Speech by

Mrs E. CUNNINGHAM

MEMBER FOR GLADSTONE

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

Mrs LIZ CUNNINGHAM (Gladstone—IND) (12.33 p.m.): Native title and the right to negotiate has been a divisive issue for many years. In my electorate, the issue has been relatively quiet, partly because people are tired of the constant bickering, partly because of the complexity of the issue, the changing approach of all parties to an appropriate solution and the sheer pressure placed on families to manage on a day-to-day basis, which diverts their attention. The right to negotiate has been given weight by various statements and findings in the Federal Court arena. Even those statements, releases and judgments have been confusing for the community, who cannot understand where the goal posts are.

I have no doubt that if this legislation failed—and it will not, because it has been indicated that there will be sufficient support—the wound to this nation would continue to fester. It is time that a compromise was reached. It is time that all parties had a chance to show that neither side will be opportunistic but will act as each one should: fairly and in a spirit of cooperation.

I received correspondence from many quarters. I am sure that every other member in this Chamber received similar correspondence. Some writers were supporting the Bill; some were opposing the Bill, saying that the right to negotiate should not exist at all. The QMC raised a very important question and I would be interested in the Premier's response to it. The QMC asked me: why does mining have to carry the cost of compensation for past injustices? Some writers opposed the Bill because they said that the right to negotiate in the proposed legislation is not strong enough. I met with a number of groups—perhaps not as many as I would have liked. I was very impressed by the Queensland Indigenous Working Group. I was impressed with their manner and their recognition that there are two sides to the issue. Although the Bill represents a less-than-desirable right to negotiate from the Aboriginal perspective, they see this step as an opportunity to show that the process can and will work.

I acknowledge the genuine fears of the rural community. I have a large number of rural properties in my area. Over 90% of my electorate is rural. Our economy in Gladstone and Calliope is very dependent on primary processing. Those concerns have stemmed from fact, fiction and fear. The reality is that, if the process that is proposed in this legislation is abused by either Aboriginal groups, the mining companies, pastoralists, the Government or by the tribunal, the people of Queensland will demand those legislative rights be revisited and either further amended or removed. Those who benefit from this Bill must show responsibility in exercising those rights. One writer made a number of observations that I would like to pass on to this House. He said—

> "No one seriously denies that Aborigines were dispossessed of Australia; that massacre and brutalities occurred and there are legitimate aspirations to be recognised and implemented.
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> But, I firmly believe that giving rights above those of other Queenslanders and other Australians, on top of other rights, such as being able to prevent Australians from going to parts of Australia, is a mistake. I am of Irish descent and proud of it, but I am an Australian. The past woes of Ireland are not my concern; those of Australia are. My people became Australians with all the rights, privileges and responsibilities other Australians have—no more, no less. Until Aborigines can say the same, I think we are heading for two Australias and a perpetuation of division.

...

My central argument is that unless we treat all Australians as equal citizens, equality will never be achieved."

The writer also stated—

"The divisions seem to be getting worse, not better and I am concerned that giving Aborigines further rights not available to other Australians will further worsen the situation. I support land rights but I do not believe that this should include mineral rights unless all Australians are given the same rights."

Do I support native title rights? Yes, however, we must give those same rights to all others affected: landowners whose tenure and whose experience show a strong connection with their land. It is my intention to introduce a private member's Bill to afford the same rights to pastoralists as is proposed under this Bill. Currently they put their heart and soul into their land through good years and bad, always facing the prospect that a third party will appear to significantly impact on their operation. They have an opportunity to object, often not successfully, then are left with the negotiations on compensation dollars. That has frustrated landowners immensely. An inequitable right that would result from the Queensland native title Bill is not positive for this State. Equitable access to the right to negotiate is essential.

I would like to direct to the Premier a number of questions about the Bill, and I would seek his clarification. In the Federal legislation, there is a definition of "claimant". I have been advised by the Premier's advisers—and I thank him for giving me access to them—that that definition is very tight. One of the definitions refers to the fact that a member of the native title group currently has or previously had any traditional physical connection with any of the land or waters covered, and then it goes on to refer to that traditional, physical connection. The second definition is that if any member of the native title group has been prevented from gaining access to any of the land or waters covered by the application, they must set out the circumstances in which that access was prevented. My question relates to some of the concerns of the pastoralists: will claimants who say that access by their forebears of 100 years or 200 years ago was denied by a lease tenure will now be able to qualify as eligible native title claimants? The initial advice from the Premier's advisers was that a physical connection will mean that current or next past generations only will qualify. Could the Minister clarify that? In his article, Gary Johns stated—

"The registration test is much firmer in the Bill. It is proposed that at least one of the claim group has or had a traditional physical connection with the claimed area. A spiritual connection will not suffice."

I seek the Premier's clarification on that matter.

