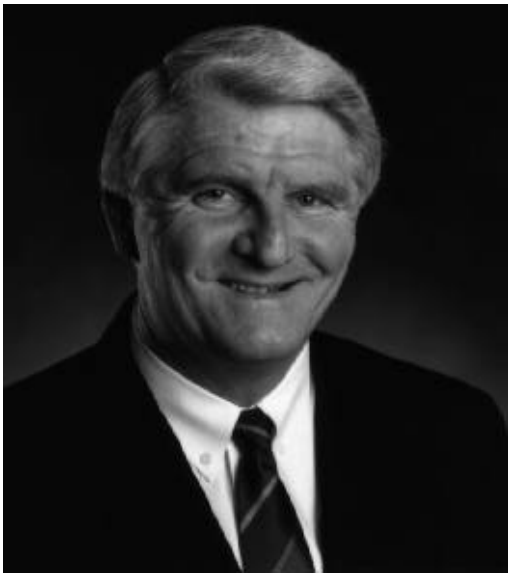

Speech by

Mr M. HORAN

MEMBER FOR TOOWOOMBA SOUTH

Hansard 25 August 1998

NATIVE TITLE (QUEENSLAND) STATE PROVISIONS BILL

Mr HORAN (Toowoomba South—NPA) (Deputy Leader of the Opposition) (3.02 p.m.): As the Opposition Leader has made clear, we will support this Bill in that it implements the first two points of the Prime Minister's 10-point plan, and it does so quite unambiguously. With this Bill we are 20% of the way towards a workable post Wik land management system in this State. That is obviously not before time.

It is now almost a year and nine months since the High Court handed down its decision in the Wik case which overturned the reach of native title as determined in Mabo and extended its application to pastoral leases and to a whole range of non-exclusive tenures in this State. Without this legislation doubt would continue to linger about the validity of grants in the so-called intermediate period and there would also be continued uncertainty about where native title might exist. Therefore, dealing with the validation and the confirmation issues is a very important first step in resolving the uncertainty brought about by another bare majority decision of the High Court.

This prompt attention to at least two of the baseline issues now that the final shape of the 10-point plan has finally been approved by the Senate is welcome. However, I wish to say a few words about the timing of this Bill, because I note that the Premier has suggested the fact that we now have this Bill represents some indication that this Government is prepared to act to resolve these issues whereas the coalition Government was not. That is a nonsense.

Some of the history of the issue outlined by the Opposition Leader shows how absolutely gratuitous that suggestion is, because the member for Surfers Paradise was able to show the extent of the tactics employed by the ALP to delay the resolution of these matters and to keep the whole thing tied up in the Senate for month after month. He was able to show the extent to which we had from the Federal Labor Party what can only now be seen as a very deliberate effort to sabotage a workable response to the problems generated by Wik.

From November last year until just a few weeks ago, we had Labor in the Senate arguing the toss at every single turn. There was hardly an element of the 10-point plan, with the exception perhaps of the voluntary agreement structure, in respect of which Labor did not comprehensively seek to delay this plan for month after month. Yet when it comes right down to it, as this Bill demonstrates, Labor now accepts the plan that it fought against for so long in the Senate. That acquiescence now speak volumes about the motivation of the Labor Party. We have had plenty of wasted time as a result of that situation.

If the coalition had not run into that obviously insincere opposition from the Labor Party, all of these matters would have been dealt with long ago. The 10-point plan was in its final form by May 1997. Legislation reflecting it could have been through by September last year at the very latest. But in fact it was in July this year—just a few weeks ago—that at least Senator Harradine finally saw the light. The Labor Party never saw the light. It resisted the 10-point plan right to the end. It resisted unqualified validation and it resisted the confirmation provisions. It is simply not correct for the Premier to say that it was the coalition which caused the delay in the resolution of these matters. If Labor in the Senate had adopted the attitude last year that he and the members opposite are adopting now in this legislation, we could have had a resolution of these issues a long time ago—virtually 12 months ago.

Given that record, I wish to pick up on one point in particular that the Opposition Leader touched on in relation to the ultimate fate of this Bill. It concerns the validation regime, the confirmation regime and many other very important matters in the 10-point plan that are not yet before the House. I refer to the view that is abroad in large sections of the Labor Party that native title, almost regardless of tenure, is not extinguished but is simply suppressed by inconsistent grant so that it can revive and be claimed. That issue was pressed constantly by Labor in the Senate and is one of the absolute core issues of this entire debate—something Federal Labor recognised. A great deal hangs off it.

