## PRIVATE PROPERTY RIGHTS

*Motion*

**HON RICK MAZZA (Agricultural)** [1.10 pm]: I move —

That the house —

(a) recognises the fundamental proprietary right of private property ownership that underpins the social and economic security of the community;

(b) recognises the threat to the probity of the Torrens title system, which guarantees disclosure, and re-establishes the necessity for registration of all encumbrances that affect land including environmentally sensitive areas, bushfire-prone areas and implied easements for Western Power that currently sit behind the certificate of title;

(c) recognises the property rights of government-issued licences and authorities including commercial fishing;

(d) asserts that fair and reasonable compensation must be paid to the owner of private property if the value of the property is diminished by a government encumbrance or resumption in order to derive a public benefit; and

(e) directs the Standing Committee on Public Administration to conduct an inquiry into the matters described above—with them as its terms of reference—and to report to the house within nine months of the date of the referral.

Property rights can be traced back 800 years to the Magna Carta. The Australian Human Rights Commission identified the recognition and protection of property rights as an area of key concern during its 2014 national consultation on rights and responsibilities. Property rights are also featured in the United Nations Universal Declaration of Human Rights, and also in section 51(xxxi) of the Australian Constitution, which provides that the commonwealth government may make laws for the acquisition of land, but only "on just terms". Murdoch University law lecturer Lorraine Finlay, whom I will reference during my speech, in her paper, "Environmentally Sensitive Areas in Western Australia: Highlighting the Limits of the 'Just Terms' Guarantee", states that "on just terms" safeguards do not apply to the states, and locking away or "sterilising" private property does not constitute acquisition. Property rights are linked with economic growth in the sense that they provide landowners with the security and incentive to save, invest and be a part of a community. This is especially true for farmers who make their livelihoods off the land. Most people aspire to own their own homes, and the family home is generally the single biggest asset that people have. Private property underpins the economic security and wealth of individuals and companies in a capitalist society, and any erosion of the rights of private property ownership is an erosion of the very fabric of our society.

The system of recording, managing and securing title to land in Western Australia is known as the Torrens title system, named after Sir Robert Torrens, introduced in South Australia in 1857 in an effort to simplify the deeds system inherited by Australian colonies from England, which was the chain of title system. The Torrens system was based on the registration of ships, whereby the original title register is maintained with a duplicate issued to the owner as proof of ownership and encumbrances affecting the title registered on it. The Torrens system is worth defending, as it has been adopted in some form by Great Britain, Canada, the Dominican Republic, Ireland, Israel, Malaysia, New Zealand, the Philippines, Russia, Saudi Arabia, Singapore, Thailand and the United States, amongst others. So sleepy little Adelaide was the catalyst for the Torrens title system, which has been adopted by many countries around the world to register and maintain records of landownership.

The May 2004 report of the Standing Committee on Public Administration, titled "Impact of State Government Actions and Processes on the Use and Enjoyment of Freehold and Leasehold Land in Western Australia", is a beast of a report. The Leader of the House mentioned to me that she spent four years of her life that she cannot get back, as a member of the committee, on that report. The report contains nine chapters—I confess that I have not read every single chapter—12 appendices and five government responses. At paragraph 2.80, the report states —

> *Butterworths Australian Legal Dictionary* defines *"Torrens title"* as follows:
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> > *"A system of land title where a register of land holdings maintained by the State guarantees indefeasible title to land included in the register. The system gives title by registration, as opposed to old system title, which depends on proof of an unbroken chain of title back to a good root of title."*

This is known as the indefeasibility of title. One key feature of the Torrens system is the registration of all matters that affect the use or enjoyment of the land registered on the title. These include encumbrances such as easements,

covenants or claims by other interested parties. The registration of a section 70A notice under the Transfer of Land Act 1893 is often used to alert prospective purchasers of potential circumstances that might impact the enjoyment of that property. Local governments often register section 70A notices for matters such as a mosquito-prone area where there may be a risk of contracting mosquito-borne diseases, such as Ross River virus, or other hazards.

The Water and Rivers Commission registered section 70A notices under the Country Areas Water Supply Act 1947 in the 1970s and 1980s to alert potential buyers that injurious compensation had been paid to a previous owner of the land for a prohibition on land clearing; future proprietors were subject to the clearing restrictions but could not claim any further compensation. Way back in the 1970s and 1980s, when environmental preservation was beginning to gain some momentum, there was concern about clearing causing salinity in a lot of catchment areas, so the Water and Rivers Commission at the time put these section 70A notices on titles to alert future people dealing with that title to the existence of these restrictions and conditions. At least, at that time, they consulted with the owner and worked out an injurious compensation, which was paid to the owner, and that registration was then on the title. If certain information is known at the time of purchase, a sale may have not proceeded in the first place, or offers made with restrictions in mind. Australia needs to strike a balance between protecting property rights, protecting the environment and also providing compensation to affected landowners. People should not have to seek out information themselves that could have implications on their land use. Many matters affecting land are now behind title and the information needs to be sought out separately from a title search, which undermines the integrity of the Torrens title system.

Easements are an issue for landowners. The Western Power website states that the electricity network covers more than 255 000 square kilometres, meaning powerlines and structures are located on or near private property. Easements allow Western Power to access land to build and maintain infrastructure on private property. The website states —

> If you have an easement registered on your property, there may be some restrictions on the activities you can perform or structures you can place within the easements.

There are guidelines for restricted activity and these include: altering or disturbing the present ground level; constructing or erecting any building or structure; construction of fencing greater than two metres in height; constructing, erecting, improving, enlarging or altering any stormwater drain, basin or drain; growing, cultivating or maintaining any vegetation exceeding one metre in height; stacking or storing any material or garbage; using machinery or vehicles that exceed 4.5 metres in height; and parking any vehicle or machinery exceeding 2.5 metres in height. If that easement is registered on the title, anybody who is going to deal in that title is aware of those restrictions, and that is fair enough.

The May 2004 standing committee report I referred to earlier refers to Western Power and landowners in recommendations 7, 8 and 9. Recommendation 7 states —

> **The Committee recommends that Western Power Corporation notify landholders of the intended use of chemicals on electricity transmission line poles on the landholders' property. Such notice should:**
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> **(a) be in writing and be sent to the landholder;**
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> **(b) specify the chemicals to be used; and**
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> **(c) be provided well in advance of the intended treatment date.**

Recommendation 8 states —

> **The Committee recommends that Western Power Corporation arrange, at the request of any landholder and at the expense of Western Power Corporation, for the independent testing of both electricity transmission line poles treated with chemicals and any livestock that may have come into contact with such poles.**

Recommendation 9 states —

> **The Committee recommends that the details of all significant communications between Western Power Corporation field officers and landholders be confirmed in writing to the landholder, and that all other communications be confirmed in writing when requested …**

Some issues arise when there is an implied easement, because those types of easements are not on the title. I had a lot of contact from a constituent in the Busselton area who complained bitterly about the fact that he had bought a property that did not show an easement, but there was an implied easement to Western Power. The Western Power document titled "Working safely around the Western Power network" states on page 12 —

> An easement may not be registered on the property, however the restriction zone will still impact land use.

His complaint was that Western Power was accessing his property without notifying him and—the usual thing for a farmer—leaving gates open. He was quite embittered by the fact that he was unaware of this particular easement. I do not know how accurate his complaint is, and maybe if we are successful with the motion today, a committee could look into some of those concerns.

Another encumbrance on land that has come to light in more recent times following the Waroona and Yarloop fires relates to bushfire-prone areas. Bushfire-prone areas are located throughout WA, which means that some properties are designated as bushfire prone. This can trigger the need for a more detailed assessment of bushfire risk, such as a bushfire attack level assessment, before building on a property. Those assessments include BAL–LOW; BAL–12.5, which is low risk; BAL–19, which is moderate risk; BAL–29, which is high risk; BAL–40, which is very high risk; and BAL–FZ, which is a fire zone. With a BAL–FZ, it would be very unlikely that a person could build anything. For some of the bushfire attack levels, such as BAL–19 or BAL–29, building or extending a property would require substantial expense to abide by the requirements of the Western Australian Planning Commission to make sure that the property was protected at that bushfire attack level.

