



Speech by

Hon. JUDY SPENCE

MEMBER FOR MOUNT GRAVATT

Hansard 25 August 1998

NATIVE TITLE (QUEENSLAND) STATE PROVISIONS BILL

Hon. J. C. SPENCE (Mount Gravatt— ALP) (Minister for Aboriginal and Torres Strait Islander Policy and Minister for Women's Policy and Minister for Fair Trading) (2.48 p.m.): This is a Bill that provides a workable solution to a contentious issue for Queenslanders. It confirms that past acts of Government are secure. It provides certainty for all Queenslanders.

This legislation has come about through consultation, not confrontation. It has involved representatives from Aboriginal and Torres Strait Islander organisations as well as representatives from mining, pastoral and fishing organisations. These groups have worked together to ensure an equitable State process that accommodates both native title and industry interests. With consultation, compromise is essential. To achieve this workable solution, all parties have had to compromise—indigenous communities, pastoralists, the mining industry and the Government. I want to acknowledge to this House that at times this process has been difficult for the participants, especially indigenous representatives.

This Government is committed to reconciliation and to improving equity and fairness for indigenous Queenslanders. This does not mean we are going to be able to meet every aspiration of indigenous Queenslanders. We are realistic enough to acknowledge that we will not always measure up. What indigenous people know they will get from this Government, and this is in stark contrast to the former Government, is a place at the discussion table and an honest consideration of their position.

Before I describe what it is that this Bill sets out to achieve, it will probably serve us all well to consider the historical context in which this Bill has been drafted. Following the Wik decision of the High Court in 1996, Australians witnessed the most hysterical, most cranked up push over land title ever seen. While it is true that only a limited number of people were trying to seize this advantage, its impact on the Australian land mass, in particular the Queensland land mass, would have been extraordinary. In the face of that extreme pressure and deliberate creation of an atmosphere of uncertainty and doubt, the Commonwealth Government proposed the 10-point plan to try, in its terms, to solve this "problem".

In a sad page in Queensland's history books, we witnessed the former Queensland Premier's shameful, hysterical, shallow one-point plan, designed to mislead and frighten Queenslanders to advance his own political agenda. Time and time again this desperate former Premier tried to inflame the native title debate as he saw electoral victory slipping away from him, but it did not work. The Queensland people had stopped listening to him long ago and I believe they have stopped listening to him today. Again today, as Opposition Leader, the member for Surfers Paradise brings out his Left/Right rhetoric, his hysterical scaremongering, to confuse the issue. Still no-one is listening. He could not even get his own team in the Parliament here to listen to him today.

The former Premier misrepresents the Labor Party on this issue and he misrepresents me on this issue. Again today he stated a number of times that I have suggested the idea of an apology tax. I challenge the member for Surfers Paradise to show me in Hansard where I have ever mentioned the idea of an apology tax. If he cannot do so, he should discontinue mentioning the subject in this Chamber.

The former Premier misrepresents the Labor Party in assuming that only the Left of the Labor Party cares about the issue of native title. I think that this misrepresents my colleagues who might be in

other factions in the party. I can assure honourable members that native title is an issue that goes to the heart of Labor Party members all over Australia. It is not just an issue of concern to the Left.

Mr Schwarten: It is not just Labor people; it is any decent people—anybody with any conscience.

Ms SPENCE: My colleague is quite right. Most decent Australians care about the issue of native title and care about justice for indigenous people as well as other Australians. It falls to this Government now to restore a period of calm and consideration so that all players can consider what is best for the future.

So what is it that the Bill seeks to achieve? There are two principal achievements that will come about from the passing of this Bill before the House today. Firstly, in responding to the Commonwealth Act, this Bill provides for the validation of "intermediate period acts". These may have been acts by the State that could have been invalid because of native title. These are acts that took place after the date of commencement of the Commonwealth Native Title Act on 1 January 1994 but preceding the High Court's decision on Wik in December 1996. Let me make it clear that these were acts that were carried out on the understanding that native title had been extinguished through the granting of a pastoral lease.

The second objective of this Bill is to confirm the partial extinguishing effect on those "non-exclusive possession acts" and the total extinguishing effect on those "exclusive possession acts". This Bill also amends or omits from the Native Title (Queensland) Act certain provisions that are now rendered redundant or superfluous through the previous changes. As the Premier has said, all of the changes will commence once the changes to the Commonwealth Act have been proclaimed on 30 September 1998.

The Labor Government recognises the fundamental cultural importance of maintaining the association between Aboriginal and Torres Strait Islander people and their traditional lands. We respect the common law recognition of native title reflected in the Wik and Mabo decisions of the High Court. Compensation will be allowed for in the provisions of this Bill to native title holders where native title has been extinguished or partly extinguished.

The Premier has already outlined to the House the two-stage process which the Government has used in the amendments to the Native Title Act. Stage 1, which is represented by this Bill today, aims to re-establish certainty in the minds of Queenslanders so that the people can quickly understand and see the clarity of the land dealing environment within which the Government operates. This Bill validates all of those acts so that miners, pastoralists and other land users will know that the leases and permits that they currently hold, which were issued by the Queensland Government between the commencement of the Native Title Act in 1994 and the Wik decision in 1996, are valid. The rights that they assumed that they possessed under those leases and permits are, in fact, absolutely confirmed.

