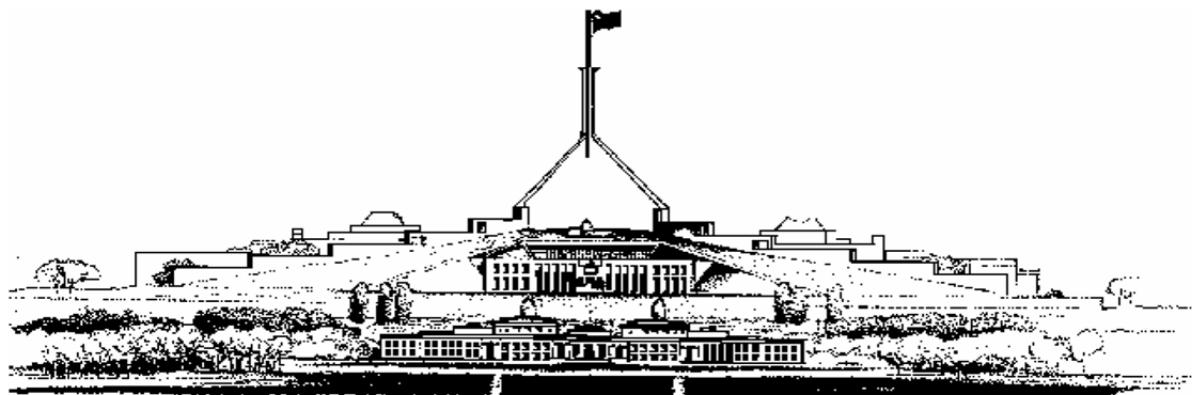




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



House of Representatives

Official Hansard

No. 220, 1998
Thursday, 9 April 1998

**THIRTY-EIGHTH PARLIAMENT
FIRST SESSION—SIXTH PERIOD**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

THIRTY-EIGHTH PARLIAMENT

FIRST SESSION—SIXTH PERIOD

Governor-General

His Excellency the Hon. Sir William Patrick Deane, Companion of the Order of Australia,
Knight Commander of the Order of the British Empire

House of Representatives Officeholders

Speaker—The Right Hon. Ian McCahon Sinclair MP

Deputy Speaker—Mr Garry Barr Nehl MP

Second Deputy Speaker—Mr Harry Alfred Jenkins MP

Members of the Speaker's Panel—The Hon. Godfrey Harry Adams MP,

Mr Kevin James Andrews MP, the Hon. Janice Ann Crosio MBE, MP,

the Hon. Nicholas Manuel Dondas MP, Mr John Alexander Forrest MP, Mr Colin Hollis MP,

Mrs De-Anne Margaret Kelly MP, Mr Frank William Mossfield AM, MP,

Mr Harry Vernon Quick MP, the Hon. Nicholas Bruce Reid MP

Leader of the House—The Hon. Peter Keaston Reith MP

Deputy Leader of the House—The Hon. Warren Errol Truss MP

Manager of Opposition Business—The Hon. Simon Findlay Crean MP

Party Leaders and Whips

Liberal Party of Australia

Leader—The Hon. John Winston Howard MP

Deputy Leader—The Hon. Peter Howard Costello MP

Chief Government Whip—Mr John Neil Andrew MP

Government Whips—Mr Fergus Stewart McArthur MP and Mr Peter Neil Slipper MP

National Party of Australia

Leader—The Hon. Timothy Andrew Fischer MP

Deputy Leader—The Hon. John Duncan Anderson MP

Whip—Mr Noel Jeffrey Hicks MP

Assistant Whip—Mr Lawrence James Anthony MP

Australian Labor Party

Leader—The Hon. Kim Christian Beazley MP

Deputy Leader—The Hon. Gareth John Evans QC, MP

Chief Opposition Whip—The Hon. Leo Boyce McLeay MP

Opposition Whips—Mr Edward Laurence Grace MP and Mr Rodney Weston Sawford MP

Members of the House of Representatives

Member	Division	Party
Abbott, Hon. Anthony John	Warringah, NSW	LP
Adams, Hon. Godfrey Harry	Lyons, Tas	ALP
Albanese, Anthony	Grayndler, NSW	ALP
Anderson, Hon. John Duncan	Gwydir, NSW	NP
Andren, Peter James	Calare, NSW	Ind.
Andrew, John Neil	Wakefield, SA	LP
Andrews, Kevin James	Menzies, Vic	LP
Anthony, Lawrence James	Richmond, NSW	NP
Bailey, Frances Esther	McEwen, Vic	LP
Baldwin, Hon. Peter Jeremy	Sydney, NSW	ALP
Baldwin, Robert Charles	Paterson, NSW	LP
Barresi, Phillip Anthony	Deakin, Vic	LP
Bartlett, Kerry Joseph	Macquarie, NSW	LP
Beazley, Hon. Kim Christian	Brand, WA	ALP
Beddall, Hon. David Peter	Rankin, Qld	ALP
Bevis, Hon. Archibald Ronald	Brisbane, Qld	ALP
Billson, Bruce Fredrick	Dunkley, Vic	LP
Bishop, Hon. Bronwyn Kathleen	Mackellar, NSW	LP
Bradford, John Walter	McPherson, Qld	LP/CDP*
Brereton, Hon. Laurence John	Kingsford-Smith, NSW	ALP
Broadbent, Russell Evan	McMillan, Vic	LP
Brough, Malcolm Thomas	Longman, Qld	LP
Brown, Hon. Robert James	Charlton, NSW	ALP
Cadman, Hon. Alan Glyndwr	Mitchell, NSW	LP
Cameron, Eoin Harrap	Stirling, WA	LP
Cameron, Ross Alexander	Parramatta, NSW	LP
Campbell, Graeme	Kalgoorlie, WA	Ind.
Causley, Hon. Ian Raymond	Page, NSW	NP
Charles, Robert Edwin	LaTrobe, Vic	LP
Cobb, Michael Roy	Parkes, NSW	NP
Costello, Hon. Peter Howard	Higgins, Vic	LP
Crean, Hon. Simon Findlay	Hotham, Vic	ALP
Crosio, Hon. Janice Ann, MBE	Prospect, NSW	ALP
Dargavel, Steven John	Fraser, ACT	ALP
Dondas, Hon. Nicholas Manuel, AM	Northern Territory	CLP
Downer, Hon. Alexander John Gosse	Mayo, SA	LP
Draper, Patricia	Makin, SA	LP
Ellis, Annette Louise	Namadgi, ACT	ALP
Elson, Kay Selma	Forde, Qld	LP
Entsch, Warren George	Leichhardt, Qld	LP
Evans, Hon. Gareth John, QC	Holt, Vic	ALP
Evans, Martyn John	Bonython, SA	ALP
Evans, Richard David Conroy	Cowan, WA	LP
Fahey, Hon. John Joseph	Macarthur, NSW	LP
Ferguson, Laurie Donald Thomas	Reid, NSW	ALP
Ferguson, Martin John, AM	Batman, Vic	ALP
Filing, Paul Anthony	Moore, WA	Ind.
Fischer, Hon. Timothy Andrew	Farrer, NSW	NP
Fitzgibbon, Joel Andrew	Hunter, NSW	ALP
Forrest, John Alexander	Malley, Vic	NP
Gallus, Christine Ann	Hindmarsh, SA	LP
Gambaro, Teresa	Petrie, Qld	LP
Gash, Joanna	Gilmore, NSW	LP

Members of the House of Representatives—*continued*

Member	Division	Party
Georgiou, Petro	Kooyong, Vic	LP
Grace, Edward Laurence	Fowler, NSW	ALP
Grace, Elizabeth Jane	Lilley, Qld	LP
Griffin, Alan Peter	Bruce, Vic	ALP
Halverson, Hon. Robert George, OBE	Casey, Vic	LP
Hanson, Pauline Lee	Oxley, Qld	Ind.
Hardgrave, Gary Douglas	Moreton, Qld	LP
Hatton, Michael John	Blaxland, NSW	ALP
Hawker, David Peter Maxwell	Wannon, Vic	LP
Hicks, Noel Jeffrey	Riverina, NSW	NP
Hockey, Joseph Benedict	North Sydney, NSW	LP
Holding, Hon. Allan Clyde	Melbourne Ports, Vic	ALP
Hollis, Colin	Throsby, NSW	ALP
Howard, Hon. John Winston	Bennelong, NSW	LP
Jeanes, Susan Barbara	Kingston, SA	LP
Jenkins, Harry Alfred	Scullin, Vic	ALP
Johnston, Ricky	Canning, WA	LP
Jones, Hon. Barry Owen, AO	Lalor, Vic	ALP
Jull, Hon. David Francis	Fadden, Qld	LP
Katter, Hon. Robert Carl	Kennedy, Qld	NP
Kelly, De-Anne Margaret	Dawson, Qld	NP
Kelly, Jackie Marie	Lindsay, NSW	LP
Kemp, Hon. David Alistair	Goldstein, Vic	LP
Kerr, Hon. Duncan James Colquhoun	Denison, Tas	ALP
Latham, Mark William	Werriwa, NSW	ALP
Lawrence, Hon. Carmen Mary	Fremantle, WA	ALP
Lee, Hon. Michael John	Dobell, NSW	ALP
Lieberman, Hon. Louis Stuart	Indi, Vic	LP
Lindsay, Peter John	Herbert, Qld	LP
Lloyd, James Eric	Robertson, NSW	LP
McArthur, Fergus Stewart	Corangamite, Vic	LP
McClelland, Robert Bruce	Barton, NSW	ALP
McDougall, Graeme Robert	Griffith, Qld	LP
McCauran, Hon. Peter John	Gippsland, Vic	NP
McLachlan, Hon. Ian Murray, AO	Barker, SA	LP
McLeay, Hon. Leo Boyce	Watson, NSW	ALP
McMullan, Hon. Robert Francis	Canberra, ACT	ALP
Macklin, Jennifer Louise	Jagajaga, Vic	ALP
Marek, Paul	Capricornia, Qld	NP
Martin, Hon. Stephen Paul	Cunningham, NSW	ALP
Melham, Daryl	Banks, NSW	ALP
Miles, Hon. Christopher Gordon	Braddon, Tas	LP
Moore, Hon. John Colinton	Ryan, Qld	LP
Morris, Allan Agapitos	Newcastle, NSW	ALP
Morris, Hon. Peter Frederick	Shortland, NSW	ALP
Mossfield, Frank William, AM	Greenway, NSW	ALP
Moylan, Hon. Judith Eleanor	Pearce, WA	LP
Mutch, Stephen Bruce	Cook, NSW	LP
Nairn, Gary Roy	Eden-Monaro, NSW	LP
Nehl, Garry Barr	Cowper, NSW	NP
Nelson, Brendan John	Bradfield, NSW	LP
Neville, Paul Christopher	Hinkler, Qld	NP
Nugent, Peter Edward	Aston, Vic	LP

Members of the House of Representatives—continued

Member	Division	Party
O'Connor, Gavan Michael	Corio, Vic	ALP
O'Keefe, Hon. Neil Patrick	Burke, Vic	ALP
Price, Hon. Leo Roger Spurway	Chifley, NSW	ALP
Prosser, Hon. Geoffrey Daniel	Forrest, WA	LP
Pyne, Christopher Maurice	Sturt, SA	LP
Quick, Harry Vernon	Franklin, Tas	ALP
Randall, Donald James	Swan, WA	LP
Reid, Hon. Nicholas Bruce	Bendigo, Vic	LP
Reith, Hon. Peter Keaston	Flinders, Vic	LP
Rocher, Allan Charles	Curtin, WA	Ind.
Ronaldson, Hon. Michael John Clyde	Ballarat, Vic	LP
Ruddock, Hon. Philip Maxwell	Berowra, NSW	LP
Sawford, Rodney Weston	Port Adelaide, SA	ALP
Scott, Hon. Bruce Craig	Maranoa, Qld	NP
Sercombe, Robert Charles Grant	Maribyrnong, Vic	ALP
Sharp, Hon. John Randall	Hume, NSW	NP
Sinclair, Rt Hon. Ian McCahon	New England, NSW	NP
Slipper, Peter Neil	Fisher, Qld	LP
Smith, Anthony Charles	Dickson, Qld	LP
Smith, Stephen Francis	Perth, WA	ALP
Smith, Hon. Warwick Leslie	Bass, Tas	LP
Somlyay, Hon. Alexander Michael	Fairfax, Qld	LP
Southcott, Andrew John	Boothby, SA	LP
Stone, Sharman Nancy	Murray, Vic	LP
Sullivan, Kathryn Jean Martin	Moncrieff, Qld	LP
Tanner, Lindsay James	Melbourne, Vic	ALP
Taylor, William Leonard	Groom, Qld	LP
Theophanous, Hon. Andrew Charles	Calwell, Vic	ALP
Thomson, Hon. Andrew Peter	Wentworth, NSW	LP
Thomson, Kelvin John	Wills, Vic	ALP
Truss, Hon. Warren Errol	Wide Bay, Qld	NP
Tuckey, Charles Wilson	O'Connor, WA	LP
Vaile, Hon. Mark Anthony James	Lyne, NSW	NP
Vale, Danna Sue	Hughes, NSW	LP
Wakelin, Barry Hugh	Grey, SA	LP
West, Andrea Gail	Bowman, Qld	LP
Williams, Hon. Daryl Robert, AM, QC	Tangney, WA	LP
Willis, Hon. Ralph	Gellibrand, Vic	ALP
Wilton, Gregory Stuart	Isaacs, Vic	ALP
Wooldridge, Hon. Michael Richard Lewis	Chisholm, Vic	LP
Worth, Hon. Patricia Mary	Adelaide, SA	LP
Zammit, Paul John	Lowe, NSW	Ind.

* Christian Democratic Party from 8.4.1998.

PARTY ABBREVIATIONS

ALP—Australian Labor Party; CDP—Christian Democratic Party; CLP—Country Liberal Party;
 LP—Liberal Party of Australia; NP—National Party of Australia; Ind.—Independent

Heads of Parliamentary Departments

Clerk of the Senate—H. Evans

Clerk of the House of Representatives—I. C. Harris

Parliamentary Librarian—

Principal Parliamentary Reporter—J. W. Templeton

Secretary, Joint House Department—M. W. Bolton

HOWARD MINISTRY

Prime Minister	The Hon. John Winston Howard MP
Minister for Trade and Deputy Prime Minister	The Hon. Timothy Andrew Fischer MP
Treasurer	The Hon. Peter Howard Costello MP
Minister for Primary Industries and Energy	The Hon. John Duncan Anderson MP
Minister for the Environment and Leader of the Government in the Senate	Senator the Hon. Robert Murray Hill
Minister for Communications, the Information Economy and the Arts and Deputy Leader of the Government in the Senate	Senator the Hon. Richard Kenneth Robert Alston
Minister for Workplace Relations and Small Business and Leader of the House	The Hon. Peter Keaston Reith MP
Minister for Foreign Affairs	The Hon. Alexander John Gosse Downer MP
Minister for Social Security	Senator the Hon. Jocelyn Margaret Newman
Minister for Industry, Science and Tourism	The Hon. John Colinton Moore MP
Minister for Defence	The Hon. Ian Murray McLachlan AO, MP
Minister for Health and Family Services	The Hon. Michael Richard Lewis Wooldridge MP
Minister for Finance and Administration	The Hon. John Joseph Fahey MP
Minister for Employment, Education, Training and Youth Affairs	The Hon. Dr David Alistair Kemp MP
Attorney-General	The Hon. Daryl Robert Williams AM, QC, MP
Minister for Transport and Regional Development	The Hon. Mark Anthony James Vaile MP

(The above ministers constitute the cabinet)

Howard Ministry—continued

Minister for Immigration and Multicultural Affairs	The Hon. Philip Maxwell Ruddock MP
Minister for Schools, Vocational Education and Training and Minister Assisting the Prime Minister for the Public Service	Senator the Hon. Christopher Martin Ellison
Minister for Resources and Energy	Senator the Hon. Warwick Raymond Parer
Minister for Family Services	The Hon. Warwick Leslie Smith MP
Minister for Defence Industry, Science and Personnel	The Hon. Bronwyn Kathleen Bishop MP
Minister for Sport and Tourism and Minister Assisting the Prime Minister for the Sydney 2000 Games	The Hon. Andrew Peter Thomson MP
Minister for Veterans' Affairs	The Hon. Bruce Craig Scott MP
Minister for Aboriginal and Torres Strait Islander Affairs	Senator the Hon. John Joseph Herron
Minister for Customs and Consumer Affairs and Deputy Leader of the House	The Hon. Warren Errol Truss MP
Assistant Treasurer	Senator the Hon. Charles Roderick Kemp
Minister for the Status of Women	The Hon. Judith Eleanor Moylan MP
Minister for Regional Development, Territories and Local Government	The Hon. Alexander Michael Somlyay MP
Minister for Justice	Senator the Hon. Amanda Eloise Vanstone
Special Minister of State and Minister Assisting the Prime Minister	Senator the Hon. Nicholas Hugh Minchin
Parliamentary Secretary (Cabinet) to the Prime Minister	The Hon. Christopher Gordon Miles MP
Parliamentary Secretary to the Minister for Trade	Senator the Hon. David Gordon Cadell Brownhill
Parliamentary Secretary to the Minister for Foreign Affairs	The Hon. Kathryn Jean Martin Sullivan MP
Parliamentary Secretary to the Treasurer and Manager of Government Business in the Senate	Senator the Hon. Ian Gordon Campbell
Parliamentary Secretary to the Minister for Primary Industries and Energy	Senator the Hon. Judith Mary Troeth
Parliamentary Secretary to the Minister for the Environment	Senator the Hon. Ian Douglas Macdonald
Parliamentary Secretary to the Minister for Workplace Relations and Small Business	The Hon. Alan Glyndwr Cadman MP
Parliamentary Secretary to the Minister for Social Security	Senator the Hon. Grant Ernest John Tambling
Parliamentary Secretary to the Minister for Health and Family Services	The Hon. Patricia Mary Worth MP
Parliamentary Secretary to the Minister for Employment, Education, Training and Youth Affairs	The Hon. Anthony John Abbott MP
Parliamentary Secretary to the Minister for Transport and Regional Development	The Hon. Michael John Clyde Ronaldson MP

