PRIVATE PROPERTY PROPRIETORSHIP

Motion

HON RICK MAZZA (Agricultural) [10.07 am] — without notice: I move —

That this house —

(a) acknowledges the inherent rights of private property proprietorship of land in fee simple and the essential integrity of the Torrens title system; and

(b) calls on the government to immediately repeal section 6 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, which deals with environmentally sensitive areas, and that the recognised convention of consultation, compensation and registration be used to acquire a public benefit from privately owned land.

The seventeenth century political philosopher John Locke's insight was evidenced in the statement he made in which he said —

> In order to preserve the public good, the central function of government must be the protection of private property.

Private property has been the cornerstone of our economic and sovereign integrity for hundreds of years. The protection of private property in Western Australia is vested in the Torrens title system. We touched on the Torrens title system during the debate on the Electronic Conveyancing Bill 2014 early in the year. The Torrens title system was unique in that it was developed in Australia; in fact, it was developed in Adelaide by Sir Robert Torrens in response to a land boom that occurred in South Australia in the mid-1850s. Essentially, he adapted a system used to register merchant ships. The key function of that title system is that the original title is held in a central location and any change of proprietorship or encumbrances or anything like that on those ships was registered on the title. That system was adopted and implemented as the property title system in Australia, including in Western Australia. The system has been so effective and so secure that it has been exported around the world. North America and many countries in Asia use the Torrens title system. It is a very safe and very effective means of registering and keeping safe our private property rights. Earlier this year we touched on the fact that there had been a breach of that security when a person's house was sold a few years ago without their knowledge, but it was not really a fault of the Torrens title system. It was identity theft, which affects all sorts of enterprises, whether financial institutions or other businesses.

The Torrens title system has been very good. One of its features is that there is no need to look behind the title as required by the old chain of title system, because everything should be recorded on that title. When a person acquires an interest in a property, the real estate agent usually does a title search to ascertain whether there are any encumbrances on that land. The conveyancing agent or solicitor will also do a title search and, generally, make an inquiry through the local authorities to see whether anything needs to be brought to the attention of the prospective owner. A mortgagee undertakes similar searches and checks to make sure that the property for which they are lending money has adequate security. The Torrens system is very sound and secure and it serves us very well.

One of the conventions of our land title system has been that when the state acquires a public benefit in that land, the state will pay compensation and then a notice is registered on the title or, in some cases, the title is vested to the state. For example, in the 1970s and 1980s the country water authority wanted to protect some water catchment areas. It consulted with the relevant landholders and negotiated injurious compensation, which was paid to those landholders, and a memorial was registered on the title so that anyone who deals with that land in the future knows the restrictions on the use of that land. I fear, though, that in recent times governments around Australia have failed private property owners, particularly primary producers. There has been a lot of commentary on this issue in recent times, particularly in *Farm Weekly*, because obviously that is a publication that a lot of rural people read. There are a couple of items I would like to read out. This is from *Farm Weekly* —

> A NATIONAL property rights group has claimed WA has the worse property rights record in Australia.
>
> Property Rights Australia chairman Joanne Rea said the erosion of private property rights was the single biggest issue facing the rural community.

She went on to say —

> "In a first-world democracy it should not be possible for activist bureaucrats who think it is their job to harass farmers to send them bankrupt through their decisions nor to cause economically fatal blighting of their property values.

> ...
>
> She said Property Rights Australia has had nothing but praise for the Queensland Government which moved quickly to redress the worst imbalances of environmental legislation.
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> ...
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> "Where the State exercises its legal power to acquire land in the interests of the wider community, private property owners are entitled to fair treatment and fair compensation."

The Environmental Protection (Clearing of Native Vegetation) Regulations, which deal with environmentally sensitive areas, undermine the integrity of private property ownership. I accept that there are environmentally sensitive areas that are of significance and require protection. However, if a benefit for the community is to be derived from that ESA, the cost of that benefit should be shared amongst the community and not burdened on a single landholder. In other words, we should not have regulation theft. The sinister nature of the ESA regulations instituted by public servant activists has been felt all around Australia. Fairly recently an article in one of the New South Wales rural publications, *The Land*, "Stuck in the native veg mire", referred to similar problems in that state where many farmers have been hurt. There is a lot of pressure on farmers financially and these ESAs are moving towards contributing to that.

Last month I came back from a trip in Victoria to Melbourne Airport and I distinctly remember listening to a radio news broadcast and hearing that, tragically, a 79-year-old farmer in New South Wales had taken the life of an environmental officer. The shire president of that district was on the radio and it was interesting to note the comments that she made. In brief, she said that she did not condone the action of the farmer. However, he was a well-regarded member of the community in that region. His family had been long-term residents of the region and he is normally a very reasonable sort of person. But these environmentally sensitive areas have pushed people to the brink and, in her words, two families were in mourning that night. It is a very, very serious issue.

