



Speech by

Mr W. BAUMANN

MEMBER FOR ALBERT

Hansard 30 July 1998

MOTION OF CONFIDENCE

Mr BAUMANN (Albert—NPA) (2.02 a.m.): Firstly, I would like to join with the many other members of the House who have offered their congratulations tonight to Mr Hollis on his election to the esteemed office of Speaker. I am sure that, if he could have enjoyed the same majority in the electorate of Redcliffe in the recent election, he would have been more than happy. I would like also to pay tribute to those tireless workers and supporters from the electorate of Albert who made very sure that I was not retired by popular vote the last time around. I am here for another term.

Mr Palaszczuk: I'm surprised.

Mr BAUMANN: I knew Henry would be surprised. It is another one of his oncers, I think. He just cannot pick them.

I turn now to the serious business at hand, and that is the motion before the House tonight. One of the key reasons this House cannot have confidence in this minority Labor Government is its total unreliability and confusion on the issue of the resolution of native title issues and the Labor Government's displayed inability to develop a sustainable and just economic framework.

At some stage later today the Premier will introduce legislation to put in place two points of the 10 point plan developed by the Prime Minister, the States and stakeholders. These two points are validation and confirmation of extinguishment. Of course, we on this side of the House welcome the comprehensive jettisoning of Labor native title policy by Queensland's Labor Premiers on these two crucial points of the plan. Obviously, it is the commonsense thing to do.

Validation of dealings in land by Governments between the enactment of the Native Title Act in January of 1994 and the Wik decision of December 1996 even though a procedural matter at one level is nonetheless a very major issue. It is, indeed, because of the potential invalidity of a large number of grants made during this period by both the Goss and Borbidge Governments over land which the Native Title Act said was not native title land but which the Wik decision then said could be native title land. So we had the position in which Governments acting in line with Paul Keating's disastrous and ineffective Native Title Act could have been making invalid grants because they did not take into account common law native title. Of course, they could not and did not take it into account because they did not and could not know at that time that it existed. So commonsense certainly demanded that it be fixed.

Notwithstanding that, with a great deal of support from the Democrats and the Greens in the Senate where the Labor Left had and still has full sway, the ALP baulked on the issue. That was incredibly hypocritical of Labor, but very revealing perhaps of the ALP's motivation on this issue generally. In what were very similar circumstances in relation to invalidity in 1993, the Labor Party was perfectly ready to validate without qualification. I refer, of course, to the situation at that time when many grants in land made between the enactment of the Racial Discrimination Act in 1975 and the Native Title Act could have been invalid because they might have been racially discriminatory. At that time Labor was perfectly capable of accepting that Governments could not have known such actions were potentially racially discriminatory because the native title was not recognised by the law. In other words, the situation was essentially exactly the same.

Governments dealt in land in accordance with the law of the day but found retrospectively that they may have been in breach of a law, in that case, the one we just spoke of—the RDA. Why there was a change of heart in relation to the very similar problems subsequently presented by Wik can only be answered by those Left Wingers who drove the debate this time around. It certainly is the case this time around that Labor wanted to place very significant qualifications on the validation regime.

What Labor wanted—and it is very clearly expressed in the amendments moved to the Native Title Amendment Bill in the Senate and by exchanges during the Committee stage of that debate—was a regime which would have left many mining tenures in particular wide open to native title issues. Labor wanted validation of dealings like mining lease grants and mining lease renewals during this so-called interim period to be able to be validated by the States only after they had been gazetted in a manner that aimed at attracting native title interests. If native title interest was attracted, then claimants could have an opportunity to go to the Federal Court. If they went to the Federal Court and a grant made during this period was determined to be invalid, as Labor believes most are, then the right to negotiate would apply.

I strongly suspect that that particular position was sparked quite specifically by a Queensland project none other than Ernest Henry. The Labor Left wanted to try to generate a situation in which Ernest Henry would have to face a retrospective right to negotiate. If it could achieve this, it might well catch a range of others, possibly scores of them around the country. In Queensland alone, for example, some 800-plus mining tenures were dealt with during that interim period.

That is absolute stupidity and absolute bloody-mindedness. That is just one of the many moves by Labor aimed at stalling the resolution of the native title issue, one of the many efforts by Labor to make native title even more litigious than Paul Keating managed to do—a fair effort—one of the many efforts by Labor to extend the reach of compensation and one of the many efforts by Labor to make mining very unfairly carry a large element of the native title burden so that Labor's cappuccino drinkers in the inner suburbs of Sydney and Melbourne can sit back and enjoy that warm inner glow, confident that they had done the politically correct thing without, of course, risking a cracker of their own.

