Speech by

GORDON NUTTALL

MEMBER FOR SANDGATE

Hansard 11 November 1998

NATIVE TITLE (QUEENSLAND) STATE PROVISIONS AMENDMENT BILL (No. 2)

Mr NUTTALL (Sandgate—ALP) (3.58 p.m.): The hysteria shown by the Leader of the Opposition indicates clearly that bullying, cajoling and threatening people is no way to resolve this issue. It is extremely disappointing that the leader of the alternative Government has adopted the position that he expressed this afternoon in the Parliament. That is the reason that the former Premier is now in Opposition. We will not resolve this problem by threatening people.

In his second-reading speech to this Bill, the Premier indicated clearly this Government's strategy for dealing with native title and the way it works with respect to mining exploration and developing industries. The Premier said that this Government was looking for an honourable outcome that balances the legitimate interests of indigenous Queenslanders with the need for a secure environment for mining development.

Mining, as we all know, is an important economic driver for this State. Mining contributes around $400m directly in royalties to the State Treasury and many millions more in direct and indirect economic benefits. On the other hand, indigenous Queenslanders have certain land title rights guaranteed to them by the High Court and by the Commonwealth Native Title Act. These set the standards for all States to follow. It is important that I remind the House of the history of the native title debate because it is important to understand the mistakes of the past in order to avoid making them in the future.

European explorers visited the Australian continent as far back as the early 17th century, and possibly even earlier. Although there clearly were inhabitants in Australia, early explorers adopted the doctrine of terra nullius or, as we know it, the land belonging to no-one. This doctrine, of course, made it easier for European settlement. Colonial powers simply claimed parts of Australia and ignored the possible existence of legal rights of the indigenous peoples of this land. Early Governors such as Arthur Phillip tried to treat indigenous people well, but there were clashes of cultural differences which led to subjection of indigenous people.

Native title has been recognised in British common law for over 200 years. New Zealand, Canada and the United States of America have long recognised that two land tenure systems exist in their countries, the first one being freehold and leasehold titles following from the colonising of the British system, and the second one being native title arising from the pre-existing indigenous system. However, in this fair country of ours, this recognition had never occurred. This state of affairs lasted for over two centuries until the historic Mabo decision of 3 June 1992.

Madam Deputy Speaker, may I just interrupt my speech to acknowledge in the public gallery the children from St Patricks College from Winton who are down here for a week. In particular, I acknowledge my young nephew Joshua Twist as well as the teachers of that school. I understand that some of the parents are with them. I trust that they enjoy their stay with us. I understand they are off to Dreamworld and Sea World later in the week, so I hope they enjoy their stay. I am sure those places will be far more enjoyable than sitting in the gallery today.

To continue my contribution in this debate, I point out that it is important for us to recognise and it is important for the Leader of the Opposition and the Opposition to recognise that the High Court found in Mabo that native title continued to exist, despite the European model of land tenure imported to Australia by the British legal system. The doctrine of terra nullius was therefore declared invalid. The Commonwealth Native Title Act of 1993 attempted to reconcile the High Court Mabo judgment with

European land tenure systems. Then the Wik judgment of 1996 found that native title could continue to coexist with pastoral leasehold. This, of course, has particular significance for Queensland in view of the large areas of the State under pastoral leases.

The Commonwealth Government's 10-point plan was an attempt to deal with Wik. The Commonwealth had to deal with the legitimate demands of the pastoralists for certainty, the legitimate expectations of the indigenous people for legal recognition of native title and from other legitimate interests, such as the mining sector, to carry on with their business. The 10-point plan passed the responsibility to the States to deal with native title in their own separate ways, provided that they conform with the basic standards laid down by the Commonwealth Native Title Act.

This is an important issue because no State can implement its own native title regime without the agreement of the responsible Commonwealth Minister and the Senate. In late July the Premier introduced into this House as the very first piece of legislation of this Government the Native Title (Queensland) State Provisions Bill, which confirmed the extinguishment of native title on all tenures that gave exclusive possession. The Bill also guaranteed the validity of the intermediate period, that is, land management decisions made by the Goss and Borbidge Governments between 1 January 1994 and 23 December 1996. This was the interval between the implementation of the 1993 Native Title Act and, of course, the Wik decision itself.

That first piece of legislation that we introduced gave certainty to many Queensland leaseholders, despite what the Leader of the Opposition has said, but it has done that at the expense of some native title interests. The Premier has acknowledged this fact and has acknowledged the need for an honourable balance in the way the State Government deals with native title in its legislation, setting up a process for integrating native title in our general land management systems. This Bill before the House this afternoon deals specifically with the issue of mining exploration permits and mining development approvals. Other legislation that the Government will bring forward will deal with other aspects of land management systems.

For the benefit of the Opposition, can I just explain the concept of what an honourable balance is? It is important to explain that, given the history of the debate at this current juncture. As the Premier indicated in his second-reading speech on this Bill, it means we have to take into account at least five factors, and these factors are—

1. that native title exists and must be respected;
2. that mining benefits the whole community—the State owns the mineral resources and issues licences for the development;
3. that mining is very important to the Queensland economy and for jobs growth in this State;
4. that negotiation is a far more effective way of dealing with native title issues than having recourse to litigation; and
5. that anything Queensland does by way of legislation, as I have said, needs Commonwealth approval.

These factors have guided the development of this legislation now before the House, and I am sure that other speakers will comment on them at a later date. However, there is a sixth and equally important factor and it is the way the Government has gone out of its way to consult all major stakeholders in the development of the legislation: the Queensland Mining Council, the Queensland Indigenous Working Group and organisations representing pastoralists, the small mining sector and the commercial fishing industry. This consultation has included public meetings in several major regional cities.

The consultation began long before this legislation was drafted and has continued beyond the point when it was introduced into the House a fortnight ago. The Premier specifically asked for comment on the detail of the Bill, and he has assured me that all major stakeholders have taken the opportunity to put forward their case. It is critical that all of us in this Parliament understand the background to this legislation and this Government's approach to it. The Government does not wish to relive the mistakes made by the Opposition when it held power in ignoring the lessons of the past in dealing with the issue of native title.

Understanding native title means not being afraid of it. Understanding native title means not running away from it. Understanding native title means not responding to the hysterical or with a closed mind, as we have seen from the Leader of the Opposition in his contribution this afternoon. It is a fact of life. It is a part of the legal system, and this Government will deal with it accordingly in the best interests of all Queenslanders.