I personally feel an inquiry is required into the handling of one local case in point, the Department of Environment and Conservation versus Peter Swift. I am yet to find out how much it cost the state financially to prosecute the case in the face of what I would say was fairly flimsy evidence. The bureaucrat activists in DEC pursued Mr Swift for a number of years with the intimidation and threat of a fine of up to $250 000. In full credit to Mr Swift, despite offers of reduced fines to settle the case, he would not cave in to the pressure of the injustice of being prosecuted for something that he never did. In the end he won the case but at a huge financial and emotional toll. It does not end there, members. He won that case but at the end of the day his property at Lake Muir still contains substantial ESA coverage, which means he is unable to graze his animals on the entire property, which is what he bought it for. From memory, talking to Mr Swift, his grazing land has gone from 1 200 acres to 240 acres. I do not quite know how this has worked, but DEC moved some of the ESAs to allow him to use it for grazing, but that lasts only five years so it does not fix the problem. I do not know how it can be an ESA one moment and then shifted and not an ESA the next moment. It needs some fairly solid investigation.

Because of these ESAs, Mr Swift's property, for which he paid stamp duty to buy and on which he continues to pay rates, is not worth what he thought it was worth when he first bought it. He did all the checks. His conveyancer did all the checks. His mortgagee did all the checks. His mortgagee is also in trouble now because it has lent money on a property that is not of the value originally thought. The Torrens system I described earlier has been circumvented and compromised, and that has left Mr Swift and his mortgagee up the proverbial creek. Landgate responded recently by providing a property interest report to alert interested parties that there could be a native title claim, an ESA or something like that on the land, but we have to go behind the title and look for it. It is not registered on the title, so we still do not have that security or certainty that we have through the Torrens title system.

I was interested to read a question asked in this place in 2005. It was asked by Hon Frank Hough. He directed his question to the minister representing the Minister for Environment, who happened to be Hon Ljiljanna Ravlich. He asked —

> (2) Why does the draft legislation propose that any registered wetland be included on the relevant certificate of title, including notification of mortgagees?

The answer was —

> (2) Placing a notice on a title is important as it informs the owner and relevant others that there is a protected wetland on the property.

The question was asked, and the question was answered, but nothing regarding wetlands was ever registered on the titles.

The ESAs that we have circumvent our Torrens title system and undermine our sovereign integrity. In recent times, the Minister for Agriculture and Food, and others, have pursued markets around the world to encourage people to come to this state and invest, particularly in agricultural interests, including land. Imagine what would happen if a foreign investor made a substantial investment in this state, did the checks through their solicitor, and then wanted to develop and use that farmland, only to find that they were prevented from doing that because of an ESA notice that they were unaware of. Our international reputation would be in tatters, in that this state does not provide sovereign security for property rights.

In closing, I urge the government to repeal this insidious ESA regulation. I know that Hon Mark Lewis has presented a petition on this issue and that it has been considered by the committee, so I hope the committee will take this issue seriously and undertake an investigation. But that is up to the committee to decide. I urge the government to repeal this legislation and give landowners their land back, at its true value. If there are areas in this state that require protection for environmentally sensitive reasons, I urge the government to consult with the landowners, negotiate just injurious compensation, and make sure that that notice is registered on the Torrens title system.

HON MARK LEWIS (Mining and Pastoral) [10.21 am]: I thank Hon Rick Mazza for bringing this motion into the house, because this area does need some debate and airing. I have been involved, as the honourable member said, for some time with a range of people who have raised grievances around this issue. Therefore, it behoves me to make some comments on this matter today.

I want to start with the issue of private property rights and the bill that has been introduced by Murray Cowper, the member for Murray–Wellington—the Taking Property on Just Terms Bill 2014. I understand the spirit and intent behind this bill and probably agree with it. But it is probably a step too far, too soon. At the end of the day, pragmatism must prevail, and we need to take a staged approach to achieve the outcome that the member for Murray–Wellington is trying to achieve. If that bill were to be dropped on the table and approved, not only would Treasury have an absolute coronary but every rating agency would as well. That is why we need to be a bit circumspect about this. So I await with interest the package of legislative amendments that the government is now, hopefully, putting together to ensure that any interest in land is compensated.

I also want to make some comments about the distinction that is made in the Taking Property on Just Terms Bill between the words "take" and "acquire", because it is very important that this distinction is understood. Conventionally, say under the federal Constitution, "take" is generally considered to be what everybody would recall from the movie *The Castle*. But that generally went to the issue of acquiring. The distinction between "take" and "acquiring" is significant. That is why we will need to be careful to ensure that we do implode in a financial sense; and also, as I said, it will probably have implications for rating agencies. I agree with the spirit and intent of that bill, but how we get there is another matter.

