



Speech by

# Hon. PETER BEATTIE

MEMBER FOR BRISBANE CENTRAL

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Hansard 26 August 1998

## NATIVE TITLE (QUEENSLAND) STATE PROVISIONS BILL

**Hon. P. D. BEATTIE** (Brisbane Central—ALP) (Premier) (12.08 p.m.), in reply: I actually grew up in Atherton, I played sport in Mareeba and I visited Malanda and Millaa Millaa on many occasions. When I was a kid, there was a very distinguished local representative named Eddie Wallis-Smith—a Labor member, I should say—who represented the tableland with distinction and pride. How things have slipped. I am happy to tell the honourable member for Tablelands that, when I return in November to the place where I grew up—I will be the guest speaker at the Atherton State High School speech night—I will be happy to talk to people about this issue or any other issue. No doubt the member will be given an invitation and he, too, will be edified and educated during the process.

The Bill before the House is the first in a two-stage process to respond to the Commonwealth legislation and the native title regime that will come into force on 30 September 1998. I am advised and I notice that the Federal Native Title Amendment Act 1998 has now been proclaimed. It was signed and sealed on 11 August 1998. This Bill, once passed by the Parliament, will be proclaimed as quickly as possible.

I thank all honourable members for their contributions. However, in my response it is important that I again remind the House of the process that is involved. There are two stages. This is the first stage—providing certainty. The second stage, which I have set out in my Native Title Strategy, which I have drawn to the attention of the House, involves a second piece of legislation dealing with the State-based regime to operate in this State. I have brought together a working party which consists of indigenous leaders, pastoralists and miners to work through the State-based regime that will operate in this State and will be incorporated in the legislation. I need to say to the House: it is absolutely essential that that process be given an opportunity to come to fruition, bearing in mind that it has had the input of the three parties involved in this issue.

I wish to raise a considerable concern about comments made by the Leader of the Opposition indicating that he intended to introduce legislation into this House at its next sitting. That legislation would simply seek to undermine the consultative process that I have put into place. I say to all members of Parliament—and I address this particularly to the member for Nicklin and the member for Gladstone—the fact that I have introduced Stage 1 as the first piece of legislation that I have introduced into this House is a clear indication of my good faith in relation to native title. However, the process is a two-stage one, and the Government should be allowed the opportunity to introduce that second piece of legislation without impediments or attempts to undermine it.

Under this native title Bill—and I will be very fair in what I am saying—there is considerable grief for indigenous Queenslanders and indigenous Australians. I acknowledge that today. The second part of the process is designed to achieve a balance, some fairness and an outcome that will bring this country and State together. That requires the goodwill and good faith of not only the three stakeholders but also members of this Parliament. Any attempt to undermine the second stage in terms of the legislation will be to the detriment of all Queenslanders and Australians.

I am hopeful that the State-based model that we will develop out of the process that I have already outlined—the Native Title Strategy, which I will not go through again as I have already tabled it in the House—will be accepted and supported by all States and certainly by our national colleagues. It is all very well to grandstand on the issue of native title. However, we have to bear in mind that any

legislation passed by this Parliament has to pass three tests. It has to pass the test of this Parliament. Then it has to pass a High Court test, should there be any challenge. Indigenous Queenslanders, as well as the mining industry and pastoralists, have the opportunity to initiate any challenge should they wish. The third part of the test relates to the Federal Parliament, which means that it has to pass the Senate test and the test of the Parliament itself. Grandstanding here will not resolve this issue. Any private member's Bill introduced here to undermine the process that I have set in place will simply result in litigation. That will result in delays and uncertainty and will be of detriment to all Queenslanders. Let the record be very clear in relation to what the Government is trying to do here in good faith.

As I said, this is a difficult issue. This piece of legislation does cause considerable pain to indigenous Queenslanders. I am pursuing it because I believe that there needs to be certainty. There needs to be certainty of investment for both the mining industry and the pastoralists. Without this validation, that certainty would be put in jeopardy. That is why I have proceeded with this legislation. In my view, it will contribute to a significant reduction in unemployment in this State. That does not mean that there is not pain for indigenous Queenslanders; there is. I get no joy out of doing that. However, I have to think of the welfare of the whole of the State, which is why I brought in this legislation as the first Bill that I have introduced.

That is why I have signalled—and I notice one member referred to it—that in some areas as part of the second stage it may well be that the outcome involves some allocation of funds, particularly in areas of grazing homestead perpetual leases, where indigenous Queenslanders are disadvantaged as a result of this Bill. It may well be that a trust or a fund is established to assist with the provision of infrastructure or other matters that we would obviously discuss with indigenous Queenslanders. I make no apology for that at all, because what I want is a fair outcome for all Queenslanders. That will only happen—

**Mr Borbidge** interjected.

**Mr BEATTIE:** The Leader of the Opposition should not get too anxious; I am about to deal with him—and I have 23 minutes.