The Department of Fire and Emergency Services website says that under the Real Estate and Business Agents and Sales Representatives Code of Conduct 2016, real estate agents must make reasonable efforts to obtain all available material facts to the transaction and communicate that information to any person affected by them. However, it says that there is no specific definition of what constitutes a material fact, which I find quite problematic. If that is not on the title, it is not easy for a real estate agent to identify an area that might be bushfire prone. It is a little disappointing that the government has not put at least a section 70A notice on titles of properties in bushfire-prone areas to alert people to this matter. The main way that people will find out that their property is in a bushfire-prone area is when they apply for a building licence. If they apply for a building licence to either build a new home or make extensions or alterations to their home and it is in a bushfire-prone area, the planning department of the local shire will require the applicant to undertake a BAL assessment. As I said earlier, that could run into tens of thousands of dollars of expense if it is quite a high rating. What is interesting about this is that a condition of the building licence approval is that the owner, at their expense, has to register a notice on their title to say that it is in a bushfire-prone area. Even though the government does not want to put notices on titles—maybe it will cost too much to do that—to add insult to injury, if a person does not know that their property is in a bushfire-prone area and they apply to build on it, under the approval process, they have to, at their expense, put a notice on the title so that anybody who deals with it in the future is aware that it is in a bushfire-prone area. If local government can put a section 70A notice on the title for mosquito-borne virus risk, I am sure that the state government would be able to do something similar for bushfire-prone areas.

State government laws bypass the "on just terms" guarantee in the Constitution. The WA Minister for Environment is allowed to declare areas to be environmentally sensitive areas, which makes it an offence to clear native legislation unless it is done under legislation. If this is disobeyed, heavy fines can be given. It could be $250 000 for an individual and up to $500 000 for companies, with daily penalties of $50 000 for individuals and $100 000 for companies if they continue to offend. This includes the grazing of cattle. Grazing is considered to be clearing. In many cases, a primary producer will need a permit to graze, and sometimes those permits last for two to five years, but can be cancelled at any time.

In August 2015, the Standing Committee on Environment and Public Affairs, which was ably chaired by Hon Simon O'Brien, released its report "Petition No. 42—Request to Repeal the Environmental Protection (Environmentally Sensitive Areas) Notice 2005". That report had a number of findings. The committee found that around 98 042 parcels of land in Western Australia are not crown reserves or state forest and include land that is an ESA. These are privately held titles. In the report, the committee acknowledged that writing to all owners of ESAs would be an extensive task, which was apparent from the number of parcels of land that were ESAs. The committee said that writing to all affected owners would be a big undertaking but it should have been done 10 years ago when the ESA notice was introduced. There was a comment from the then minister that it would be very difficult to get consent from all those landholders to register something on the title to advise future owners that there were issues surrounding the land that they were buying. People are still buying and selling land with ESAs and they are unaware of it. Banks lend money and they are unaware of it because it is not on the title. As I say, it undermines the integrity of the Torrens title system. We are all quite aware of the case of Peter Swift, who bought his farm 12 years ago and was charged by the department. He was found not guilty, but he was out of pocket for a lot of money. Peter Swift has campaigned for a long time to get some justice and some compensation for the fact that he was unable to use the land as he should have been able to use it. I think he recently drove a prime mover up to Dumas House to see the Minister for Environment and the Premier to try to work something out. I know Peter. He has been placed on suicide watch at times because of the pressure that has been put on him. He is financially ruined. He has had to deal with all these issues without compensation.

Another issue about private property rights is that it is not just about real property or land. It also relates to private ownership of cars or boats; they are private property. One of those relates to fishing rights. Fishing rights in Australia exist in four primary forms. This is recognised in common law, is explained in Warwick Gullett's book *Fisheries Law in Australia* and is highlighted on page 16 of the April 2011 report "Improving Commercial Fishing Access Rights in Western Australia". It is interesting to note that on page 86 of the "2017 WA Labor Platform", under section 332, it states —

> **c)** That Government must ensure management arrangements are developed in full consultation with stakeholders and the wider community and based upon the best available information and research;
>
> **d)** Stakeholders have the right to expect a transparent and accountable process when management and regulatory decisions are made …

On page 87 of the "2017 WA Labor Platform", paragraph 334 reads —

> WA Labor will:
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> **d)** Seek to more clearly define the property rights of commercial fishing license and authority holders;

Late last year and early this year, there was furore within the crayfish industry when the government decided to take a quota. The decision sent shockwaves through the industry to the point that the banks were starting to reassess the security of the money they had lent. Private property rights are extremely important; they make sure that people feel secure. When a private property right is diminished to derive public benefit, compensation should be given to landowners, particularly when the value of the land is diminished by the public benefit as derived in the case of environmental consideration and other things.

I have a lot more to say on this issue, but I am running very short on time. I hope that this motion is supported by the house. A lot more work needs to be done in this area. There were two partial reports before 2004, which were not completed—the 2004 report, which, as I said, is a beast of a report, and report 41 of 2015. I am hopeful that this issue will be referred to the Standing Committee on Public Administration to conduct further inquiry and hopefully resolve a lot of the issues that have been dogging property owners in this state for a long time. We must maintain and uphold the integrity of the Torrens title system, which should be restored.

**HON JIM CHOWN (Agricultural)** [1.34 pm]: I congratulate Hon Rick Mazza for bringing this motion on private property rights in this state to the house for discussion. Private property rights has been an issue for previous governments and it is an issue for the current government. Governments, including the government to which I belonged, never address this issue adequately, appropriately or to the standard that private property owners expect. This is another occasion on which members of Parliament can voice their opinion about private property rights, and I certainty support the intention of Hon Rick Mazza's motion.

As Hon Rick Mazza stated, the commonwealth Constitution allows for fair and just compensation, but there is no such thing in this state. We have a private property rights charter, which contains a lot of flowery words but which is not at all binding. On the issue of fair compensation on just terms, the charter states —

> Laws for the compulsory acquisition of privately owned land should provide for compensation in an amount that will, having regard to all relevant matters, justly compensate the landowner for the acquisition of the land in a manner which is fair to the community and the landowner.

That quite lengthy statement says nothing about fair compensation for those people whose land is blighted or acquired for the public good. On the issue of consultation—I will get back to this with regard to environmentally sensitive areas, which are under discussion in the motion—the charter states —

> Before taking government action that will have a direct adverse effect on private property rights in land, the land owner should be consulted where this will not unduly compromise the advancement of the relevant community benefit or public interest

The charter has a bet each way and, quite frankly, it has no relevance under law; rather, it is just a guideline. We need a bit more than that. Hon Rick Mazza's motion states that private property underpins the social and economic security of the community, and that is absolutely correct. I will provide some general information from the Property Council of Australia. Nationally, the property industry employs 1.4 million Australians, more than any other sector in the community. Property has overtaken health care and social assistance as the biggest direct contributor to employment in this nation. The property industry has also extended its lead as the biggest direct contributor to gross domestic product, and it contributes $87.9 billion annually in combined Australian, state, territory and local government tax revenues. It is vital to creating jobs and communities, with more than one in four Australians relying on the industry. Private property and the right to private property are absolutely essential for our financial and social wellbeing.

Private property rights has been an issue under common law in the United Kingdom going back centuries. I love the statement by economist William Blackstone, who in 1773 said —

> There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property …

That flowery statement holds true today. I will spend a bit of time on this because it is absolutely important that we understand how private property affects us financially and how its benefits and the ownership of such benefits the community at large. If we look at China, for example, it was a communist country for many, many years. In April 2017, the Chinese Premier of the People's Republic of China—I have trouble pronouncing his name—Li Keqiang announced that full private ownership of land would be restored in China's cities. As a result, the population of Shenzhen increased from 175 000 to 10.7 million after Chinese people were given the right to own private property in the countryside if they had enough money to put down the required deposit. That was driven solely by the ability to own property.

History has better examples of the importance of private property ownership to the wellbeing of an economy. We all benefit from a strong economy. One of the best examples is Finland and Estonia, which are neighbouring countries that are culturally similar and share many values. In the 1930s, they shared a similar standard of living. However, in 2000, the average Finn earned two and a half times to seven times more, than the average Estonian. Of course, the difference between Finland and Estonia is that for 50 years, Estonia was under communist rule and private property ownership was not allowed. When the Berlin Wall came down, we saw the difference in the standard of living between East and West Germany. That difference was politically driven because on one side of the wall, people could own private property, gain benefits from that ownership and work towards that property appreciating in value while on the other side of the wall, property was owned by everybody and nobody had an incentive whatsoever to get on with the job and take a commercial risk. Professor Allan Meltzer said —

> In each of these comparisons, culture, language, and traditions are the same. Outcomes are markedly different. The countries with capitalist institutions and the market system grew richer; the others faltered or went backwards.

The underwriting parameter of that was the ownership of land. As stated in a paper —

> Today, property rights are often worked out among individuals or firms first and then recognized by law. However, governments at all levels continue to weaken or attenuate property rights on a daily basis with a barrage of regulations affecting the use of private property.
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> The two essential elements of property rights are (1) the exclusive right of individuals to use their resources as they see fit as long as they do not violate someone else's rights and (2) the ability of individuals to transfer or exchange those rights on a voluntary basis. The extent to which those elements are honored and enforced will determine how effectively prices in an economy will allocate goods and services.