Mr Bredhauer: What's the matter with cappuccinos, anyway?

Mr BAUMANN: Not a thing, probably. It will give the honourable member opposite that warm inner glow as well.

Mr Bredhauer interjected.

Mr BAUMANN: I am sure the member would. It would take one of those Labor Left gentlemen to identify that warm inner glow, wouldn't it? One could hear them say, "Leave the bulk of the challenges and the costs to the miners and the pastoralists. Just leave us alone with our warm inner glow." Lovely stuff! We are very grateful on this side of the House to at least have the understanding at this point that Labor in Queensland has again thumbed its nose at the Left. That, of course, is a very brave act by the Premier—if he is listening—because all of us know that when the former member for Logan led the Labor Party in this State he also treated the Left with contempt. That led, in time, to a break-out, and even strident criticism, to be quite generous, which in turn generated a vow from that faction that it would never silently tolerate or accept such treatment again. At the moment the silence is deafening, so perhaps the Left has rolled over, too.

Anyhow, it is pleasing to see that the member for Brisbane Central, so early in his tenure, is prepared to treat the Left with the same degree of disdain as the former Labor leader. It is particularly refreshing to see the member for Brisbane Central chancing his arm in this regard so very early in his tenure when he lacks anywhere near the degree of support in the caucus, or certainly in the electorate, that the member for Logan achieved—if somewhat briefly under all the circumstances. One could say that he epitomises the old adage—if one is not living on the edge one is taking up too much space.

We will, however, be watchful of the legislation as it is introduced to ensure that it does deliver what the Premier has been so keen in recent days to suggest it does, which is an unqualified validation regime, despite the position of the Federal Labor Party. We need that, and we need it quickly. Another area in which we are particularly pleased to see the new Government dump Labor policy is in relation to the confirmation of extinguishment provision, which is point two of the 10 point plan. The Premier says he is doing it, but I do not think he quite knows what he is doing, judging by some of his quite extraordinary comments in recent days concerning extinguishment.

The confirmation of extinguishment provisions means just that: they are not provisions which extinguish, as the Premier so clearly suggests. They are provisions which merely confirm that extinguishment has taken place, at some time in the past, in line with the clear interpretations of the High Court. The fact that this regime is a simple confirmatory regime is well recognised and accepted by at least the Right Wing of the Labor Party in Canberra in general, and by the Federal Opposition Leader in particular. This is the maxim: that native title is extinguished by inconsistent grant. Where the grant is a grant of exclusive possession, native title is totally extinguished. Where the grant is a non-exclusive grant, the extinguishment is to the extent of the inconsistency in relation to what native title

may remain on non-exclusive tenures. It can co-exist with the rights granted to, say, a pastoral leaseholder. But even so, where there is a conflict the rights of the pastoralist will prevail.

So what the native title amendment legislation of the Commonwealth does is simply affirm this view of the common law accepted, as I say, by most sensible commentators and by the parliamentary Leader of the Federal Labor Party in particular. To achieve that, there is simply a schedule attached to the legislation which lists those tenures which are grants of exclusive possession in this country, State by State. In relation to Queensland, that list naturally includes grazing homestead perpetual leases. The Premier, however, seems to be of the view that what he proposes to do is actually extinguish native title, and he has referred particularly to the fact that that is his intent in relation to grazing homestead perpetual leases. Of course, that is nonsense. There can be no such deliberate extinguishment. More pointedly, one cannot extinguish what is already extinguished.

I know that the leaders of the Labor Party in Queensland gave instructions for the State to argue in the Wik case, and in the Waanyi case, that native title over all pastoral land in this State was extinguished. It argued that very forcefully. But those days are behind us. The fact is that native title is only extinguished totally on grants of exclusive possession. Grazing homestead perpetual leases are grants of exclusive possession which have totally extinguished native title. So this Government cannot somehow extinguish it again—even if it would if it could.

The Premier then compounded his error in relation to the question of compensation. He has suggested that compensation for his alleged statutory extinguishment of native title on grazing homestead perpetual leases will, possibly, be in the form of infrastructure. Again the Premier is out on a very strange limb indeed. Compensation will not be a factor for native title that he has not extinguished but which was extinguished quite some time ago. But if it was payable hypothetically, it certainly will not be decided statutorily by the Premier, it will be determined by independent processes by the courts.