SHADOW MINISTRY

Leader of the Opposition	The Hon. Kim Christian Beazley MP
Deputy Leader of the Opposition and Shadow Treasurer	The Hon. Gareth John Evans QC, MP
Leader of the Opposition in the Senate and Shadow Minister for Public Administration, Government Services and Territories	Senator the Hon. John Philip Faulkner
Deputy Leader of the Opposition in the Senate and Shadow Minister for Trade	Senator the Hon. Peter Francis Salmon Cook

(The following members of the Shadow Ministry are listed in alphabetical order)

Shadow Minister for Defence	The Hon. Archibald Ronald Bevis MP
Shadow Attorney-General and Shadow Minister for Justice	Senator the Hon. Nick Bolkus
Shadow Minister for Foreign Affairs	The Hon. Laurence John Brereton MP
Shadow Minister for Industry and Regional Development and Manager of Opposition Business	The Hon. Simon Findlay Crean
Shadow Minister for Science and Information Technology	Mr Martyn John Evans MP
Shadow Minister for Veterans' Affairs and Shadow Minister for Defence Science and Personnel	Mr Laurie Donald Thomas Ferguson MP
Shadow Minister for Employment, Training, Population and Immigration and Assistant to the Leader on Multicultural Affairs	Mr Martin John Ferguson MP
Shadow Minister for the Environment	The Hon. Duncan James Colquhoun Kerr
Shadow Minister for Education and Youth Affairs	Mr Mark William Latham MP
Shadow Minister for Health	The Hon. Michael John Lee
Shadow Minister for Social Security and the Aged and Assistant to the Leader of the Opposition on the Status of Women	Ms Jennifer Louise Macklin MP
Shadow Minister for Industrial Relations, Finance and the Arts	The Hon. Robert Francis McMullan
Shadow Minister for Small Business and Customs and Shadow Minister for Sport and Tourism	The Hon. Stephen Paul Martin

Shadow Ministry—continued

Shadow Minister for Aboriginal Affairs and Assistant to the Shadow Foreign Minister on Arms Control	Mr Daryl Melham MP
Shadow Minister for Consumer Affairs, Local Government, Housing and Childcare	Senator Belinda Jane Neal
Shadow Minister for Primary Industries	The Hon. Neil Patrick O'Keefe MP
Shadow Minister for Communications	Senator the Hon. Christopher Cleland Schacht
Shadow Minister for Resources and Energy	Mr Stephen Francis Smith MP
Shadow Minister for Transport	Mr Lindsay James Tanner MP

(The following Parliamentary Secretaries are listed in alphabetical order)

Manager of Opposition Business in the Senate and Parliamentary Secretary to the Shadow Minister for Education	Senator Kim John Carr
Parliamentary Secretary to the Shadow Ministers for Health and Primary Industries	Senator Michael George Forshaw
Parliamentary Secretary to the Shadow Minister for Sport and Tourism and Assistant to the Shadow Ministers for Science and Information Technology, Youth Affairs and the Arts	Senator Kate Alexandra Lundy
Parliamentary Secretary to the Shadow Ministers for Employment and Training, and for Industrial Relations	Senator Susan Mary Mackay
Parliamentary Secretary to the Leader of the Opposition and the Shadow Minister for Primary Industries and Spokesperson on Northern Australia	Mr Gavan Michael O'Connor MP
Secretary to the Shadow Ministry	The Hon. Andrew Charles Theophanous MP
Parliamentary Secretary to the Shadow Treasurer and to the Shadow Minister for Population and Immigration	Mr Kelvin John Thomson MP

THE COMMITTEES OF THE SESSION

FIRST SESSION: SIXTH PERIOD

STANDING COMMITTEES

ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS: Mr Lieberman (*Chair*), Mr Albanese, Mr Campbell, Mr Dondas, Mr Entsch, Mr Holding, Mr Katter, Mr Lloyd, Mr McGauran, Mr Melham, Dr Nelson, Mr Quick, Mr A. C. Smith, Mrs Stone.

COMMUNICATIONS, TRANSPORT AND MICROECONOMIC REFORM: Mr Neville (*Chair*), Mr R. A. Cameron, Mrs Crosio, Mr Hardgrave, Mr Hollis, Mr Lindsay, Mr McArthur, Mr McDougall, Mr Marek, Mr P. F. Morris, Mr Randall, Mr Tanner, Mr Wakelin, Mr Willis.

EMPLOYMENT, EDUCATION AND TRAINING: Dr Nelson (*Chair*), Mr Barresi, Mr Bartlett, Mr Brough, Mr Dargavel, Mrs Elson, Mr M. J. Ferguson, Mrs Gash, Mr Latham, Mr Marek, Mr Mossfield, Mr Neville, Mr Pyne, Mr Sawford.

ENVIRONMENT, RECREATION AND THE ARTS: Mr Causley (*Chair*), Mr Anthony, Mr Billson, Mr Brown, Mr E. H. Cameron, Mr Entsch, Mr Hockey, Mr Jenkins, Miss J. M. Kelly, Mr Kerr, Dr Lawrence, Mr McDougall, Mr Mossfield, Dr Southcott.

FAMILY AND COMMUNITY AFFAIRS: Mr Forrest (*Chair*), Mr R. A. Cameron, Ms Ellis, Mrs Elson, Mrs E. J. Grace, Mr Jenkins, Mrs Johnston, Mrs D. M. Kelly, Mr Lieberman, Ms Macklin, Mr A. A. Morris, Dr Nelson, Mr Quick, Mrs West.

FINANCIAL INSTITUTIONS AND PUBLIC ADMINISTRATION: Mr Hawker (*Chair*), Mr Albanese, Mr Anthony, Mr Causley, Mrs Gallus, Mr Hockey, Mr Latham, Mr Martin, Mr Mutch, Dr Nelson, Mr Pyne, Dr Southcott, Mr Willis, Mr Wilton.

HOUSE: The Speaker, Mr J. N. Andrew, Mrs E. J. Grace, Mr Hollis, Mr McLeay, Mr Nehl, Mr Sawford.

INDUSTRY, SCIENCE AND TECHNOLOGY: Mr Reid (*Chair*), Mrs Bailey, Mr Beddall, Mr M. J. Evans, Mr R. D. C. Evans, Ms Gambaro, Mr Jenkins, Mrs Johnston, Miss J. M. Kelly, Mr Marek, Mr A. A. Morris, Mr Nugent, Mr O'Connor, Mr Zammit.

LEGAL AND CONSTITUTIONAL AFFAIRS: Mr K. J. Andrews (*Chair*), Mr Barresi, Mrs E. J. Grace, Mr Hatton, Mr Kerr, Mr McClelland, Mr McGauran, Mr Melham, Mr Mutch, Mr Price, Mr Randall, Mr A. C. Smith, Dr Southcott, Mrs D. S. Vale.

LIBRARY: The Speaker, Mr Adams, Mr Barresi, Mr Causley, Mr Filing, Mr Jones, Mr Nugent.

MEMBERS' INTERESTS: Mr Reid (*Chair*), Mr K. J. Andrews, Mr E. L. Grace, Mr Jenkins, Mr Jull, Mr Martin, Mr Neville.

PRIMARY INDUSTRIES, RESOURCES AND RURAL AND REGIONAL AFFAIRS: Mrs Bailey (*Chair*), Mr Adams, Mr Andren, Mr Causley, Mr Cobb, Mr Fitzgibbon, Mrs Gash, Mr Hawker, Mr Katter, Mr Nairn, Mr O'Connor, Mr S. F. Smith, Mrs Stone, Mr Wakelin.

PRIVILEGES: Mr E. H. Cameron (*Chair*), the Leader of the House or his nominee, Mr K. J. Andrews, Mr Brown, Mr Holding, Mr Jull, Mr McClelland (nominee of the Deputy Leader of the Opposition), Mr McGauran, Mr McLeay, Mr Sawford, Mr Slipper.

PROCEDURE: Mr Nugent (*Chair*), Mr J. N. Andrew, Mr E. H. Cameron, Mr Forrest, Mr Martin, Mr Mossfield, Mr Reid, Mr K. J. Thomson.

PUBLICATIONS: Mr Leiberman (*Chair*), Mr Cobb, Ms Ellis, Mr R. D. C. Evans, Mr Griffin, Mr Martin, Mr Mutch.

SELECTION: Mr Nehl (*Chair*), Mr J. N. Andrew, Mr Anthony, Mr Filing, Mr E. L. Grace, Mr Hicks, Mr Hollis, Mr McArthur, Mr McLeay, Mr Reid, Mr Sawford, Mr Slipper.

JOINT STATUTORY COMMITTEES

AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION: Senator MacGibbon (*Presiding Member*), Mr Hicks, Mr Jull, Mr McAuthur, Mr Sercombe, Senator J. A. L. Macdonald, Senator MacGibbon, Senator Ray.

BROADCASTING OF PARLIAMENTARY PROCEEDINGS: The Speaker (*Chair*), The President, Mr Adams, Mr R. D. C. Evans, Mr Hicks, Mr Lindsay, Mr Martin, Senator Knowles, Senator West.

CORPORATIONS AND SECURITIES: Senator Chapman (*Chair*), Mr Anthony, Mrs Johnston, Mrs D. M. Kelly, Mr McLeay, Mr K. J. Thomson, Senator Conroy, Senator Cooney, Senator Gibson, Senator Murray.

NATIONAL CRIME AUTHORITY: Mr Bradford (*Chair*), Mr Filing, Mr Sercombe, Mr Sharp, Dr Southcott, Mrs West, Senator Conroy, Senator Ferris, Senator Gibbs, Senator McGauran, Senator Stott Despoja.

NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND: Mr Entsch (*Chair*), Mr Causley, Mr Dondas, Mr Melham, Mr Quick, Senator Abetz, Senator Bolkus, Senator Evans, Senator Ferris, Senator Woodley.

PUBLIC ACCOUNTS AND AUDIT: Mr Charles (*Chair*), Mr Anthony, Mr Beddall, Mr Broadbent, Mrs Crosio, Mr Fitzgibbon, Mr Georgiou, Mr Griffin, Mr Sharp, Mrs Stone, Senator Coonan, Senator Crowley, Senator Gibson, Senator Hogg, Senator Murray, Senator Watson.

PUBLIC WORKS: Mr Tuckey (*Chair*), Mr R. D. C. Evans, Mr Forrest, Mr E. L. Grace, Mr Hatton, Mr Hollis, Senator Calvert, Senator Ferguson, Senator Murphy.

JOINT COMMITTEES

ELECTORAL MATTERS: Mr Nairn (*Chair*), Mr Cobb, Mr L. D. T. Ferguson, Mr Griffin, Mr McDougall, Senator Faulkner, Senator Lightfoot, Senator Murray, Senator Synon.

FOREIGN AFFAIRS, DEFENCE AND TRADE: Senator MacGibbon (*Chair*), Mr R. C. Baldwin, Mr Bevis, Mr Bradford, Mr Brereton, Mr Brough, Mr Dondas, Mrs Gallus, Mr Georgiou, Mr E. L. Grace, Mr Hicks, Mr Hollis, Mr Jones, Mr Jull, Mr Lieberman, Mr McLeay, Mr Nugent, Mr Price, Mr Prosser, Mr Slipper, Dr Southcott, Mr Taylor, Senator Bourne, Senator Chapman, Senator Cook, Senator Ferguson, Senator Harradine, Senator J. A. L. Macdonald, Senator Margetts, Senator O'Brien, Senator Reynolds, Senator Schacht, Senator Synon.

MIGRATION: Mrs Gallus (*Chair*), Mr E. H. Cameron, Mr M. J. Ferguson, Mr Hicks, Mr Holding, Dr Theophanous, Senator Bartlett, Senator Eggleston, Senator McKiernan, Senator Tierney.

NATIONAL CAPITAL AND EXTERNAL TERRITORIES: Senator McGauran (*Chair*), Mr Dargavel, Ms Ellis, Mrs Johnston, Mr Nehl, Mr Neville, Dr Southcott, Senator Allison, Senator Carr, Senator Lightfoot, Senator Lundy, Senator West.

TREATIES: Mr Taylor (*Chairman*), Mr Adams, Mr Bartlett, Mr L. D. T. Ferguson, Mr Hardgrave, Ms Jeanes, Mr McClelland, Mr McGauran, Mr A. C. Smith, Senator Abetz, Senator Bourne, Senator Coonan, Senator Cooney, Senator Murphy, Senator O'Chee, Senator Reynolds.

PARLIAMENTARY DEPARTMENTS

House of Representatives

Clerk of the House—I. C. Harris
Deputy Clerk of the House—B. C. Wright
Clerk Assistant (Procedure)—I. C. Cochran
Clerk Assistant (Table)—J. W. Pender
Serjeant-at-Arms—D. Elder

Senate

Clerk of the Senate—H. Evans
Deputy Clerk of the Senate—A. Lynch
Clerk-Assistant (Table)—J. Vander Wyk
Clerk-Assistant (Corporate Management)—P. O'Keeffe
Clerk-Assistant (Procedure)—R. Laing
Clerk-Assistant (Committees)—C. J. C. Elliott
Usher of the Black Rod—R. Allison

Parliamentary Reporting Staff

Principal Parliamentary Reporter—J. W. Templeton
Chief Hansard Reporter—B. A. Harris
Assistant Chief Reporter—V. M. Barrett

Library

Parliamentary Librarian—

Joint House

Secretary—M. W. Bolton

Thursday, 9 April 1998

Mr SPEAKER (Rt Hon. Ian Sinclair) resumed the chair at 8.30 a.m.

BUSINESS

Mr REITH (Flinders—Leader of the House) (8.30 a.m.)—Mr Speaker, for the information of members, we are awaiting the final delivery to all members of documentation. It will take a couple of moments for that material to be made available.

I might start by thanking those officers of the parliament and officers of the Attorney-General's Department and other relevant sections for the work they have been doing overnight. We have been through this situation before where, when the Senate sits very late, there is then the very significant task of putting together the sum total of the considerations of the Senate so that the amendments and outcomes of the Senate process can be transmitted through to the House of Representatives.

That also involves a very detailed examination of the outstanding issues, so it is therefore important that the executive be fully briefed on the outcomes from the Senate. That has meant that a very large number of people have had to work all through the night, for hour upon hour. I do not think the Senate completed its deliberations until around 2.30 a.m. So we thank all those who have been responsible for completing that work.

The course of action now proposed is that the House will consider these matters in committee. We propose to have two speakers a side of 15 minutes and five minutes, so we hope the House will be able to adjourn for the Easter break in roughly 45 minutes. They are the administrative matters that have been concluded.

The schedule of amendments made by the Senate will cover validation, the right to negotiate, the question of the Racial Discrimination Act, the proposals in respect of a sunset clause, all of those being very significant issues, and other significant issues which have been raised during the lengthy debate in

the Senate. I thank members for their patience.

Mr Bradford—If I could take a point of order, Mr Speaker, the Leader of the House announced arrangements that have been made for this debate. I am just not sure to what extent those arrangements include the minor parties and Independents. I realise those arrangements are not made with regard to our interests. I have a great interest in this matter and would hope to have the opportunity to make at least a few brief remarks, not wanting to hold people up from getting home to their families at Easter.

Mr SPEAKER—I can assure the honourable member that the standing orders do not discriminate between any members of this House, whatever the particular group of people with whom they might be sitting at any one time.

NATIVE TITLE AMENDMENT BILL 1997 [No. 2]

Consideration of Senate Message

Bill returned from the Senate with amendments.

Ordered that the amendments be taken into consideration forthwith.

Senate's amendments—

Validation

Govt (1)

Schedule 1, item 39, page 136 (lines 32 to 34), omit paragraph (8)(b), substitute:

- (b) the grant or vesting of any thing expressly for the benefit of, or to or in a person to hold on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or

Govt (2)

Schedule 1, item 39, page 137 (lines 16 to 18), omit subparagraph (iii), substitute:

- (iii) a lease granted expressly for the benefit of, or to a person to hold on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or

Racial Discrimination Act

Opp (RN42)

Schedule 1, item 3, page 5 (lines 4 and 5), omit the item, substitute:

3 Section 7

Repeal the section, substitute:

7 Relationship with Racial Discrimination Act

- (1) This Act is intended to be read and construed subject to the provisions of the *Racial Discrimination Act 1975*.
- (2) Subsection (1) does not affect the validation of past acts or intermediate period acts by or in accordance with this Act.

Note: The provisions of the *Racial Discrimination Act 1975* apply to the performance of functions and exercise of powers conferred by or authorised by this Act. To construe this Act, and thereby to determine its operation, ambiguous terms should be construed consistently with the *Racial Discrimination Act 1975* if that construction would remove ambiguity.

Registration test**Govt (66)**

Schedule 1, item 9, page 94 (after line 18), at the end of section 30, add:

Registered native title rights and interests

- (3) For the purposes of this Subdivision, the *registered native title rights and interests* of a native title party are:

- (a) if the native title party is such because an entry has been made on the National Native Title Register—the native title rights and interests described in that entry; or
- (b) if the native title party is such because an entry has been made on the Register of Native Title Claims—the native title rights and interests described in that entry.

Note: The heading to section 30, page 93 (line 21) is altered by adding at the end "etc."

Govt (67)

Schedule 1, item 9, page 95 (line 10), omit "determined or claimed", substitute "registered".

Govt (68)

Schedule 1, item 9, page 106 (line 11), omit "determined or claimed", substitute "registered".

Govt (69)

Schedule 1, item 9, page 106 (lines 27 and 28), omit "determined or claimed", substitute "registered".

Govt (70)

Schedule 2, page 200 (after line 9), after item 60, insert:

60A After paragraph 186(1)(f)

Insert:

- ; (g) a description of the native title rights and interests in the claim that:
 - (i) the Registrar in applying subsection 190B(6); or
 - (ii) a recognised State/Territory body in applying provisions equivalent to that subsection;

considered, *prima facie*, could be established.