As Hon Rick Mazza correctly stated, some incursions that have resulted from legislation or regulation are based on environmental issues. The issue of environmentally sensitive areas is a good example, because over 98 000 parcels of lands throughout the state, mainly in the south west land division, as the Bureau of Meteorology calls it, have been affected. As part of the charter, and as per the recommendations of the committee chaired by Hon Simon O'Brien, we know that these landowners have no idea that they do not have any say on their property—none at all. They are happily farming their properties—grazing them, ripping them up and planting them—without any knowledge of this, because they have never been informed. The only information I can find about environmentally sensitive areas on private property is a map. It is a pretty small map with little dots all over it. Landowners have to somehow find out whether a dot on an ESA is part of their property. It is ridiculous. The previous government did nothing to address this. In my opinion, we have a very good Minister for the Environment. I do not know whether he will do anything about it—I place a great burden on the minister's shoulders with that statement! It is a serious matter.

Let us look at the history of ESAs. Before we had ESAs, we had the evaluation of the wetlands of the Swan coastal plain in Western Australia, which designated a number of areas along the Swan coastal plain as wetlands and environmentally fragile areas on which people could not do anything. However, those wetlands encompass a number of areas that are now under housing. There was a great outcry at the time, when the now Premier was Minister for the Environment. As minister at the time, he came back to this place and said that this policy was rubbish and that we should get rid of it. That is what happened, in a nutshell. However, it was replaced by these environmentally sensitive areas, which actually expanded the area that was covered—it was not just the Swan coastal plain but right through the south west land division. That was no solution at all. The report "A Methodology for the Evaluation of Wetlands on the Swan Coastal Plain, Western Australia" states that only 3.8 per cent of the area of the coastal plain is currently assigned as a conservation management sensitive area. That is 3.8 per cent! What is going on here? I assume that that 3.8 per cent is totally translocated into ESAs. Of the tens of thousands

of hectares that are now part of an environmentally sensitive area, which is unknown to landowners on many occasions, only a minuscule percentage of that area is environmentally sensitive. It is like some dork in the department went dot, dot, dot, dot anywhere there was a possibility of an area being environmentally sensitive, and made it law. That is not good government. It is a very good example of private property being blighted by a decision of a department and endorsed by a minister, without any due diligence at all—none. It is wrong. It undermines the value of those properties. As Hon Rick Mazza correctly stated, it is not even stated on the title. Landowners do not know. The recommendations of the committee chaired by Hon Simon O'Brien should at least be carried out. The thousands and thousands of landowners who have an ESA on their properties should be notified of that in writing and at least have a right of appeal as to why an area of their properties has been designated as environmentally sensitive. That does not happen either. It is crazy days.

I am very concerned about this matter. Imagine us having an environment minister in the future, regardless of which government is in power at the time, who is not as pragmatic as Hon Stephen Dawson and decides to take action on these breaches. That happened to Mr Peter Swift, who had no idea he had an ESA until he had a knock on the door and was told he was in breach of the regulation. Mr Peter Swift went through the wringer. He went to court. He was prosecuted in 2009 by the Western Australian state government's Department of Environment and Conservation for clearing vegetation on his Manjimup property without authorisation, contrary to sections 51C and 99Q of the Environmental Protection Act 1986. Mr Swift maintained his innocence against the charges and provided aerial photographs that showed that the land clearing had taken place before he purchased the property in 2007. He had photographic evidence that the land clearing, for which he was being charged, was not done by him, as he did not own the property when it occurred. In the end, Mr Swift was cleared of all charges in 2013, but he was left $360 000 out of pocket for defending his rights, as a private property owner, against a department that would not see sense, as it was trying to make a point and send a message to everyone that ESAs cannot be farmed on.

I go back to my previous point. Landowners do not know. If they have not been notified in writing and it is not on their title, how would they know? It is just a map. It is just wrong. Poor Mr Swift was cleared of all charges in 2013. However, the experience left him severely physically and mentally drained, as I believe it would anybody. This farm was meant to be his retirement fund. He had his life savings in it, until this department Nazi turned up and decided to pursue it.

Several members interjected.

*Withdrawal of Remark*

**The PRESIDENT**: Member, I find that —

**Hon JIM CHOWN**: I withdraw that statement.

**The PRESIDENT**: I am glad you have done that. Thank you.

*Debate Resumed*

**Hon JIM CHOWN**: The regulations relating to the Western Australian Environmental Protection Act, which contain the provisions of subsidiary legislation pertaining to the declaration of environmentally sensitive areas, was not mentioned on Peter Swift's record of title; he was just expected to know. I do not know how he was expected to know, but he was expected to know. In fact, as Hon Rick Mazza has already stated, the Torrens system is a great system as it actually discloses all encumbrances on a property before someone buys or gains an interest in the property. But if things like ESAs are not actually stated, how would someone know? Mr Swift's unfortunate experience could be the experience of anybody. I suggest that it could be the experience of any landowner in my electorate. It is not a good situation.

This is a very good example of how governments can do better. The government needs to say, "Right, let's start again. Let's inform landowners of their responsibilities under the relevant regulations and acts, or we do not do it." I would like any government to say, "We understand and comprehend what has happened." It should not be done in a property rights charter that contains vacuous statements of intention, but in an actual piece of legislation that gives not only some authority to government, but also rights to private property owners in regard to fair and just compensation. I am fully aware that, through these sorts of conversations taking place in this place, departments become more sensitive to their responsibilities when they compulsorily acquire land for public good. For example, if Main Roads Western Australia seeks to compulsorily acquire land for roads et cetera, it must jump through a number of hoops, including finding offsets if that is required. If it is acquiring private property, one policy is that it must pay 10 per cent more than the going rate for that property. The price of that property is assessed by three independent valuers, two of whom I think are chosen by the owner of the property and one by the department. Also, the value is based on the value of the land on the first day after the election of a government, and which date is renewed with each four-year term. People are paid 10 per cent more than the valuation. They do not have to accept it; they can take it to court if they want. They get a 10 per cent loading on the evaluation they accept, which is negotiable. Any

translocation from the owner's property to a new location is free of charge; it is all done for the owner. As I said, most people take that offer because it is a pretty good one. Governments do not just acquire the land after telling the owner what the value is, take it or leave it. Owners can take the case to court, as Peter Swift did, but that will costs hundreds of thousands of dollars.

That is a great step forward but I would like to see this government or a future government introduce a bill of some kind that would give some surety of compensation for blighting or easements that could affect the value of a person's private property in this state. It is lacking; it is a conversation that has been ongoing in this place for many years. I do not know for how much longer the conversation can go on without some action taking place along the lines I have advocated here today.

**HON CHARLES SMITH (East Metropolitan)** [1.50 pm]: I want to make a short statement in support of this motion this afternoon. The Torrens system is a great Australian invention. Traditionally, under common law one would have to trace back the ownership of land from a crown grant, with the most ancient title being the one in force, unless of course one can find a more ancient title. The Torrens system took a great leap forward in the quest for indefeasibility of title with a system of registration similar to that of ship registration in the United Kingdom. This system of registration revolutionised how we handle property law, with the system being adopted throughout Australia over the next few decades. This system makes the purchase and sale of land remarkably simple, and provides clear notice of any encumbrances on the property, such as caveats, easements, incorporeal hereditaments or restrictive covenants, among other things. Among other things, it paints a clear picture of that property. It therefore begs the question why environmentally sensitive areas, or notice of such, are not registered on the title.

Currently, under section 51B of the Environmental Protection Act 1986, the Minister for Environment may declare by notice an area or class of areas to be an environmentally sensitive area. These ESAs were declared in the Environmental Protection (Environmentally Sensitive Areas) Notice 2005. There is a saying that if we really want to get at our neighbour, have his property heritage listed! A property that is heritage listed does not have a significant market value and puts a significant burden on the owner—particularly if they wish to renovate or carry out repairs. Similarly, to have one's land considered a bushfire buffer zone renders it unusable and sinks the value of the property, and the same can no doubt be said for these ESAs. It therefore begs the question: why are these very important declarations not placed on the certificate of title? One great strength of the Torrens system is the transparency it gives to buyers and sellers, but the power of government to arbitrarily make a declaration of their land, rendering it valueless, creates not only a cautious property environment, but also a "buyer beware" attitude. A prospective buyer is unlikely to check a *Government Gazette* about a property.