There may well be the potential for some negotiation, but it is a very brave statement indeed from the Premier that any such compensation, by way of infrastructure, will be deducted from any orders in relation to compensation. He may get a real shock—even a rude shock—because that is not his call. I suspect that some of the confusion the Premier is displaying on this issue is related directly to the balancing act he is seeking to engage in and which is so clearly going to bedevil him every step of the way. What Labor wanted in the Senate in relation to confirmation was to strike out the entire Schedule. This is because the Left Wing of the Labor Party in Canberra, which basically pulled management of the matter right out from under Kim Beazley and went its own way, does not believe that even exclusive tenures extinguish native title. Labor, in the Senate, in the debate run by Nick Bolkus, had to be dragged screaming to agree to the proposition that private freehold land extinguished native title. We are scaremongers! I would say it is enough to terrify all Australians.

But it is Nick Bolkus and the Labor Left which clings hardest to the view that freehold does not extinguish. Senator Bolkus, and others from the Labor Party, argued that even that had not been conclusively decided and they wanted to leave the matter to the courts. Of course, in relation to lesser tenures—even those which are almost universally accepted as grants of exclusive possession—the Labor Left wanted the issue as to whether there was any extinguishment of native title left comprehensively to the courts—tenure by tenure test cases. This would result in literally years, possibly decades, of litigation. So much for certainty! That is part of the Premier's current, clearly almost wholesale confusion on this topic. He is trying to serve a number of masters and the job is getting the better of him.

He realises that it is the commonsense, just and equitable thing to do to confirm extinguishment as set out in the Native Title Amendment Bill and thus endorse point two of the 10 point plan. But he is aware of what Federal Labor wants—or at least he is aware of what the Left of the Queensland Labor Party wants—and he is trying to have two bob each way. None of this augurs well for the handling of this issue by this Government in the months and the years ahead.

Senator Bolkus has repeatedly said that Federally Labor remains committed—that was his very word—to the amendments to the 10 point plan which the ALP first moved in the Senate late last year. These include limited validation. That would put projects like Ernest Henry at risk. These include no schedule of confirmation of extinguishment. We would have years, and possibly decades, of expensive test cases and uncertainty deep into the next century.

These include the wholesale application of the theory of revival of native title: that there is no extinguishment, just suppression, so that native title can revive, and return, and be claimed and litigated for ever. These include maintenance of a full right to negotiate in relation to mining on pastoral land; to a full right to negotiate over infrastructure projects built by third parties; to a full right to negotiate for the intertidal zone; to a full right to negotiate over compulsory acquisitions for third parties in towns and cities; and to a full right to negotiate in relation to any mining lease renewals—even those dealt with during the so-called intermediate period. They include constraints on pastoral activity. They include opposition to virtually every aspect of the 10 point plan, and to many subsidiary but important

aspects of the Native Title Amendment Bill as well. The situation is like this: the Premier has been assiduously ducking any substantive statement on where he stands on native title since this debate began years ago. He either does not know what to think or he does not dare express what he does think. A key case in point is the right to negotiate. That is the crucial point of native title policy.

Nick Bolkus has delivered Labor's view time and again. Native title without the right to negotiate is nothing, he says. Yet the right to negotiate will smother the mining industry in this State. If the Premier goes along with the right to negotiate, he will be committing this State to double-digit unemployment and the jobs, jobs, jobs he talks about will be lost, lost, lost. He will strangle billions of dollars in development, and he knows it. So why does he not answer the central question? It is simple enough: does he back Labor policy or does he back commonsense? The fact that the Premier will not tell us is a key reason why this House cannot express confidence in his Government, particularly in relation to the native title issue.

If Federal Labor wins the next general election, will the Premier fold to the Left? More than likely, we say. Will we see all of Labor's native title policies come into play? It is hard to think that we will not, given the passionate zeal with which Labor in the Senate pursued its goals. Can we trust him in the meantime? Having given the Left two major swipes—by ostensibly going along with validation, and confirmation, however confusedly—what is going to happen when he gets to the most substantive issues? Will he need to deliver some quid pro quos to the Left? Will he need to develop legislation in a fashion that will enable him to slot in Labor policy if and when Labor wins federally? The Premier says that he is on about stability and certainty. In relation to native title, he is on about hiding around corners. Neither he nor his Government deserves the confidence of this House on this topic.