Govt (71)

Schedule 2, item 63, page 203 (line 2), omit "3 months", substitute "4 months".

Govt (72)

Schedule 2, item 63, page 203 (line 8), omit "accompanying documents", substitute "other documents provided by the applicant".

Govt (74)

Schedule 2, item 67, page 209 (line 21), after "are", insert "and a description of the nature and extent of the native title rights and interests concerned".

Govt (75)

Schedule 5, item 11, page 347 (line 30), omit "3 months", substitute "4 months".

Govt (76)

Schedule 5, item 11, page 349 (line 4), omit "3 months", substitute "4 months".

Opp (RN34) [amt to Govt (70)]

At the end of paragraph 186(1)(g), add "or thereafter considers, *prima facie*, could be established".

Opp (RN35) [amt to Govt (70)]

After paragraph 186(1)(g), insert:

Note: The Registrar may wish to enter some rights or interests immediately and continue to consider others. Rights may be entered when the Registrar forms the appropriate view.

Opp (N36) [as amended by Opp (N37)]

Schedule 2, item 63, page 205 (line 22) to page 206 (line 28), omit subsections (5) to (10), substitute:

Registrar's satisfaction about the basis of the application

- (5) The Registrar must be satisfied that:

- (a) the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion and that it supports the following assertions:

- (i) that the native title claim group have, and the predecessors of those persons had, an association with the area;
 - (ii) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests;
 - (iii) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs; or
- (b) at least one member of the native title claim group:
- (i) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or
 - (ii) would reasonably have been expected currently to have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to land or waters) by the Crown in any capacity, a statutory authority of the Crown in any capacity or any other person.

Prima facie case

- (6) The Registrar must consider that, *prima facie*, at least one of the native title rights and interests claimed in the application can be established.

Note: If the claim is accepted for registration, the Registrar must, under paragraph 186(1)(g), enter on the Register of Native Title Claims details of only those claimed native title rights and interests that can, *prima facie*, be established. Only those rights and interests are taken into account for the purposes of subsection 31(2) (which deals with negotiation in good faith in a "right to negotiate" process) and subsection 39(1) (which deals with criteria for making arbitral body determinations in a "right to negotiate" process).

No failure to comply with section 61A

- (7) The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that, because of section 61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts) the application should not have been made.
- (8) If the Registrar is considering placing reliance on material which is adverse to the

interests of the claimant, or inconsistent with material supplied by the claimant, the claimant must be shown the material and given a reasonable opportunity to respond or supply further material.

No extinguishment of native title to minerals etc.

- (9) The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that to the extent that the native title rights and interests claimed consist of or include ownership of minerals, petroleum or gas—the Crown in right of the Commonwealth, a State or a Territory wholly owns the minerals, petroleum or gas.

Confirmation

Govt (3)

Schedule 1, item 9, page 14 (lines 23 to 28), omit subsection (9), substitute:

Exclusion of acts benefiting Aboriginal peoples or Torres Strait Islanders

- (9) An act is not a *previous exclusive possession act* if it is:

- (a) the grant or vesting of any thing that is made or done by or under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (b) the grant or vesting of any thing expressly for the benefit of, or to or in a person to hold on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (c) the grant or vesting of any thing over particular land or waters, if at the time a thing covered by paragraph (a) or (b) is in effect in relation to the land or waters.

Note: The expression *Aboriginal peoples* is defined in section 253.

Exclusion of national parks etc.

- (9A) An act is not a *previous exclusive possession act* if the grant or vesting concerned involves the establishment of an area, such as a national, State or Territory park, for the purpose of preserving the natural environment of the area.

Effect of exclusions

- (9B) To avoid doubt, the fact that an act is, because of any of the previous subsections, not a previous exclusive possession act does not imply that the act is not valid.

Govt (4)

Schedule 1, item 9, page 19 (after line 21), at the end of Division 2B, add:

23JA Attribution of certain acts

If:

- (a) a previous exclusive possession act or a previous non-exclusive possession act took place before the establishment of a particular State, the Jervis Bay Territory, the Australian Capital Territory or the Northern Territory; and
- (b) the act affected land or waters that, when this section commences, form part of the State or Territory;

then, for the purposes of this Division, the act is taken to be attributable to:

- (c) the State; or
- (d) if the Territory is the Jervis Bay Territory—the Commonwealth; or
- (e) if the Territory is the Australian Capital Territory or the Northern Territory—that Territory.

Note: The meaning given to the expression *attributable* by section 239 will apply for the purposes of this Division to all other previous exclusive and non-exclusive possession acts.

Govt (5)

Schedule 1, item 12A, page 123 (lines 3 and 4), omit subparagraph (1)(b)(ii), substitute:

- (ii) the area is held expressly for the benefit of, or is held on trust, or reserved, expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; and

Govt (6)

Schedule 1, item 12A, page 123 (line 13), omit "creation of the trust", substitute "doing of the thing that resulted in the holding".

Govt (7)

Schedule 1, item 12A, page 123 (line 16), omit "on trust".

Govt (8)

Schedule 1, item 12A, page 124 (line 13), omit "declaration", substitute "dedication".

Govt (9)

Schedule 1, item 49, page 140 (line 24), omit paragraph 249C(1)(a), substitute:

- (a) anything set out in Schedule 1, other than:
 - (i) a mining lease; or
 - (ii) an interest created by or under legislation that creates interests only for the

benefit of Aboriginal peoples or Torres Strait Islanders; or

- (iii) an interest created expressly for the benefit of, or held on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (iv) any other interest created in relation to particular land or waters, if at the time an interest covered by subparagraph (ii) or (iii) is in effect in relation to the land or waters; or

Govt (10)

Schedule 1, item 49, page 141 (after line 3), at the end of section 249C, add:

Regulations to cover exclusive possession interests only

- (3) Before the Governor-General makes a regulation for the purposes of paragraph (1)(b) declaring a particular interest to be a Scheduled interest, the Minister must be satisfied that the interest confers a right of exclusive possession that extinguishes all native title rights and interests over the land or waters concerned.

Opp (N3)

Schedule 1, item 9, page 14 (after line 28), after subsection (9), insert:

- (9A) An act is not a *previous exclusive possession act* if it is:
 - (a) the grant of an interest in land from the Crown, or a statutory authority, to the Crown in any capacity, or a statutory authority; or
 - (b) the creation or vesting of an interest in land in the Crown in any capacity, or a statutory authority;

unless, or until, the land is put to residential, agricultural or commercial uses, which would otherwise extinguish native title rights and interests.

Opp (N5)

Schedule 1, item 9, page 14 (after line 28), after subsection (9), insert:

- (9B) An act is not a *previous exclusive possession act* if it is an act done pursuant to a law of the Commonwealth, a State or Territory which provides that it does not extinguish native title rights or interests.

Opp (RN2)

Schedule 1, item 9, page 14 (after line 31), at the end of section 23B, add:

- (11) Notwithstanding anything else in this Act, native title rights and interests, extinguishment of which is confirmed by this Division, may, if not otherwise extin-

guished, lost or abandoned, revive upon the cessation of the interest (including any valid renewal or extension of the interest) created by the previous exclusive possession act.

Opp (N6)

Schedule 1, item 12A, page 123 (line 17), after "freehold estate", insert "for the provision of services (such as health and welfare services)".

Opp (N7)

Schedule 1, item 12A, page 125 (line 14), after "lease is", insert "bona fide".

Opp (N8)

Schedule 1, item 12A, page 125 (line 14), after "term is", insert "bona fide".

Opp (N10)

Schedule 1, item 49, page 140 (line 27), at the end of subsection (1), add:

; or (c) but not any interest otherwise excluded from the definition of a previous exclusive possession act.

Indigenous land use agreements**Govt (11)**

Schedule 1, item 9, page 20 (line 10), at the end of subsection (3), add "A future act (other than an intermediate period act) that has already been done invalidly may also be validated as a result of such agreements".

Govt (12)

Schedule 1, item 9, page 22 (after line 21), after paragraph (a), insert:

(aa) particular future acts (other than intermediate period acts), or future acts (other than intermediate period acts) included in classes, that have already been done;

Note: Intermediate period acts are or can be validated only under Division 2A.

Govt (13)

Schedule 1, item 9, page 22 (after line 31), after paragraph (e), insert:

(ea) compensation for any past act, intermediate period act or future act;

Govt (14)

Schedule 1, item 9, page 26 (after line 6), after paragraph (a), insert:

(aa) particular future acts (other than intermediate period acts), or future acts (other than intermediate period acts) included in classes, that have already been done;

Note: Intermediate period acts are or can be validated only under Division 2A.

Govt (15)

Schedule 1, item 9, page 26 (after line 16), after paragraph (e), insert:

(ea) compensation for any past act, intermediate period act or future act;

Govt (16)

Schedule 1, item 9, page 27 (line 20), at the end of subsection (2), add:

; and (c) if, for any part (the *non-claimed/determined part*) of the land or waters in the area, there is neither a registered native title claimant nor a registered native title body corporate—one or more of the following:

- (i) any person who claims to hold native title in relation to land or waters in the non-claimed/determined part;
- (ii) any representative Aboriginal/Torres Strait Islander body for the non-claimed/determined part.

Govt (17)

Schedule 1, item 9, page 35 (after line 14), after paragraph (a), insert:

(aa) particular future acts (other than intermediate period acts), or future acts (other than intermediate period acts) included in classes, that have already been done;

Note: Intermediate period acts are or can be validated only under Division 2A.

Govt (18)

Schedule 1, item 9, page 35 (after line 23), after paragraph (e), insert:

(ea) compensation for any past act, intermediate period act or future act;

Govt (19)

Schedule 1, item 9, page 45 (after line 5), after section 24EB, insert:

24EBA Validating previous future acts covered by indigenous land use agreements***Coverage of section***

(1) The consequences set out in this section apply if:

(a) details are on the Register of Indigenous Land Use Agreements of an agreement that includes a statement to the effect that the parties agree to:

- (i) the validating of a particular future act (other than an intermediate period act), or future acts (other than intermediate period acts) included in classes, that have already been done invalidly; or

- (ii) the validating, subject to conditions, of a particular future act (other than an intermediate period act), or of future acts (other than intermediate period acts) included in classes, that have already been done invalidly; and

Note: Intermediate period acts are or can be validated only under Division 2A.

- (b) whichever of the Commonwealth, the State or the Territory to which the future act or class of future acts is attributable is a party to the agreement; and
- (c) where, whether under the agreement or otherwise, a person other than the Crown in right of the Commonwealth, a State or a Territory is or may become liable to pay compensation in relation to the future act or class of future acts—that person is a party to the agreement.

Commonwealth acts valid

- (2) If the act or class of acts is attributable to the Commonwealth, the act or class of acts is valid, and is taken always to have been valid.

State or Territory laws may validate their acts

- (3) If the act or class of acts is attributable to a State or Territory, a law of the State or the Territory may provide that the act or class of acts is valid, and is taken always to have been valid. The law may do so by applying to all acts, to classes of acts, or to particular acts, in respect of which the requirements of subsection (1) are or become satisfied.

Non-extinguishment principle

- (4) If subsection (2) applies or a law makes provision in accordance with subsection (3), the non-extinguishment principle applies to the act or class of acts unless:
 - (a) the act or class of acts is the surrender of native title; and
 - (b) the agreement includes a statement to the effect that the surrender is intended to have extinguished the native title rights and interests.

Compensation consequences

- (5) If subsection (2) applies or a law makes provision in accordance with subsection (3), the consequences set out in subsection 24EB(4), (5) or (6), and the consequences set out in subsection 24EB(7), apply to the act or to each of the acts in the class.

Govt (20)

Schedule 1, item 30, page 129 (line 16), after "24EB(1)", insert "or 24EBA(1) or (4)".

Govt (21)

Schedule 1, item 30, page 130 (line 3), omit "The", substitute "Subject to subsection (1A), the".

Govt (22)

Schedule 1, item 30, page 130 (after line 34), after subsection (1), insert:

Federal Court order not to remove details

(1A) If:

- (a) the Registrar is or will be required to remove the details of an agreement from the Register in a case covered by paragraph (1)(a) or (b); and
- (b) the persons who, under the approved determination of native title mentioned in that paragraph, hold native title apply to the Federal Court for an order under this subsection; and
- (c) the Federal Court is satisfied that those persons accept the terms of the agreement, in accordance with the process by which they would authorise the making of such an agreement;

the Federal Court may order the Registrar not to remove the details of the agreement from the Register.

Note: The heading to subsection 199C(2) (page 131, line 1) is altered by adding at the end "to remove details".

Govt (23)

Schedule 1, item 39, page 135 (line 5), after "Part 2", insert "(disregarding section 24EBA)".

Opp (N46)

Schedule 1, page 6 (after line 10), after item 8, insert:

8A At the end of section 15

Add:

- (3) Notwithstanding subsection (1), if an indigenous land use agreement to which a State or Territory is a party is registered and makes provision in relation to the consequences of a past act validated under this Division, the provision has effect from the time at which the agreement is registered.

Opp (N47)

Schedule 1, item 9, page 8 (after line 3), at the end of section 22B, add:

- (2) Notwithstanding subsection (1), if an indigenous land use agreement to which a State or Territory is a party is registered and makes provision in relation to the consequences of an intermediate period act validated under this Division, the provision has

effect from the time at which the agreement is registered.

Opp (N11) [amt to Govt (12)]

Paragraph 24BB(aa), after "other than" (wherever occurring), insert "the validation of".

Opp (N12)

Schedule 1, item 9, page 22 (after line 31), after paragraph (e), insert:

- (eb) the consequences of any act with respect to which an agreement can be made (other than the validation of past acts or intermediate period acts);

Opp (N13) [amt to Govt (14)]

Paragraph 24CB(aa), after "other than" (wherever occurring), insert "the validation of".

Opp (N14)

Schedule 1, item 9, page 26 (after line 16), after paragraph (e), insert:

- (eb) the consequences of any act with respect to which an agreement can be made (other than the validation of past acts or intermediate period acts);

Opp (N15) [amt to Govt (17)]

Paragraph 24DB(aa), after "other than" (wherever occurring), insert "the validation of".

Opp (N16)

Schedule 1, item 9, page 35 (after line 23), after paragraph (e), insert:

- (eb) the consequences of any act with respect to which an agreement can be made (other than the validation of past acts or intermediate period acts);

Dems-GWA (20)

Schedule 1, item 9, page 22 (lines 19 to 21), omit "future" (wherever occurring).

Dems-GWA (21)

Schedule 1, item 9, page 23 (lines 3 and 4), omit "a future act or class of future act" (wherever occurring), substitute "an act or class of acts".

Dems-GWA (22)

Schedule 1, item 9, page 23 (line 7), omit "a future act", substitute "an act".

Dems-GWA (23)

Schedule 1, item 9, page 23 (after line 30), at the end of section 24BD, add:

- (4) If no representative body for the area (or a part of the area) is a party to the agreement, the registered native title bodies corporate must consult with such a representative body as to the terms of the agreement before it enters into the agreement.

Dems-GWA (24)

Schedule 1, item 9, page 25 (after line 24), at the end of section 24BI, add:

- (2) The Registrar must not register the agreement if a representative body for the area notifies the Registrar, within that period of 1 month, that no representative body was consulted in accordance with subsection 24BD(4).

Dems-GWA (25)

Schedule 1, item 9, page 26 (line 5), omit "future" (wherever occurring).

Dems-GWA (26)

Schedule 1, item 9, page 26 (lines 23 and 24), omit "a future act or class of future act" (wherever occurring), substitute "an act or class of acts".

Dems-GWA (27)

Schedule 1, item 9, page 26 (line 27), omit "a future act", substitute "an act".

Dems-GWA (28)

Schedule 1, item 9, page 28 (after line 11), at the end of section 24CD, add:

- (7) If no representative body for the area (or a part of the area) is a party to the agreement, the native title group must consult with such a representative body as to the terms of the agreement before it enters into the agreement.

Dems-GWA (29)

Schedule 1, item 9, page 29 (lines 4 to 22), omit subsection (3), substitute:

Certificate or statement to accompany application

- (3) Also:

- (a) the application must have been certified by all representative Aboriginal/Torres Strait Islander bodies for the area in performing their functions under section 203BE in relation to the area; and
- (b) the certificate must include a statement to the effect that the following requirements have been met:
 - (i) all reasonable efforts have been made (including by consulting all representative Aboriginal/Torres Strait Islander bodies for the area) to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement have been identified;
 - (ii) each of the persons so identified has had a reasonable opportunity to parti-

pate in a decision to authorise the making of the agreement;

- (iii) there was consultation with a representative body as to the terms of the agreement in accordance with subsection 24CD(7).

Note: The word *authorise* is defined in section 251A.

Dems-GWA (30)

Schedule 1, item 9, page 30 (line 23), omit "paragraphs 202(8)(a) and (b)", substitute "paragraphs 203BE(5)(a), (b) and (c)".

Dems-GWA (31)

Schedule 1, item 9, page 31 (line 18), omit "paragraphs 202(8)(a) and (b)", substitute "paragraphs 203BE(5)(a), (b) and (c)".

Dems-GWA (32A)

Schedule 1, item 9, page 32 (line 23), omit "paragraphs 202(8)(a) and (b)", substitute "paragraphs 203BE(5)(a), (b) and (c)".

Dems-GWA (163)

Schedule 1, item 30, page 131 (after line 10), at the end of section 199C, add:

- (4) The Federal Court must not make an order under subsection (2) unless it is satisfied that, if the party referred to in subsection (3) is one of the native title holders, authority to enter into the agreement would not have been given but for the fraud, undue influence or duress.
- (5) If the Federal Court makes an order under subsection (2), the Court may also grant further or ancillary relief against any person involved in the fraud, undue influence or duress for the purpose of compensating any party to the agreement who has suffered loss as a result of the order to remove details of the agreement from the Register.

Primary production

Govt (24)

Schedule 1, item 9, page 50 (line 13), after "is", insert "required or permitted to be".

