supply is threatened by the native title claim, was false, misleading and could create unnecessary fear'. I hate to disappoint him, but it has done exactly that. It was not false, it was certainly not misleading and it is creating unnecessary fear. Let me quote from the applicants' case which states quite simply: 'In this case, the law allows the applicants to proceed and they seek to proceed as follows: to claim a communal native title vested in the applicants in accordance with their acknowledged laws and observed customs as against the whole world'. They are saying they believe they should be the only ones who have these rights. They also state in their submission that 'native title conferred on some or all of the native title holders, as the case may be, confers the rights of possession, occupation, usage and enjoyment to all the claimed areas to the exclusion of all others'. Those persons indicated as claimants refer to 'the exclusion of all others'. That is a very clear statement.

The director of the Central Land Council suggests to the people of Alice Springs that the article was misleading them and could create unnecessary fear. I believe he is the one who is

Page 10565

misleading the general public because the applicants' intention is stated very clearly in that paper. He does admit in his statement that the claim encompasses the bore field, but he goes on to say that it poses no threat to the ongoing water supply to Alice Springs. May I ask him why on earth they would make that claim if there were no threat to the ongoing water supply to Alice Springs. I simply do not understand why they are making this claim and creating this instability in our town. I do not know how they can make a claim over a resource that is inaccessible except with the use of modern technology. No one can tell me that the Aboriginal people of many years ago knew that that water supply even existed. It is not visible from the surface of the land. They may be saying they should have access to land, but how can they claim access to the water supply which I believe they did not even know existed? Certainly, they would not have had the technology to access it.

As I said earlier, this claim is opportunist. The director of the Central Land Council knows, as stated in his media release, that the Northern Territory government has the power, under the Water Act, to use the water and to develop infrastructure for its use. He acknowledges that the act imposes criminal sanctions of up to 12 months jail for anyone who interferes with the government exercising its rights over water for the benefit of the people of Alice Springs, both Aboriginal and non-Aboriginal. This application is not about coexistence, but about control of a town's water supply. It is about creating uncertainty and confusion, and it is about stopping development.

Not content with the claim already made, the CLC indicates that further claims will be made to other areas in and around the town and a compensation claim will be lodged for land developed since 1975. About half of our town falls into that category. I wonder how those Aboriginal people who are not among the claimants feel about this claim. They will be affected as taxpayers, even as the rest of us will be. They will be paying for the compensation together with everyone else. As residents of the town, they will be paying ridiculously high prices for houses and home blocks resulting from the restriction on development imposed on this town. Some Aboriginal people have called into my office to express their alarm and concern about what they see as the bias of a small group of Aboriginal people who are laying claim to Alice Springs. They feel that it is creating an aura of distrust among the residents in the town.

I believe it is incumbent on the federal government to introduce legislation to clear

up this matter and to throw out these claims over towns and lands set aside for public purposes such as water supply. Territorians are becoming tired of some of the unrealistic claims that are being made. We have lived for 20 years with the Aboriginal Land Rights Act, and already we have seen 40% of our land given to Aboriginal people under that act. We need to move on and develop the Territory, free from the threat of land claims and native title claims. If Aboriginal people really want reconciliation, they will acknowledge that claims such as that lodged over the Alice Springs town water supply will not assist in that process. It can only destroy relationships and exacerbate the instability and mistrust that is currently occurring. I support the Chief Minister's motion, and I agree that we need to make the federal government realise that this is a most important matter that needs to be resolved quickly.

Mr BALDWIN (Victoria River): Mr Deputy Speaker, I rise to support the Chief Minister's motion. The issue of native title is of considerable concern to my constituents for a range of reasons. Firstly, my electorate is primarily a pastoral and agricultural area. It is already the hub of the Territory's growing cattle breeding and export industry and includes

Page 10566

some of the areas that have been mentioned today by the Minister for Primary Industry and Fisheries as those that are best suited to more intensive agricultural development. Under normal circumstances, that expansion and development would be expected to continue unimpeded with considerable benefits accruing from it to the Territory economy. Secondly, as members will be aware, my electorate contains a high population of Aboriginal constituents who have generally maintained strong cultural and ceremonial links with their ancestral land. In most cases, these people have succeeded in securing their land under the provisions of the Aboriginal Land Rights (Northern Territory) Act over the last 20 years or so.

