

INDIGENOUS CONSERVATION TITLE BILL 2007

Second Reading

Resumed from 22 November 2007.

HON KEN BASTON (Mining and Pastoral) [3.37 pm]: The Indigenous Conservation Title Bill 2007 is a bill for an act —

- **to cancel Reserve No. 34606 (Gibson Desert Nature Reserve) and Reserve No. 34607 (Rudall River National Park); and**
- **to provide for the transfer of an estate in fee simple in each of the former reserves; and**
- **to provide for each of the former reserves, other than particular areas, to be managed as a national park or nature reserve and for those particular areas to be used as Aboriginal community living areas; and**
- **to make a consequential amendment to the *Land Administration Act 1997*; and**
- **for related purposes.**

It is a very interesting bill, one that took me some time to follow through. The purpose of the Indigenous Conservation Bill is to create a new form of title that recognises Indigenous interests in the national parks that I mentioned. The Rudall River National Park is one of the biggest national parks in Western Australia and one of the largest in the world. It is two and a half times larger than the Grand Canyon National Park in Arizona and has an area of 1 283 706 hectares, approximately 12 838 square kilometres. The exclusive native title surrounding that area is 136 000 square kilometres. The Gibson Desert Nature Reserve south east of Rudall River is 29 400 square kilometres, or nearly three million hectares. They are very large tracts of land. These parks were formed in 1977 between the passage of the commonwealth Racial Discrimination Act 1975 and the Native Title Act 1993. Although the reserves were created at that time and native title was extinguished when it was determined that the area was the subject of a vesting order, it was deemed that compensation had to be paid to the Indigenous people. I find it interesting that the compensation for native title claims has never been tested in Australia. I believe, and my side of politics believes, that it is time to test native title in the courts to see how much compensation should be paid. I believe that when native title was set up, a federal land and equity fund was set up for that purpose, but the principle has never been tested.

As I said, the bill allows for the cancellation of the existing A-class reserves that are attached to the national park and nature reserve. The bill creates a unique hybrid form of inalienable title to be transferred to Indigenous people. A freehold title is a legal estate in fee simple. Therefore, it is the most complete form of ownership of land. Freehold land is alienable, meaning that it can be bought and sold. Inalienable freehold land cannot be bought or sold, but it can be leased, generally. I will refer later to some interesting issues that will crop up during the committee stage regarding the proposed inalienable freehold title in the community and reserve areas. Indigenous conservation title is a form of inalienable freehold title; it cannot be bought or sold. An ICT has a number of conditions attached to the tenure. For example, an ICT can be transferred only to a prescribed body corporate. If the conditions of an ICT are breached, the title can be forfeited to the state. Those titles must be borne in mind by all members when considering this bill. I tend to question whether this bill is about compensation or better serving the people who live in the affected areas.

Interestingly, there are two communities living in the Rudall River National Park. This bill will excise from those two communities an area of some 78.5 square kilometres each, which is 6.1 per cent of the total land area of the proposed Rudall River ICT area. One of the communities is Punmu and the other is Parnngurr, which is also known as Cotton Creek. One is in the south of the park and the other is on the northern boundary of Lake Dora. No living areas have to be extracted from the Gibson Desert Nature Reserve as they have already been excised. I will speak about that later.

In January I flew to the Punmu community. I made arrangements to be met upon my arrival. The visit was extremely interesting and valuable. I have visited many Indigenous communities in the Kimberley, Pilbara and the Gascoyne. The Punmu community is no different from any other community that I have visited. If anything, it has more problems. It has problems with community development employment projects and health services funding. The community is isolated. It has not had a dentist for four years, although one has been promised. Management of CDEP funding for the community in the Rudall River National Park was originally undertaken by a CDEP organisation in South Hedland before it was transferred to CDEP organisations in Tom Price in the shire of Ashburton.

I question what the Indigenous Conservation Title Bill is really about. What will it achieve for the communities concerned? Will it achieve what they hope it will achieve? The government will create an inalienable freehold

title and lease it back for 99 years. The opposition very much supports the management structure. A joint management team, which will comprise Indigenous people from the communities, will manage the national park. The involvement of the communities will give the people there a purpose. They will have a chance to proudly show their culture and the beautiful environment in which they live.

During the briefing on the bill, there was discussion about the \$1 million a year for 15 years to manage Rudall River National Park. The figure for the Gibson Desert Nature Reserve is, from memory, \$5 million over a time frame that I cannot exactly remember. Interestingly enough, one figure is a lot bigger than the other.

As was outlined in the briefing, the bill is a package of measures. It will meet the government's commitment to compensation liability. I have received emails advising me that some people are not satisfied with the amount of compensation that will be paid. This bill hinges on everyone signing off on the compensation that is being offered. It must be valid. The interesting question that will be answered later is: what will happen in 99 years? Of course, none of us will be around then.