This issue of rendering properties valueless also has knock-on effects. Much like those poor people in west Bullsbrook who have PFAS-contaminated water, nobody there will buy a property in a zone that is subject to such regulations, burdens or encumbrances, meaning that if the owner wants to move, they must start anew with nothing. That simply is not fair. We value the concept of a fair go in Australia; indeed, the very spirit of the nation rests on the notion that a man's home is his castle. We all know the famous fights against compulsory acquisition, but not of governmental value destruction. Perhaps this motion is the first step in that revolution. Compulsory acquisition requires restitution at a fair market value. I therefore congratulate Hon Rick Mazza on bringing this motion forward and I offer it my support.

**HON JACQUI BOYDELL (Mining and Pastoral — Deputy Leader of the Nationals WA)** [1.54 pm]: I want to join other members of the house in thanking Hon Rick Mazza for bringing this motion to the house today. It is an exceptionally important motion to the people of Western Australia, albeit probably a bit of a headache for governments and departments to work out how to apply a procedure that would bring some more transparency to property developers, purchasers of land and property owners in general. I guess that is why Hon Rick Mazza has suggested that the Standing Committee on Public Administration should conduct an inquiry into this matter to try to find some simplistic ways that our government could consider looking at adjusting the current system to make it easier and more transparent for property owners, because that is, after all, exactly what we are talking about.

I was very interested in talking to Hon Rick Mazza about the issue in this motion because I have had an experience with an environmentally sensitive area notice. I owned a property that had an ESA notice on it and when I purchased the property I was unaware that part of the property was impacted by this ESA notice until we went to carry out some work on it. It was at that point that we became aware that there was a natural wetland and soak on the property that impacted on our capacity to produce or agist, or do anything like that. We had to take into account a whole lot of other considerations that, first, we had not budgeted for and, second, had not planned for in how we would manage the land. The ESA notice was very unexpected and set us about trying to understand exactly what our obligations were and how we should manage them. It was a shock to us when we found that out. It was frustrating because it impacted on our plans for the future of that property. I remember thinking to myself at the time that there must have been an easier way for me as the purchaser, and the real estate agent I was dealing with, to have been aware that an ESA notice was on the property, but that simply was not the case.

As has been highlighted by other members in the house, other people have had much more negative experiences and had their lives more greatly impacted on, financially and emotionally, than I have. I was able to work my way through that. I was lucky that I was able to do so because I had people to assist me to do that. Certainly, when a property owner, potential investor, developer or landowner wants to purchase a property and believes they are genuinely doing the right thing in fulfilling their obligation by trying to understand the title covering the property and undertake all the procedures, only to find later that the property is not what it seems and they are to be lawfully held accountable for something they did not intend, it indicates there is an issue with the system. The people of Western Australia believe that our procedures of government should support them, not make it difficult for them to carry out their daily business.

I support the motion. I think landowners and property developers, or whoever they may be, deserve a simpler and more transparent and comprehensive system. They deserve the notice of a committee to work their way through this. As other members have said, although this has been before committees previously, maybe a different view at a different point in time will create a different outcome. The Nationals WA supports the motion, and I thank the member for bringing it to the house.

**HON DR STEVE THOMAS (South West)** [1.59 pm]: We are very polite in this chamber; we keep offering the call to somebody else. I take this opportunity to say a few words about the property rights debate in Western Australia. It is a debate that I have been fairly intimately involved with for some time. There are not many in the chamber who were around in the thirty-seventh Parliament, which went from 2005 to 2008. Hon Simon O'Brien would probably remember that at that time, in opposition, we had a shadow Minister for Property Rights, Mr Gary Snook. Hon Donna Faragher and Hon Ken Baston were here at that time. A few people would remember that at that stage, in opposition, we took property rights quite seriously. Unfortunately, it is one of those issues that everybody takes very seriously in opposition but they have a slightly different view of the process when they come to government. I suspect that when the minister stands up to give a formal reply, he might make that fairly obvious point.

Nevertheless, let us proceed with this. It was an important issue for us at a time when, as was mentioned previously, we were going through the Swan coastal plain wetland policy, which I will talk about in a little bit more detail, and its transference into environmentally sensitive areas. A bit of history has been mentioned, and it is important to put a little bit of this in context. When members get into a debate with people who own private property, in my view, they always make a number of assumptions. They jump in very early and assume that what a title to property means in Western Australia, or Australia, is different from the reality. It has been said that this process goes back to the Magna Carta, and to some degree it does. During the debate on stamp duties and levies, we talked about the original capacity to put land in a title that could be held by a corporate body rather than a single individual. When the knights went off to the crusade and had to put a person in charge of their land, they did not necessarily get their land back when they returned. This was in the same era as the Magna Carta. It was an era when people were very interested in land title. The reference to the Magna Carta has already been made, but I want to make sure that people are aware of exactly what it says. With the forbearance of the house, I will read from my notes. Paragraph 39 of the Magna Carta states —

> No freeman shall be arrested, or detained in prison, or deprived of his freehold, or in any way molested; and we will not send forth against them, nor set against him, unless by the lawful judgment of his pears or by the law of the land.

Let us be very aware that even at the stage, the Magna Carta—the document that people like to refer to all the time—says that no-one shall be deprived of their land except by a judgement of their peers or by the laws of the land. The first thing I would say to honourable members is that if they find themselves in an argument with someone who says that either the Magna Carta or the Australian Constitution says that no-one can touch their use of their land and no-one can take it off them, that is not what the Magna Carta says and it is not quite what the Australian Constitution says either. The reason is that governments, be they just or unjust, totalitarian or democratic, have always had a requirement at some point to impact upon some people's land, because, for the greater good, a road, a powerline, some drainage or a pipeline will be needed somewhere. There will be a need to maintain environmental principles and to look after the rest of the community. In Australia—or in Britain, for that matter—we do not own our land to the point at which we have exclusive domination and dominion over those lands. People are always subject to the laws of the land. People were under the Magna Carta and they are under the Australian Constitution, which is why the Australian Constitution has a section that says that if government takes a person's land, it will do so with fair and just compensation. That is important because it is something that is missing in the Western Australian Constitution. There was a private member's bill a Parliament or two ago when a member of the other chamber attempted to put forward and introduce into Western Australian legislation that equivalent term of "fair and just compensation". The bill was called the Taking of Property on Just Terms Bill 2014 and it was very short. The bill suggested —

> A public authority must not take property from a person, whether by direct or indirect means and whether intentionally or otherwise, under a written law or policy except on just terms.

The definition of "take" was quite interesting, because in the definitions in clause 3 of the bill, "take" was defined as —

(a) to extinguish an interest in property; or

(b) to lower the value of a property; or

(c) to restrict the use and enjoyment of the property by its owner.

I suspect that this bill did not proceed because its impact would have been quite significant. Lots of people are imposed upon by government, particularly in their ability to use and enjoy the piece of property that they own. The definition of ownership of that property has changed significantly over time since the days of the Magna Carta, 800-and-something years ago. I do not remember the exact number, but it was about eight centuries ago. I was not there at the time, minister! I might need to reference Hon Simon O'Brien at some point.

**Hon Simon O'Brien**: It was 904 years ago.

**Hon Dr STEVE THOMAS**: Was it 904 years ago? There you go, thank you. I will not ask Hon Simon O'Brien what the weather was like. I am sure we would get delayed!

**Hon Simon O'Brien**: It was just after morning tea time!

**Hon Dr STEVE THOMAS**: Yes!

**Hon Stephen Dawson**: Hon Simon O'Brien has obviously been here a very long time!

**Hon Dr STEVE THOMAS**: He has not necessarily been here that long in this chamber!

At that time, the definition of what people owned was different from today. There are a couple of definitions I would like to talk briefly about. People get a bit confused about the definition of "fee simple" and owning their land fee simple. Fee simple does not refer to the price paid for the land; it is a reflection back to the fiefdoms that existed. Land title used to exist on a fiefdom system, which would be an inherited title that would go down through British aristocracy. Fee simple is not a cost; it refers to the words "fief" and "fiefdom". This is important to know. Basically, at that point, a person's entitlement to land was only for freemen. I am terribly sorry if a person was enslaved or a female at that time, because they did not have many rights; I am not sure which was worse. Maybe the two words were interchangeable at that point in history, but let us not go there for a minute. At that time, a person owned the lands to the centre of the earth and the air above it.