Mr Ah Kit: It is good to hear someone speak well about it.

Mr BALDWIN: I have no problem with it. We have never had any problem with it.

For these people, the issues associated with native title have had little impact on their lives so far although it must be expected, of course, that they are interested in and will certainly participate in the public debate. There will be other groups who will seek to exercise what they believe to be their native title rights over Territory land. Under these circumstances, I am concerned that Aboriginal people should understand the primary concern of the Territory government in this debate. This is not an argument about racism. It is not an argument about the rights of Aboriginal people to hold land. It is not an argument about the rights of traditional Aboriginal people to have access to pastoral land for traditional purposes. None of those

points is at issue. What this debate is about can be summarised, and has been today, in one word - certainty. Certainty is needed, not only for pastoralists, farmers and miners, but also for Aboriginal people themselves. It needs to be pointed out that, in many cases, Aboriginal people are as much the victims in the native title debate in this country as any other Australians. That is so not only because the uncertainty over native title leads to increased division and dissent within our society but because, even to this moment, no one can state confidently what native title consists of.

Given the way the media has reported this debate, in very general terms, Aboriginal people may believe that they have been granted legally enforceable rights, but that may not turn out to be the case in the long term. Likewise, there is no way of saying just how far native title extends from physical and ceremonial contact with land to spiritual beliefs about it, and how that attachment might be reflected in terms of future development of the land, or compensation for that matter. These are all reasons why native title needs to be defined in the interests of Aboriginal people. I believe the rural people have been left behind by bureaucracies such as the Northern Land Council which are supposed to represent their interests. I do not believe they are representing their interests and I am sure that will be borne out in the future.

The automatic response from groups such as the NLC appears to be to lodge a claim for native title wherever possible. However, this may not be in the best interests of local people who will be left to cope with the consequences of such claims. Where these claims turn out to be tenuous, or are approved but with no significant compensation at the end, I believe the local Aboriginal population will be left to bear the brunt of any resentment generated by divisions caused by the claims process. One has to ask whether, in the long term, they will believe that it was all worth while. Based on the experience of 20 years of land rights, I believe there is a real concern among Aboriginal people that the NLC is not necessarily to be trusted, particularly when it takes on the role of a benevolent dictator.

Page 10567

Mr Ah Kit: Do they trust you?

Mr BALDWIN: I am not asking them to trust me. I do not do that.

In the bush, there is a real feeling that white bureaucrats and town-based Aboriginal people have taken control of the NLC, and that the needs of rural people are not always best served by the NLC's political agenda. I think a good example of the cause ...

Mr Ah Kit: You do not have any white, bureaucrat advisers, do you?

Mr BALDWIN: I beg your pardon?

Mr Ah Kit: You do not have white bureaucrat advisers, do you?

Mr BALDWIN: I do, both white and black.

Mr Stone: You do, don't you?

Mr Ah Kit: Yes, and there is not a problem with them.

Mr BALDWIN: A good example of the cause for concern lies in the uncertainty that has now been created for Territory pastoralists. Right of access for Aboriginal people for traditional activities is in place in the Northern Territory. That is not in doubt and has never been part of this debate, yet pastoralists have suddenly had fundamental decisions about how they manage their properties placed in doubt because of uncertainty about native title. It is not a situation that they have brought on themselves through bad management or any wrongful treatment of Aboriginal people. The detriment to the pastoral industry from this situation is clear and has been well documented by a number of speakers today in this debate.