Stage 2 of this process in which we are engaged is to establish workable mechanisms that are easily understood and straightforward in their operation so that we can deal with future activities that might affect native title. For the Commonwealth this has been a drawn-out and contentious process over 18 months. The fact of the matter is that the Commonwealth, after all of that time, was unable to develop an acceptable regime. Their response to that failure was to dump the entire problem onto the State. The Queensland Government will rise to that challenge.

The Queensland Government will in fact design a workable system, but to do that we will need a partnership based on goodwill. That will require the assistance and respect of all stakeholders who are directly involved in these issues. At this point I acknowledge the substantial effort and contribution of the Queensland Indigenous Working Group. I acknowledge the presence of the members of that group here in the gallery today. They have been working with my colleagues in the Premier's Department to resolve some of these extremely complex and painful issues. The skills of those people in the Indigenous Working Group are highly valued by the Queensland Government. Without an effective partnership based on a framework of goodwill, the results seen so far could not have been achieved. It is my hope that as we move into Stage 2 we can at all times maintain this goodwill and a singular objective of resolving the outstanding issues that the Commonwealth has left with us.

I will briefly outline some of the commitments that have been given to date by the Queensland Government and the context in which those commitments are given. Firstly, I am mindful of the provision of the Constitution of Australia, in particular section 51, subsection 31, which provides for the acquisition of property by Governments on "just terms". The constitutional guarantee of "just terms" has a number of important implications for dealing with native title holders. It is important that the principle of "just terms" is achieved by acting reasonably.

So what is the proposal that has been put forward by my colleague the Premier in endeavouring to arrive at these just terms? Currently there are not clear guidelines on how to value land that is subject to native title or how to value native title for the purposes of compensation for their loss, impairment,

diminution, or partial or total extinguishment. There are only very limited precedents in common law. The Australian Property Institute advises that it is currently working on guidance notes for its members.

I want to describe the quid pro quo that the second stage of the negotiations will lead to. Decision in the Mabo case is a central event in Australia's history. The dispossession of the Aborigines, as Justices Deane and Gaudron said in their Mabo judgment, left "a national legacy of unutterable shame". We need to recognise this shame and accept the terrible wrongs of our past. The Premier is committed to assisting indigenous people, and today I will outline some ways that we intend to do this which complement this legislation.

In central Queensland, the Government intends to examine ways of providing infrastructure that will assist Aboriginal people living in isolated communities. These sorts of infrastructure projects will include water, housing or sewage treatment works. Members of the House can rest assured that we acknowledge that there has been considerable pain for indigenous people in relation to native title processes, and to pursue equity and fairness some adjustments will have to be made. So the Queensland Government is responding to the basic proposition that, under the Constitution of the country, when people lose property rights they are entitled to be compensated on "just terms". The Premier has previously indicated that he is most concerned about trying to be fair to indigenous Australians.

It might assist members of the House to gain an awareness of the appalling deficiencies in infrastructure that indigenous Australians have to endure. There have been decades of neglect by Queensland Governments, which has resulted in many indigenous communities being left with severely malfunctioning water supplies and sewage disposal systems. For example, there was a major reaction in Brisbane recently when swimming pools were found to have cryptosporidium, and those pools were immediately closed to the public. In some communities in northern Queensland, the entire drinking water supply systems are infected with cryptosporidium. Through my portfolio we are moving rapidly to try to address some of those problems, to try to reverse the years of neglect which have resulted in this totally unacceptable situation.

So how will this Government overcome the legacy of non-delivery and partial delivery of services as experienced by many indigenous Queenslanders in the past? Let me make it clear that there are two essential and positive differences in today's Queensland Government that have been missing in the past. What had been an Office of Aboriginal and Torres Strait Islander Affairs is soon to be gazetted as the Department of Aboriginal and Torres Strait Islander Policy and Development. That is a very significant change. It is no longer a small office in a large department with a much greater focus on areas other than specific indigenous affairs. It is now a department with all of the specific focus and with all of the benefits of commitment and team building that can be derived from a departmental structure in its own right. I believe this will mobilise and invigorate the officers in the new department who have already demonstrated a high level of commitment and dedication to achieve positive outcomes for indigenous Queenslanders.

The second means of ensuring that services are delivered, that promises are fulfilled and that the social and economic wellbeing of Aboriginal and Torres Strait Islander populations is improved is to develop a high-level vigorous process of interdepartmental coordination. This process is vital and supports our pre-election commitment to establish a separate office that will facilitate a whole-of-Government commitment to Aboriginal and Torres Strait Islander affairs policy.

In the near future, I will be establishing high-level processes that I intend to chair to ensure that this level of coordination can be achieved in a way that will lead to the highest quality outcomes in the fastest feasible times. I intend to ensure that indigenous communities in Queensland can see some real services arriving under the auspice of the Queensland State Government. Coexistence is common in our land tenure system. I support the Bill.