This has gradually changed. Up until the late 1800s, a person still owned a significant amount of land below them and the air above them in what we used to call the Queen Victoria titles. Some other members are probably old enough to remember some of those titles existing in the 1970s and 1980s. In various property rights debates in the south west, going back a decade or 12 years, the Acting President (Hon Adele Farina) and I had discussions about what the old Queen Victoria titles—the purple titles—were like, because they, in theory, also gave a person all the land down to the centre of the earth and the air above it. There are basically no Queen Victoria titles left, and where they do exist, they are gradually being changed over. There is now a fairly legal and complicated process, whereby a person's freehold title to land—freehold was a shortening of "free for hold", which basically meant that nobody else held a caveat or a title over that land—is not what it used to be. We are still a commonwealth country and we are vested in Queen Elizabeth II for the time being, but, ultimately, a person is effectively granted almost a leasehold title over the land that they, in theory, hold as freehold. This means it is free from encumbrances from somebody else; however, it is not necessarily that person's land to do entirely what they want with.

This is an argument that people get into all the time: they do not own the land to the point at which anything they do on that land is free from interference from anybody else. It was not that way in the Magna Carta, it was not that way even in the Queen Victoria titles, and that is not the situation under the Torrens system that exists now. People own the land and they have the capacity to use and enjoy the land, but precisely how they can keep anything else from happening on that land is the point that we are getting to in the debate today. It is important because there have been some interesting incursions on people's capacity to enjoy that land. I will leave my discussion on the value of the land to the end of this debate because, in many cases, that is the last part of this debate and the bit that really impacts on people's planning.

Comments were made earlier about the wetlands policy on the Swan coastal plain that was mooted from 2005 to 2008. I occupied the same policy position then as I do now as the shadow Minister for Environment. It was interesting to go through that process. I am the first to suggest that genuinely valuable areas of the environment need to be protected. I do not think any member of the chamber has a different view from that; however, the way that we do that is important. It surprised me at the time that when we talked about wetlands designated under the Swan coast plain wetlands policy, the definition of a wetland was extremely vague. Many places that were defined as wetlands were what I would call damp lands or slightly soggy lands. A lot of wetlands were not ponds, lakes or marshes, but areas of land that in winter had water sitting on them and in summer were remarkably dry. Most of those wetlands were initially defined by geomorphic datasets. Nobody walked on the land and looked at it to say what it was like.

The geomorphic datasets were effectively satellite pictures and a range of information that came from various government departments. Where it looked like there might be water sitting on the ground in the middle of winter, it looked like a good place for someone to draw a line. As far as I am aware, nobody ultimately went through and did all the work to determine where the wetlands genuinely were versus where the damp lands might have been.

**Hon Jim Chown**: There was a lack of process.

**Hon Dr STEVE THOMAS**: There was absolutely a lack of process. Lines were drawn on maps in a bureaucratic process that had no meaning to the people who owned the land, worked on the land and lived on the land.

**Hon Jim Chown**: They were making very loose assumptions.

**Hon Dr STEVE THOMAS**: They were making assumptions based on the information they had available, which was entirely and utterly inadequate. The wetlands policy was immensely problematic and it caused great grief and hardship for a number of people. I think everybody has been glad to see the end of it. However, a similar process remains for environmentally sensitive areas. One day when we swap sides with members opposite and I get the opportunity to take the place of the Minister for Environment, I want to have somebody walk over all the spots that we have decided to call environmentally sensitive areas and provide some justification for that.

This is an age-old debate. From my view, the debate is not about what the land title tenure is, because the current land title tenure is probably unable to be shifted. An enormous report that both Hon Rick Mazza and Hon Jim Chown referenced, the parliamentary review on land title in 2004, offered a range of information and recommendations, but basically said that fair and just compensation was the critical part that needed to be looked at. Perhaps we need to have another look at that for genuine impacts. The first thing to work out is whether the impact on the piece of land in particular is genuine. That was the downfall of the Swan coastal plain wetlands policy and, in my view, it is also the downfall of the environmentally sensitive areas policy. Various departments, particularly the Department of Water and Environmental Regulation, have not done adequate work to make sure that every piece of land it identified as environmentally sensitive is genuinely so. That is going to take a significant investment in both time and resources. However, the alternative is to say that the bureaucratic process will have the capacity going forward to encumber land on the basis of a desktop study or a set of geomorphic datasets. That is not sufficient. That is not adequate. We need to make sure that if this matter is looked at by a committee, a genuine attempt is made to ensure that the references are adequate and that somebody with adequate training has walked over each of those sites and made sure that what is theoretically an environmentally sensitive area that requires protection is genuinely an environmentally sensitive area that requires protection. There will be some areas that impact on individuals, and there will be some that impact on somebody's right to farm. It is incumbent on the state to invest adequately to ensure that those people are not disadvantaged.

Things have drifted off lately, but five to 10 years ago there was a great push to have effectively public–private partnerships in natural vegetation conservation.

**Hon Stephen Dawson**: Conservation covenants.

**Hon Dr STEVE THOMAS**: Yes, it was through covenants. Some great work was done and more work could be done in that area. However, the reservation I have, which was raised by somebody in relation to heritage listing, is that if we make the requirements and restrictions around those things so onerous that the property becomes devalued instead of increasing in value, people will drift out of the system. The heritage system is a diabolical thing. I agree with Hon Charles Smith that the heritage system has a diabolical impact. Members can call me a heritage heathen if they like, but the reality is that if people purchase an artificial structure, they should have every right to do with that artificial structure as they wish. If they want to upgrade, even to a modern design that I do not particularly like, and if they have made the effort to purchase the property, they should be able to do so. If the government wants to dictate what people can or cannot do on their property, it should be forced to buy it. All the terrace houses that nobody can do anything with should be required to be purchased by the government or it should allow the owners to get on with the job. Back in the days of the Magna Carta, if I were King John, that is what I would do: I would give people the capacity to do what they want with the buildings they have. As I say, I am not the most heritage sensitive individual in the chamber, but that is the condition I would go forward with.

Even in the individualistic rights arena, I accept that land, particularly widespread areas of land, will always have some encumbrances placed on it by government and that the government must have the capacity to do so. It is incumbent on the government to minimise that and to ensure that it happens only with justification—that is, that the government has taken every step to ensure that the land is required. The impacts on the landowners need to be addressed in a manner far better than they are at the moment. That is no slight on the current government. As I said, a bill was presented to the previous government but it was not debated. Perhaps the bill should have been amended or put forward in a different manner because it was a very wide catch-all bill that would have had some interesting—unintended, I am assuming, but perhaps intended—consequences on the capacity of the state to develop.

There is a long way to go. We have drifted a long way from the opposition having a shadow minister for property rights and it is a long way back to try to put forward property rights but not to the extreme of the ideas that will be presented. The first time someone quotes either the Western Australian or the Australian Constitution, and says that it defines what wonderful property rights we have, run—do not walk away; move quickly—because it is not accurate. We will be bogged down for hours with home-taught, homespun constitutional experts telling us what the Constitution grants us, because it does not. Let us look at what is required to give people a better use, value and appreciation for their property and let us make sure that government, if it is going to impinge upon that, pays for the process.

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment)** [2.20 pm]: It is my pleasure to rise this afternoon. I give credit to Hon Rick Mazza, who is tenacious, because the motion he has moved today is similar to a motion he moved in August 2014, early in our careers in this place. He was not successful at the time but he has come back today to have a second bite at the cherry.

This issue has been around for a very long time. Hon Dr Steve Thomas talked about the Magna Carta and the issues that that threw up. But we have also seen property rights and land issues across Australian history. We can look at the Mabo decision, and *The Castle*, with the line, "Tell them they're dreaming." This issue evokes a range of views from the Australian community. Elements of this issue have been looked at by the Parliament before. In the honourable member's opening remarks, he alluded to the fact that the Parliament had previously looked at many of these issues. In fact, during the thirty-sixth Parliament—four Parliaments ago—the Standing Committee on Public Administration and Finance produced a report entitled "The Impact of State Government Actions and Processes on the Use and Enjoyment of Freehold and Leasehold Land in Western Australia". As the honourable member pointed out and as the Leader of the House, who is away from the chamber on urgent parliamentary business, has said before, that committee looked at this issue for three to four years and came back with a 685-page report that has probably not just sat on the shelf for the last few years but certainly has been overlooked. Some elements of it have been put into action since it was tabled. It is certainly an issue that continues to vex the community.

Hon Rick Mazza's motion refers to a nine-month referral. Given that the last committee that looked into many of these issues in 2001 to 2004 took four years, I do not have the member's confidence that the problem will be fixed in that nine-month period. It is a good read. Initially, that committee picked up the threads of two separate inquiries that had been conducted by the Parliament, one by the former Standing Committee on Public Administration and Finance and one by the former Standing Committee on Constitutional Affairs. The inquiry considered two key issues that were central to the previous two inquiries—the erosion of private property rights by the actions of the state government, and land clearing restrictions on agricultural properties. In addition, the inquiry expanded its scope and looked into a range of issues connected with private land ownership in Western Australia. Some of the specific impacts examined in detail by the committee were compulsory acquisition of interests in land; transmission line and water pipeline easements; land use zonings; subdivisions and development approvals; land clearing restrictions in agricultural areas; environmental policies relating to urban bushland and wetland conservation; industrial buffer zones; heritage lists; protection of endangered fauna and flora; conflicting land uses within close proximity; mining rights granted to third parties over privately held land; and notification and recording of restrictions on land use. Although that is broader than the motion moved by the member today, at that time nearly all, if not most, of the issues in the member's motion were looked at.