It needs to be understood also that the vast majority of Aboriginal people in my electorate would not want to see this uncertainty either. Most of my Aboriginal constituents whom I have spoken to about this issue over quite a long period have strong links to the pastoral industry. I am the first to acknowledge that, historically, those links have not always been beneficial to Aboriginal people. Indeed, in one celebrated case, I guess they prompted the modern land rights movement. Nonetheless, I do not believe Aboriginal people in my electorate would seek to create dissension and economic loss. Unfortunately, as it now stands, the native title issue is a recipe for exactly that outcome.

It is critical that certainty be reintroduced into the native title debate, and that certainty is necessary for all Territorians, including pastoralists, farmers, miners and Aboriginal people themselves. Aboriginal people need to know where they stand in this debate, what their rights are and how they may be exercised. I think those Aboriginal people who have maintained their traditional links with their country stand to become public scapegoats while lawyers and bloated, town-based bureaucracies, such as the Northern Land Council, profit from the dissension and the division. In the interests of all Territorians, I believe that this situation must not be allowed to continue. I support the motion.

Page 10568

Dr LIM (Greatorrex): Mr Deputy Speaker, I rise to support the Chief Minister's

motion, seeking legislative changes to clarify what is now a very muddy situation where groups are claiming native title over just about anything they can get a piece of legal paper to cover. I have listened closely to all previous speakers on this matter today. In particular, I have tried to listen closely to the members opposite to understand what they have to contribute. The opposition has had 2 speakers in this debate and, unfortunately, they had little to say beyond attempting to rewrite history. While all members on this side have had something to say on this matter, less than half of the members opposite have been able to bring themselves to contribute. They have sat there in splendiferous silence. It was music to my ears not to hear the incessant interjections that they normally dribble out. The frequently loquacious member for Fannie Bay has had nothing to say. The member for Arnheim has giggled continually throughout the debate as if what has been said has been a joke for him. Even the very aggressive member for Wanguri has been tamed for the day. As for the member for MacDonnell, I will come to him later. The Chief Minister asked members opposite to stand shoulder to shoulder with members on this side and all other Territorians to defend the Territory, but they could not. One wonders if they really care for the Territory. Are they so entrenched in their ideology that they would betray all Territorians?

Members opposite say continually that we should sit down and negotiate with Aboriginal groups to reach acceptable agreements. They should tell that to the Premier of New South Wales. He did exactly that. He settled Crescent Head for a price that was 1.5 times greater than its commercial value. What happened then? The moment the Wik decision came down, some 40% of New South Wales went under claim. Sit down and talk? That is a laugh. Sit down and talk, and negotiate on a block-by-block basis? I suppose that, for a race of people to whom time is not a major issue, that would be appropriate. However, time is also leaving them behind. As the late Fred Hollows was wont to say: 'Do not lead Aborigines down an evolutionary cud de sac'. Unfortunately, Aboriginal activists seem bent on heading up blind alleys.

I want to dwell specifically on issues pertaining to central Australia, in particular on the matter of the native title claim to the Alice Springs water supply and reserves. I believe I do not exaggerate when I say that I have endeavoured to be reconciliatory with Aboriginals in central Australia. I believe it is recognised widely in central Australia that I have a genuine concern, as have all members on this side, for the desperate plight of many Aboriginals living under very poor conditions. As a person who feels strongly about the reconciliatory process that should occur between Aboriginals and mainstream Australia, I was very angry when I read that a native title claim had been placed on the water and reserves of water in Alice Springs. I do not know if people can understand how indignant I was when I read the newspaper article reporting that. However, if I felt angry, imagine the level of anger that has been felt by those who are not as positively

inclined as I am. This is a copy of an article from the Centralian Advocate of Friday 14 February 1997. The headline is 'New title claim: on Alice water!' Mr Deputy Speaker, I seek leave to table this copy for the record.

Leave granted.

Dr LIM: The opening paragraph reads:

Page 10569

Alice Springs' water supply and reserves are included in a native title claim. The claim, which covers all water above and below the ground and significant parts of Alice Springs and surrounding regions is soon to [go] before the Federal Court. If successful, it would almost certainly spark additional claims over areas under pastoral lease from which future water supplies have been planned.