This is an issue which serves to show just how comprehensively the Left of the Labor Party took over this debate, particularly in the Senate. Whenever Senator Bolkus, who led that debate for Labor, talked about suppression rather than extinguishment, he was directly contradicting his own leader, Mr Beazley. All we have to do to establish that is look at what Mr Beazley said in the House of Representatives on 25 September last year in his second-reading speech on the Native Title Amendment Bill. In respect of the impact of extinguishment in relation to pastoral leases he stated—

> "Both the 1993 Act and the Wik decision affirm that their rights extinguish native title to the extent of any inconsistency. We will support any amendments that give greater certainty and clarity to that reality."

That statement flows from the conventional view that grants of exclusive possession have extinguished all native title and that grants of non-exclusive tenures extinguish native title to the extent of the inconsistency.

When we consider the long-term viability of this Bill and whether it will survive and remain meaningful, we see that Senator Bolkus' contradiction in the Senate was not the first contradiction of the Federal parliamentary Leader of the Labor Party by the Left on this centrally important point. In October last year, after Mr Beazley's speech in the House, we had the minority on the Joint Parliamentary Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund pressing that same issue. Senator Bolkus was deputy chair of that committee. Another Labor Left Winger, Mr Daryl Melham, Labor's Aboriginal Affairs spokesman, was also on that committee. The minority of which they were a part signed off on statements such as the following—

> "... the question whether native title is permanently extinguished or merely suppressed is not yet conclusively determined by the High Court ... The Government must not assume that the common law provides for more than the suppression of native title during the term of an inconsistent grant."

Compare that with the sentiments of Mr Beazley. They are an absolutely direct contradiction. Interestingly, that statement was the minority's reasoning in relation to its rejection of the confirmation of extinguishment provisions of the 10-point plan which, along with validation, is the topic of the Bill now before this House. In another reference to the same issue, the minority said—and I repeat that among this minority were Senator Bolkus and Mr Melham—

> "It is not only feasible but likely that native title will be found by the courts to be capable of revival after the expiry of an inconsistent interest, particularly non-exclusive interests like a pastoral lease."

So that again was a direct contradiction of the Federal Opposition Leader and apparently the Premier in the context of extinguishment by that committee. That contradiction continued from the Labor Party in the Senate and became the Labor Party's position. Never mind what the leader thought; Bolkus and the Left simply took over.

There is so much confirmation of the rolling of the Federal Opposition Leader on the record that I will not attempt to subject the House to all of the relevant comments by Senator Bolkus across the three debates: the one last year, the debate in April and the debate in July. But I will give one unambiguous example from each of those debates to establish that it is the express view and the consistent view of the Federal Labor Party that suppression and not extinguishment is what has occurred in relation to native title whether the grant concerned is non-exclusive or even exclusive.

The first is from December last year when Senator Bolkus signalled some 359 amendments to the 10-point plan, mainly straight off the indigenous working party's wish list, as were the sentiments in the minority report. In relation to the confirmation of extinguishment provisions he said—

> "The ongoing concern that we have is that what is provided for here is a regime of permanent extinguishment, when the common law makes it clear that that particular aspect has not been determined. Permanent extinguishment is just unjustifiable in terms of the common law. We are adopting a position in this respect where our amendments are designed to remove the whole section dealing with extinguishment and to remove the definition of extinguishment which makes extinguishment permanent."

Obviously, that was quite a nonsensical contribution from Senator Bolkus. Extinguishment is extinguishment. If something is extinguished, it is dead, extinguished, full stop. Mr Beazley recognised that but Senator Bolkus, with apparent impunity, simply contradicted him.

Senator Bolkus did it again in April during the second consideration by the Senate of the Native Title Amendment Bill in relation to the confirmation provisions. He said—

> "It was clear to all of us on this side of the debate that these provisions do in fact over reach the common law and in themselves are legislative extinguishment of native title. The government, for instance, says that people have assumed that such interests as freehold, all types of leases, public works, et cetera, extinguish native title. But I think it is fair to say that the Wik decision left this assumption in a very unclear situation."