As we have already heard from a number of speakers, Western Australia has had the benefit of and operating a secure and robust Torrens system in this country for about 140 years. Having read the member's previous contribution, this system started in Adelaide, South Australia, by Robert Torrens. Since that time it has been adopted across this country and, indeed, across a number of other countries in Asia and Europe. I think the member is on record as saying that it has been a good system. In the last Parliament, I remember during debates on electronic conveyancing that a number of people mentioned the Torrens system in their contributions. I think it has served us well. It was a favourite subject of Hon Ken Travers; he often spoke about the Torrens system and its history in this state.

We have had the benefit of operating the Torrens land title system. It has not only provided certainty, but also provided security of land titles through what is a fairly simple, efficient and inexpensive regime. It provides certainty and security of land titles through three key legal principles: the certainty of registered title; guarantees of that registered title by the state government; and compensation payable by the state in certain circumstances, including in fraud and in error. Our secure land title system allows financial investment in land for agriculture, commerce and homes to occur with confidence. Landgate is in operation in this state. It is essentially a world leader in operating a modern land registry that reflects world's best practice in land administration systems.

Western Australia's system of real property law is based on the state owning all land at the outset. The crown, or the state, grants an interest in land, with freehold title being the type of grant that is considered closest to absolute ownership. Private ownership of the fee simple in freehold land is commonly referred to as private real property

ownership. In fact, the report of the former Standing Committee on Public Administration and Finance that I referred to earlier looked into this issue. That report states —

> As noted above, it is often falsely claimed that a freehold landholder has a "right" to do what they wish with their land. In reality, however, in the absence of the grant of an express approval from the Crown, a landholder may only do with their land that which is not prohibited by the Crown at that particular moment in time.

Even with the grant of freehold, some rights are reserved to the state and the commonwealth of Australia, most obviously in the rights around minerals. Legal interests in land recorded on the register are guaranteed by the state of Western Australia. Landownership rights in Western Australia are and always have been subject to restrictions that the government may determine as appropriate. The Transfer of Land Act 1893 implements the Torrens system of land title by registration in Western Australia. It created the Western Australian land titles register primarily to record property interests on a central, publicly accessible register. As I said, registration of landownership does not grant unfettered rights to the registered proprietor of the title.

The honourable member has a number of parts to his motion. I will address each one individually. Paragraph (b) states that the house —

> recognises the threat to the probity of the Torrens Title system, which guarantees disclosure, and re-establishes the necessity for registration of all encumbrances that affect land including environmentally sensitive areas, bushfire-prone areas and implied easements for Western Power that currently sit behind the certificate of title;

There never was an intention for such rights and interests affecting land and land use to be shown on the certificates of title, nor to be guaranteed by the government. There is a difference between legal interests in land and factors affecting the use and enjoyment of land. The existence of interests that do not appear on the certificate of title does not threaten the probity and integrity of the Torrens system. This system has flourished in Western Australia for more than 140 years. The state is not willing—in fact, it is not able—to guarantee such a large category of other interests. If all other interests affecting land appeared on the certificate of title, it may, for example, clutter the title with information. It may even make the certificates of title more difficult for people to understand. It may increase the complexity of conveyancing and require professionals to advise of the meaning and the relevance of those interests, and it could also potentially slow down the conveyancing process. It could also increases costs, an issue that we often deal with in this place. The complexity and expense is contrary to the essence of the underlying principles of the Torrens title system, which, as I mentioned previously, is about simplicity, efficiency and cost-effectiveness. The land titles register does not exist in isolation from the wider property law regime. It is part of a broad legal and legislative framework of rights and responsibilities in land. An interest recorded on the register is only one way in which the rights and interests of owners of the land can be lawfully affected. Landownership rights in Western Australia are and always have been subject to restrictions that the government may determine as appropriate.

I want to touch briefly on statutory easements that relate to Western Power. Statutory easements that benefit Western Power do not appear on certificates of title, and there is no requirement that they do so to be legally effective. Such statutory easements are part of a considered government policy and strategy for the provision of essential services to our community. However, a bushfire notification may be placed on a certificate of title at the request of the Western Australian Planning Commission under section 165 of the Planning and Development Act 2005. The Western Australian Planning Commission can also require other notices to be recorded on titles for hazards, and for other factors that seriously affect the use and enjoyment of land. Land use planning may constrain some private property rights to ensure that the private property rights of neighbours and the wider community are also protected. We always need to have a balance in place when dealing with these issues. From the outset, the state has prioritised the collective use or benefits of land over individuals so that those interests affecting land do not impact on the effectiveness of the land title system.

Amendments were made to the Transfer of Land Act to enable information about the land contained in the certificate of title to be linked to the certificate of title, rather than physically registered upon it. In Western Australia we have the Shared Land Information Platform, or SLIP, which was developed by Landgate. It has enabled the agencies that held statutory interests in land to place those datasets on the platform. SLIP is an award-winning platform that enables the sharing of land information and is available to the public for use. SLIP has enabled Landgate to create its property interest reports. The PIR for land contained in a certificate of title includes the interests that affect the use and enjoyment of the land, including, but not limited to, implied easements, declared bushfire-prone areas, environmental protection policies, aircraft noise and groundwater salinity. Anyone can request a PIR on any property online by contacting Landgate. There is a fee of $59, but that provides a comprehensive list of all interests in the land. Like a certificate of title search, the PIR explains each interest in detail and provides information on where further information can be obtained. It is our view that it would be inefficient and impractical to require all interests to appear on a certificate of title.

Part (c) of Hon Rick Mazza's motion reads —

> recognises the property rights of government-issued licences and authorities including commercial fishing;

Licences issued by the government are not legal interests in land, and do not grant ownership rights in land. Fishing licences issued under the Fish Resources Management Act 1994 are statutory rights to take fish. Such fishing licences are not property rights. Water licences issued under the Rights in Water and Irrigation Act 1914 grant the right to take water for a particular use, but do not give ownership of water to licensees. Licences are not real property rights, and they are not, and should not be, recognised under our land title system.

Part (d) of the motion reads —

> asserts that fair and reasonable compensation must be paid to the owner of private property if the value of the property is diminished by a government encumbrance or resumption in order to derive a public benefit …

Compensation regimes apply for taking interests in land for public works purposes, or injurious effects and controls. Privately owned land can be reserved for public purposes by the state or local government via a planning scheme. However, in instances where this occurs, the Planning and Development Act 2005 provides the opportunity for an affected landowner to seek compensation or to have their property purchased. The state may take an interest in land for public purposes, including public works, under part 10 of the Land Administration Act 1997, which establishes a reasonable regime for taking land and interests in land. The regime provides for compensation payable by the state to those landholders, such as freehold owners, who have had their land taken. The amount of compensation is assessed at the date of taking the land, subject to certain requirements being met. Compensation may be payable by the state when injurious effects may be caused by, for example, rezoning of the land for public purposes. Government encumbrances that notify the existence of statutory easements for the provision of utilities such as electricity are essential to protect infrastructure for a modern, advanced society such as that we enjoy in Western Australia.

This issue spans a number of portfolios. Obviously, the Minister for Lands would be the lead minister, but it does touch on the environment portfolio. A number of members have mentioned the parliamentary inquiry in the thirty-ninth Parliament, chaired by Hon Simon O'Brien, on environmentally sensitive areas. I had the pleasure of serving as Hon Simon O'Brien's deputy chair in that inquiry.

**Hon Simon O'Brien** interjected.

**Hon STEPHEN DAWSON**: The member has it in front of him.

We spent some time looking at environmentally sensitive areas. I was not the minister then, nor was I the shadow minister.

**Hon Simon O'Brien**: Now you are in a position where you can do something about it.

**Hon STEPHEN DAWSON**: Now I am in a position to consider the report in a different light.

**Hon Simon O'Brien**: Were you captured by your bureaucrats, like every other environment minister we've ever seen?

**Hon Donna Faragher**: Excuse me!

**Hon STEPHEN DAWSON**: Member, that is highly inappropriate commentary.

**Hon Simon O'Brien**: Apart from Donna Faragher!

**Hon STEPHEN DAWSON**: It is actually Hon Donna Faragher, but she is not the only person who I am sure at times has —

**Hon Simon O'Brien** interjected.

**The ACTING PRESIDENT (Hon Adele Farina)**: Order, members! This is a time-limited debate, and the minister has the call.