Another issue relates to the opportunity for negotiations to spin out of control time wise. That issue was raised both by pastoralists and the mining council. One of the conditions of an extension of time is by a negotiated agreement between both parties. However, the flow chart in the Premier's executive summary gives optimum time frames. I am advised that the penalty for native title claimants who fail to adhere to those time frames is that the mining lease can and will be granted. I am also advised that the clauses in the Bill that give the tribunal the right to extend the period of negotiation is only on the basis of a determination by the tribunal that the mining company was not negotiating in good faith or appropriately. Is that the only justification? Will that test applied to the mining company be an objective test or a subjective test? What is the maximum cumulative period of time those extensions could be granted?

In clause 608, the tribunal is empowered to consider "any other matter" in reaching its decision. What parameters will be set for these "other matters"? We have seen the goalposts shifted regarding the High Court decisions on Mabo and Wik as they were delivered. How will the tribunal's powers be quantified? In the tribunal process, will an opportunity be available to ensure that all issues can be settled in a coordinated manner? That is, while native title claimants and the mining companies negotiate an agreement, will leaseholders also be forwarded an opportunity to clarify Aboriginal access at the same time? If not, when will that access be clarified?

The Bill deals only with pastoral leases and predominantly the right to negotiate—it deals with vacant Crown land, but the concerns are about the pastoral leases. What is the time frame proposed for the release of the other necessary elements of amendments to Queensland's statutes in relation to changes to land management legislation, the make-up of the tribunal, its scope and powers, cultural heritage protection laws and other laws?

My advice regarding the right to negotiate on infrastructure has been mixed. One advice was that the Bill does not include the issue of infrastructure and I was advised that that would be dealt with by separate legislation. The second piece of advice that I received was that the infrastructure issue would be dealt with under the State Development and Public Works Organization Act. In the past, this

wheelbarrow Act dealt only with large projects. Is this approach to change? How will native title issues be dealt with in respect of infrastructure—through that Act or through another mechanism?

Is it possible that in the negotiations for compensation under the native title agreements that the package will determine, rather than set amounts of monetary compensation, that the compensation be in kind, that is, in educational infrastructure, health infrastructure, housing, and/or cultural heritage issues?

Mr Beattie: The answer is yes again.

Mrs LIZ CUNNINGHAM: That is good, and that is what the Premier's advisers told me. However, it is going to have to be by an agreement on both sides. One of the concerns—and this is not intended to be an offensive comment—is that a lot of dollars have been invested in the health, educational and housing disadvantage that Aboriginal communities face, particularly the more western and remote communities. A lot of dollars by both Federal and State Governments have been sunk into those areas with little tangible result. The concern is that this may be another way in which there will be significant dollars invested in the Aboriginal community rightly, but that those who are genuinely in need will not get the benefit. The question was put to me: why not have the compensation package more regularly in the form of infrastructure as opposed to dollars?

Potentially, the whole process can be a legal quagmire. In common with the member for Kurwongbah, I hope that that is not true. I think that it is important that this legislation guards against that occurring as much as possible. What legal protection or access to legal assistance will be available to lessees in this entire process, given that their land is going to be significantly affected?

My final question is: low-impact mining is exempted from the early negotiation. Some prospectors, or some investigators, are really good: they will come in and they will just have a look around. However, some people believe that the only way in which they can have a look is with a D9. For those people who in the initial stages may significantly impact on the land—and I am talking about this from an Aboriginal perspective in terms of sacred sites and from the perspective of pastoral leaseholders, who have these turkeys come on their property, do their initial investigation, then walk off having significantly scarred the property with little or no rehabilitation options—what controls are going to be placed on the operation of the Bill to ensure that those initial exploration rights are not abused so that the mark is not stepped over? As I said, that relates to the two parties: the Aboriginals in relation to circumstances where significant sites could be lost and the pastoralists who, at the moment, have very little say.

As I said, for many years this issue has been in this community on a State and Federal basis. It has been most divisive. As rights and freedoms have been afforded to the Aboriginal community, the negotiation—the fight, if one likes—has continued because it appeared that the bottom line was the right to negotiate. Until that issue is addressed, the festering sore that is the unification of our Australian nation will continue to deteriorate. This is an opportunity for the clear concerns of the Aboriginal community to be addressed in good faith and to prove to pastoralists that it will not be as intrusive and as demoralising as they may have anticipated and feared. One would hope that the mining companies would see that it also will not be as iniquitous or financially onerous as they expect and that all parties will come to the negotiation in a fair and open manner, not in a selfish manner and, in terms of finances, not self-seeking.

From earlier comments, it appears that the Bill will be passed. I intend to support it for reasons that I have outlined, not because it will allay the fears of the pastoralists—it will not—but one would hope that as time unfolds, and I am talking about the near future not the long-term future, it can be shown that the concerns of all of those entities can be addressed in a fair and equitable manner.