I now want to make a few comments about the issue of environmentally sensitive areas. I have discussed this issue with the Minister for Environment, and I know that this matter will be coming before the Standing Committee on Environment and Public Affairs. I, too, like Hon Rick Mazza, hope that that committee will inquire into the issue of ESAs a bit further, because the whole framework is very, very difficult to understand. I have been looking at this issue for many months, and I still struggle to get my head around it. So it does need some sort of teasing out by a committee or inquiry.

I am also acutely aware of the problem of consultation around ESA notices. Since the practice of placing ESA notices on land was adopted in 2005, I do not know of anyone who been consulted about the impact of an ESA notice on their land. I would have thought it would be normal practice that before the ESA notice went out, with the implications that it has, there would be some discussion or consultation with the relevant landowners. As I have said, I do not know of anybody who has been consulted about or is aware that an ESA notice has been placed on their property. We estimate that between 4 000 and 6 000 landowners are impacted by an ESA. But no-one really knows, because no-one has ever done the calculations. Suffice to say, the area covered by ESAs goes from Gingin and along the coastal strip, all the way down to Esperance. An ESA has been placed on almost all of the properties on that coastal strip. None of those landowners knows whether an ESA has been placed on their property.

Under the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, it is illegal to clear land that is covered by an ESA. The definition of "clearing" includes grazing. Anyone who grazes livestock on a property that is covered by an ESA, but that they do not know is covered by an ESA, commits a criminal offence and is subject to a fine of up to $250 000, and also will obviously have a criminal record. That is untenable. That is an injustice. The natural justice of that is a lay-down misère.

If a property owner wants to find out whether an ESA has been placed on their property, good luck. I have been involved in geographic information systems, as I said yesterday, and modelling and those sorts of things, so I can

work my way around a computer fairly well and I can interrogate geographic information systems. But even I struggle to find out whether an ESA has been placed on my property. There is an old principle of law that says that if access to the law is not freely available, we have a problem. All law should be freely available at law print. But when we go to law print to find out on which properties an ESA has been placed, they say, "Oh! This old hoary chestnut!" So obviously people are having trouble finding out where ESAs have been placed. Although there are some exemptions under an ESA notice, there are no exemptions in rare flora and fauna areas. It is possible to get a permit to clear under an ESA, but that is if the landowner knows that an ESA has been placed on their property. The problem I have is that these people are unwittingly committing a criminal offence, because they just do not know.

The government needs to get on the front foot here. It is not going to be an easy task, as a significant amount of work will be required to make sure that landholders are properly informed about the existence of an environmentally sensitive area and what they can do about it. As I said, I have spoken to the minister, who is aware of the problem. I encourage him to look at ways to remove this burden, which people do not even know they have. I again thank Hon Rick Mazza for bringing this motion to the house. I hope this debate will help inform not only minister but also the department so they can develop solutions.

HON ROBIN CHAPPLE (Mining and Pastoral) [10.30 am]: I rise to speak briefly to the motion. Obviously, the Greens would not support the removal of section 6 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, because it would be using a sledgehammer to crack a walnut. Having taken on board the comments of Hon Rick Mazza and Hon Mark Lewis, when title deeds are passed on there needs to be a clear indication of the status of the land. Land owned in fee simple is owned without any limitations or conditions. This type of unlimited estate is called absolute. Fee simple is generally created when a deed gives land with no conditions, usually in words such as "to John Doe" or "to John Doe and his heirs". However, we need to make sure that where there are issues of environmental sensitivity on a property that at the time of sale they are clearly identified. I take on board what Hon Rick Mazza said: it is an impost on the person taking on the title. This is obviously an issue, and we heard from Hon Mark Lewis that the government is looking at this. I am sure, if this were sent off to a committee, or something like that, we could do something useful to collaboratively resolve the issues, which is what we are trying to do. Removing section 6 of the regulations would have an immense effect on so many other rights and interests, so the Greens will not support that. However, we support what Hon Rick Mazza has said about the failure to identify in a title that there are impacts on the land which may not be made available to the purchaser at the time of the sale.

Hon Rick Mazza: What about the current owners who have had that impost put on and they pass it on?

Hon ROBIN CHAPPLE: Let us have that debate in a standing committee. I will not make a deliberation about what should happen, and I do not think Hon Mark Lewis, the government or the opposition will either. However, it is a significant issue and the best way to look at this would be by a committee of this house. I would support the honourable member, if he were to change his motion to do that, and he might find there would be unilateral support for that sort of approach.

HON HELEN MORTON (East Metropolitan — Minister for Mental Health) [10.33 am]: I want to thank Hon Rick Mazza for bringing the motion to the house. It has provided an opportunity for me to outline the government's response to what is a very important and topical issue. The member has raised two issues. As the minister representing the Minister for Environment, I will address the issues in the same order they were raised in the motion. Before I get into that, I want to acknowledge the important role that farmers play in our state in providing food and produce et cetera. I come from a farming background—in fact, very near to where the member lives down in the Frankland region. My parents were farmers, and my husband and I had farming properties and continue to have an interest in farming areas. I want to make that statement because I fully understand and acknowledge that farmers have and continue to play a very important role in managing lands, including native vegetation.