Govt (25)

Schedule 1, item 9, page 55 (lines 19 to 22), omit subparagraphs (e)(ii) to (iv), substitute:

- (ii) to extract, obtain or remove sand, gravel, rocks, soil or other resources (except so far as doing so constitutes mining);

Govt (26)

Schedule 1, page 145 (after line 32), after item 57, insert:

57A Section 253 (paragraph (c) of the definition of *mine*)

Repeal the paragraph, substitute:

(c) quarry;

but does not include extract, obtain or remove sand, gravel, rocks or soil from the natural surface of land, or of the bed beneath waters, for a purpose other than:

- (d) extracting, producing or refining minerals from the sand, gravel, rocks or soil; or
- (e) processing the sand, gravel, rocks or soil by non-mechanical means.

Opp (N19) [amt to Govt (26)]

Schedule 1, item 57A, after "but", insert ", for the purposes of section 24GE".

Harradine (N1)/Opp (N17)

Schedule 1, item 9, page 49 (line 26), at the end of subsection (1), add:

; and (e) the future act could lawfully have been done in relation to the lease prior to 23 December 1996 if any native title in relation to the land and waters covered by the lease had not then existed.

Harradine (N2)/Opp (N18)

Schedule 1, item 9, page 52 (line 16), at the end of subsection (1), add:

; and (d) prior to 23 December 1996, the activity could have been carried out in the area covered by the lease because:

- (i) the terms of the lease or the legislation governing the lease permitted or required the activity; or
- (ii) if an act (such as a permit, licence or authority) was required, that act could lawfully have been done in relation to that activity prior to 23 December 1996.

Harradine (R9)

Schedule 1, item 9, page 53 (line 31), at the end of subsection (1), add:

; and (f) the future act takes place on land which has not been the subject of an approved determination of native title in respect of which the native title rights and interests include a right to exclusive possession of the land.

Renewals

Govt (27)

Schedule 1, item 9, page 59 (line 18), omit "and", substitute "or".

Govt (28)

Schedule 1, item 9, page 59 (after line 18), at the end of paragraph (c), add:

(iv) if the original lease etc. was a non-exclusive pastoral lease covering an area greater than 5,000 hectares and the majority of the area covered was not required or permitted to be used for purposes other than pastoral purposes—have the effect that the majority of the area covered by the renewed, re-granted, re-made or extended lease is required or permitted to be used for purposes other than pastoral purposes; and

Govt (29)

Schedule 1, item 9, page 60 (line 17), at the end of paragraph (c), add "(other than a mining lease)".

Opp (N21)

Schedule 1, item 9, page 58 (line 28), after "authority", insert ", other than one which permits mining".

Opp (N22)

Schedule 1, item 9, page 59 (lines 24 to 26), omit paragraph (e).

Opp (RN23)

Schedule 1, item 9, page 59 (after line 26), after subsection (1), insert:

- (1A) A future act is also a *permissible lease etc. renewal* if:
 - (a) the original lease etc. was the creation of a right to mine; and
 - (b) the future act is a renewal or extension of the original lease etc.; and
 - (c) either:
 - (i) the original lease etc. was granted on or before 23 December 1996; or
 - (ii) the grant of the original lease etc. was a permissible lease etc. renewal or a pre-existing right-based act; and
 - (d) the future act does not:
 - (i) confer a right of exclusive possession over any of the land or waters covered by the original lease etc.; or
 - (ii) otherwise create a larger proprietary interest in the land or waters than was created by the original lease etc.; or
 - (iii) create a proprietary interest over any of the land or waters covered by the original lease etc., where the original lease etc. created only a non-proprietary interest; or
 - (iv) confer on the grantee rights to do things which will have a greater impact on the land or waters concerned than the rights conferred by the earlier right; or

- (v) confer a right to mine minerals which were not included in the earlier grant; and
- (e) the area to which the original lease etc. relates is not extended; and
- (f) the term of the renewal or extension is not longer than the term of the original lease etc.; and
- (g) if the original lease etc. contains, or is subject to, a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders—the renewed or extended lease either contains, or is subject to, the same reservation or condition.

Opp (RN27)

Schedule 1, item 9, page 87 (line 25) to page 88 (line 5), omit subsection (1), substitute:

- (1) This Subdivision does not apply to an act consisting of the creation of a right to mine if:
 - (a) the creation of the right is done by:
 - (i) the renewal; or
 - (ii) the extension of the term;
 - of an earlier right to mine; and
 - (b) the earlier right:
 - (i) was created on or before 23 December 1996 by an act that is valid (including because of Division 2 or 2A); or
 - (ii) was created by an act to which this Subdivision applied that was not invalid to any extent under section 28; and
 - (c) the area to which the earlier right relates is not extended; and
 - (d) the term of the renewal or extension is not longer than the term of the earlier right; and
 - (e) the renewal or extension:
 - (i) does not confer on the grantee rights to do things which will have a greater impact on the land or waters concerned than the rights conferred by the earlier right; and
 - (ii) without limiting subparagraph (i), does not confer a right to mine minerals which were not included in the earlier grant.

Note: For compensation in relation to acts of this class, see Subdivision I.

Harradine (14)

Schedule 1, item 9, page 60 (lines 14 to 17), omit paragraphs (4)(b) and (c).

Reservations**Govt (30)**

Schedule 1, item 9, page 64 (after line 25), at the end of section 24JB, add:

Notification of national, State and Territory park management plans

(7) If the act consists of the creation of a plan for the management of a national, State or Territory park intended to preserve the natural environment of an area, then, before the act is done, the person proposing to do the act must:

- (a) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the plan that the act is to be done in relation to the land or waters; and
- (b) give them an opportunity to comment on the act.

Note: The heading to subsection 24JB(6) (page 64, line 13) is replaced by the heading "*Notification of public works*".

*Services to the public***Opp (93)**

Schedule 1, item 9, page 65 (line 3), omit "construction", substitute "reconstruction (but not so as to increase significantly the area of land used)".

Opp (94)

Schedule 1, item 9, page 65 (line 7), omit "construction", substitute "reconstruction (but not so as to increase significantly the area of land used)".

Opp (95)/Dems-GWA (87)

Schedule 1, item 9, page 65 (lines 13 to 18), omit paragraph (1)(c), substitute:

- (c) it does not prevent native title holders in relation to land or waters on which the thing is located or to be located from having reasonable access to the land or waters in the vicinity of the thing, except for reasons of health and safety; and

Opp (RR101)

Schedule 1, item 9, page 67 (after line 27), at the end of section 24KA, add:

- (9) If there are registered claimants in relation to the land or waters concerned, they have the procedural rights referred to in subsection (7).

(10) If there is no registered claimant in relation to the land or waters concerned, the representative body, in addition to any procedural right conferred on it by any other law, has a right to comment on the act before it is done.

Dems-GWA (92)/Opp (100)

Schedule 1, item 9, page 67 (lines 2 to 12), omit subsection (7), substitute:

- (7) The native title holders have the same procedural rights as they would have in relation to the act on the assumption that they instead held ordinary title covering any land concerned or covering the land adjoining, or surrounding, any waters concerned.

*Freehold test and offshore***Govt (32)**

Schedule 1, item 9, page 71 (lines 13 to 15), omit paragraph (c), substitute:

- (c) the compulsory acquisition extinguishes the whole or the part of the native title rights and interests; and

Govt (33)

Schedule 1, item 9, page 71 (after line 30), after the note, insert:

- Note 2: This subsection only deals with the case where native title rights and interests are compulsorily acquired. It is also possible for native title rights and interests to be acquired voluntarily by means of an indigenous land use agreement or an agreement covered by subsection (2A). In such cases, non-native title rights and interests could be acquired either compulsorily or by some other means (e.g. voluntarily).

Govt (34)

Schedule 1, item 9, page 71 (after line 30), before subsection (3), insert:

Extinguishment of native title by surrender in course of right to negotiate process

(2A) If:

- (a) notice of a proposed compulsory acquisition of native title rights and interests is given in accordance with section 29 or with an equivalent alternative provision applicable under section 43 or 43A; and
- (b) an agreement arose out of negotiations in relation to the proposed compulsory acquisition of the native title rights and interests; and
- (c) the agreement includes a statement to the effect that an act consisting of the surrender of the whole or part of the native title

rights and interests is intended to extinguish the whole or the part of the native title rights and interests;

then:

- (d) the surrender extinguishes the whole or the part of the native title rights and interests; and
- (e) no native title holder who is entitled to any benefit provided under the agreement is entitled to any compensation for the act under this Act, other than compensation provided for in the agreement; and
- (f) any other native title holder is entitled to compensation for the act in accordance with Division 5.

Govt (35)

Schedule 1, item 9, page 71 (lines 32 and 33), omit "other future act to which this Subdivision applies", substitute "future act to which this Subdivision applies that is not covered by subsection (2) or (2A)".

Govt (37)

Schedule 1, item 9, page 75 (lines 1 and 2), omit "nothing in this Act prevents the acquisition from extinguishing", substitute "the compulsory acquisition extinguishes".

Opp (RR107)

Schedule 1, item 9, page 73 (after line 33), at the end of section 24MD, add:

- (8) If there are registered claimants in relation to the land or waters concerned, they have the procedural rights referred to in subsection (6).
- (9) If there is no registered claimant in relation to the land or waters concerned, the representative body, in addition to any procedural right conferred on it by any other law, has a right to comment on the act before it is done.

Opp (RR110)

Schedule 1, item 9, page 76 (after line 26), at the end of section 24NA, add:

- (10) If there are registered claimants in relation to the land or waters concerned, they have the procedural rights referred to in subsection (8).
- (11) If there is no registered claimant in relation to the land or waters concerned, the representative body, in addition to any procedural right conferred on it by any other law, has a right to comment on the act before it is done.

Harradine (18)

Schedule 1, item 9, page 71 (line 4), omit "(whether compulsorily or otherwise)", substitute "compulsorily".

Harradine (21)

Schedule 1, item 9, page 74 (line 24), omit "(whether compulsorily or otherwise)", substitute "compulsorily".

Statutory access rights

Opp (N30)

Schedule 1, item 9, page 118 (after line 17), after subsection (3), insert:

- (3A) For the purposes of paragraph (3)(a), physical access to land is deemed to have been regular up to 23 December 1996 if the person, being a member of the native title claim group, had not had regular physical access to the land prior to 23 December 1996 by reason of an act of government or by reason of the person having been denied physical access to the land by the lessee or a person acting on behalf of the lessee or any other person.

Opp (183)/Dems-GWA (151)

Schedule 1, item 9, page 120 (lines 1 to 10), omit section 44C.

Compensation

Govt (51)

Schedule 2, item 102, page 223 (after line 9), after paragraph (a), insert:

- (aa) to hear and determine applications under subsection 50(2) of that Act for determinations of compensation, where the amount of the compensation to which the applicant claims to be entitled is less than:
 - (i) \$100,000; or
 - (ii) such other amount as is prescribed instead for the purposes of this paragraph;

Govt (52)

Schedule 1, page 126 (after line 2), after item 13, insert:

13A Subsection 50(1)

Omit "section", substitute "Division".

Note: The heading to subsection 50(1) is altered by omitting "Section" and substituting "Division".

Govt (53)

Schedule 1, page 126 (before line 3), before item 14, insert:

13B At the end of subsection 50(1)

Add:

Note: Such compensation is generally for acts that are validated or valid. Native title holders would ordinarily be entitled to compensation or damages for invalid acts under the general law. The Federal Court may be able to award such compensation or damages in proceedings in relation to the invalidity of the act: see subsection 213(2).

Opp (R188)

Schedule 1, page 126 (after line 2), after item 13, insert:

13C Subsection 51(1)

Omit "Subject to subsection (3), the", substitute "The".

Opp (N31)

Schedule 1, page 126 (after line 2), after item 13, insert:

13D After subsection 51(1)

Insert:

(1A) To avoid doubt, the entitlement to compensation referred to in subsection (1) arises whether the loss, diminution, impairment or other effect of the act on native title rights and interests occurs as a result of a valid act or an invalid act.

Opp (RN32)

Schedule 2, item 102, page 223 (after line 10), after subsection 18AB(2A), insert:

Compensation

(2B) Where a compensation claim is referred to a Judicial Registrar:

- (a) the Court may give such directions as it considers appropriate, and for the purpose of ensuring that, so far as is reasonably practicable:
 - (i) the claim is determined as expeditiously and cheaply as possible and without unnecessary formality; and
 - (ii) the likely cost to the claimant of maintaining a reasonable claim is not disproportionate to the benefit claimed; and
- (b) the directions which the Court may give may include, but are not limited to, orders about:

- (i) the principles and procedures to be adapted to the circumstances of the case; and
- (ii) providing for referral to mediation; and

- (iii) ensuring that the issues in dispute are identified as soon as possible and that the procedures required and evidence to be called by any party are limited to what is necessary to resolve such issues; and
- (iv) limiting the liability of the claimant to an adverse costs order; and
- (v) directing that the claimant's costs, or any part thereof, be paid by another party in any event or in particular circumstances.

Applications**Govt (54)**

Schedule 2, item 19, page 151 (table, column 3 of first item), omit paragraph (1) and the notes, substitute:

(1) A person or persons authorised by all the persons (the *native title claim group*) who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed, provided the person or persons are also included in the native title claim group; or

Note 1: The person or persons will be the applicant: see subsection (2) of this section.

Note 2: Section 251B states what it means for a person or persons to be *authorised* by all the persons in the native title claim group.

Govt (55)

Schedule 2, item 19, page 152 (table, column 3 of third item), omit paragraph (2) and the notes, substitute:

(2) A person or persons authorised by all the persons (the *compensation claim group*) who claim to be entitled to the compensation, provided the person or persons are also included in the compensation claim group.

Note 1: The person or persons will be the applicant: see subsection (2) of this section.

Note 2: Section 251B states what it means for a person or persons to be *authorised* by all the persons in the compensation claim group.

Govt (56)

Schedule 2, item 19, page 154 (lines 19 to 25), omit subsection (4), substitute:

6 *Section not to apply in section 47, 47A or 47B cases*

(4) However, subsection (2) or (3) does not apply to an application if:

- (a) the only previous exclusive possession act or previous non-exclusive possession act concerned was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made; and
- (b) the application states that section 47, 47A or 47B, as the case may be, applies to it.

Govt (57)

Schedule 2, item 19, page 155 (lines 8 to 14), omit subparagraphs (iv) and (v) and the note, substitute:

- (iv) that the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it; and

Note: Section 251B states what it means for the applicant to be *authorised* by all the persons in the native title claim group.

- (v) stating the basis on which the applicant is authorised as mentioned in subparagraph (iv); and

Govt (58)

Schedule 2, item 19, page 157 (lines 9 to 15), omit subparagraphs (iii) and (iv) and the note, substitute:

- (iii) that the applicant is authorised by all the persons in the compensation claim group to make the application and to deal with matters arising in relation to it; and

Note: Section 251B states what it means for the applicant to be *authorised* by all the persons in the compensation claim group.

- (iv) stating the basis on which the applicant is authorised as mentioned in subparagraph (iii); and

Govt (59)

Schedule 2, item 19, page 158 (before line 6), before subsection (1), insert:

Application may be amended to reduce land or waters covered

- (1A) An application may at any time be amended to reduce the area of land or waters covered by the application. (This subsection does not, by implication, limit the amendment of applications in any other way.)

Note: If such an amendment is made, the Court may make an appropriate costs order under section 85A.

Govt (60)

Schedule 2, item 19, page 164 (after line 16), after section 66A, insert:

66B Replacing the applicant

Application to replace applicant in claimant application

- (1) One or more members of the native title claim group (the *claim group*) in relation to a claimant application, or of the compensation claim group (also the *claim group*) in relation to a compensation application, may apply to the Federal Court for an order that the member, or the members jointly, replace the current applicant for the application on the grounds that:

- (a) either:

- (i) the current applicant is no longer authorised by the claim group to make the application and to deal with matters arising in relation to it; or
- (ii) the current applicant has exceeded the authority given to him or her by the claim group to make the application and to deal with matters arising in relation to it; and

- (b) the member or members are authorised by the claim group to make the application and to deal with matters arising in relation to it.

Court order

- (2) The Court may make the order if it is satisfied that the grounds are established.

Registrar of Federal Court to notify Native Title Registrar

- (3) If the Court makes the order, the Registrar of the Federal Court must, as soon as practicable, notify the Native Title Registrar of the name and address for service of the person who is, or persons who are, the new applicant.

Register to be updated

- (4) If the claim contained in the application is on the Register of Native Title Claims, the Registrar must amend the Register to reflect the order.

*Claims process and the sunset clause***Govt (61)**

Schedule 2, item 3, page 147 (lines 13 to 15), omit subsection (1A), substitute:

Time limit for applications

- (1A) No application is allowed to be made under paragraph (1)(a) in relation to an area later than 6 years after:

- (a) if neither paragraph (b) nor paragraph (c) applies—the commencement of this subsection; or
- (b) if section 47A or 47B would apply to the whole of the area covered by the application—the earliest time at which it could reasonably be known that an application in relation to the area could be made under either of those sections; or
- (c) if section 47 would apply to the whole of the area covered by the application—the later of:
 - (i) the commencement of this subsection; or
 - (ii) the earliest time at which it could reasonably be known that an application in relation to the area could be made under that section.

Govt (62)

Schedule 2, item 20, page 172 (line 27), at the end of subsection (5), add ", if the Court is satisfied that the person's interests may be affected by a determination in the proceedings".

Govt (63)

Schedule 2, item 20, page 172 (after line 27), after subsection (5), insert:

Persons wanting to exercise public right of access or use

(5A) If:

- (a) a person wants to become a party to the proceedings; and
- (b) the Federal Court is satisfied that the person's interests may be affected by a determination in the proceedings merely because the person has a public right of access over, or use of, any of the area covered by the application;

the Court:

- (c) may make appropriate orders to ensure that the person's interests are properly represented in the proceedings; but
- (d) need not allow more than one such person to become a party to the proceedings in relation to each area covered by such a public right of access or use.