Hon Simon O'Brien: Speak for yourself!

Hon KEN BASTON: Who knows, a revolution in medicine may mean that we will live longer, although that will put extra pressure on our health system—and the Royal Flying Doctor Service!

I mentioned the cancellation of the two A-class reserves, which is a major component of the bill. I support the establishment of a joint management regime. Amendments to the Conservation and Land Management Act 1984 and the Wildlife Conservation Act 1950 will provide greater scope for traditional owners to carry out traditional pursuits and cultural activities. That will allow the use of firearms in the national park which, of course, is currently banned.

Even though this management act will be set up, certain parts of the Conservation and Land Management Act 1984 and the Wildlife Conservation Act 1950 will be waived. I find it very interesting that the government should be setting a precedent to wipe out A-class reserves and for those two acts to be stood aside, so that we will not have the punitive powers within those acts, and yet management will still be carried out. Many questions will be asked about this bill when we get to the committee stage.

The area of the Rudall River National Park has had a history in the past, in the sense that part of it was excised for the Kintyre uranium mine. I was doing a little research, as one does when approaching these types of bills, which are quite interesting. I went back to the *Hansard* of 17 August 1993, and I found that Hon Ross Lightfoot asked a question of the Minister for Lands, who at that time was Hon George Cash, which is quite interesting. I will quote from *Hansard* —

RUDALL RIVER NATIONAL PARK — KINTYRE DEPOSIT EXCISION

296. Hon P.R. LIGHTFOOT to the Minister for Lands:

Earlier today the Minister gave notice of his intention to introduce a Reserves Bill into the House.

- (1) Does the Minister intend to excise the Kintyre deposit from the Rudall River national park?
- (2) Was the proposal agreed to and approved of by the previous Labor Government?

Hon GEORGE CASH replied:

I thank the member for some notice of the question.

That is the normal response in this house at question time —

- (1) The Reserves Bill contains a clause which seeks to provide for the excision of approximately 151 square kilometres, or one per cent, of the national park. That area contains most of the established mineralisation. The excision will minimise management difficulties for the Department of Conservation and Land Management.

Point of Order

Hon N.D. GRIFFITHS: The Minister has now turned to the second page of his second reading speech.

The PRESIDENT: What is your point of order?

Hon N.D. GRIFFITHS: He is delivering a speech.

The PRESIDENT: You may be correct, but it is not a point of order.

The discussion went on, and then continued —

Hon GEORGE CASH: I assure Hon Nick Griffiths that this is not part of the second reading speech.

Hon John Halden: Will you table it?

Hon GEORGE CASH: Yes, if the Opposition requires that.

He then continues with the answer —

- (2) The area is entirely outside the Rudall River watershed, and the ecosystems involved are well represented elsewhere in the national park. It is proposed that the western boundary of the national park should be extended 2.8 kilometres further west to compensate for the area being excised. This represents an area of approximately 154 square kilometres to be added to the national park. The proposal was agreed to on 3 August 1992 by the Cabinet of the former Labor Government.

Therefore, the Labor Party has been mucking around with this park and changing it for some time. It makes a bit of a mockery of the government when we look at the NatureBase news page on the Department of Environment and Conservation's website. An article dated September 2007 reads —

Environment Minister David Templeman today announced the single biggest addition to Western Australia's prized collection of parks and reserves in history.

The Minister said more than 2.7 million hectares — most of it former pastoral lands in the Gascoyne and Murchison — would be converted into 11 new conservation parks and 14 new nature reserves, or added to existing parks and reserves.

It goes on to brag about how many parks we have etc. I find it quite amazing that we are now going down the path of changing a national park in Western Australia—and a very large one at that—to a different land title altogether.

I touched on the community living areas and the conservation area. Those two community areas that are mentioned will be excised. The traditional owners in the community living areas will be given a hybrid form of inalienable title to be known as an Indigenous conservation title. However, it is interesting that the traditional owners will not be permitted to sell or mortgage that land, because the title may be transferred only to a prescribed body corporate. However, the land may be leased, and the leaseholder will be permitted to mortgage the land. I will be asking some questions about this matter at the committee stage, because I find that situation rather absurd.

This bill will also interact with the Mining Act 1978 and the Petroleum Act 1967 in that it will maintain the status quo as to how these acts operate on ICT land. Those two acts will continue to treat ICT land as though it were an A-class reserve. In respect of the compensation provisions in those acts, ICT holders will be treated as though they are private landholders. The exception to this will be community living areas, which will be treated as though they are private land. Therefore, even though we are dealing here with inalienable freehold title, there is straightaway a mishmash of two different types of title. It really is a hybrid title that we are creating in this bill.