As the minister representing the Minister for Environment I will respond to the two particular issues that have been raised by Hon Rick Mazza. In relation to private property proprietorship of land in fee simple, a private member's bill, Taking Property on Just Terms Bill 2014, was introduced into Parliament on 14 May by the member for Murray–Wellington, Mr Murray Cowper, MLA. The government considers that the private member's bill introduced by Mr Cowper would create a broad range of legal difficulties and would not best serve the public interest. The state government remains committed to addressing the long-running issue of private property rights and is currently drafting a package of legislative amendments to ensure that where government acquires an interest in land the compensation provided to a landowner is on just terms. It is anticipated that these amendments will be introduced into Parliament by the end of this year.

As with every other right of this nature, property rights exist subject to modification by general and specific acts of Parliament and subject to the common law principles of nuisance and negligence, which can provide for rights of action if a landowner uses their land in such a way as to cause damage to their neighbours or to other third parties. This latter aspect is relevant to the consideration of environmental harm or pollution that the Environmental Protection Act 1986 regulates or prevents.

Section 51C of the EP act makes it an offence to cause or allow clearing of native vegetation unless the clearing is done under the authority of a permit or in accordance with an exemption. There are two types of exemptions. Exemptions for clearing that are a requirement of a written law or authorised under certain statutory processes are contained in section 6 of the EP act. Exemptions for low-impact management practices are prescribed in the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, but do not apply in environmentally sensitive areas. Extensive clearing either requires a clearing permit or is authorised under a law listed in schedule 6 of the EP act, and environmentally sensitive areas are not relevant.

Section 51B of the EP act allows the Minister for Environment to declare by notice either a specified area of the state or a class of areas of the state to be an ESA. Section 51B(4) provides that the notice must be made after consultation with the Environmental Protection Authority and such public authorities, persons and groups as the minister considers to have an interest in the subject matter. Environmentally sensitive areas include environmental assets such as declared rare flora, threatened ecological communities, wetlands, Bush Forever sites and World Heritage areas. The intent of listing areas or classes as environmentally sensitive areas is to ensure that clearing that is allowed by exemption in regulations cannot be undertaken in these areas without consideration through a permit application.

ESA are in place in the context of the low-impact routine activities that are contained in the clearing regulations. They are intended to prevent incremental degradation of important assets such as declared rare flora, threatened ecological communities or high-value wetlands. It is not the case that the presence of ESAs precludes clearing from taking place. A total of 924 clearing permits have been granted within environmentally sensitive areas since the clearing provisions of the Environmental Protection Act commenced on 8 July 2004. If ESAs are repealed, the exemptions in the clearing regulations will need to be significantly tighter and more prescriptive to ensure adequate protection of important values. This would have a negative impact on the majority of landholders whose vegetation is not within an ESA.

Last year the Liberal–National government made amendments to native vegetation clearing regulations in line with the government's commitment to approvals reform. These changes reflect contemporary farming practices and the need for day-to-day farm management to recognise better farming technology, including automated farming machinery. These changes will go some way to reducing the administrative burden on farmers and land managers and will not result in any significant risk to the environment.

In summing up I want to say that the government is considering further amendments to the EP act to provide appropriate flexibility for dealing with trivial clearing without compromising environmental outcomes. In addition, it is expected that these amendments will greatly assist in remedying concerns relating to any negative impacts of environmentally sensitive areas.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [10.40 am]: I want to make a few comments on this matter and thank Hon Rick Mazza for putting the motion on the notice paper today. I appreciate the sense of frustration on the part of Hon Rick Mazza and the people he represents and, indeed, some members of the government that this matter remains unresolved. As did other notable people in this Parliament, I sat on a parliamentary committee from 2001 through to 2004 that looked into this matter and we made certain recommendations. Following the tabling of the report in this place by the then Standing Committee on Public Administration and Financial Operations, we looked into the use of freehold land. I cannot remember the title of the report but I will make sure it is put on the record. Following the tabling of that report in 2004, the Liberal Party, then led by Hon Colin Barnett, released a statement about the government's intentions. In 2002 it had released a policy discussion paper on these matters and made certain commitments. Obviously, for people who support Hon Rick Mazza's position there is a sense of frustration that those matters still have not been enacted by the Liberal Party.

The first sentence of the motion refers to acknowledging the inherent rights of private property and the essential integrity of the Torrens title system. It is important to note that the Torrens system is really important. In the simplest terms, it is a register of land ownership but, of itself, does not grant unfettered use of that land; it never has. The committee noted at page 37 of its report —

> 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 …

In this case, what is prohibited by the Crown are certain things in relation to environmentally sensitive areas. The committee made the point —

> … a landholder may only do with their land that which is not prohibited by the Crown at that particular moment in time.