Govt (64)

Schedule 2, item 20, page 173 (after line 12), at the end of section 84, add:

Court to consider dismissing parties

- (9) The Federal Court is to consider making an order under subsection (8) in respect of a person who is a party to the proceedings if the Court is satisfied that:

- (a) the following apply:

- (i) the person's interests may be affected by a determination in the proceedings merely because the person has a public right of access over, or use of, any of the area covered by the application; and
 - (ii) the person's interests are properly represented in the proceedings by another party; or
- (b) the person never had, or no longer has, interests that may be affected by a determination in the proceedings.

Govt (65)

Schedule 2, item 20, page 174 (after line 24), at the end of subsection 84C(1), add:

Note: The main application may still be amended even after a strike-out application is filed.

Dems-GWA (190)/Opp (223)

Schedule 2, item 3, page 147 (lines 11 to 15), omit the item.

Dems-GWA (192)

Schedule 2, item 9, page 148 (lines 7 to 20), omit the item.

Dems-GWA (333)

Schedule 5, items 18 and 19, page 355 (lines 14 to 21), omit the items.

Representative bodies**Govt (77)**

Schedule 3, item 11, page 238 (lines 3 to 23), omit subsection (1), substitute:

Commonwealth Minister may issue directions

- (1) The Commonwealth Minister may, by written instrument, issue directions requiring, or relating to, either or both of the following:

- (a) a former representative body returning documents and records, relating to the performance of its functions or the exercise of its powers in respect of its former area, to the person or persons who provided them to the body;
- (b) the former representative body allowing access to, giving or giving copies of documents and records held by the former representative body to a body (the *replacement body*) that has become the representative body for all or part of the former representative body's former area, where the documents and records are reasonably necessary for the performance of the functions, or the exercise of the powers, of the replacement body.

Directions take effect on the day on which they are issued.

Limit on directions

- (2) Directions must not require the former representative body to allow access to, give or give copies of documents and records, of the kind mentioned in paragraph (1)(b) that relate to:
 - (a) a claim in a claimant application or a compensation application; or
 - (b) native title rights and interests that are the subject of a determination of native title; to the replacement body, unless the replacement body has been asked by the claimants to assist them in relation to the claim, or has been asked by the persons who have been determined to hold the native title rights and interests to assist them in relation to those rights and interests.

Govt (77A)

Schedule 3, item 32, page 278 (lines 17 to 30), omit the item.

Govt (78)

Schedule 3, item 11, page 239 (after line 10), after section 203FC, insert:

203FCA Representative body to comply with wishes of traditional custodians

- (1) In performing its functions and exercising its powers, a representative body must make all reasonable efforts to comply with the wishes of the traditional custodians of any traditional materials in its possession about the way in which the traditional materials, and any information contained in them, are to be dealt with.

Definitions

- (2) In this section:

traditional custodian of traditional materials means a person who, according to the traditional laws and customs concerned, is responsible for the traditional materials.

traditional materials means documents, records or other things that are of significance to Aboriginal peoples or Torres Strait Islanders according to their traditional laws and customs.

Govt (79)

Schedule 3, item 30, page 259 (lines 3 to 6), omit all the words in paragraph 203BG(a) after subparagraph (ii), substitute "are brought to the attention of any person who the representative body is aware holds or may hold native title in relation to the land or waters, where the representative body considers that the notices would be unlikely to come to the attention of the person by some other means; and".

Govt (80)

Schedule 3, item 30, page 259 (after line 18), after the note, insert:

Note 2: This Act also imposes notification obligations on other persons.

Govt (81)

Schedule 3, item 31, page 277 (after line 6), at the end of subsection (1), add:

Note: The Aboriginal person or Torres Strait Islander is able to obtain a statement of reasons etc. for the decision from the representative body under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*.

Opp (N45) [amt to Govt (77)]

After subsection 203FC(2), insert:

Traditional materials

- (2A) Directions must not require the former representative body to act in contravention of its obligations under section 203FCA.

Right to negotiate

Govt (38)

Schedule 1, item 9, page 79 (line 20), omit ", a right to fossick or a right to quarry", substitute "or a right to fossick".

Govt (39)

Schedule 1, item 9, page 81 (line 5), omit "identification and protection", substitute "protection and avoidance".

Govt (40)

Schedule 1, item 9, page 87 (lines 7 to 10), omit subsection (5A), substitute:

Fourth condition

- (5A) The fourth condition is that the Commonwealth Minister is satisfied, immediately before the determination is made, that mining for opals or gems is being carried on in the whole or a substantial part of:

- (a) if paragraph (b) does not apply—the area; or
- (b) if, immediately before the determination is made, any part of the area is an approved opal or gem mining area—so much of the area as is not already an approved opal or gem mining area.

Govt (41)

Schedule 1, item 9, page 88 (after line 11), after paragraph (2)(a), insert:

- (aa) the earlier act took place after the commencement of this section; and

Govt (42)

Schedule 1, item 9, page 93 (line 2), after "Notice", insert "to the public under subsection (3)".

Govt (43)

Schedule 1, item 9, page 94 (after line 18), at the end of section 30, add:

Replacing a native title party

(4) If:

- (a) a person becomes a registered native title claimant because the person replaces another person as the applicant in relation to a claimant application; and
- (b) the other person is a native title party; the first-mentioned person also replaces the other person as the native title party.

Govt (44)

Schedule 1, item 9, page 99 (after line 23), at the end of section 35, add:

Negotiations for an agreement

- (3) Even though the application has been made, the negotiation parties may continue to negotiate with a view to obtaining an agreement of the kind mentioned in paragraph 31(1)(b) before a determination in relation to the act is made under section 34A, 36A or 38. If they make such an agreement before such a determination is made, the application is taken to have been withdrawn.

Govt (45)

Schedule 1, item 9, page 113 (lines 7 to 10), omit paragraph (3)(b), substitute:

- (b) if, at the end of 180 days after doing so, the alternative provisions do not comply and subparagraphs (c)(i) and (ii) do not apply—in writing, revoke the determination made under paragraph (1)(b); and
- (c) if:
 - (i) at the end of 180 days after advising the State Minister or Territory Minister, the alternative provisions do not comply and the Commonwealth Minister is satisfied that the State Minister or the Territory Minister is using his or her best endeavours to ensure that the alternative provisions will comply; and
 - (ii) before the end of the 180 days, the Commonwealth Minister determined in writing that a further period should apply for the purposes of this paragraph; and
 - (iii) at the end of the further period, the alternative provisions still do not comply;

in writing, revoke the determination made under paragraph (1)(b).

Note: A determination mentioned in subparagraph (c)(ii) is a disallowable instrument: see section 214.

Opp (R114)

Schedule 1, item 9, page 78 (after line 21), after subsection (1), insert:

- (1A) A compulsory acquisition will be deemed to be an acquisition involving a conferral of interests on persons other than the Government party, unless it is stated in writing to be for a Government purpose.

Opp (117)/Dems-GWA (107)/Harradine (23)

Schedule 1, item 9, page 79 (lines 1 and 2), omit paragraph (f).

Opp (118)/Dems-GWA (108)/Harradine (N3)

Schedule 1, item 9, page 79 (line 3), omit "sections 43 and 43A", substitute "section 43".

Opp (N24)

Schedule 1, item 9, page 79 (lines 22 to 24), omit subsection 26A(3), substitute:

- (3) The second condition is that the act or acts will have an insignificant impact on the particular land or waters concerned, taking into account, in appropriate cases, the possibility or likelihood that more than one such act may affect the same area.

Opp (N25)

Schedule 1, item 9, page 80 (line 18) to page 81 (line 2), omit paragraphs (6)(b) and (c), substitute:

- (b) any such persons or bodies will have a right to be heard by an independent person or body, which person or body (not less than two months after receipt of the notice referred to in paragraph (a)) will determine:
 - (i) whether the act is to be done; and
 - (ii) any matter relating to the doing of the act, and in particular, the matters referred to in subsection (7); and
- (c) the person who will do any thing authorised by the act will have a legal obligation to consult in good faith:
 - (i) any person or body covered by subparagraph (a)(i) or (ii); and
 - (ii) any person identified by the representative Aboriginal/Torres Strait Islander body as a holder of native title in the area affected by the act;

for the purpose of minimising the impact of the act on the exercise of native title rights and interests in relation to land or waters

that will be affected by the act, and in particular about the matters set out in subsection (7).

Opp (N26)

Schedule 1, item 9, page 81 (after line 20), after subsection (7), insert:

Fifth condition

(7A) The fifth condition is that the Minister is satisfied that if the person who will do any thing authorised by the act does not comply with any requirement, limitation or condition imposed in relation to the doing of the act in accordance with the outcome of procedures and matters referred to in the fourth condition, the persons and bodies referred to in subparagraphs (6)(a)(i) and (ii), or in the case where such persons or bodies do not exist in relation to all of the area affected by the act or acts, the representative Aboriginal/Torres Strait Islander body referred to in subparagraph (6)(a)(iii) may make application to the independent body or person referred to in paragraph (6)(b) and the independent body or person may determine that:

- (a) the authority for the act be revoked; and
- (b) where applicable, compensation be paid to the parties referred to in subparagraphs (6)(c)(i) and (ii).

Opp (125)/Dems-GWA (114)

Schedule 1, item 9, page 88 (line 13), omit ", (g) or (h)".

Opp (126)/Dems-GWA (115)

Schedule 1, item 9, page 88 (lines 15 to 19), omit paragraph (c), substitute:

- (c) the agreement mentioned in paragraph 28(1)(f) provided:
 - (i) an express understanding that there would be no further negotiation before the later act took place; and
 - (ii) that, if the later act were done, certain conditions would be complied with by parties other than native title parties (whether before or after the act was done); and

Opp (127)/Dems-GWA (116)

Schedule 1, item 9, page 88 (after line 22), at the end of section 26D, add:

Exception

- (3) However, the exclusion provided by this section does not apply if the agreement with respect to the earlier act provides for or permits the application of this Subdivision to the later act.

Opp (129)/Dems-GWA (119)

Schedule 1, item 9, page 90 (line 25), omit "34A,".

Opp (130)/Dems-GWA (120)

Schedule 1, item 9, page 91 (after line 7), at the end of section 28, add:

- (3) A person wishing to lodge a native title determination application under section 61 may apply to the Federal Court for an order prohibiting the doing or continuation of any act to which this Subdivision applies on the basis that section 29 has not been complied with.

Opp (134)/Dems-GWA (124)

Schedule 1, item 9, page 97 (after line 14), at the end of section 33, add:

- (3) If the negotiations are with respect to a right the creation of which may constitute an earlier act for the purposes of section 26D, the negotiations may include the possibility that:
 - (a) any agreement which results will provide for further negotiations in respect of an act that constitutes a later act for the purposes of that section; or
 - (b) this Subdivision will apply to the later act.
- (4) Proceedings may be taken in the Federal Court in relation to an agreement reached under section 31 pursuant to negotiations about matters referred to in subsection (3):
 - (a) for specific performance of the agreement; or
 - (b) for a declaration that the conditions of the agreement agreed to by non-native title parties have not been complied with; or
 - (c) for an injunction or prohibition restraining those parties from continuing to do things under the act or the later act; or
 - (d) for damages for the doing of the things or for a failure to comply with the conditions, or both.

Opp (135)/Dems-GWA (125)

Schedule 1, item 9, page 97 (line 18), omit "34A,".

Opp (137)/Dems-GWA (127)

Schedule 1, item 9, page 97 (line 20) to page 99 (line 10), omit section 34A.

Opp (139)/Dems-GWA (129)

Schedule 1, item 9, page 99 (lines 18 and 19), omit paragraph (c).

Opp (140)/Dems-GWA (130)

Schedule 1, item 9, page 99 (line 22), omit "34A".

Opp (N28) [amt to Govt (44)]

Schedule 1, item 9, subsection 35(3), omit "34A".

Opp (142)

Schedule 1, item 9, page 99 (line 25) to page 100 (line 20), omit subsections (1), (2), (3) and (4), substitute:

- (1) Subject to section 37, the arbitral body must take all reasonable steps to make a determination in relation to the act within:
 - (a) if the act is the grant of a licence to prospect or explore for things that may be mined—the period of 4 months starting when the application is made; or
 - (b) in any other case—the period of 6 months starting when the application is made.
- (2) The arbitral body must not make a determination that the act may be done unless it is satisfied that the Government and grantee parties negotiated in good faith as required by subsection 31(1).

Report to Commonwealth Minister

- (3) If the arbitral body is the NNTT and it does not make the determination within the period, it must, as soon as is reasonably practicable after the end of the period, advise the Commonwealth Minister in writing of the reason for it not doing so.

Commonwealth Minister may give notice as to urgency

- (4) At any time after the end of the period applicable under subsection (1) in respect of an application under section 35 that has not been withdrawn, and before either:
 - (a) the negotiation parties have made an agreement of the kind mentioned in paragraph 31(1)(b); or
 - (b) the arbitral body has made a determination under section 38;

the Commonwealth Minister may give a written notice to the arbitral body requesting the arbitral body to make such a determination within the period specified in the notice. The period must end not earlier than 30 days after the day on which the notice was given.

Opp (143)

Schedule 1, item 9, page 100 (line 23), omit "Relevant", substitute "Commonwealth".

Opp (144)

Schedule 1, item 9, page 100 (lines 30 and 31), omit paragraph (c).

Opp (145)

Schedule 1, item 9, page 101 (line 1), omit "relevant", substitute "Commonwealth".

Opp (146)

Schedule 1, item 9, page 101 (line 4), omit "relevant", substitute "Commonwealth".

Opp (147)

Schedule 1, item 9, page 101 (line 5), omit "relevant", substitute "Commonwealth".

Opp (148)

Schedule 1, item 9, page 101 (lines 9 to 21), omit paragraphs (2)(b) and (c) and subsection (3), substitute:

- (b) it is in the national interest to make the determination at that time.

Opp (149)

Schedule 1, item 9, page 101 (line 22), omit "34A or".

Opp (150)

Schedule 1, item 9, page 101 (line 23), omit "34A or".

Opp (151)

Schedule 1, item 9, page 101 (line 24), omit "relevant", substitute "Commonwealth".

Opp (152)

Schedule 1, item 9, page 101 (lines 28 to 30), omit paragraph 36B(2)(a).

Opp (153)

Schedule 1, item 9, page 102 (line 1), omit "relevant", substitute "Commonwealth".

Opp (154)

Schedule 1, item 9, page 102 (line 8), omit "relevant", substitute "Commonwealth".

Opp (155)

Schedule 1, item 9, page 102 (line 28), omit "relevant", substitute "Commonwealth".

Opp (156)

Schedule 1, item 9, page 103 (line 2), omit "relevant", substitute "Commonwealth".

Opp (157)

Schedule 1, item 9, page 103 (line 4), omit "relevant", substitute "Commonwealth".

Opp (158)

Schedule 1, item 9, page 103 (line 6), omit "relevant", substitute "Commonwealth".

Opp (159)

Schedule 1, item 9, page 103 (line 20), omit "34A and".

Opp (160)

Schedule 1, item 9, page 103 (line 24), omit "34A or".

Opp (161)

Schedule 1, item 9, page 103 (line 28), omit "relevant", substitute "Commonwealth".

Opp (162)

Schedule 1, item 9, page 104 (line 7), omit "relevant", substitute "Commonwealth".

Opp (163)

Schedule 1, item 9, page 104 (line 9), omit "relevant", substitute "Commonwealth".

Opp (164)

Schedule 1, item 9, page 104 (line 27), omit "relevant", substitute "Commonwealth".

Opp (165)

Schedule 1, item 9, page 105 (lines 4 to 14), omit subsection (7), substitute:

- (7) The Commonwealth Minister must, as soon as practicable after making a determination, and in any case within 15 sitting days, cause a copy of the determination, together with reasons for the determination, to be laid before each House of the Parliament.

Opp (166)

Schedule 1, item 9, page 105 (line 20), omit "34A or".

Opp (167)/Dems-GWA (135)

Schedule 1, item 9, page 105 (after line 27), after subsection (1), insert:

- (1A) A determination may, with the agreement of the parties, provide that particular matters that:
- (a) are not reasonably capable of being determined at the time the determination is made; and
 - (b) are not directly relevant to the doing of the act;
- are to be the subject of further negotiations or determined in a specified manner.

- (1B) If the matter is to be determined by arbitration otherwise than by the arbitral body, the parties must agree to the manner of determination or, in the absence of agreement, the matter must be determined by the arbitral body at an appropriate time.

Example 1: A mining lease may be granted subject to quantification of compensation etc. at a later time by an independent arbitrator.

Example 2: A mining lease may be granted subject to site clearance procedures to be determined by a third person.

Opp (170)/Dems-GWA (136)

Schedule 1, item 9, page 106 (after line 5), at the end of section 38, add:

- (3) If the act is with respect to a right the creation of which may constitute an earlier act for the purposes of section 26D, the determination may include a condition that:
 - (a) will provide for further negotiations in respect of an act that constitutes a later act for the purposes of that section; or
 - (b) will provide that this Subdivision will apply to the later act.
- (4) Proceedings may be taken in a court of a State or Territory in relation to a determination under this section:
 - (a) for specific performance of a condition of the determination; or
 - (b) for a declaration that the conditions of the determination have not been complied with by non-native title parties; or
 - (c) for an injunction or prohibition restraining those parties from continuing to do things under the act or the later act; or
 - (d) for damages for the doing of the things or for a failure to comply with the conditions, or both.

Opp (172)/Dems-GWA (138)

Schedule 1, item 9, page 106 (lines 32 and 33), omit paragraph (d).

Opp (173)

Schedule 1, item 9, page 108 (after line 4), at the end of section 40, add:

- (2) Subsection (1) does not apply to an indigenous land use agreement, or an agreement in writing referred to in paragraph 31(1)(b), that identifies the agreement or determination affected.

Opp (174)

Schedule 1, item 9, page 109 (line 10), omit "34A or".

Opp (176)

Schedule 1, item 9, page 112 (lines 35 and 36), omit "34A or 36A, or both," substitute "36A".

Opp (178)/Dems-GWA (146)/Harradine (31)

Schedule 1, item 9, page 113 (line 16) to page 117 (line 14), omit sections 43A and 43B.

