Speech by

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

Ms NELSON-CARR (Mundingburra—ALP) (10.57 p.m.): The Premier in his second-reading speech on this Bill and an earlier speaker in this debate have referred to the need to learn from the mistakes of the past so that we do not repeat them. This principle is particularly true in regard to the need to learn about the direct and indirect costs of the litigation that has arisen from attempts to come to terms with native title.

The first major event of the native title debate in Australia arose from a court case: the famous Mabo decision of 1992. Since then, we have had other significant legal milestones, including the Wik decision of 1996. These legal actions were critical in establishing the legal fact of native title. Unfortunately, the fact that they arose from legal action has inspired too many of the players in the native title area to believe that legal action is the only way by which to resolve these issues.

I refer to a point made by the Premier in his second-reading speech on this Bill. He stated—

> "In relation to questions of native title, the previous Government had a short-sighted determination to fight indigenous interests every inch of the way, no matter what the issue, no matter what the cost to the mining industry or taxpayers of the State in terms of jobs or a bottomless pit of lawyers' fees for litigation."

In other words, there are many kinds of costs for those who choose litigation first, last and foremost.

Native title parties, industry associations and mining companies have spent literally millions of dollars in trying to accommodate or, more accurately, trying to fight native title. Enough is enough. A great deal of that money was taxpayers' money, and I guarantee that the people of my electorate would much rather have that money spent more productively on facilities and services for the community at large than on lawyers' fees and court costs, particularly when nothing appears to have been solved. The system established by the legislation now before the House places its emphasis on negotiated agreements between mining companies and native title bodies. In doing so, the legislation reflects the firm view of everyone in the Government that litigation ought to be the last resort, not the first or only resort.

There are many kinds of agreements. For all its flaws, the current Federal Government's Native Title Act at least recognises the principle of negotiated agreements. These can have many forms, including indigenous land use agreements which are known as ILUAs. ILUAs can help to map out the agreed process for determinations of native title and future activities or acts associated with mining development proposals. ILUAs can be registered with the Federal Court and be binding on all parties.

The Government's approach on this matter can be summed up very precisely: facilitate, do not frustrate. I am very pleased by the Premier's assurance that the Government will provide practical assistance to promote the securing of agreements. The Premier advises me that he has set up a special unit in his department known as Native Title Services. This new unit offers three types of service: a negotiation unit, an historical and anthropological unit, and a communications unit. I am advised that the negotiation unit will actively help parties in discussions about the impact of mining or other developments on native title to resolve their issues amicably and quickly, avoiding the need for costly court action. There are already precedents illustrating how this has worked successfully.

Members of the House will recall references in the press a few weeks ago to the agreement reached by a pastoralist family and the Western Yulanji people in an area north-west of Cairns. This

long-running issue was eventually resolved through the goodwill of the people concerned and the active involvement of negotiators from Native Title Services. It is well known that the previous State Government was incapable of resolving this matter, because it refused to talk to the parties involved or to help them come to an amicable settlement. I understand that the Government's negotiators are also involved in many other discussions that will be successfully resolved.

As I said, the Bill before the House is structured around parties finding agreement. There are clear procedural guidelines for how to reach agreement, incentives for trying to reach agreement and disincentives for parties who try to frustrate agreements.

For exploration, the Bill requires the mining company to at least consult with the native title parties over a period of two months to reach agreement about minimising the impact on native title. For mining development, the Bill requires the parties to at least consult and negotiate with the intent to reach agreement. This is merely underlining how civilised and sensible people ought to behave. I do not understand the Opposition's rejection of this idea. At the end of the day, the Government is also realistic enough to understand that not all matters will be capable of being resolved by agreement among the parties. There will need to be a strong jurisdictional body that is able to make decisions or determinations in the interests of the parties and in the broader interests of the State. The Premier assures me that legislation to establish such a body is well advanced.

I am pleased that the Bill recognises the importance of negotiation in reaching agreements. For reasons entirely beyond me, the Opposition seems to be against the very idea of negotiation. It will try to amend the Bill to strike out the emphasis on negotiation. Opposition members should think again. All their approach would achieve would be more unnecessary cost, more division and more delay. The approach of the Opposition reminds me of the old saying: those who do not know the past are condemned to repeat it.