It went on to list all the cases in support of that. The committee made the following recommendation on page 42 of the report, which reads —

> **GENERAL OBSERVATION OF THE COMMITTEE ON THE CONCEPT OF PRIVATE PROPERTY RIGHTS**
>
> 2.111 In light of the above discussion, the Committee has developed a general, in principle, view regarding the treatment by the State of a landholder who has validly acquired an interest in a parcel of land with various granted rights (as distinguished from 'rights' that the landholder may anticipate may be granted at some time in the future) attached to that interest.
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> 2.112 The Committee believes that where such an interest in the land, or any granted right attaching to that interest, is subsequently taken from the landholder by the State Government for a public purpose, then the State should provide fair compensation to the landholder.

WA Labor does not support repealing section 6 of the environmental protection regulations with respect to the treatment of environmentally sensitive areas. The treatment of environmentally sensitive areas, different from other areas, has been supported by both major political parties. A property owner can certainly apply for a permit to clear in an ESA, but they cannot claim that clearing is exempt from the need to obtain a permit. I guess that is the unfettered nature that I referred to at the start of my comments; that is, Torrens is a register; it does not grant, of itself, unfettered use of land. The principle is that the collective view is, in this case, represented by the government of the day, whoever the government of the day is, that those environmentally sensitive areas need to be protected.

Hon Rick Mazza: On your comment about unfettered use, I accept that, but encumbrances of that nature should be registered on the title—the same as the country waters did—and other covenants or memorials or whatever that affect the land should be registered on that title. It is a register, but ESAs are not listed on it.

Hon SUE ELLERY: It is indeed a register. The motion before us calls on us to immediately repeal section 6, and the Labor Party will not support that. Section 6 and the ESA process enables management of that land in a way that recognises the values that land has for us as a broader community. On the view that a property owner should be compensated for it, as we made the point in the committee—I do not have the page reference—it is a huge issue for the state, whoever is in government. It would come at a huge cost if we were to change our system from one that does not have compensation built into it to one that does. I can appreciate, I guess, why since 2002 government, in response to our committee's report, has not bitten the bullet on that. I can understand that it is a big decision to make because it would involve an awful lot of money.

Hon Rick Mazza: You're quite right. It is a lot of money but at the moment that financial burden is being borne by the few landholders it affects, so those people have that burden on reduced land values.

Hon SUE ELLERY: Hon Rick Mazza is quite right. That is why the committee wanted to make the point—we heard lots of witnesses and it was a very emotional inquiry—in the most sensitive way we possibly could that people have the notion that they have unfettered rights and that any imposition on them in the use of that land is of itself unreasonable. Always built into this system—we tried to do this in the most sensitive way we could—from the beginning has been this notion that the collective use of land overrides the individual. That is part of the system that has operated for land ownership and usage since we developed rules about land usage and management. I guess I am saying we will not support the motion because we will not support the repeal of section 6. However, there are serious issues around compensation that need to be properly addressed. I was part of the committee that recommended that the government of the day look at that, but that did not happen. However, the issue of compensation needs to be properly addressed because there is a whole lot of evidence in that committee report, one of the biggest that was ever tabled in the Legislative Council, and in the kind of evidence we have heard this morning from people. The President is holding up a copy. All sorts of evidence suggest that landholders in particular, but more so the general community, do not understand that and the demand for compensation is one that strikes at the heart. It was captured beautifully in the movie, the title of which escapes me —

A government member: *The Castle*!

Hon SUE ELLERY: Indeed, it was *The Castle*. It is the vibe! That movie struck at the heart of a really basic principle in the Australian character, which is what the people who make those movies are all about. People have

an innate sense that it is right that compensation be offered. It is a huge issue that needs to be grappled with. However, with respect to the particulars of this motion, we will not support the repeal of section 6 of the Environmental Protection (Clearing of Native Vegetation) Regulations.

HON PAUL BROWN (Agricultural) [10.50 am]: I rise to make a short contribution to this debate. We have covered some fantastic issues during debate on this motion. Hon Rick Mazza raised the idea, which has been debated in full, of memorial on title. Certainly as Hon Sue Ellery stated, the idea of compensation for ESAs would put a very large burden on the state because of the areas covered by ESAs, the value of the land and the magnitude of the debt to the state, all of which would be very real and problematic for the state. I do not think that that argument can be successfully propagated. I do agree with Hon Rick Mazza that landowners, whether they be small or large landowners or landowners of private, developed or agricultural land, need recognition of memorial on the title that their land has been affected so that when they want to sell the land to another party, that party is well informed of what uses are permitted on the land. Having looked at section 6 of the Environmental Protection (Clearing of Native Vegetation) Regulations, I do not see how the repeal of that section would be of benefit in the way suggested by Hon Rick Mazza, certainly with regards to compensation and memorial on title. We would be better served discussing amendments to the act. We should encourage the Standing Committee on Environment and Public Affairs—a petition from Hon Mark Lewis is currently being considered—to investigate the wider ramifications of that petition and the ESAs that it addresses.