Opp (198)/Dems-GWA (167)/Harradine (52)

Schedule 1, item 34, page 133 (line 10), omit "or 43A(1)(b)".

Opp (200)/Dems-GWA (169)

Schedule 1, item 34, page 133 (line 11), omit ", 251C(4) or (5)".

Opp (201)/Dems-GWA (170)

Schedule 1, item 34, page 133 (lines 11 and 12), omit "or paragraph (i) of the definition of *infrastructure facility* in section 253".

Opp (203)/Dems-GWA (172)/Harradine (53)

Schedule 1, item 34, page 133 (line 16), omit ", 43(3) or 43A(6)", substitute "or 43(3)".

Opp (R209)

Schedule 1, item 42, page 138 (lines 16 to 18), omit the item, substitute:

42 Paragraph 237(a)

Omit "does not directly interfere with the community life", substitute "does not interfere directly with the actual functioning of the way of life of the community".

Opp (210)

Schedule 1, items 43 and 44, page 138 (lines 19 to 22), omit the items, substitute:

43 At the end of section 237

Add:

- (2) If the act creates rights in persons other than those who are or may be native title holders in relation to the land or waters concerned, the following must be taken into account:
 - (a) the terms and conditions contained in any relevant grant, licence, permission or authority;
 - (b) the legislation governing their creation;
 - (c) the possible activities that would be authorised by their creation.
- (3) In deciding whether an act involves a major disturbance as mentioned in paragraph (1)(c), the beliefs and concerns of the native title claim group must be considered.

Opp (218)/Dems-GWA (185)

Schedule 1, item 50, page 142 (line 12) to page 144 (line 9), omit sections 251C and 251D.

Opp (221)/Dems-GWA (188)

Schedule 1, item 57, page 145 (lines 13 to 32), omit the item.

Opp (287)/Dems-GWA (258)

Schedule 2, item 78, page 216 (table), omit the item relating to infrastructure facility.

Opp (295)/Dems-GWA (265)

Schedule 2, item 78, page 218 (table), omit the item relating to town or city.

Opp (354)/Dems-GWA (329)

Schedule 5, item 11, page 351 (line 32), omit "34A,".

Opp (355)/Dems-GWA (330)/Harradine (54)

Schedule 5, item 11, page 352 (lines 7 and 8), omit "or 43A(8)".

Dems-GWA (137)

Schedule 1, item 9, page 106 (line 24), at the end of paragraph (1)(a), add:

- and (vi) the natural environment of the land or waters concerned, to the extent that it, and the likely effect of the act upon it, are relevant to the native title rights and interests claimed or determined;
- (aa) any assessment of the effect of the proposed act on the natural environment of the land or waters concerned that is relevant to subparagraph (a)(vi):
 - (i) made by a court or tribunal; or
 - (ii) made, or commissioned, by the Crown in any capacity or by a statutory authority;

Dems-GWA (268)

Schedule 2, item 94, page 221 (lines 13 to 16), omit the item.

Dems-GWA (270)

Schedule 2, item 101, page 222 (lines 24 to 27), omit the item.

Harradine (22)

Schedule 1, item 9, page 78 (lines 13 to 15), omit "and" and subsubparagraph (B).

Miscellaneous**Govt (82)**

Schedule 1, item 10, page 122 (line 3), after paragraph (b), insert:

- and (ba) an activity is done in accordance with the lease, licence, permit or authority and any such conditions;

Govt (83)

Schedule 1, item 10, page 122 (lines 5 and 6), omit "any activity in giving effect to the requirement or permission", substitute "the activity".

Govt (84)

Schedule 1, item 10, page 122 (lines 10 and 11), omit "any activity in giving effect to the requirement or permission", substitute "the activity".

Govt (85)

Schedule 1, item 10, page 122 (lines 13 and 14), omit "any activity in giving effect to the requirement or permission", substitute "the activity".

Govt (86)

Schedule 1, item 10, page 122 (lines 15 to 17), omit the note, substitute (aligned with the left margin to the text of section 44H):

Note 1: Any compensation to which the native title holders may be entitled under this Act for the grant of the lease, licence, permit or authority may take into account the doing of the activity.

Note 2: This section is not intended to imply that the person carrying on the activity is not subject to the laws of a State or Territory.

Govt (87)

Schedule 1, item 34, page 133 (lines 8 to 10), omit ", subsection 24KA(8), 24MD(7), 24NA(9), 26A(1), 26B(1) or 26C(2), paragraph 43(1)(b) or 43A(1)(b)", substitute "or (7)(a), subsection 24KA(8), 24MD(7), 24NA(9), 26A(1), 26B(1) or 26C(2), paragraph 43(1)(b), subparagraph 43(3)(c)(ii), paragraph 43A(1)(b), subparagraph 43A(6)(c)(ii)".

Govt (88)

Schedule 1, page 139 (after line 2), after item 45, insert:

45A Section 240 (definition of *similar compensable interest test*)

After "past act", insert ", an intermediate period act".

Govt (89)

Schedule 2, item 36, page 193 (lines 21 to 28), omit the item, substitute:

36 At the end of section 139

Add:

; or (d) if a person has made an application under subsection 24DJ(1) objecting against registration of an indigenous land use agreement and not withdrawn the objection—whether the person satisfies the Tribunal that it would not be fair and reasonable to register the agreement having regard to the matters mentioned in paragraph 24DL(2)(c).

Govt (90)

Schedule 2, item 37, page 193 (line 29) to page 194 (line 1), omit the item.

Govt (91)

Schedule 2, item 40, page 194 (lines 14 and 15), omit the item, substitute:

40 Section 148

Repeal the section, substitute:

148 Power of Tribunal where no jurisdiction, failure to proceed etc.

The Tribunal may dismiss an application, at any stage of an inquiry relating to the application, if:

- (a) the Tribunal is satisfied that it is not entitled to deal with the application; or
- (b) the applicant fails within a reasonable time to proceed with the application or to comply with a direction by the Tribunal in relation to the application.

40A After section 149

Insert:

149A Power of Tribunal to reinstate application

If it appears to the Tribunal that an application has been dismissed in error, the Tribunal may, on the application of a party to the application or on its own initiative, reinstate the application and give such directions as appear to it to be appropriate in the circumstances.

Govt (92)

Schedule 2, item 70, page 210 (lines 10 and 11), omit the item, substitute:

70 Paragraph 200(1)(a)

Omit "arising under Part 2", substitute "for acts affecting native title".

Govt (93)

Schedule 2, page 210 (after line 11), after item 70, insert:

70A Paragraph 200(1)(c)

After "State/Territory body", insert ", or equivalent body (within the meaning of subsection 207B(1))".

Govt (94)

Schedule 2, item 71, page 211 (after line 25), after paragraph (c), insert:

- (ca) members of the one or more equivalent bodies will enjoy security of tenure no less favourable than that enjoyed by members of the NNTT or the Native Title Registrar, as the case requires; and

Govt (95)

Schedule 2, item 71, page 212 (lines 3 to 12), omit paragraph (f), substitute:

- (f) if any of the functions or powers that will be performed or exercised under the determination are those of the NNTT—the law of the State or Territory will require the member or at least one of the members of the equivalent body to be a member of the NNTT; and

Govt (96)

Schedule 2, item 71, page 212 (after line 28), at the end of subsection (5), add:

Note: The *Administrative Decisions (Judicial Review) Act 1977* will apply to decisions that an equivalent body or a State or Territory Minister may, because of this section, make under this Act to the same extent to which it applies to corresponding decisions of the NNTT, the Native Title Registrar or the Commonwealth Minister under this Act.

Govt (97)

Schedule 2, items 72 to 74, page 213 (line 27) to page 214 (line 18), omit the items.

Govt (98)

Schedule 2, Part 3, page 224 (lines 2 to 7), omit the Part.

Opp (N48)

Schedule 1, item 9, page 12 (after line 24), after Division 2A, insert:

Division 2AA—Validation of transfers under New South Wales land rights legislation

22I Overview of Division

In summary, this Division allows New South Wales to validate certain transfers under the *Aboriginal Land Rights Act 1983* of that State.

22J Validation of transfers

If:

- future acts consist of the transfer of lands under section 36 of the *Aboriginal Land Rights Act 1983* of New South Wales; and
- the claims for the lands were made before 28 November 1994; and
- the acts took place before or take place after the commencement of this section; and
- the acts are not intermediate period acts; and
- the acts are invalid to any extent because of Division 3 of Part 2 or for any other reason, but would be valid to that extent if native title did not exist in relation to the lands;

a law of New South Wales may provide that the acts are valid, and are taken always to have been valid.

22K Effect of validation on native title

The non-extinguishment principle applies to the acts.

22L Entitlement to compensation

Compensation where validation

- If a law of New South Wales validates the acts, the native title holders concerned are entitled to compensation.

Recovery of compensation

- The native title holders may recover the compensation from New South Wales.

Compensation to take into account rights etc. conferred by transferee

- The compensation is to take into account all rights, interests and other benefits conferred, in relation to the lands, on the native title holders by, or by virtue of membership of, the Aboriginal Land Council (within the meaning of the *Aboriginal Land Rights Act 1983* of New South Wales) to which the lands are transferred or by which the lands are held.

NSW may create compensation entitlement

- This section does not prevent a law of New South Wales from creating an entitlement to compensation for the acts or for their validation.

Note: Paragraph 49(b) deals with the situation where there are multiple rights to compensation under Commonwealth and State legislation.

Opp (N49)

Schedule 5, page 357 (after line 9), at the end of Part 5, add:

26A Transitional—certain acts are valid

- If the conditions in this item are satisfied an act will be valid.

First condition

- The first condition is that the act:
 - if done under the old Act would be a permissible future act; and
 - would not have been subject to the requirements of the right to negotiate provisions in the old Act; and
 - is subject to the right to negotiate provisions in this Act.

Second condition

- The second condition is that after 1 July 1996 and before the commencement of this Act:
 - negotiations in good faith with native title parties have been entered into by the person requesting that the act be done; and
 - an agreement about the doing of the act is reached between:
 - the person requesting that the act be done; and

- (ii) one or more of the native title parties; and

and at least one Aboriginal/Torres Strait Islander body for the area endorses that it is satisfied that negotiations have occurred in accordance with paragraph (3)(a); and

- (c) the act is done either by the person requesting to do the act or by a State or Territory government, consistent with the terms of the agreement.

Act may be done without agreement

- (4) If agreement is not reached in accordance with paragraphs (3)(a) and (b) and the Aboriginal/Torres Strait Islander body for the area endorses that it is satisfied that negotiations have occurred in accordance with paragraph (3)(a) for a reasonable period:
 - (a) the act may be done; and
 - (b) the native title parties have the same procedural rights in relation to the doing of the act as if the old Act was still in force.

Mr HOWARD (Bennelong—Prime Minister) (8.35 a.m.)—Mr Speaker, I suggest it would suit the convenience of the House to consider the amendments in two groups—firstly, those amendments which the government proposes be disagreed to, which are listed on schedule 1, the grey sheet circulated to honourable members, and then, secondly, the amendments which the government proposes be agreed to, which are listed on the green sheet.

Mr SPEAKER—There being no disagreement, I call the Prime Minister.

Mr HOWARD—I move:

That the following Senate amendments be disagreed to:

- (1) Dems-GWA (20); (21); (22); (23); (24); (25); (26); (27); (28); (29); (30); (31); (32A); (137); (192); (268); (270) and (333);
- (2) Dems-GWA (92)/Opp (100) and Dems-GWA (190)/Opp (223);
- (3) Harradine (14); (18); (21); (22) and (R9);
- (4) Harradine (N1)/Opp (N17) and Harradine (N2)/Opp (N18);
- (5) Opp (93); (94); (142) to (166); (173); (174); (176); (210); (N3); (N6) to (N8); (N21); (N22); (N24) to (N26); (N28); (N30); (N31); (N36) [as amended by Opp (N37)]; (N49); (R188); (R209); (RN2); (RN23); (RN27); (RN34); (RN35) and (RN42); and

- (6) Opp (95)/Dems-GWA (87); Opp (117)/Dems-GWA (107)/Harradine (23); Opp (118)/Dems-GWA (108)/Harradine (N3); Opp (125)/Dems-GWA (114); Opp (126)/Dems-GWA (115); Opp (127)/Dems-GWA (116); Opp (129)/Dems-GWA (119); Opp (130)/Dems-GWA (120); Opp (134)/Dems-GWA (124); Opp (135)/Dems-GWA (125); Opp (137)/Dems-GWA (127); Opp (139)/Dems-GWA (129); Opp (140)/Dems-GWA (130); Opp (167)/Dems-GWA (135); Opp (170)/Dems-GWA (136); Opp (172)/Dems-GWA (138); Opp (178)/Dems-GWA (146)/Harradine (31); Opp (183)/Dems-GWA (151); Opp (198)/Dems-GWA (167)/Harradine (52); Opp (200)/Dems-GWA (169); Opp (201)/Dems-GWA (170); Opp (203)/Dems-GWA (172)/Harradine (53); Opp (218)/Dems-GWA (185); Opp (221)/Dems-GWA (188); Opp (287)/Dems-GWA (258); Opp (295)/Dems-GWA (265); Opp (354)/Dems-GWA (329) and Opp (355)/Dems-GWA (330)/Harradine (54).

The bill as returned to us by the Senate is quite unacceptable to the government. The bill that was passed through this parliament last year, and again a few weeks ago, was a fair and balanced piece of legislation. It already represented a major compromise. It represented a fair balancing of the interests of all sections of the Australian community. It was fair as between Aborigines and farmers; it was fair as between city and country; it was fair as between Australian and Australian.

The bill as amended by the Senate will not treat farmers and Aborigines equally. The bill as amended by the Senate gives special privileges to one group of Australians denied to others. It contains provisions which are not available to other sections of the Australian community and are specifically available to one group of Australians, and that group of Australians alone. It is a fundamental of our kind of society, and it is certainly a fundamental of the approach of my government, that all Australians should be treated equally before the law. All Australians should be entitled to an equal dispensation of justice, and all Australians should have equal responsibilities before the law.

There are four major objections which the government has to the bill as amended by the Senate. They surround the areas that have been debated at length over the past weeks

and the past months. They relate, firstly, to the right to negotiate, secondly, to the registration test, thirdly, to the application of the Racial Discrimination Act to this piece of legislation and, fourthly, to the so-called sunset clause.

We have long argued that it is wrong in principle that there should be a right to negotiate over pastoral leaseholdings subject to mining applications in the hands of indigenous claimants, yet that right is not available to farmers and pastoralists. We do not believe that that right should be available to one group and not available to others.

That is the fundamental reason why we have always said that a bill which contained the right to negotiate was always going to be unacceptable, not only to the rural community of the Australia, not only to the mining industry of Australia, but indeed to the vast bulk of the Australian community, who believe in a very sacred principle, that is, the equality of all Australians before the law.

Mr Speaker, I would remind the parliament that when the original native title legislation was passed at the behest of the Keating government in 1993 it was never intended that the right to negotiate should apply to pastoral leaseholdings. Nothing which has happened in all the hours, all the weeks and all the months of the debate that has gone on since the High Court brought down its decision in the Wik case in December 1996 has disturbed that unassailable historical fact that the original legislation was predicated on the basis that the grant of a pastoral leasehold extinguished native title.

That was contained in a preamble to the 1993 act. It was asserted by Mr Keating, my predecessor as Prime Minister. That assurance, that assumption, that statement, that declaration of belief was contained in correspondence which passed between the then Prime Minister and some premiers of the Australian states. It was the belief and the assumption under which the former Labor Premier of Queensland, Wayne Goss, operated. It was always believed, even by prominent members of the indigenous community, that the idea that native title should have survived the grant of a valid pastoral lease was com-

pletely unacceptable. The whole basis of all of our understanding was that that was an unassailable fact.

Then to our very great surprise the High Court of Australia decided in December 1996 that that was not necessarily so. There were many people then with a great deal of justification, including many of the farmers of Australia and all of the state premiers of Australia—and I say advisedly: all of the state premiers of Australia—including the Premier of New South Wales, Mr Bob Carr, who said that the proper response of the government in the wake of the High Court decision was in fact to pass a law that simply confirmed the understanding of the parliament and the understanding of the Australian people in December of 1993 that the grant of a valid pastoral lease extinguished native title.

That was the pressure under which my government was placed, and that was the view of many of my colleagues who now sit behind me, not only in the National Party, but also in the Liberal Party, because they believe that is what the Australian people had been promised, guaranteed and led to believe by the former Labor Prime Minister.

But, because of our respect for the decision taken by the High Court and because of our belief that we had to properly balance the interests of farmers and Aborigines, we said, 'No, we will not embrace that course of action, but what we will seek to do is establish a legislative structure—which was ultimately embodied in the 10-point plan and subsequently in the Native Title Amendment Bill—that would enshrine the principles of equality of treatment, respect the principles of native title laid down in the Mabo case, confirm the interpretation of that in relation to pastoral leaseholdings enunciated in the Wik decision, and present it to the people as a fair and decent compromise.'

If anybody has any doubts about the veracity of that proposition, go and talk to the rural representatives in the western lands division of New South Wales, who argued very strongly that their particular leaseholds were exclusive tenures of the type contemplated by the Wik decision and therefore should have totally extinguished native. But because our

legal advice was that that was not so, we refused to include those particular leaseholdings in the schedule to the Native Title Amendment Act. In the face of the fiercest criticism—and understandable criticism from those people—the government said no, it would not compromise the integrity of the legislative framework that it had established.

I mention these things, Mr Speaker, because it is important in perhaps the very final speech I will make in this parliament in relation to this piece of legislation that the Australian public ought to be reminded of the original expectation given voice by Paul Keating as Labor Prime Minister of Australia that the grant of a valid pastoral lease extinguished native title—an assumption under which all Australians were entitled to operate; a bona fide belief held by all Australians; a High Court decision that overturned that exception; a refusal by my government to simply embrace the extinguishment option in relation to those pastoral leaseholdings; and the hammering out of a compromise that was honourable to everybody, bitterly disappointing many of my own party supporters and having to say face to face to many representatives of the rural community of Australia, 'We are prepared to go so far, but no further.'