The native title claim was filed by the Central Land Council on behalf of the Mbantuarinya/Arrernte group. The article continues:

[The claimants say] ... the claimed areas include all water which, from time to time, may be found within or beneath the claimed areas, whether such waters are, at any time, stationary or flowing, or located in natural or man-made water courses, dams etc. Such claims extend to the banks or beds underlying or supporting such waters and all natural resources found therein.

I could not blame anyone who expressed outrage over this spurious claim. This morning, I asked the Minister for Lands, Planning and Environment about the apparently ambit nature of the claim by the Larrakia. The question could be generic and could apply to central Australia as well. This claim on the water in Alice Springs is nothing but inflammatory. I feel honestly sorry for the man or woman in the street, even if they are Aboriginal. They are not that way inclined. They do not want to be in conflict with the rest of us, but they have no control. The actions of those on the lunatic fringe of Aboriginal activism have thrown Aboriginals into an adversarial position with us, possibly against their will.

I note that the member for MacDonnell is singularly silent on this issue. Is he scared to voice his objection to the native title claim? Is he scared to join me in my objection to the claim? The member for MacDonnell knows full well where the water supply for Alice Springs comes from. At present, the main bore supplying

water to Alice Springs is in his electorate of MacDonnell. I ask again whether he intends to support the claim. What will he say to all of his pastoral constituents? I challenge him to answer my questions this afternoon.

The article in the Centralian Advocate reported that, during his determination of the Ti Tree Station claim in 1987, Justice Maurice stated:

While counsel for the claimants had said Aboriginal people could be expected to behave reasonably and responsibly in such negotiations, there was no reason to believe they were any more reasonable or responsible than the rest of the community with such an advantage.

We have had a great deal of rain in Alice Springs over the last month. More than the annual average rainfall has fallen over the last 4 weeks. The Todd River has flowed strongly off and on during this period. Its waters have fed the town basin and the surrounding areas. This lifeblood of the central Australian region has come after a protracted drought. The pastoralists are rejoicing with rekindled hope that they will be able to continue for at least the next little while. Is the CLC saying to them that they cannot use that water - water that has fallen freely from the skies? Is the CLC saying now that it owns the rain as well?

Page 10570

The Minister for Asian Relations, Trade and Industry also mentioned the land claim that is over Alice Springs. It is slowly but surely strangling the township. We have heard of exploding land prices in Alice Springs. The average housing block is well over \$60 000. One block in the golf course area was sold recently for over \$100 000. How does a young family, a first home-buyer, or even a small businessman, buy a small home for the family or an employee? How can Alice Springs grow? If Aboriginal people are honest in their desire to have some form of reconciliation with the rest of us in Australia, they must stop these provocative, ridiculous and senseless claims. These claims do nothing but provoke anger, leading to the breakdown of the many but tenuous links that have been forged between Aboriginals and those who are called 'non-Aboriginals' - a term which I abhor. Aboriginal activists, who continue to provoke, can only be held in contempt. From my perspective, this claim cannot be doing any good for the people whom the CLC represents. The CLC would be the first to scream that its people were being victimised. All I can say is that the CLC has brought this reaction on its own people. The Chief Minister has moved a motion that will help us be rid of these uncertainties. I strongly support the motion.

Mr STONE (Chief Minister): Mr Speaker, when I rose to deliver my ministerial statement and move the motion, I said that this was one of the most important

issues facing the Territory and Territorians today. Where are the faceless men and women of the ALP? Where was their contribution to this debate? We had a 10- or 15-minute contribution from the Leader of the Opposition and then a contribution from the member for Arnhem. If members opposite believe in the position put by the Leader of the Opposition, why didn't they speak in support of her comments? If they believe that pastoral leases do not extinguish native title, why did they lack the courage of their convictions to stand up and say so? They went away to hide, and they were not prepared to contribute to a debate in which Territorians are vitally interested. If they believe for one moment that they will escape this debate by hiding like scared rabbits in the opposition lobby, they are sadly mistaken.