In short, we do not support the motion, but we support the intent, which is to give landowners certainty on their title. I encourage the department to provide notification to landowners. It should write to all affected landowners in the area which, as Hon Mark Lewis referred, extends from Gingin in the north down to Esperance. Although I accept that that might be a large task, it is a worthy task. At least in that way it will not be up to landowners to find out whether there is an ESA on their land. Rather, the department that placed the ESA on the land and put up a roadblock to further development or use advises the landowners so that they are fully aware of the implications of the ESA on their land.

I thank Hon Rick Mazza for moving the motion, but we will not support it. It is certainly worthy of debate in this house and it is worthy of consideration by the Standing Committee on Environment and Public Affairs or any other committee that chooses to do an inquiry.

HON SIMON O'BRIEN (South Metropolitan) [10.54 am]: If the opportunity presents itself, I urge members to visit the old land titles building on Cathedral Avenue to look at the semi-subterranean vaults in which titles used to be kept. They should observe how strong they are and learn why they were constructed the way they are; indeed, they had to be fireproof and resistant to all forms of creatures or air quality that might cause the title documents to deteriorate. They also had to be secure from the watertable or any possible flood plain activity that might happen. The titles that were kept there—they are now kept in another more secure repository—are very important documents. We hear the term "real property". It is applied to people's land as opposed to other forms of property. Why is that so? As with any sort of property, such as the watch worn by Hon Rick Mazza, his motor car or any other form of personal property, if someone takes it or damages it, restitution can be made. The stolen property can be recovered and returned or an amount of money can be provided to replace the article—but not so with land. That was evident in a scam that was perpetrated—it is still about the place—that involves people's house and land being sold out from underneath them. An innocent third party pays money for that. When the crime becomes apparent, the former owner of the property finds that he has no title to the property to which he did have title because title has changed. That is the important difference between real property and movable property.

Hon Peter Katsambanis: Indefeasibility of title.

Hon SIMON O'BRIEN: Indeed. Without that doctrine, our whole property system would collapse. People could make claims for land going back to the Norman Conquest, or any other time, to try to occupy land of which someone else has possession. The questions of title to land and what one can do with it are very important. They impact on our lives many times. I can remember when I held a statutory office, my wife looked up at me from the morning newspaper where her attention had been drawn to an advertisement under the signature of the Minister for Transport. It was entitled "Taking of land". She looked up at me with some feeling and said, "Whose land are you taking now?" That procedure is provided for by law—and with good reason. But the fact is that whenever there is reference to people's property or property that people occupy and have title to and someone wants to interfere with how they use it or provide that a certain portion of it cannot be used for certain things or must be preserved under a planning control order or some other mechanism, it impacts on people and it matters to them.

That is the value of Hon Rick Mazza bringing this matter to the house for its consideration. We have heard already this morning that the matter has been looked at before; that it has been looked at again and again; that a great deal has been inquired into and written about; and that perhaps there are some matters that some holders

of title do not understand about their situation. We have heard that things are actually going pretty well. If things are going pretty well and everyone has had a look at the matter, why on earth are we here considering this matter today as a result of representations, which have not only been made to Hon Rick Mazza, but made to probably every other member in this place again and again and again? I think it is time that we sorted out these questions once and for all, and with due respect to some members who have spoken and who previously had a lot to do with this matter, I do not know that the essence of the issue that is currently about is understood by everyone in this place.

Recently, a petition was tabled that relates to the consequences of a notice given out under the environment legislation. That petition has been referred to the relevant standing committee, which will go through its processes in examining that. Maybe the committee members will find some further way of defining a problem that apparently exists by helping its members to, and, through its members, help their constituents understand the system that we have in such a way that it enjoys a greater sense of appreciation abroad in the community. We do not want to continually see claims given with some feeling, and, dare I say it, with some reason that people's expectations of what they can do with their property is not being unduly eroded, which results in the visiting of all sorts of terrible consequences upon them.

That is the reason Hon Rick Mazza, a very thoughtful and valuable member of the Parliament, who raises issues of genuine concern in the community, deserves our thanks for raising this matter. One of the good outcomes of the debate already is that the people who he is representing—that is, the landowners—will know that the house is turning its attention to the matter, and that is the mark of a good member. Again, I thank him for introducing the motion and it is to be hoped that we can put some of these matters to bed in due course once and for all.