There are already many mining leases in this area. Those existing mining leases will not be affected by this bill. Some time ago, I was lobbied by a person who told me that he thinks this is an excellent bill. I know that this person is in the minerals game, so I asked him whether he has any leases in the Rudall River area, and he said he has a couple in the middle, and he would take me out in his helicopter and show me where they are. I said thanks very much. I find it amazing how personal interest always comes to the fore when these sorts of things take place. I have spoken to the Chamber of Minerals and Energy of Western Australia, and it does not have a problem with this bill either.

I turn now to the objectives of the joint management regime that is proposed in the bill. The first objective is preserving and enhancing Aboriginal culture and the heritage values of the area. I certainly support that. The second objective is preserving and enhancing the natural environmental values of the land. I certainly support that. The third objective is to—insofar as is consistent with the first two objectives—provide access to the general public for recreational purposes. I support that also.

I have mentioned that this bill provides for the making of joint management agreements. These joint management agreements will in turn provide for the establishment of joint management bodies, which will comprise representatives of the traditional owners and DEC. However, the bill does not state how these bodies

will actually be structured. All these matters will need to be agreed to before the Native Title Tribunal will be able to sign off on this agreement and give effect to the extinguishment of native title in this area. That may take some time, given how long it is taking to get things moving within the circles of government at this time.

It is interesting that during the briefing we touched on whether this bill would set a precedent. We asked whether this bill would affect any other parks, and the answer we were given was that it could affect another nine in Western Australia. I find it a little disturbing that we will continue to do that under the hybrid title of this bill. I have no problem with funding these management plans, but I, and other members, have asked questions in this place about the lack of funding for managing of the current reserves. However, all of a sudden we are going to whack a heap of money into other reserves.

There must be some careful thought about how all this will operate on a state and federal level. I have spoken in this place about my having travelled around communities and witnessed the waste of both state and federal dollars through a lack of auditing or accountability. I think a lot more could have been done with the dollars that have been spent in those communities to solve some of the issues and problems. I certainly do not deny that there are lots of issue and problems in the communities. I have already alluded in this place to some of the wasted dollars on the ground, such as power systems etc that were not installed and have been sitting there for two years. Some \$1.6 million worth of batteries, solar panels and renewable energy is just sitting, wasted, in Pilbara communities. Nobody does an audit or follows through on what is happening to these funds.

I touched on the community of Punmu, where rubbish is everywhere because the funding to clean it up was not channelled to that community. We must ensure that when we channel funding, instead of it being dished out from miles and miles away, the community has control over it so that it goes to areas where it is needed to make the community work. For example, we could give the community the opportunity organise the trucks and machinery and then to say to people that it is rubbish day today, and they will get \$20 an hour if they help clear it up. That lack of organisation resulting from how the funding is set up and flows to the communities is a huge problem. It is wrong to think that this bill will solve all the problems in the communities by deeming that native title has been excised.

These parks can be managed with the involvement of the Indigenous people, such as in Karijini National Park. There are examples of it happening that demonstrate that, by their involvement, people can have meaningful employment and a purpose in life. They are able to get up in the morning and be proud to show people around the parks and also protect significant sites etc.

The briefing also referred to changes to the Conservation and Land Management Act 1984, which will mean that —

For instance, traditional owners will be allowed to hunt, shoot, destroy or set snares for the purposes of capturing indigenous fauna and to occupy, clear or break up for cultivation land within the conservation area provided that these acts are authorised by, and are done or made in accordance with the joint management plans.

When I read the joint management plan and the bill, the difficulty that was apparent to me was how it would be set up. Members may say that that could be clarified in the regulations, but I would like it outlined more clearly in the bill because of the broad spectrum of management issues in the Pilbara and Kimberley regions that I have talked about. I cannot see how this bill will suddenly bring about a revolution in the management of those areas.

I look forward with interest to working through this bill, and I reiterate that I believe that it is time that we consider taking to court those cases in which native title has been extinguished to find out what the real meaning of that extinguishment is. Members should bear in mind that funds of some \$40 million plus were set aside for that purpose. That figure was given to me some time ago by somebody fairly in the know.

An enlargement was done with a reserve extension in 1996 in the Gibson Desert area for the Mantjiltjarra people out at the Patjarr community. That was an extension of the reserve proclaimed in the 1968 Patjarr culture site. Hon Peter Foss was involved in the extension in that reserve. I believe that that community now contains some 50-odd people, with, from memory, 12 in the school, and is a proud community. That is one community I hope to visit later.