It is vital that we get an outcome that is fair to everyone. If we do not get an outcome that is fair, this matter will end up in the courts, it will end up being delayed and it will end up being something of which we will not be proud.

Let me move to the particular issues. I wish to deal with the issue of legal advice. I am aware that legal advice has been sought by various parties about whether one tenure included in this Bill, that is, grazing homestead perpetual leases, or GHPLs as I call them, extinguishes native title. I think it would help if I recounted the history of why GHPLs are in this Bill, because the Leader of the Opposition has no understanding of GHPLs or extinguishment.

**Mr Borbidge** interjected.

**Mr BEATTIE:** Recently, the Leader of the Opposition described the legislation of the member for Nicklin as loopy. It was just a continuation of his insults. The member for Nicklin does not deserve that insult and nor does anyone else. It is about time that the Leader of the Opposition thought constructively about this State's history and future.

To educate the Leader of the Opposition and whoever wrote his speech, let me recount the history of why GHPLs are in this Bill. GHPLs are in this Bill because they are in the Schedule to the Commonwealth Native Title Act, which this Bill seeks to implement at a State level. In developing that Schedule the Commonwealth sought information from all States about the nature of land tenures in those jurisdictions. That occurred throughout 1997. Each State was provided with a list of 19 criteria which the Commonwealth—I repeat "the Commonwealth"—would use to decide whether particular forms of tenure would be included in the Schedule to its Act. The role of State officials in this process was simply to provide technical advice about the nature of the tenures to assist the Commonwealth to evaluate them against those 19 criteria. At the end of the day, the decision to include GHPLs was made by the Commonwealth, with all of the technical and legal advice at its disposal. That is why they are included in the Bill.

Let me turn now to the legal advice that has been given in this instance. The legal advice comes down to a simple proposition, and that is that the inclusion of GHPLs in the Schedule is debatable. Ask any lawyer about any matter and they will say that the case is arguable. I should know; I am a lawyer. I know there are some lawyers on our side of the House, and on the other side there are some who aspire to be lawyers. Indeed, on the other side of the Chamber there is a former failed Attorney-General who aspires to be a lawyer and a Leader of the Opposition who could never be one.

The history of the native title debate shows that this is nowhere more true than in this area of the law. The preliminary advice that the Government received from the Crown Solicitor supported the view that GHPLs confer exclusive possession and thus extinguish native title either for the fact of the grant of the lease or for activities that have taken place on those leases. Is the member with me so far?

The Crown Solicitor concedes, after having read the contrary legal opinion produced yesterday by the Indigenous Working Group, that no guarantee can be given that the High Court would definitely accept that proposition. However, the Crown Solicitor further notes that in light of the change——

**Mr Hobbs:** Yesterday? Oh, cut it out.

**Mr BEATTIE:** The member opposite would be better off listening; he would learn something. Good heavens! Is the member opposite going to let me finish or does he just want to let his mouth run away with his head? The Crown Solicitor further notes, however——

**Mr Borbidge:** You're just working towards running the agenda.

**Mr BEATTIE:** Is the member opposite still the Leader of the Opposition? Can members opposite not do something about this? They should get someone with a brain. The Crown Solicitor further notes, however, that in the light of the change in composition of the current High Court, there is a real prospect——

**Mr Borbidge:** What was that about personal reflections?

**Mr BEATTIE:** Look, I am provoked. I am provoked by someone who has no manners. The Crown Solicitor further notes, however, that in the light of the change in composition of the current High Court, there is a real prospect that a majority of the High Court will determine the issue in a manner similar to that adopted by Chief Justice Brennan in the Mabo No. 2 and Wik decisions in contrast to the majority approach in Wik. Whether a court would ever accept any particular point of view is sheer speculation—end of story.

**Mr Hobbs:** This only happened yesterday.

**Mr BEATTIE:** Yes, I know, and since yesterday——

**Mr Borbidge:** You're just rolling over to the Indigenous Working Group.

**Mr BEATTIE:** Unlike the previous Government, which fiddled while Rome burned, we actually take advice. We actually listen to people.

The Indigenous Working Group provided a legal advice yesterday. The Attorney and I discussed this matter, as is appropriate, and we took advice. The member for Ashgrove quite appropriately raised this issue. We decided that we would do the right thing. We do listen to people, so the Attorney and I sought advice, which is the appropriate thing to do. I am now telling the member opposite the outcome of the advice. I am advising the people of Queensland through this Parliament, which is appropriate.

Let me finish the point. Whether a court would ever accept any particular point of view is sheer speculation. These are difficult issues to resolve whether by a court or by a Parliament. My Government does not want this game of legal tit for tat to continue any further than it has to. The sad history of native title is that the winners from the legal debate are not the indigenous community, not the pastoralists, not the miners, but the lawyers.