HON NIGEL HALLETT (South West) [11.02 am]: I would just like to make a few comments and to congratulate Hon Rick Mazza for bringing this motion on for debate. The comments made from all the members have been particularly interesting and I think are channelled in the same direction. Probably the highlight of the debate coming through has been Mr Swift's story and the relentlessness to which he was pursued by the department, and the time frames. From what I remember from the media reports, the case against him cost something like $500 000, but the personal cost is something that we do not take into account and the health ramifications to some of these people need to be considered.

Government departments have no time frames to which they can pursue their matters, and I think some of the changes arising from the repealing of section 6 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 are required. I certainly agree with the member who suggested that we take it back to the committee. There should be time frames placed on these cases when they are brought before the court. There should be compensation that is enacted. People buy their land in good faith, and I think we saw last year the government increase land clearing from one hectare to five hectares, which is a positive. We are not saying it is a green light to be indiscriminate with clearing, but it is reducing the red tape and honours what the government set out to do by easing these clearing regulations by making these restrictions fully clear so that landholders know what they can do.

In part, farmers certainly drive the environmental management. They need to look after their land and I think their history shows that they will do everything possible to ensure that their land is fully productive. So it is a matter of the government having to define what is the clearing of land and what is the cleaning up of land. It is an area where the department and landowners must be brought together. We have seen farmers prosecuted when wanting to clear a tree that has come over the fence, it being deemed by some of the agencies as breaking the law.

Hon Simon O'Brien: When you've got that happening, that's a problem!

Hon NIGEL HALLETT: Exactly.

Hon Simon O'Brien: And people need to understand that.

Hon NIGEL HALLETT: And I can understand why the member's wife got very upset!

Hon Simon O'Brien: It was only a little bit of land!

Hon NIGEL HALLETT: We have also got to make it clear when the government puts restrictions on land, who is responsible for the vegetation and the pests that start to develop on the land. We have got a huge problem in our region with cotton bush. A lot of it is on government land and there are restrictions in place, but no-one is taking responsibility. It is not about slash-and-burn and wholesale clearing; it is about responsible land management and people need to know what they can do, what they cannot do and who is responsible, and if we can derive clarity from the matter going back to the committee, it will be a good outcome. But we certainly cannot put people through what Mr Swift went through and the people who did that should be fully accountable. Thank you.

The PRESIDENT: Before I call Hon Peter Katsambanis, I acknowledge the presence in the President's gallery of Hon Doug Wenn, a former member of this chamber.

HON PETER KATSAMBANIS (North Metropolitan) [11.06 am]: I would like to thank and congratulate Hon Rick Mazza for bringing this motion to the house today and for highlighting an issue that is a real live issue in the community. It is an issue that, for a long time, Parliament and governments of various political persuasions have tried to ignore or avoid. I am a strong supporter of private property rights. I think that they are one of the fundamental rights that we rely upon in a liberal democratic society. We have done so for a very long time and the system of private property rights and private property ownership has served us very well as a society. We can contrast that with some other places in the world that have tried to move away from private property rights and we have seen the damage—namely, the social, political, environmental and overall damage that has happened to those societies and we never want to go down the path where private property rights are fettered, hindered or dismissed out of hand.

It is important that we assert the primacy of private property rights because too often they can be challenged and they can be attacked by unaccountable unelected bureaucrats. This area that has been highlighted by Hon Rick Mazza in this motion is one of those areas where I think the balance has started to tilt unfairly. A number of members have made reference to Mr Swift and the battle that he went through. I would like to place on the record that it is people like Mr Swift who take on Goliath at extraordinary personal cost to themselves, and I think that has been highlighted; so good luck to Mr Swift in his endeavours. He is a person who stood up for his rights and paid a very heavy personal price upholding them, and I think he will continue to do so. We should recognise that and by recognising that, we should make sure that we do not have more Mr Swifts in the future.

I would like to expand on some of the issues that were raised today. Hon Sue Ellery talked about the Torrens title system as being a register—I think at one point she said, "It's just a register." I agree that the Torrens title system creates a register, but I think it is a lot more than "just a register". The Torrens title system, effectively, provides a guarantee that the title we have is the title to that land. The legal concept is indefeasibility of title; if someone is on that register, they get a lot more than just registration—they own that land. We saw with those recent fraud cases that Hon Rick Mazza referred to that the person who purchased the land in good faith—the bona fide third party who purchased the land for valuable consideration, as the old law would tell us—gets to keep that land. That is indefeasibility of title; if someone is on that register, they own that land unless they were involved in something nefarious to get themselves onto it. It is a whole lot more than a register; it is a government guarantee that the person whose name is on that title owns that land. We should not forget that. It is a system that has served us very well.

Of course, people do not get completely unfettered rights to their land; a lot of encumbrances are registered on the title, such as easements. There are many sorts of easements, such as for sewerage or water. Also, covenants are imposed by a developer, such as restrictions on the building materials that might be used and so forth. Other restrictions exist that are not shown on the title but are well known in legislation, such as planning restrictions and restrictions on the extraction of minerals and other things from the land.