The situation is best illustrated by the fact that all MLAs were provided with copies of the relevant map and, as the Deputy Chief Minister pointed out, members in the northern suburbs displayed that map for the public to see. It was not highlighted in any particular way, but was displayed as a means of sharing information. However, in the electorate office of the member for Fannie Bay, it is nowhere to be seen. It is hidden away. These are the very same people who come into this Chamber and cry for freedom of information, but only when it suits them. As I said, if they had the courage of their convictions, and really did take the view that pastoral leases did not extinguish native title, why didn't they have the guts to stand up and say so? They are running scared on this issue, and it is very much to their discredit that they were not prepared to take part in this debate.

I will address some of the things that were said and some of the claims that were made. The Leader of the Opposition made great play of the fact that, at one point, I advocated regional directors. I did that because the Prime Minister of the day said that he would look favourably at funding such agreements, and we were operating in a pre-Wik environment. However, when it came to the crunch, the former Prime Minister, Paul Keating, withdrew the offer. If a government wanted to enter into a regional agreement, it would have to pay. As a consequence, there was obviously no incentive for any Australians to sit down and work these issues through. I remind members of the statement that was made at the eco-politics conference that was held in Darwin late last year. A very prominent Aboriginal spokesperson

Page 10571

said words to the effect that uncertainty was good because it maximised one's negotiating position. In fact, if one looks at what was said at the Wik conference in Cairns, one sees this constant reference to maintaining uncertainty and ratcheting up the stakes because the resource sector finds uncertainty anathema.

Mrs Hickey interjecting.

Mr STONE: That is the position that people like the Leader of the Opposition support. There has been a defining point in this debate today, and it was the abandonment of the undertakings given by the former Leader of the Opposition, Brian Ede. He stood in this Chamber and said that pastoral leases extinguish native title. In fact, he said that he became angry at forever having the wood put on him as to what the real position was because he had had an assurance about that from the Prime Minister and there was no doubt in his mind.

Members interjecting.

Mr STONE: He has now departed, and we have the current Leader of the Opposition. Finally, we are on different paths for Territorians to see. The CLP stands for the original agreement - that is, that pastoral leases extinguish native title. It is quite clear from the contribution of the Leader of the Opposition that she does not accept that proposition. She does not accept that pastoral leases extinguish native title, and that is the defining policy difference between the members opposite and ourselves. They will have to explain to Territorians why they take that view.

The Leader of the Opposition made some play also of the fact that there had been negotiations with the Office of Aboriginal Development. In fact, she issued a press release today: 'Stone must come clean on native title negotiations'. I will let the Leader of the Opposition in on a little secret. This was not a secret. We are negotiating and we are trying to resolve the differences. We have been trying to put together a framework by which we could talk to the Larrakia people, and realise and recognise their aspirations. I met with different groups of Larrakia people on no less than 3 occasions ...

Mr Manzie: With their legal advisers.

Mr STONE: ... and with their legal advisers at one point, to try to work the issues through in a spirit of cooperation, reconciliation - all the catchwords. We did it in good faith and, all along, the NLC was working up an ambit claim behind the scenes that came in from left field. How does one negotiate with people who do not act in good faith? How does one deal with a group of people like the NLC who have been duplicitous in the way that they have gone about laying a large native title claim over Darwin?

Mrs Hickey interjecting.

Mr STONE: Do not talk to me about negotiations. The Kenbi land claim! How many years? 20 years in the making! It would not matter what was put on the table. In fact, a revelation was made by the former director of the NLC when he conceded that the Larrakia people and other claimants in Kenbi had, in fact, never

been shown the latest government offer. How does one deal with people like that? It is all very well for the member for Arnhem to

Page 10572

come in here and extol the virtues of the NLC. I will remind him that, when the Mt Todd agreement was being negotiated, he ran the NLC off. He would not even have it represented in the sideshow that was taking place there. He ran it off with good reason, and here we find the NLC running interference again.