This Bill confirms extinguishment of native title on GHPLs and brings the matter to a close as far as the State is concerned. I will not allow an expensive, divisive legal brawl over the status of this form of tenure to continue for years when the balance of argument suggests that native title will not be found to have survived. Queensland needs certainty at this point so that we can start the process of rebuilding a cohesive community that will work together to build a prosperous future for all Queenslanders. The Bill does not extinguish the right of indigenous people to seek compensation that may arise if native title is found to have existed, and that is provided for in the Federal legislation. Indeed, the Act specifically provides for compensation. That is part of the 10-point plan, in case members opposite had missed it.

Let us deal with the sort of nonsense that we have had from the Leader of the Opposition. Let us look at where the Leader of the Opposition has misled us. He claimed that nothing came of my representations to my Federal colleagues about the renewal of mining leases—misleading No. 1. The Courier-Mail did not think so; its headline suggested that the "ALP bows to mine lobby in rethink of Wik Bill". That is what it said. Mr Borbidge, the Leader of the Opposition, is an absolute master of the half-truth. He picks up a little thing and twists it and tries to pretend that it is something different. That is what we saw a little earlier in question time today now that we have had a chance to read the material. It is just typical. "ALP bows to mine lobby in rethink of Wik Bill", is hardly a headline that indigenous Queenslanders would be excited about.

The Queensland Mining Council did not agree with the Leader of the Opposition, either. Michael Pinnock said that "the meeting went better than expected". Here is his news release——

"Council welcomes further Labor discussion. Chief Executive Michael Pinnock today welcomed statements by Peter Beattie that he managed to arrange for the Federal Labor Opposition's Wik task force to come to Queensland. Mr Pinnock said it was encouraging to see that the ALP was at least committed to further discussion ..."

and it goes on. The fact is that the Labor Opposition included federally—and this is another nonsense from the Leader of the Opposition—an amendment No. RN23, which protected simple mining lease renewals from the right to negotiate. That amendment was accepted by the Senate. That is exactly what I set out to do; that is exactly what I claimed to have done; that is exactly what I did; and that is exactly what the Senate passed. So everything I said in relation to changes on these matters has been delivered, contrary to what the Leader of the Opposition claimed before.

Where else did the Leader of the Opposition mislead in his contribution? He claims that, if Labor wins the Federal election, it will seek to amend the native title legislation. Says who? Mr Beazley, the Leader of the Labor Party federally, has publicly stated that he will revisit the Act only if it is proven to be unworkable or is successfully challenged in the courts. They are the only criteria. So again we get this half-truth, this misleading nonsense.

Where else did the Leader of the Opposition mislead? He claims that a member of Mr Beazley's staff has been sitting in on our working group meetings. Who? Let the Leader of the Opposition name the person. No-one from the Federal Opposition has been sitting in on the working group meetings at all. It is just typical of the Leader of the Opposition, who comes into this place and elsewhere and seeks to mislead and deceive. It is not true. No-one from Beazley's staff is involved in the working group meetings. No-one at all!

**Mr Sullivan:** And when you ask him, Mr Premier, he doesn't even respond.

**Mr BEATTIE:** Typical.

The only issue of possible interest raised by the Leader of the Opposition in his diatribe relates to the extinguishment of native title on grazing homestead perpetual leases. Mr Borbidge, the Leader of the Opposition, argues that native title was extinguished by the very act of creating the grant of the lease. This is his argument. Just listen to how nonsensical it is. He argues that native title was extinguished by the very act of creating the lease. The critical issue is that through this Bill my Government is creating certainty for the holders of GHPL tenures. That is what is going on. When common law challenges arise, the issue then becomes one of compensation and how it might be fairly arrived at, not an issue of title.

I have always feared from the beginning that the Leader of the Opposition did not understand native title when he was in my position, and he does not. He has just indicated that he has absolutely no idea—absolutely none. Mr Borbidge, or whoever wrote that somewhat confused speech that he delivered, appears not to understand the simple fact that I have outlined. The Leader of the Opposition seems to want to have it both ways. He either supports the inclusion of GHPL tenures in the Bill or he does not. Does he want them in or not? He seems to be arguing that they should not be in and then he is arguing that they are. He cannot have it both ways. He said he would support the Bill. He is either in or he is out.

**Mr Borbidge:** By your comments you're opening up a massive compensation issue.

**Mr BEATTIE:** What is the Leader of the Opposition talking about? Under the Federal Bill, compensation is provided, and nothing I have said today moves in any direction from that. That is a nonsense. What an absolute nonsense!

**Mr Borbidge:** You've done it—in head first.

**Mr BEATTIE:** Is it little wonder that after two and a half years of Mr Borbidge running this State that we were heading nowhere? Might I remind the Leader of the Opposition that the GHPLs appear in this Bill because his coalition colleagues in Canberra put them in their Native Title Act. That is why they are there. I cannot understand why he is seeking to undermine it.