But the restrictions placed on land under regulation 6 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 are a different restriction altogether. They are not registered anywhere, and often they do not require notice to the property owner. As many members highlighted today, it is very difficult for a prospective purchaser to find out whether there are any environmentally sensitive areas; and, if there are, exactly what they relate to on the land. We need to fix that up; it is very, very important. I was heartened by the minister's comments today that this area is being looked at—a number of parliamentary committees have looked at it in the past. I look forward to the legislation that will fix it up coming before this place.

I agree with the comments of Hon Paul Brown, that repealing regulation 6 of the regulations will probably not achieve too much; it will still leave the primary legislation in place. I think part V, division 2 of the Environmental Protection Amendment Act 2003, if I am not mistaken—whatever the primary legislation is—would still exist; it would still allow bureaucrats to pass new regulations and undertake similar systems. We need to work out how best to fix up this area in the future, so that it provides certainty for landowners and ensures that the costs of providing a public or social benefit are not borne by private landowners. I think that is important, and it is the last issue I want to highlight today.

A number of people have spoken about how compensation would lead to a massive cost, so if we paid compensation to private landowners it would cost our society a lot of money. I put it to members that it would cost no more than it costs today; the cost is already there. However, the cost today is being borne by each of those individual landowners who have had their land use fettered and their property actually ameliorated—the

value of their property reduced. That cost is already there. It is a private cost being borne by private landowners for a social or public benefit. To people who believe in private property rights and individual rights, that is an obscenity that needs to be addressed. If it leads to a cost transfer, it will lead to a cost transfer to the public purse; I accept that, and it may very well be a very big cost. But, again, it would allow bureaucrats who make these decisions to start focusing on the cost benefit of each decision, so that when they classify an environmentally sensitive area they would have to think about the cost benefit, rather than just the benefit. Perhaps we would strike a better balance if we went down that path. As I said, I think this issue is very, very important. I do not profess to have the magic pudding solution, but it needs to be looked at. The government is looking at it, for which it ought to be commended. As I said, I look forward to the amendments in due course, and hopefully they will address all or some of these issues. Let us not sweep these things under the carpet and allow them to fester; let us not create any more Mr Swifts who have to bear the burden of these decisions made by unaccountable and unelected bureaucrats that place significant costs on private citizens of this state.

HON RICK MAZZA (Agricultural) [11.16 am] — in reply: I will make a few brief comments in closing. I thank all members for their contributions this morning. It was very pleasing to hear that everybody acknowledges that we have a major problem with our private property rights, particularly those landholders who are affected by an environmentally sensitive area classification. The vast majority of people, of course, live in urban environments, but say the government came along and said, "Right, we don't want you using your outdoor entertainment area anymore because we don't believe that's good for the environment, and we want you to close off that fourth bedroom—you're not allowed to use that anymore. That's going to devalue your property by, let's say, 40 per cent, but we're not paying you any compensation." I think if that happened, there would be a major outcry from the community because the value in their private property—their castle—had been stolen by regulatory theft.

I was very concerned that some of the comments made were, "Look, if we paid compensation, there would be a massive impost on the state"—that is, all the people of Western Australia—"for the reduced value of these properties." But currently, as has been pointed out by Hon Peter Katsambanis, that burden is being carried by a few landholders who are really, really feeling a lot of pressure and suffering financial loss over this. I think that is unfair. I have no problem with environmental protection—it is an important part of our community to make sure that our environment is looked after—but I think we have to look out for the social implications that come with that. To put that burden on a few landholders is unconscionable.

One of the comments made by the magistrate in the Peter Swift and the Department of Environment and Conservation case was that if one of the allegations being levelled at Mr Swift had been successful, it would have resembled something said by Sir Humphrey Appleby. I am very concerned that a lot of power is vested in bureaucrats with some of this stuff, and that commonsense is not being used and bureaucratic activism can really harm people's lives. In closing, members, I thank everybody for their contribution. I am glad there is some motivation and appetite to have this matter resolved, and I hope it happens very soon.

The PRESIDENT: Members, the debate lapses at this stage, but could I just say that this is an issue that has been close to my heart throughout all my public service, and as such I have followed the debate today with keen interest. As has been referred to by some members, the Legislative Council has had an extensive involvement in this issue over the years. The Leader of the Opposition referred to a report of the Standing Committee on Public Administration. The Leader of the Opposition, Hon Ken Travers and I served on that committee, and I was privileged, as the chairman, to table the report. Just for Hansard's benefit, it was "The Report of the Standing Committee on Public Administration and Finance in Relation to the Impact of State Government Actions and Processes on the Use and Enjoyment of Freehold and Leasehold Land in Western Australia".

Motion lapsed, pursuant to standing orders.