So in April again we had a reaffirmation of the view abroad in the Labor Party—the official view abroad in the Labor Party—despite Mr Beazley's disagreement that there could be no assumption that grants such as freehold had extinguished native title.

I give Senator Bolkus the benefit of the doubt in relation to freehold. It has to be said that under great pressure in December Labor ultimately did cave in on the freehold point after a fight, so that the Native Title Amendment Bill could state quite categorically that freehold at least has extinguished native title. So we give him the benefit of a Freudian slip right there. But, nonetheless, the gist of his comments is very clear.

Senator Bolkus was still arguing for suppression in April this year. He did so yet again just a few weeks ago when he pushed for an amendment which would have had the effect of leaving it to the courts for case by case consideration as to whether extinguishment really meant extinguishment or whether it merely meant suppression right up to and including on exclusive tenures. That was during the final Senate consideration of the confirmation issue on 6 July.

The issue is simply this: here we have the Queensland Labor Government agreeing without compromise to the validation and the confirmation provisions of the 10-point plan. As the Opposition Leader has said—and I heartily agree with him—that is a good thing and it is a commonsense result in the best interests of Queenslanders. Mabo-based common law native title is respected in the 10-point plan and again in this Bill. Wik-based common law native title is also respected in the 10-point plan and again in this Bill. So no reasonable person could argue against the plan. But in Canberra we have a Federal Labor Party which disagrees with the plan and disagrees with this legislation quite comprehensively. Strangely, it has been all but silent on the predicament now facing this Government: does it satisfy the Labor Party in Canberra, or does it do what it knows is right by the people of Queensland—all the people of Queensland?

Senator Margaret Reynolds gave the Premier a bit of a bake in the Upper House in Canberra during the debate on the Native Title Amendment Bill. Senator Woodley of the Democrats was very critical of what this Government might do, as were the Greens, and outside the parliamentary sphere so was Father Frank Brennan. But Federal Labor has ducked the issue. Senator Bolkus has ducked it now both inside and outside the Chamber. Suddenly Mr Daryl Melham has been silent. Mr Beazley has been silent if not silenced, yet the fact remains that here we have a Labor Party acting against what its Federal colleagues want. We have a Queensland Labor Government implementing legislation which its colleagues in Canberra ostensibly and passionately oppose. It just has to come to mind that the silence is planned.

We need an assurance from the Premier—and it is a simple assurance. I should say that we do not expect the impossible. If Federal Labor were to win the next election, then doubtless we would have considerable pressure at that level to see the full Federal Labor native title package put in place. That pressure might well be unstoppable, but at least the Premier could today give this House and this State an assurance that he would not under those circumstances lobby for the Federal Labor position to be adopted. He should tell us quite clearly here and now what his intention would be so that all Queenslanders know where they stand. Would he stick with the validation principles in this Bill, for example? Would he stick with the confirmation regime? The latter is perhaps most to the point.

I doubt that the validation regime could be altered once set in train but, in relation to the confirmation regime, there are potentially considerable loopholes that a Commonwealth Labor Government could exploit to change the intent of the Bill that is now before this House. For example, the Federal Government will be able to remove certain categories of tenures from the Schedule which confirms extinguishment without reference to Parliament but will not be able to add to it without reference to the Federal Parliament. That was an amendment pushed by both the Labor Party and Senator Harradine.

This means, for example, that the grazing homestead perpetual leases to which the Premier has referred in recent days could be taken off the Schedule by the Commonwealth. Since we have already had indications from the Premier that he believes native title does exist on that particular form of tenure and he is extinguishing it by this State legislation, then a Federal Labor Government could

give him a ready out. In fact, it would probably act unilaterally. This would mean that the Premier could simply say to the 3,000 holders of grazing homestead perpetual leases that Canberra had decided to remove their tenure from the Schedule confirming extinguishment and there was nothing that he could do about it.

Of course, there is something that he could do about it. He could signal to this House here and now during this debate that that simply would not be on. So I seek a double assurance from the Premier during this debate. The first is that he does not seek to have grazing homestead perpetual leases or, for that matter, any tenure now on the Schedule removed if Labor wins federally. The second is that, if there is a move down the track from a Federal Labor Government to remove GHPLs or any other tenure on the Schedule, he will absolutely resist it and resist it very strongly indeed. That is what we need: a Premier who will stand up for Queensland and ensure that the intent of this Bill is always absolutely adhered to.