In the interests of fairness, balance and justice the Deputy Prime Minister (Mr Tim Fischer) and I were prepared to say to many people and many organisations that have been lifelong supporters of our two parties that, in the interests of fairness and balance, we could not go any further than the 10-point plan.

I mention those things as a measure of the bona fides of my government and the bona fides of the Deputy Prime Minister, who, I might say, has displayed conspicuous courage, tenacity and decency on this particular issue. In this speech I want to thank the Deputy Prime Minister again for the contribution he has made in very difficult circumstances.

I say to the farmers of Australia: although we could not do everything that you would want us to do, there is one thing we have been able to do—that is, we have clung tenaciously to the principle that all Australians should be treated equally; we have clung

tenaciously to the principle that farmers and Aborigines should be treated equally; we have clung tenaciously to the principle that no one group in the Australian community should have rights that are not enjoyed by another group. That is why we were never prepared to compromise on the issue of the right to negotiate.

We have said to the farmers of Australia: we are not going to legislate to implement your legitimate expectation raised by the Labor Prime Minister Paul Keating; not only are we going to fail to give force to your legitimate expectation but we are going to go further, we are going to leave the right to negotiate over pastoral leaseholds although it was only ever intended that it would apply to vacant crown land. That would have been to doubly throw dirt in the face of the rural community of Australia. We were simply, in the interests of fairness and balance, unprepared to do that.

It has always been a cardinal principle of our handling of this legislation that, once the Wik decision was brought down, the right to negotiate over pastoral leaseholds had to go as a matter of ordinary commonsense and logic because the original basis of the legislation was that you could only make a native title claim over vacant crown land, and that was the belief enshrined in the recital of the original act. It defies logic, fairness, common-sense and balance in the Australian community that that right to negotiate should continue to apply in relation to pastoral leases. The failure of the Senate to accept that principle means that the amendment on that issue alone is absolutely unacceptable to my government.

The other issues, although of lesser significance, are nonetheless very significant in themselves. I thought at one stage that we had amended the original registration test, but I found last night that we had not because there was a double backflip with triple pike done by the minor parties in the Senate. The registration test in its present form—the Senate form—is unacceptable.

And of course there is the application of the racial discrimination clause. This is the clause that the Labor Party in government decided not to apply. This is the clause that Father

Frank Brennan, in that now notorious correspondence in the *Sydney Morning Herald*, said was being used by the Labor Party as a device to get an early election on this issue. If you leave the bill in the form proposed by the Senate, you will end up applying the principle of double jeopardy in relation to every piece of litigation that might take place under the Native Title Act. That of course is also unacceptable.

Mr Tuckey—A lawyers' clause.

Mr HOWARD—It would be a lawyers' feast. I am indebted to the honourable member for O'Connor for that interjection. Finally, of the four things I wish to mention, there is the sunset clause, which is a simple proposition. If you are a registered claimant after a period of six years, you really cannot go any further. It does not take away the common-law right to bring an action in the Federal Court; it is merely limited in relation to registered claimants. It is a totally fair and reasonable principle, but that is also regarded as unacceptable by the Senate.

In relation to the Senate, the Senate has been guilty of some quite bizarre behaviour on this. I talk in particular of the Senate's gyrations and chopping and changing on the issue of the registration test and the sunset clause. We did at one stage have a decent registration test but that disappeared in the dead of night last night. We did at one stage have a sunset clause which was reasonable and fair but that also disappeared. Not only did the Senate deny us what we wanted in relation to the right to negotiate, what Labor said was fair—and Father Frank Brennan continues to say is fair—in relation to the Racial Discrimination Act, but at the 11th hour, at five minutes to midnight, so to speak, they have also denied the House of Representatives what was wanted in relation to the registration test and the sunset clause.

There are numerous other amendments listed on the grey sheet that have been inserted by the Senate which we find completely unacceptable. There are just two other things that I want to say very carefully to the parliament and to the Australian people. I reject completely the description constantly used by many in the media that, if the Wik bill is the

subject of a double dissolution, the next election will be a race election. There will be no race election as far as my government is concerned. We will never embrace the politics of race. We will never seek to exploit a political issue or create a political argument based on race. We do not have in our ranks people who have used racist language. We do not have in our numbers people who have used racist language. I notice that I am going to be followed by somebody who has still failed to apologise for having made some very crude and some very crass remarks.

It will not be a race election so far as my party is concerned. It will not be a race election so far as the Leader of the National Party is concerned. If those media commentators who continue to loosely and glibly describe it as such had any concern for the harmony of the Australian community, they would stop using such a ridiculous title.

I believe that this bill, after it has been disposed of, should be laid aside, but there will be some further amendments to be dealt with shortly. In its form as presented by the Senate, for the reasons that I have outlined and in circumstances that I greatly regret, the bill is absolutely unacceptable to the government. (*Time expired*)

Mr GARETH EVANS (Holt—Deputy Leader of the Opposition) (8.50 a.m.)—It is deeply depressing that the government has chosen to reject the Native Title Amendment Bill 1997 [No. 2] in the form in which it is returned to us from the Senate. There is no reason in law or justice or economics or morality for this bill in this form to be rejected. If it is rejected, it will not be for any reason of law or economics or justice or morality. It will be for reasons of politics—the politics of the coalition and the accommodation of the National Party within it, the politics of the forthcoming Queensland election and the politics of winning the federal election in rural and regional Australia.

This is a divisive and confrontational government which has deliberately taken a divisive and confrontational course on issue after issue since it has been in office. It has taken that course now on the Australian waterfront and it has taken it now here on an

issue that is even more explosive—the issue of race and Aboriginal rights. The tragedy is that it has been so unnecessary for the government to take this course.

We in the opposition approached this whole issue from the outset in a conciliatory and consensual fashion. We kept trying to find solutions throughout the course of this debate that would be acceptable to all the key stakeholders—indigenous Australians, pastoralists, miners and the larger Australian community. We have been constantly disappointed by the government's reaction and we are disappointed again—disappointed to the extent of total depression—by the government's reaction today.

Let me proceed immediately to the substance of the issues and explain why it is that the government should be prepared to accept this bill in the form in which it has come back to us. The government says there are four key issues in the legislative package which make that impossible. That is not a view that is accepted by the opposition and let me explain why. First of all, the threshold or registration test. This is the key to a great deal else in the bill. It is crucial that it be effective. It is crucial that we end so-called paper claims once and for all. It is crucial that the right to negotiate in future be exercised only by claimants to native title with a reasonable chance of success.

The amendment passed by the Senate is not precisely what the government wanted in this respect, that is true, but it does get that result. It is a very different set of provisions from that which passed the Senate in December. What we now have—and let me identify it—is first of all a set of tough procedural hurdles that have to be jumped. We have a criterion whereby each individual claim has to be *prima facie* sustainable and determined as such by the registrar. We have to have a traditional physical connection, not just any old connection, or, in the absence of that, a lockout. That is going back only one generation: the issue has not been put in the legislation of going back more than one generation.

Alternatively, if you have not got that kind of traditional association or a lockout, you at the very least have to have an acknowledged

traditional law association or a customary association which has been maintained with this particular patch of land to the extent practicable—the Mabo test outlined by Mr Justice Brennan. That is not some loose, vague, spiritual association test, as has been constantly claimed; it is a workable and defensible addition to the legitimate bases for such a claim being made.

There is moreover something the government was always reluctant to accept—God knows why because it adds very significantly to the armoury of the miners who want to contest rights to negotiate being triggered in situations where they think the claims being made are indefensible. There is provision in our threshold test for a collateral challenge to be made to the registrar's decision in circumstances where it is beyond the registrar's power to determine a contested matter of fact, but it is a matter of the court's power. We have now put in a provision expressly enabling an unsustainable claim, in effect, to be swept away at the threshold. So much for the threshold test.

As to the right to negotiate, yes, as the bill comes to us from the Senate that has been retained for mining on pastoral leases—the issue that was left open, not foreclosed, in 1993. Why shouldn't that right to negotiate be retained? What we are talking about here is a common law right to have native title or a claim of such common law right which the government recognises legitimately does trigger a right to negotiate in relation to mining and compulsory acquisition exercises if it is on vacant crown land. What difference should it make that a pastoral lease has been given over that crown land? We are not talking about freehold and we are not talking about full commercial leasehold of the kind which involves exclusive possession; we are talking about pastoral leases, which, as we all know or should know, historically were no more than essentially grass and water licences to graze. That is the truth of the matter.

The onus is not on those who want to argue for a right to negotiate to be extended to pastoral leases; the onus must be on those who would want to take away the right to negotiate from those with credible common

law claims to native title who would have that right if it were vacant crown land and for whom the existence of a pastoral lease should make no difference. Pastoralists are not being prejudiced in any way. Their rights will not be one iota diminished from what they are under statute or common law at the moment.

The final point to make about the right to negotiate is that it is critical not only to the justice and morality of this package but also to its legal certainty. The Hindmarsh Island case left very much open the necessity for a race based constitutional provision to operate to the net benefit of Aboriginal or indigenous people and it is clear that the right to negotiate will be crucial in any determination of that net benefit.

As to the third issue of the sunset clause, it is true that has now been deleted from the legislation, but this has always been the least credible, least plausible, of the government's positions and, frankly, acknowledged as such in many private conversations, which I will not be rude or crude enough to actually identify, going right back to the beginning of this debate. The truth of the matter is that it has always been acknowledged that the sunset clause would not inhibit the pursuit of common law claims—and that has been acknowledged again by the Prime Minister (Mr Howard) today; all it would do is rub out the statutory procedures being applicable. All the existence of a sunset clause would have done is trigger an avalanche of ambit claims which would make much more difficult the practical resolution of these vexed and sensitive issues.

As to the final of the four issues, the Racial Discrimination Act clause, this is not the kind of destructive weapon the government claims it to be. We did amend the text of the bill to make specific provision to exclude from any possible override by the Racial Discrimination Act its application to not only the original validations but also the validations that have been accomplished for the intermediate period from 1994 to 1996. There has been in addition an interpretive footnote inserted in our amendment designed to make it clear that the RDA applies in relation to the performance of functions, the exercise of powers or the resolution of ambiguity.

In other words, there is a very clear direction being given to the courts that it is not the intention of the legislature that the Racial Discrimination Act cut some sort of destructive swath through the substantive provisions of the legislation. It is there as an interpretive guide and it is there as a restatement of the fundamental principle, which we all ought to be prepared to accept, that non-discrimination ought to apply and ought to be visibly seen to apply.

It is critical to appreciate that these four issues are not the only issues that have been the subject of the Senate debate. A huge number of other issues have been debated and overwhelmingly in relation to all these other issues the government got what it wanted. Let me list what the government has achieved in this respect so people can understand why it is we say that the government should not be rejecting this legislation in the form in which it has come back and for it to do so is politically driven rather than driven by economics, law, morality or justice. Let me list these issues quickly.

On the validation issue, the government got what it wanted with ALP support. On the issue of confirmation of past extinguishment, the government got everything it wanted with a couple of comparatively small exceptions. On the question of indigenous land use agreements, largely as a result of a consensus in negotiation we have achieved something that is supported by both the government and the opposition parties, a better outcome than December and one that in particular will allow for the resolution of a great many of those tangles of outstanding claims from the pre-1996 period which will not be revisited under the new threshold test and which have to be somehow addressed if we are to resolve the continuing problem areas, particularly in the Goldfields and elsewhere.

On the primary production regime, the government's pastoral diversification regime was here accepted, effectively in its entirety. The government and the pastoralists have everything in practice they could reasonably want, and did in fact want. Non-claimant applications, water and air space issues were clear wins for the government in the sense that it

got exactly what it wanted; it got its bill. On the renewals issue, the government got nearly all that it wanted, with one huge advance on December, which was given to it with ALP support, and that was the renewal of mining leases and interests on the same terms as they had previously existed. That will not now trigger a right to negotiate. It was a matter on which the mining industry had very strong feelings—a matter on which we sought and achieved a consensus outcome.

On the issue of reservations, the government got what it wanted. On the question of services to the public, there was a mixed outcome for the government. It got everything except the right to construct new facilities without a compulsory acquisition right to negotiate regime being associated with that. On low impact acts, there was achieved in the Senate an extension to low impact exploration—that is, that does not now trigger a right to negotiate. That is a major advance for the mining industry and for the government on what was achieved in December, and it was delivered with complete cross-party support as a result of negotiations. On the freehold test and offshore issues, the government got exactly what it wanted. On statutory access rights, the government got half of what it wanted. It maintained what we would regard as the unfair element of suspending common law native title rights when statutory access is in fact achieved, granted or exercised, but the opposition won its position on the extension of those access rights to cover various lock-out situations.

On compensation, we achieved an improved regime—delivered by agreement—and one thing that will make the bill a lot more certain in its legal application so far as this area is concerned. On the question of applications procedure, the government got what it wanted. On claims procedure, it got what it wanted. On the question of representative bodies, it got what it wanted, with some significant improvements on the 1993 bill incorporating some positions negotiated by the government with the opposition. On a whole miscellany of other issues, which it is not easy to simply characterise, the government got 14 of its amendments up; we got seven, including,

might I say, an amendment to guarantee the Queensland Chevron pipeline deal which was delivered last night—a statutory provision to that effect—by the opposition, the Greens, Senator Harradine and the Democrats against government opposition. That is there in the text of the legislation and that will not be forgotten in the forthcoming Queensland debate.

The point is this: I have just rattled through, together with the original four matters I dealt with at more length, the 20 key issue areas that were up for debate in the Senate. On 14 of those 20 key issues, the government got exactly or more or less exactly what it wanted. On two other of those 20 issues, the outcome was divided from a government perspective. On four of those issues—the RDA, the sunset clause, the threshold test and the right to negotiate; the big four that the government keeps emphasising—it did not get what it wanted. But I should say that overwhelmingly the balance is there and any reasonable analysis of the outcome in the Senate will make it absolutely clear that this is a package that should have been accepted by the government. I should say that even this outcome has been even more divisive and confrontational than could have been the case. More options were on the table that could have delivered consensual negotiated outcomes on issues which still remain divisive as between us, including, I have to say, the right to negotiate itself.

The debate lost its way when the government, as I understand it, backed away from various undertakings or assurances or understandings that were given in negotiations with Senator Harradine. That led him to walk back from positions that he previously had taken. There is no point in going over the agony of all that debate over the last two weeks, but all I can say in general terms is that, had the political atmospherics been a lot better, had this government been not so obviously determined to create the conditions for confrontation here, a totally acceptable outcome could have been achieved; and that is of course something we have been arguing for from day one—that it is possible with goodwill to achieve that.

What we have as a consequence of the failure to reach a complete agreement on all these issues is a number of residual areas of quite serious legal uncertainty so far as this bill is concerned. Because of the government's achieving its way on a number of the issues that I have already mentioned, there is a very real question as to whether this legislation can in its present form satisfy the beneficial requirement which we believe continues to exist in section 51(xxvi) and which will be determined by the High Court when it finally gets around to addressing the substantive issues on things like confirmation of extinguishment to the extent that it does not apply common law rules. There are some just terms, issues which again are redolent right through this legislation, which had I the time I would address.

But let me just come back to where I started. Nothing in the economics, the law, the justice or the morality should stop this bill being accepted. The government will be judged by its failure to accept this bill. It will be judged, of course, by indigenous people who, once again, have had their hopes of reconciliation and advancement sadly dashed. It will be judged by the miners and all those others who want commercial certainty and who have been denied it by the failure to reach agreement on these issues. The government will be judged internationally by those who are all too conscious internationally of the long record of insensitivity this government has chalked up on racial issues. And this government will be judged by the Australian people, who do not want division and confrontation, who do not want to see unleashed all those forces of prejudice, fear, humiliation and hurt that, whether intended or not, are absolutely inevitable if we do proceed, as now seems inevitable, to a race based double dissolution.

Mr TIM FISCHER (Farrer—Deputy Prime Minister) (9.05 a.m.)—The government stands firm to deliver a practical solution to the problems associated with Wik. The Senate was not able to do this and, therefore, it is now a matter for the people to decide.

I want to say for the benefit of members that I understand that there will be one divi-

sion at about quarter past nine on the amendments on which we disagree. On the amendments on which we agree on both sides, obviously there will be no division. That might assist some last minute planning as we deal with this final debate on this very important piece of legislation, the Native Title Amendment Bill 1997 [No. 2].

I want to say, in response to the Deputy Leader of the Opposition (Mr Gareth Evans), that the die was not cast before yesterday. Indeed, as late as 10 o'clock last night the Prime Minister (Mr Howard) took the precautionary step of calling a joint party meeting to explain the state of play, and even at the end of that meeting—if I can have your permission to reveal this—the Prime Minister put a caveat that it may have to be resumed to consider any last minute changes in the remaining four hours of sitting of the Senate. In other words, we were prepared, right through to 2.15 this morning—in fact right through to the 7.30 cabinet meeting this morning—to look at any last minute changes from the Senate.

Alas, that was not to be the case. I accept the phraseology of the Deputy Leader of the Opposition that there were in a sense 20 main issues and on six of those 20 there was not agreement between the government and the opposition. The four big issues were the right to negotiate, Racial Discrimination Act alteration, the sunset clause provision and, above all else, the threshold test provision, which was carried briefly in the Senate in favour of the government's longstanding 10-point plan position but was of course reversed yesterday afternoon.

I will go back to Longreach on Saturday. I will make a point of going to Longreach to meet with a number of people at a function which is mainly associated with the 10th anniversary of the Stockman's Hall of Fame. In the morning of that Saturday I will go to Winton to the opening of the new Matilda Centre and in the afternoon to the Stockman's Hall of Fame to unveil the 10th anniversary plaque. They will be magnificent iconic events in their own right. But I will take the opportunity to informally reiterate to the people I meet with in Winton and Longreach

this Saturday that we gave an undertaking—the Prime Minister, John Howard, gave an absolute undertaking—that there was a fair 10-point plan and that we would not be walking away from that 10-point plan, and I will say that that is exactly what we have done in the houses of parliament this particular week and this particular moment.