**Hon STEPHEN DAWSON**: As I was mentioning, environmentally sensitive areas were the subject of that parliamentary inquiry, and obviously Hon Simon O'Brien will allude to that shortly, when he makes his contribution. That committee reported in 2015, and I am told that the former Department of Environment Regulation addressed its recommendations, including by publishing a guide on grazing and clearing of native vegetation, and providing a link to the environmentally sensitive areas notice and clearer access to its website. The former department took on board the recommendations of that committee, and sought to make some of these issues clearer and to provide the information on the website.

**Hon Simon O'Brien** interjected.

**Hon STEPHEN DAWSON**: The member can say his bit in a second. I am talking about 2015 and the advice I have been given. Obviously, I was not the minister then. The McGowan government is also progressing

amendments to the clearing provisions of the Environmental Protection Act 1986 to ensure that these provisions work more efficiently, and to provide a better process to monitor and maintain environmentally sensitive areas and regulations that would then give accountability to the Parliament.

I have touched on water licences previously. I have mentioned fisheries licences previously. To recap, elements of this issue have been looked at numerous times over the past almost 20 years. Hon Rick Mazza reckons that problems can be fixed in nine months. I do not believe they can. Across a range of portfolios, there has been an effort to address the various elements of this motion. I indicate that we will not support the motion before us.

**HON SIMON O'BRIEN (South Metropolitan)** [2.39 pm]: I look forward to making a contribution to this debate because I chaired the inquiry that led to the forty-first report of the Standing Committee on Environment and Public Affairs, aided and abetted by some other members, and none more distinguished than my intrepid deputy chairman, Hon Stephen Dawson, who, serendipitously, now just happens to be the Minister for Environment. Thank heavens for that! Maybe some sanity has prevailed. The only other decent Minister for Environment I can remember is Hon Donna Faragher, and there is a story from 2008 that she hates me repeating, so I had better not repeat it or she will be cross with me!

There are some serious matters here. I would like to see some further examination of this area. I urge members to get hold of the forty-first report, because it is a smoking gun into what has been going on with these sorts of property issues, and with particular reference to environmentally sensitive areas notices. I feel rather strongly about this. This was brought to attention by a former colleague, Hon Murray Nixon, who served in this place for a couple of terms and it is a pity that we did not get another term or two out of him. He is a very capable fellow and very committed to this particular area of policy. He drew a number of matters to our attention via a petition. The committee decided that it was so serious that it needed to be looked into through its own standalone inquiry and standalone report, which included a range of findings and recommendations. I may have the time to refer to a couple of those and I commend others to the mover's attention, whether or not this motion gets up. I commend the report to the house because it illustrates how people in the bureaucracy can subvert public policy. There are classic examples of what happens in the environment portfolio. Ministers who do not keep an eye on what is happening in their agencies let them run amok and then when a parliamentary inquiry reports on how they have run amok, the same weak-as-water ministers accept and sign off on the government draft responses provided by those very same officers who have corrupted the system for their own purposes. In refreshing my memory of the forty-first report, I also accessed the government response, and if members think that I sound a bit hot under the collar today, it is because I did that. It brought back to me the absolute insult that was that response of the government of the day—weak as water. In fact, if we accept that, there is no point at all in agreeing to this motion, because there will just be more of the same and more weak-as-water ministerial officers who will pay lip-service to it and say, "We thank the committee for its work. Yes, we are taking this seriously and we will have better consultation processes", while all the time they are pursuing their own agenda and to hell with the rights of the property owners of Western Australia. I urge members to have a look at the forty-first report and discover that, with the virtual stroke of a pen, around 98 000 parcels of land in Western Australia that were not crown reserves or state forests were captured as environmentally sensitive areas. They should read about how, notionally, most of the farming land, particularly on the Western Australian coastal strip and in the south west, would be unavailable because some bureaucrats decided that that was what they were going to do.

**Hon Rick Mazza**: Seven days' consultation.

**Hon SIMON O'BRIEN**: It got worse than that. The member has obviously read the report. There was seven days' consultation in order to tick some box somewhere, but it was phoney consultation, and that is the thing that really upsets me. I will describe for members what happened with that particular consultation process. The environmentally sensitive area notice is a disallowable instrument. The Joint Standing Committee on Delegated Legislation of the day obviously researched the matter. It was provided with an explanatory memorandum about ESA notices by the government of the day, which of course sourced it from its agency of the day, advising that the issue itself was not controversial, that there had been plenty of consultation and that it should be able to be accepted without any concerns. The truth, in fact, was rather different. The truth is that when there was some consultation over a few days—basically over a weekend—some groups such as the Pastoralists and Graziers Association and the Western Australian Farmers Federation expressed their strong concerns. They thought it was unworkable and similar sentiments. Yet our joint standing committee, which was meant to concern itself with such matters, was completely blindsided, so it did not take any preventive action and, in due course, the time for disallowance passed, and now there is no way to upset the environmentally sensitive areas notice.

It was typical that people in the environmental protection agency had devised a system whereby they would sit in an ivory tower somewhere and use a map to ordain that 98 000-plus parcels of land on privately held property by and large should be affected by environmentally sensitive areas notices. Those notices basically stop anyone from doing anything on their own land, even if they are already doing it—just about any form of agriculture at

all in the place that is the very heart of our agricultural land. When these matters are brought to notice, would we not expect that a government, whether it be through the office of the Minister for Environment or anywhere else in government, ought to do something about it? Government responses to parliamentary reports have to go through cabinet. That is what happens; it is a whole-of-government response. Where was the minister for agriculture of the day? Where were other ministers of the day? They failed because they just accepted what the bureaucrats dished up—tick, tick, tick—and submitted it to the house. I was damn angry about it then and I am damn angry about it now, because those same notices that are potentially stopping just about every farmer in the south west from doing their stuff are still live; it is still a threat that hangs over them.

The deputy chairman, whose name is appended to the forty-first report, is now the Minister for Environment, so the issue is squarely back in his court. What is he going to do about it? I have no doubt that the honourable minister is on the job. He will pursue this matter, I am sure, because he knows that he has the earnest support of myself and several other members of the house to make sure that he does just that. This is a real live situation in which out-of-control government officers have shoved their quirky policies under the nose of weak ministers, who have signed off on them. The ramifications are enormous. When it is pointed out to ministers of the day, chapter and verse, that they or their predecessors have been dudded, for some reason they cannot bring themselves to say, "No, we're going to do something about it." Is the Minister for Environment that sort of minister? Will he say, "It's too hard. I'm held captive by my bureaucrats"? The situation that existed when we reported in 2015 is the same situation that exists now. To his credit, Hon Rick Mazza is trying to do something about it. I will certainly support him in doing that, but I say to Hon Rick Mazza that I will not be holding my breath because he will have to go through the same grief and aggravation that we went through for probably the same lack of return. He could do worse than to put the terms of reference that he has proposed partly to one side and embrace a follow-up to the forty-first report of the standing committee and say, "What the hell's happened with it?" I bet he will find that all the departmental mandarins—the zealots who have been hoodwinking successive environment ministers—are still doing it, or trying to do it. If Hon Rick Mazza wants to achieve something, he should try doing that because, as we have seen in the past, we can have all the inquiries that we want, but unless a government actually does something, it is not much use at all. However, Hon Rick Mazza has done us a favour by bringing forward this motion today, because it gives us the opportunity to show our support for the current Minister for Environment in no doubt tackling this very grave blot on the administration of Western Australia, and land rights of Western Australians in particular. I will certainly support the motion.

**HON DIANE EVERS (South West)** [2.53 pm]: I am pleased that I waited to give my contribution to the debate until after Hon Simon O'Brien spoke, because it demonstrated to me just how important it is that I speak for the environment. I recognise wholeheartedly a lot of the issues that have been raised during the debate on this motion. I understand that when people are buying a property, they want to know what is listed on that property. They want to know whether there are any environmentally sensitive areas or easements and whether the property is in a bushfire-prone or mosquito-prone area. In the continuation of our history lessons, I say caveat emptor—buyer beware. Every person who buys a property should be aware that they need to do their homework and find out whatever information they can. I recognise that people do that by going through a conveyancer and asking for and going through the title, but maybe more can be done. It is not as though ESAs are a surprise to anybody. I understand that in the case that was issued, the land had been previously cleared. I hope that the person who cleared that land has had their case progressed through the courts to make up for the fact that they cleared land that they were not supposed to clear.