I refer again to the Rudall River National Park, the size of which I have already stated. This is an interesting statistic: Lake Dora is 198 metres above sea level. I found it quite interesting for a salt lake to be that high above sea level, bearing in mind that salt lakes, as farmers know, are usually below sea level. I was quite amazed by the height of that area.

The vegetation in that park is divided roughly into three landscapes—the Little Sandy Desert in the south west; a central belt of stony hills and flattish plains; and the Great Sandy Desert to the north east. There are also watercourses etc. Ninety bird species, including more than a dozen water birds, are known, including the Pacific

black duck; Australasian grebe; painted finch; spinifex pigeon; white-plumed honeyeater; grey-headed honeyeater; crimson chat and little button quail in good seasons; spinifexbird and white-winged fairy wren. Also present are wedge-tailed eagles etc.

Rudall River was so named by Frank Hann after the surveyor and explorer William Frederick Rudall. The Aboriginal people's name for the area is Karlaminyi. The Aboriginal people call the Rudall River the Karlaminyi.

Flying over the area, it is visibly obvious that the Rudall River is very much a watercourse, with pools etc. It is an oasis. A couple of songlines run within the area of the park, and of course there are many other areas of importance to Indigenous people. These are cultural benefits for future tourism development out there. Seeing Punmu for the first time, I thought it was a great sight for tourists. The community was certainly looking at developing that activity, as people wanted to have something by which they could earn their own income and be self-reliant from that massive lake that goes for as far as the eye can see—and a lot further. I found it to be quite overbearing, and I think that many other people would think the same.

I will not go into a lot of the history of the area now. The other point that needs to be made clear is that the communities around the Rudall River were only set up in 1982. However, there was something that concerned me. When I flew out there, my office got permission to enter the community from people on the ground in the community, in fact from the officer in charge of running the community. I got a phone call three days later inquiring whether I had been out to Punmu and Cotton Creek. I assured the lass on the phone that I had been to Punmu, I had flown over Cotton Creek, I had flown over Rudall River National Park, I had been to Telfer and met with people there, and I had gone back to Broome. I asked the young lass what she actually did. She said she was a lawyer. She said, "You didn't have permission." I asked her where she was living and I think she said her office was somewhere in West Perth. I said, "This is what epitomises to me the issues and problems we have with all these communities etc." I pointed out to her very politely that federal and state members of Parliament do not need permission or permits to go onto Indigenous land. I pointed out also to her that the two communities were in a national park, that they were my constituents and that I, as member for the Mining and Pastoral Region, was entitled to visit those people. She then said, "Ken, legally you are absolutely right." I then said, "Well, what's your problem?" I find that one problem seems to be a kind of separation of power between people in Perth and people in Punmu and Cotton Creek. Of course that is nothing new to what we are used to in regional areas. However, if these issues continue to be driven from a city-centric view, then we will have problems. All I can say is that there are parts of this bill that the opposition supports and others that it does not support. However, I look forward to debating the bill in committee. It is a very interesting bill, although I am not sure that it is the correct way we should be going.

HON GIZ WATSON (North Metropolitan) [4.11 pm]: The Greens (WA) welcome the Indigenous Conservation Title Bill and congratulate the government for bringing it forward. I thank the Leader of the House for his kind cooperation in allowing us to at least commence the second reading debate on this bill this afternoon.

Mr Deputy President (Hon George Cash), I acknowledge in the President's gallery members of the Mantjiltjarra community who are, fortunately, in Perth on other business and who, of course, have a particular interest in the passage of this bill. It is very unusual that we are dealing with a bill in this Parliament that specifically addresses the rights of a particular group of Western Australians, and I am very pleased that they are able to join us this afternoon.

This is indeed a historic bill, and I think it is a very significant bill. It is the first bill of this type that I have had to deal with in my time as a member of Parliament. It is a significant development for the Greens in terms of finally dealing in a more appropriate way with the issues of joint management in significant areas of country. It is fair to say, in my assessment and in the assessment of people I have consulted on the issue to do with shared responsibility to manage significant areas of country, that there is a general dissatisfaction with the current arrangements for joint management of national parks. Of course there are other models, and this is another model that we are now debating in this Parliament. The bill provides us with the opportunity to implement a joint management arrangement that will respect the traditional owners of the country.

I wanted to start my comments by seeking the leave of the house to table a document that has been kindly provided to me titled "Working Together Joint Management in the Gibson Desert Nature Reserve". Members might well be interested in this document in that it provides very good photographic evidence of the existing arrangements that are in place in what we call the Gibson Desert Nature Reserve where there is a joint management arrangement between the Mantjiltjarra people and the Department of Environment and Conservation.

Leave granted. [See paper 4062.]

Debate interrupted, pursuant to temporary orders.

[Continued on page 3556.]

Sitting suspended from 4.15 to 4.30 pm