My Government recognises the reality of the Commonwealth native title law and so GHPLs and many other tenures are included in this Bill. I am gratified that the Leader of the Opposition has let slip, however, during his contribution that he recognises the likelihood of a Labor victory in the forthcoming Federal election when he talked about what Kim Beazley would do. I look forward to that event and to discussing the matters of native title with my Federal colleagues and to showing them how Queensland has set the benchmark for dealing with native title fairly and sensibly. We have acted decisively on the issue of native title. We have acted decisively notwithstanding a deliberate strategy by the Leader of the Opposition who, in the threatened use of private members' Bills, sought to undermine the Government's attempt to come up with a fair resolution of the issue of native title.

Before I move on to some comments that One Nation members have made, I just repeat what I said before. What Mr Borbidge is seeking to do is to grandstand here in a way that will not pass either the test of the Senate or the test of the High Court. It is no good baring one's chest, thumping it and carrying on like some macho man if the Bill that one has put forward will not last till the end of the week. That is why what I am doing here in terms of this Bill today and in terms of the second Bill has a chance of working. It gives a chance of certainty. All those members of this Parliament who really want certainty will back what I am doing because it is the only way through.

The member for Lockyer, Dr Prenzler, and the member for Tablelands made some comments in relation to the Bill. Dr Prenzler said that the Bill is designed to give certainty to all sides in the native title debate and thus to reduce the conflicts. I thank him for those remarks because they are true. He further said that Governments of all persuasions have attempted to deal with the native title Bill and the Howard coalition Government has singularly failed to deal with it. I agree with that. What they have basically done is dump it all on the States. Dr Prenzler further said that it is the business of Parliament to deal with the matter on behalf of Queenslanders, and that is what we are seeking to do today.

In relation to the comments made by the member for Lockyer and the member for Tablelands, I might say that we were dumped with this problem by the Commonwealth. It is true, it was dumped on the States. The Prime Minister and the former Premier of Queensland, now Leader of the Opposition, Mr Borbidge, had 18 months to try to resolve this issue, and they did not. They never sat down and consulted with the parties. One of the parties who was a member of the working group, and who is not an indigenous Queenslanders but represented the mining industry, said that this is the first time his industry had been consulted or allowed to sit down and discuss the issue anywhere in Australia. That is the only way that we will achieve an outcome. That is why the working group is the only way through this issue.

I say to the people of Queensland today: beware of the Leader of the Opposition's motives in this matter; beware of his attempts to introduce private members' Bills in relation to this issue. They are about politics and are not about a solution. Mr Borbidge had 18 months to have a go. Now it is our chance to have a fair go to sort out this matter. This Bill is only the beginning. This is Stage 1, and Stage 2 is just as important.

I want to refer to the legendary allegations that Mr Borbidge seems to make about the Townsville meeting I organised for the Federal parliamentary native title task force. He has attacked me repeatedly because I went to Taiwan in February. It is just another cheap shot. I want to put this matter on the record today. When I arranged for the parties' national native title committee to visit Townsville for discussions with indigenous Queenslanders, mining industry representatives and pastoralists, I did so in the full knowledge that I would not be there. I am not a member of the Federal committee. In case the Leader of the Opposition, Mr Borbidge, has missed it, I am not a member of the Federal Parliament.

I recall that perhaps 20 years ago I had aspirations to go federally, but now I have three wonderful children and I am delighted with being a State member. I have no further ambitions beyond being in the job I occupy today. While this may disappoint Mr Borbidge, I have no intention of running at the next Federal election or at the one after that. I have no intention of turning up at national meetings of Federal members of native title committees. It would have been inappropriate and wrong for me to have been at the committee meeting. I never intended to be there.

I know that ruins a good story for Mr Borbidge. He will go out and run with it. I know he will find another beat-up tomorrow. That was yesterday's beat-up and there will be another one tomorrow. Let us put the record straight in relation to that matter. Mr Borbidge has had a fair run out of it and, fair enough, that is the way it goes. He has a run here, I have a run there, and at the end of the day he loses. That is the way it is. I am quite happy with that. I want to make sure that the record is clearly understood.

**Mr Borbidge:** What I like about you is your honesty.

**Mr BEATTIE:** There is something you like about me? I am delighted to hear it. It would probably be better if the Leader of the Opposition does not put it on the public record because it might come back to haunt him on another occasion.

There is one matter that I draw to the attention of the House. There is a minor amendment to clause 18. My staff has consulted with both independent members and the Leader of the Opposition has also been consulted. It is simply a formal procedural amendment. I understand there is no objection to the amendment. So that there is no accusation that there is a lack of grace on my part—because I would hate that to be said—I thank the Leader of the Opposition for his support of the Bill.

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