The Leader of the Opposition spoke in a belated and half-baked fashion. She mouthed all the platitudes about a sense of fair play, being fair, everyone is just trying to get on with life, and it is really not as bad as we imagine. Let me tell the Leader of the Opposition that not only is it as bad, but it is worse than she can imagine. The facts are that jobs are being lost, opportunities are being lost and the Territory's young people are losing those employment opportunities because people are holding back on investment decisions. What is the very best that members opposite can do? They try to urge on us the heads of agreement with the Cape York Land Council and the Cattlemen's Union. I will table a copy of this farcical agreement. The member for Stuart shakes his head. I wonder if he has seen it or even taken the time to read it. We will not know because he did not contribute to the debate, and that is really quite extraordinary given the nature of his constituency. It is also extraordinary in respect of a number of the other members who are sitting over there with their heads bowed. They do not want to say anything about this. What does this represent? Is there some great division between the views of the Leader of the Opposition and those of her colleagues? Quite obviously, they have differences of opinion on a number of other matters. This is one of the most farcical agreements one will ever read. I table it, Mr Speaker.

That agreement does not bind anyone to do anything. It does not even involve the very people who have the carriage of land administration in the state of Queensland - the Queensland state government. It is an agreement to talk, and nothing more. Indeed, it now transpires that the spokesperson who wrote letters to the editor of The Australian is not even a cattleman. He is a lawyer. The story becomes more confused as it goes on in terms of just what standing that agreement actually has. However, members opposite come into this Chamber and urge us to embrace that kind of nonsense.

I am bitterly disappointed in the contribution that the Australian Labor Party has made to this important debate. Quite clearly, members opposite are running for cover. They are hiding over this issue. They are not prepared to have their say and tell Territorians clearly where they stand on it. They had their opportunity to stand and tell us the position of the Australian Labor Party but, since they did not do it, I will tell Territorians exactly what members opposite had to say today. The member

for Barkly must be the only leader of an opposition in Australia who does not support the proposition that pastoral leases extinguish native title. I wonder whether she is aware of the fact that she is in the esteemed company of one Daryl Melham. Maggie Hickey and Daryl Melham shoulder-to-shoulder, marching on - and Warren Snowdon. This is because she was reefed back into line after her little Labor love-in at which she was put on the mat and told that she was to do as she was told. By whom? None other than the former NLC director and now member for Arnhem. It is obvious to the most casual observer who is running the show over there, and it is not the member for Barkly.

Members interjecting.

Mr STONE: We oppose the amendment. Hello, the rat is back ...

Page 10573

Mr BAILEY: A point of order, Mr Speaker!

Mr SPEAKER: Order!

Mr STONE: What makes the member for Wanguri think I was talking about him?

Mr SPEAKER: Order! The Chief Minister will withdraw the remark.

Mr BAILEY: Mr Speaker, I am sure the Chief Minister is aware of standing order ...

Mr STONE: I withdraw, Mr Speaker. However, I am curious to how he knew I was talking about him.

Mr Bailey: Because I had just returned.

Mr STONE: The member for Arnhem had just come back too.

Members interjecting.

Mr STONE: Mr Speaker, we will not be supporting the amendment.

Finally, may I point out to the member for Arnhem, who is most aggrieved that he does not have all these resources, that that circumstance goes with the patch of being in opposition.

The Assembly divided:

Ayes 8 Noes 16

Mr Ah Kit Mr Adamson
Mr Bailey Mr Baldwin
Mr Bell Mrs Braham
Mrs Hickey Mr Burke
Ms Martin Mr Coulter
Mr Rioli Mr Finch
Mr Stirling Mr Hatton
Mr Toyne Dr Lim
Mr Manzie
Mr Mitchell
Mrs Padgham-Purich
Mr Palmer
Mr Poole
Mr Reed
Mr Setter
Mr Stone

Amendment negatived.

Motion agreed to.

Page 10574