I note that one Independent has expressed particular interest this morning. The member who has been the most consistent of the Independents is the member for Calare (Mr Andren). At every stage he has opposed giving the farmers a fair go in respect of the 10-point plan. I will allow this: he has been absolutely consistent on this; he has been absolutely consistent with the Labor Party on this. In respect of the member for Oxley (Ms Hanson), sometimes she has been here and sometimes she has not. She has not even fronted for some of the key divisions on the Wik legislation.

I want to conclude by quoting from a committee hearing in respect of native title. That committee hearing took place on 24 September in Canberra. The member for Page (Mr Causley) asked Mr Djerrkura, whom I greatly respect, a couple of questions. I simply read from the transcript of that particular deliberation of the committee at that meeting. The member for Page said:

Many of the legal minds that we have had before the committee have said that they think the High Court is saying that it is access to land for hunting, gathering and ceremonial rights. Do you agree with that, or do you think that it is more than that?

Mr Djerrkura replied:

Of course it is much more than that . . . It is a total being. The land is our mother . . . Particularly in today's world, there is a willingness by indigenous people to participate in commercial activities.

Fair enough. He went on to say:

It is total ownership. It is a recognition of our rights to this country. That is what native title reflects. That is something we are not going to surrender.

This 10-point plan, this legislation, does not wipe out native title across mainland Australia. It provides a fair process in accord with the utterances of Mr Djerrkura and others at that very key committee hearing last year. What we are about is a fair outcome, an

equality of rights and a determination which now must go before the people of Australia. (*Time expired*)

Mr MELHAM (Banks) (9.10 a.m.)—If the Native Title Amendment Bill 1997 [No. 2] forms part of a double dissolution trigger, then let us be under no mistake: it will be a race based election. It will be divisive and it will be ugly. Not only will the Prime Minister (Mr Howard) have diminished his office, he will have diminished the nation and he will have diminished each and every one of us, because this is totally unnecessary. What has driven this is low grade politics and the fact that this government has been the captive of sectional interest.

The first sticking point is the Racial Discrimination Act. It was coalition policy that amendments to the Native Title Act would respect the Racial Discrimination Act. The Prime Minister repeated that in this parliament when questioned. He repeated that to every community group. The first sticking point was a core promise of this government both before and after the election and we will hold them to it. We will hold them to it because, if one reads Mabo, if one reads the Western Australian challenge to our Native Title Act and if one reads Justice Brennan in the Wik case, one realises that without the Racial Discrimination Act the states can extinguish native title. That is where the ‘bucketfuls of extinguishment’ are.

In relation to the second test, the threshold test, this government seeks to make it harder for indigenous people to pursue native title claims under this act than it is under the common law. What will that do? It will drive indigenous people to the courts to assert their common law rights. What does that do? It creates delays, uncertainty and unworkability. Development will be at a standstill. What will a sunset clause do? It will repeat the mistakes of the framers of the constitution. In the 1890s when the constitution was framed there were negative references to indigenous Australians because the framers thought that they would not be with us much longer, that they would die and we would not have to worry about them in the constitution. So a sunset clause means that they are not going to be a

problem in six months time or in six years time—a total misreading of what this act is about, an alternative to the common law, an alternative that puts people at the table.

The fourth sticking point is the right to negotiate—not a right of veto. The second explanatory memorandum of the government at page 15, paragraph 3.15 says:

The right to negotiate was not a veto.

It is a right to be consulted. Why is it there? Because it is an intrinsic element of native title. But, more importantly, if you want a constitutional bill and you want to acquire the property rights, even of indigenous Australians, just terms acquisition requires consultation, a proper process. And, at the end of the process, there is a right of override. The Labor Party, from the outset, stood ready to provide a solution that had the broad support of the parliament. That was rejected by the Prime Minister.

Senator Harradine set the bottom line on this bill because the Democrats, the Greens and Labor still did not have the numbers. Senator Harradine—a decent, honourable human being—gave the government two out of four of their sticking points and was told by the Prime Minister, ‘Not enough.’ Why? Because they did not want a solution. They do not want an outcome because there is a Queensland election around the corner and they want some votes on this. I say this: you might get an outcome that is not agreed to, but in the end you are not above the courts and you are not above the constitution.

Justice McHugh, one of the more conservative judges on the High Court, had this to say in the unreported judgment of the Waanyi case at page 52:

The community will quickly lose confidence in the courts of justice if a perception arises that the courts are ready to ignore the legal rights of individuals whenever intervening governments or litigants urge that public or private convenience requires such rights to be by-passed.

That is what this debate has been about: ignoring the property rights of indigenous Australians, ignoring the common law rights of indigenous Australians—throwing them off the table. They went to our courts and had a terrific victory. We should have respected the

High Court. This is a day of shame and the buck stops with the Prime Minister.

Mr BRADFORD (McPherson) (9.15 a.m.)—This is a sad place and it is a sad day for Australia.

Mr Truss—Rubbish.

Mr BRADFORD—You can say that. Let me make a few brief observations. I have been in this place for eight years and we have seen today exactly what happens here when the opposition puts a point of view. When opposition leaders are speaking, government members mostly walk out, and vice versa. There is no real attempt to sit and listen to each other and to talk about the issue.

Mr SPEAKER—I suggest the honourable member address the issue. He is not talking to general parliamentary procedures.

Mr BRADFORD—I will, Mr Speaker. The Native Title Amendment Bill 1997 [No. 2] before us was an opportunity to unite Australia, but what is going to happen is that Australia will be further divided. It was an opportunity to show the world that we could address these difficult matters in a mature and sensitive way; instead, they have been addressed in a clinical and insensitive way. This was apparently just another battlefield: it would be won or lost in a war of words.

Our indigenous people are shackled by the constraints of welfare that have been placed upon them by previous governments. Native title for them is a substantial part of the solution to that problem. Of course equality before the law is important for all Australians and it is an issue, but equality in the terms described by the Prime Minister (Mr Howard) this morning misrepresents the situation—and that has been the flaw in the government’s position throughout in this debate. The true situation has been constantly clouded by the holding up of maps and speaking of non-existent vetos, of claims about suburban backyards being at risk when that patently was not true.

The privacy and amenity of pastoralists should be protected. But I want to say to you—I have thought about this long and deep—that native title without the right to negotiate is meaningless. I believe that in the

context of this debate coexistence and a representation of all Australians' interests could have been achieved. We talk about the issue of taking care of pastoralists' rights—and that is a land management issue and that could be handled at the state level, but here in this place for us it is an issue about the future of our kids, both black and white. Yesterday my heart broke to see those gentle people walk out of this place in tears and distress.

Government members—Ha, ha!

Mr BRADFORD—You laugh. Have you been to talk to them? Have you been to sit down and deal with them? Let me tell you my experience in dealing with them. They are a gentle people. They are not articulate on your terms. To talk with them you have to listen. We should be ashamed of the state of our indigenous people. This is an affluent society, yet many of our indigenous people live in abject poverty. We condemned genocide in other countries—and rightly so—but we are responsible for a genocide in our own nation and we cannot even say sorry.

Tomorrow is Easter. The message of Easter is one of reconciliation. The greatest challenge facing our nation is reconciliation. I believe that in this debate today and in our rush to get away—and all of that is understandable—we have missed an opportunity to achieve coexistence and reconciliation. I believe it is possible, but the opportunities to achieve that in this century may have passed us by.

Question put:

That the amendments be disagreed to.

The House divided. [9.25 a.m.]

(**Mr Speaker**—Rt Hon. Ian Sinclair)

Ayes 72

Noes 35

Majority 37

AYES

Abbott, A. J.	Anderson, J. D.
Andrew, J. N.	Andrews, K. J.
Anthony, L. J.	Bailey, F. E.
Baldwin, R. C.	Barresi, P. A.
Bartlett, K. J.	Billson, B. F.
Bishop, B. K.	Broadbent, R. E.

AYES

Cameron, E. H.	Cameron, R. A.
Causley, I. R.	Charles, R. E.
Cobb, M. R.	Downer, A. J. G.
Draper, P.	Elson, K. S.
Evans, R. D. C.	Filing, P. A.
Fischer, T. A.	Forrest, J. A.
Gallus, C. A.	Gambaro, T.
Gash, J.	Georgiou, P.
Grace, E. J.	Hardgrave, G. D.
Hicks, N. J. *	Hockey, J. B.
Howard, J. W.	Jull, D. F.
Kelly, D. M.	Kelly, J. M.
Kemp, D. A.	Lindsay, P. J.
Lloyd, J. E.	Marek, P.
McArthur, F. S. *	McDougall, G. R.
McGauran, P. J.	McLachlan, I. M.
Moore, J. C.	Mutch, S. B.
Nairn, G. R.	Nehl, G. B.
Nelson, B. J.	Pyne, C. M.
Randall, D. J.	Reith, P. K.
Ronaldson, M. J. C.	Ruddock, P. M.
Scott, B. C.	Sharp, J. R.
Slipper, P. N. *	Smith, W. L.
Somlyay, A. M.	Southcott, A. J.
Stone, S. N.	Sullivan, K. J.
Taylor, W. L.	Truss, W. E.
Tuckey, C. W.	Vaile, M. A. J.
Vale, D. S.	Wakelin, B. H.
West, A. G.	Williams, D. R.
Wooldridge, M. R. L.	Worth, P. M.

NOES

Albanese, A.	Andren, P. J.
Baldwin, P. J.	Bradford, J. W.
Brown, R. J.	Crosio, J. A.
Dargavel, S. J.	Ellis, A. L.
Evans, G. J.	Ferguson, L. D. T.
Ferguson, M. J.	Fitzgibbon, J. A. *
Grace, E. L. *	Griffin, A. P. *
Hatton, M.	Hollis, C.
Jenkins, H. A.	Jones, B. O.
Latham, M. W.	Lee, M. J.
Martin, S. P.	McClelland, R. B.
McMullan, R. F.	Melham, D.
Morris, A. A.	Mossfield, F. W.
O'Connor, G. M.	O'Keefe, N. P.
Price, L. R.	Sercombe, R. C. G. *
Smith, S. F.	Tanner, L. J.
Thomson, K. J.	Willis, R.
Wilton, G. S.	

PAIRS

Brough, M. T.	Quick, H. V.
Cadman, A. G.	Brereton, L. J.
Costello, P. H.	Crean, S. F.
Dondas, N. M.	Theophanous, A. C.
Entsch, W. G.	Macklin, J. L.
Fahey, J. J.	Kerr, D. J. C.
Halverson, R. G.	Holding, A. C.
Hawker, D. P. M.	Lawrence, C. M.
Miles, C. G.	Adams, D. G. H.

PAIRS

Moylan, J. E.	Beazley, K. C.
Neville, P. C.	Evans, M. J.
Prosser, G. D.	Beddall, D. P.
Reid, N. B.	McLeay, L. B.
Smith, A. C.	Bevis, A. R.
Thomson, A. P.	Morris, P. F.

* denotes teller

Question so resolved in the affirmative.

Amendments (by Mr Howard) agreed to:

- (1) Govt (1) to (30); (32) to (35); (37) to (45); (51) to (72); (74) to (77); (77A) and (78) to (98);
- (2) Opp (N5); (N10) to (N16); (N19); (N45) to (N48); (R114); (RN32); (RR101); (RR107) and (RR110); and
- (3) Dems-GWA (163).

Motion (by Mr Howard) agreed to:

That the bill be laid aside.

House adjourned at 9.29 a.m. until Tuesday, 12 May 1998, at 2 p.m., in accordance with the resolution agreed to this day.

REQUESTS FOR DETAILED INFORMATION: RESPONSE

Vietnam Service

Mr Bevis asked the Minister for Defence Industry, Science and Personnel, without notice, on 8 April 1998:

My question is directed to the Minister for Defence Industry, Science and Personnel. Minister, are you aware of repeated approaches that have been made to your office, going back to August of 1996, from Lt Col. Harry Smith, retired, who was the officer who commanded D Company 6 RAR at the Battle of Long Tan on 18 August 1966? Why have you not investigated Colonel Smith's allegations that his recommendations for Military Cross awards for two of his platoon commanders in that battle were destroyed and that they were given a lesser award, one that was also handed out to the postal clerk at Vung Tau? Why did you refuse to investigate these matters before closing the End of War List for the Vietnam War, and will you now give the House an undertaking that these issues will be fully investigated and that the Australian soldiers, who clearly displayed gallant and distinguished service in action at the Battle of Long Tan, are properly recognised.

Mrs Bishop—The answer to the honourable member's question is as follows:

I am aware of LTCOL Harry Smith correspondence concerning nominations for military awards in the Battle of Long Tan.

LTCOL Smith raised the issue with this Government on three occasions, with the Prime Minister in August 1996, with my Senior Adviser in May 1997 and with me in December 1997. The letter of August 1996 being to the Prime Minister was in part referred to my office for response which was given by my Senior Adviser. It was also dealt with by the PM's Parliamentary Secretary. The May 1997 letter written to my Senior Adviser was responded to in full. Correspondence relevant to Mr Bevis's question is set out below.

LTCOL Smith's second letter, being the letter to my Senior Adviser is a lengthy eight page letter largely dealing with his recollection of the Battle of Long Tan and the difficulties he had with his immediate commander. This letter was also responded to.

In his only letter to me on 16 December 1997, he again traverses the same ground but asks that the matters raised by him be treated as a special case, which is not in line with Government policy. As was stated to him it is only possible to include people on the End of War List who were recommended at the highest level in Vietnam. This letter is still with the Department.

I have retrieved from our records the recommendation for Honours and Awards in respect of the two platoon commanders of concern to LTCOL Smith. The recommendations were made by the Commanding Officer of 6RAR, countersigned by the Commander of the First Australian Taskforce and the Commander Australian Force Vietnam. The awards recommended were for Mention In Dispatches which were in fact made. It is important to point out that at the time of the Vietnam War, the MID was awarded for both meritorious service under adverse conditions and for acts of bravery under fire.

It does not reflect well on Mr Bevis to disparage the award given to one individual while trying to promote the worthiness of others.

This is just another legacy of the Labor Government's thirteen years of inaction and bad policy which this Government has to clean up.

This Government did promise that if further cases come to light of recommendations for Honours and Awards which meet the Government's criteria, (i.e. being recommended at the highest level in Vietnam and then either not awarded or down graded) we would deal with those cases. Indeed one such instance has been found and the name of the individual forwarded to Government House.

NOTICES

The following notices were given:

Miss Jackie Kelly to move:

That this House:

- (1) recognises that the former Labor Government created a child care system which was based on inequitable funding practices such as operational subsidies;
- (2) agrees that the Government's reform of the child care system provides for an equitable distribution of money between low and middle income families and the creation of an extra 83 000 places over the next four years;
- (3) notes and supports the Government's allocation of \$4.9 billion to the child care system over the next four years;
- (4) calls on the Opposition to stop its campaign of misinformation to parents which threatens to do long-term damage to the child care sector as a whole;
- (5) notes that due to this Government's reforms low and middle income families are now better off than under the previous Government; and
- (6) condemns the former Labor Government for its management of the child care sector, creating a massive oversupply of centres in some areas and undersupply in others.

Mr Bob Baldwin to move:

That this House:

- (1) recognises the importance of infrastructure construction projects such as Redbank Power Station to the investment and employment prospects of the Hunter region;
- (2) congratulates the Howard Coalition Government for legislating to grant up to \$30 million in infrastructure borrowings tax rebate to ensure the project viability;

- (3) condemns the NSW State Labor Government for refusing to honour a contractual agreement with National Power which would lead to the construction of Redbank Power Station and as such places the project in doubt;
- (4) notes that the failure of the NSW State Labor Government to honour the contract has resulted in the loss of 1200 jobs during the construction phase and 250 jobs in the operational phase; and
- (5) condemns the (a) NSW State Labor Government for destroying the investment confidence in the Hunter by its actions, (b) lack of action by the NSW State Labor Government Minister for Energy, Bob Debus, for refusing to step in and make Energy Australia honour its contractual obligation, (c) lack of action by the NSW State Labor Government Minister for Regional Development for refusing to investigate the loss of jobs at Redbank Power Station, (d) NSW Labor Premier, Bob Carr, for refusing to show leadership and (e) Member for Hunter for not speaking out for jobs in his electorate, particularly in relation to the Redbank Power Project.

PAPERS

The following papers were deemed to have been presented on 8 April 1998:

Commonwealth Electoral Act—Regulations—Statutory Rules 1998 No. 57.

Federal Court of Australia Act—Regulations—Statutory Rules 1998 No. 55.

Patents Act—Regulations—Statutory Rules 1998 No. 56.

Public Service Act—Determinations 1998 Nos. SESROB 20, SESROB 21, SESROB 22, SESROB 23, SESROB 24, SESROB 25.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Taxation

(Question No. 2359)

Mr Kelvin Thomson asked the Treasurer, upon notice, on 20 October 1997:

(1) What impact will recent tax law changes have on the capacity of Australian firms to bid for Government privatisations.

(2) Has his attention been drawn to an assessment made by Mr M. Green, an energy tax partner with Ernst and Young, that the deductions lost to Australian companies as a result of taxation law changes, coupled with a new accounting standard to be introduced soon, will leave them uncompetitive in privatisation bids; if so, does he agree with the assessment.

Mr Costello—The answer to the honourable member's question is as follows:

(1) and (2) It is not possible to provide a meaningful answer to the honourable member's question without more specific detail on the particular taxa-

tion and accounting standard changes he has referred to. I can only provide a substantive answer to the honourable member if he provides sufficient information on the issues he has raised.

**Australian Peak Shippers Association:
Shipping Exports**
(Question No. 2812)

Mr Tanner asked the Minister for Workplace Relations and Small Business, upon notice, on 26 March 1998:

What percentage of Australia's liner shipping exports are handled by the Australian Peak Shippers Association.

Mr Reith—The answer to the honourable member's question is as follows:

No liner shipping exports are handled by the Australian Peak Shippers Association, which is an administrative body with one part-time staff member operating from a serviced office.