**Hon Simon O'Brien**: What about people who had land before these notices?

**Hon DIANE EVERS**: Exactly. That is just what I am getting to. Along with the notion of buyer beware, the Greens also believe in transparency, and it is very important that people are aware of the things placed on their property. Luckily, we are moving into a new age in which technology will make it easier to provide information about properties. It should be possible for people to look at a map of their property and see all the information about it. We can get there, but we have to move forward in the future.

Environmentally sensitive area notices protect wetlands. If a person is buying a property with a wetland on it, really they should be thinking, "That's a wetland; that's an important part of my property. That's something that I could help nurture, keep and build around." It is not wise for someone to buy a property and assume that they will be able to clear it. Clearing restrictions apply; we need permission to clear land. A person's first guess when they see a wetland on their property should not be to clear it and make money from it. It is a similar situation when a property has salinity. If somebody planted something on the property or redirected a buyer to a different part of the property to somehow hide the salinity, the buyer would be just as angry that they did not know that property had salinity. Salinity is not listed on the title; that is not something that is done. Another issue is revegetation by previous owners who have received funding through natural resource management programs to revegetate the land. Buyers should know whether that has happened because if it has been done with government funding in the last 10 years or so, it would make no sense to clear it. Hon Jim Chown talked about that undermining the value; really, what is undermining the value of a lot of our landscape is climate change. I will keep repeating that: it is

climate change. Climate change is resulting in issues such as lower rainfall, a lower watertable and salinity occurring because we are clearing more land. Human-induced actions are undermining property values. Soil erosion is another issue, and it does not happen on its own. Soil erosion occurs when we denude the land. When we are talking about undermining the value, we have to look at the things that we are doing to the landscape. If we buy a property that is in good shape and we clear it and grow things on it and over time it is affected by salinity, does that mean that we should clear more land and do the same thing again? That would be pretty stupid. I do not understand why we would clear more land when that has not worked in the past. ESAs protect all of us; they are there to protect Western Australia, to keep some of our landscape intact, so that we can maintain the biodiversity and weather patterns that we need to continue living.

When we talk about local government rates, we talk about the unimproved value. Improved value is when the land has been cleared and fenced and has cattle or crops. Over time, that improved value will become less than the unimproved value had the land not been changed. We need to take another look at this. We have talked about local governments declaring mosquito-prone areas and listing such information on titles. That may decrease the value of land because a person might buy land near a river assuming that there are mosquitoes but without having that listed on the title. Does it change things if that is not on the title or should the buyer have recognised that because the land is next to a slow-moving river or wetlands, there is likely to be mosquitoes? It is the same with bushfire-prone areas. Is it the act of saying that a property is prone to bushfires or is it the fact that the property is next to a forest or a plantation? We do not need someone to tell us that our property is in danger of a bushfire when that property is next to an area of bush that burns from time to time. The humans involved have to take some responsibility; they have to take care of their own assets and make sure they limit their risks. The motion seeks to put that responsibility back on the government.

I come now to the previous inquiries, which came up with lots of recommendations. The 2004 inquiry took four years to complete. We can go around in circles with these inquiries. What I am getting at is that if we want to make changes, giving this matter to the Standing Committee on Public Administration for nine months will not make those changes. If we put it to that committee and it spends nine months on it—it may even ask for an extension—it will come up with a lot of the same recommendations as the inquiries from 2004 and 2014 came up with, and nothing will happen. That is not the change we are looking for. Maybe we need to break it down. We need to work out the issue. But in the meantime, let us not get rid of those environmental controls. Let us not try to baby everybody.

I assume that members opposite support the small government side of things. One suggestion was that the government should buy all the heritage buildings, but I am not sure where we would get the money to buy all the heritage buildings. The member wants the government to step in and put in all the fine details on people's titles—to list which areas are mosquito prone or fire prone, when a road will be put in nearby, any developments that may happen, or that rainfall may decrease in an area because we have fewer forests creating rain. What else? The watertable may fall because properties are located next to a tree farm. Should that be on there as well? There are so many impacts on landscapes that to single out just the few that we are currently talking about and say that they should be on the title is limited. We need to think bigger than that.

We need to go forward. We should look into the future. We could look at how technology can help with mapping, for instance. I understand that some environmentally sensitive areas are supposedly wet only in winter, but there are an awful lot of rivers that are not wet all year round either and are still marked as rivers. That is just part of our landscape. That does not make them less meaningful either, because those wetlands need to be wetlands in winter to continue to provide habitat for the microorganisms and other flora and fauna that live there.

Maybe we need to think about this again. We should think about what the issue is, rather than taking up nine months of a committee so that it can go through the whole process again. The committee probably would not be able to come up with a 600-page report or get to all the recommendations from the 2014 inquiry. We should do something different, because this is clearly not the way to do it. We should not just put down a few points and say that this is what we are concerned about and that we need to give a committee some time to look at it and come up with a report, on which nothing is going to happen. Why should we vote for this when we cannot see it leading to something? Maybe there is another way. Dare I say it, but maybe we should work together and collaborate. We recognise that one side of Parliament thinks it should be one way, and the other side thinks it should be another way. Let us work together and try to come up with a solution. We can pinpoint the issue. We do not want to just baby people and make sure that we tell them absolutely everything, because they have some responsibility as well to find out as much as they can about what they are buying.

We need to manage the state in perpetuity—that means endlessly. That is sustainability. We need to keep it going and regenerate it, and make sure it is available for future generations. The issue should not be that people need more land because they want to farm more, and that they want to do what they want to do and they should have

that right. There is a collective right, which is much more important. We must all look after this state. In speaking on behalf of the Greens on this motion, I cannot see how the motion, in its current form, will actually change anything, and I do not see it as the way forward to address some of these issues.

**HON RICK MAZZA (Agricultural)** [3.04 pm] — in reply: I thank all members for their contributions to this debate today. I want to make a couple of comments on the response from the minister. I do not accept the government contention that bushfire-prone areas or environmentally sensitive areas—ESAs—should not be registered on a title. At the end of the day, one of the key features of the Torrens title system is that these sorts of encumbrances are listed on titles to warn buyers or those dealing on the title what issues might affect the land. When someone has to go searching for this information, it really undermines the integrity of that system. As far as fishing licences are concerned, I did not intend them to be part of a Torrens title system. Private property rights involve not just real property; they can involve other things. I put in the fishing licences as being private property, which is outlined in WA Labor's own 2017 policy platform document.

As far as environmental considerations such as ESAs are concerned, I do not think the argument is that we should set aside environmentally sensitive areas for conservation. The issue is really that if a public benefit—that is, conservation or some other use—is going to be derived from a piece of land, the public should pay compensation for any diminishment in the value of that piece of land. That compensation would be paid to the owner and the encumbrance registered on the title to warn others. The very important part about private property rights is that compensation is paid to people whose land or livelihood is affected in the process of deriving a public benefit. Reports were done in the past—in 2004 and 2015, as has been pointed out. To go through that process again in nine months probably would be a fairly big undertaking. However, those reports are available to the Standing Committee on Public Administration to refer to. Maybe that committee could look at ways to implement a lot of the recommendations and findings that were gathered and are yet to be dealt with. This is a live issue. Many people are affected by this. Many people do not even know that they are affected by this. It affects more than 98 000 parcels of land that people own. Many of those people would have no idea of that and could be tripped up, like Mr Peter Swift. I hope the house supports this motion.

*Division*

Question put and a division taken with the following result —

Ayes (18)

| | | | |
|---|---|---|---|
| Hon Martin Aldridge | Hon Donna Faragher | Hon Simon O'Brien | Hon Dr Steve Thomas |
| Hon Jacqui Boydell | Hon Nick Goiran | Hon Robin Scott | Hon Colin Tincknell |
| Hon Jim Chown | Hon Colin Holt | Hon Tjorn Sibma | Hon Ken Baston *(Teller)* |
| Hon Peter Collier | Hon Rick Mazza | Hon Charles Smith | |
| Hon Colin de Grussa | Hon Michael Mischin | Hon Aaron Stonehouse | |

Noes (17)

| | | | |
|---|---|---|---|
| Hon Robin Chapple | Hon Diane Evers | Hon Martin Pritchard | Hon Alison Xamon |
| Hon Tim Clifford | Hon Adele Farina | Hon Samantha Rowe | Hon Pierre Yang *(Teller)* |
| Hon Alanna Clohesy | Hon Laurie Graham | Hon Matthew Swinbourn | |
| Hon Stephen Dawson | Hon Alannah MacTiernan | Hon Dr Sally Talbot | |
| Hon Sue Ellery | Hon Kyle McGinn | Hon Darren West | |

Question thus passed.