Speech by

Hon. PETER BEATTIE

MEMBER FOR BRISBANE CENTRAL

Hansard 21 October 1998

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

Hon. P. D. BEATTIE (Brisbane Central— ALP) (Premier) (3.03 p.m.): I move—

"That the Bill be now read a second time."

This is an historic piece of legislation that could well become a precedent for other States. This legislation is the culmination of three months of intense negotiation with all stakeholders—the only jurisdiction in Australia where all the stakeholders have been involved in this process. This Bill provides certainty. It provides a balanced, practical, workable approach that is fair and drives jobs. But more than any of that, this is an honourable and principled outcome. In summary, it is a fair and sensible solution that will drive jobs.

Australia as a nation needs to rise above politics and embrace the goodwill towards the issue of native title that has been demonstrated by all stakeholders and participants in this Queensland process. This outcome today has been achieved while honouring Labor policy to maintain the rights of indigenous people to negotiate about resource developments. That is the hub of our solution—a balanced system.

Every Parliament and every Government has its important milestones. This is one of ours. However, for the previous coalition Government the first milestone was something it stumbled and fell over, and every successive milestone was a repeat of that first stumble and fumble.

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. Far more importantly, it cost us dearly in terms of the trust that ordinary citizens ought to be able to place in their Government to understand their legitimate aspirations, to accommodate them as far as possible, and to balance them fairly with other needs.

The most fundamental trust of all lies in a belief that ordinary citizens and businesspeople ought to feel sure that the Government is telling them the truth about the great questions of the day, that politicians are not trying to frighten the electorate with half-truths and scare tactics. Either deliberately or through ignorance the coalition sowed seeds of mistrust and division. It wasted opportunities for development and jobs. It bogged the State down in pointless litigation. Ignorance comes at a huge price. Knowledge costs very little but can save us immeasurably.

If, some time in the future, historians come to assess the costs of the coalition approach, they must wonder at the sheer futility and folly of it. Contrast this, on the one hand, with the approach of my Government on the other. We put a stop to litigation as the only way to resolve these matters. At the micro level we have helped individual parties, including miners, pastoralists and indigenous groups to negotiate sensible and workable agreements and outcomes in a dignified way, and we will continue to do that. On the larger plane, we have sat down with the pastoralists and the big and small miners, with the fishing industry and with indigenous representatives, and we will continue to do so.

A defining moment for me came early in these discussions with stakeholders when one delegate turned to me and said that this was the first time ever that all the parties had been invited to sit in the same room to at least try to thrash out a common approach. What a telling reflection on the divisiveness of the coalition. These discussions have allowed us to gain an understanding of the real

big picture issues at hand. Only by understanding the issues can Governments better deal with them while knowing where to draw the line in the interests of the whole community. And it is in the interests of the whole community that my Government has drafted the legislation that I am now introducing.

My Government's first milestone was the passage of the Native Title (Queensland) State Provisions Act that settled once and for all the question of whether native title was extinguished by the granting of certain tenures. In introducing that legislation, I acknowledged the historic difficulty it represented for the indigenous people of Queensland, insofar as it closed one chapter in the long and tortuous debate about the nature of native title. This was balanced by the certainty the legislation gave to the owners of leasehold and other tenures, many of whom, let it be said, may themselves be indigenous people.

On that occasion I also spoke of the historic opportunity we have to end the division and the suspicion that has characterised this debate for too long. The time for blame and recrimination is over. What we on this side of the House, and I am sure all Queenslanders, are looking for is a decisive lead from Government in how to accommodate the legal reality of native title in the conduct of their everyday business. We have provided leadership. We have demonstrated leadership in the less than four months that we have been in Government, and that leadership is reflected in this Bill today.

The Native Title (Queensland) State Provisions Act passed in August was the first stage of the Government's strategy for dealing with native title issues. This legislation is the beginning of the second stage. It will consist of a coherent package of legislation to deal with native title issues with balance and with a pragmatic view to what is possible. I promised a program of legislation within three months. I promised this legislation before the end of October. I am delivering on that commitment and promise today.

I believe that, with this legislation, Queensland is about to give the lead to all other Australian States in how to deal honourably and fairly with native title. We are setting a high standard for others to follow. The native title strategy I announced in July alluded to several discrete matters we would need to deal with, including—

1: revision of the working procedures of all Queensland Government departments to accommodate the effects of the Commonwealth Government's Native Title Act. That has been achieved.

2: development of protocols for indigenous land use agreements. That too has been achieved and will be further refined. It is abundantly clear to anyone who has worked in this area that an agreement-based approach offers the only viable long-term solution to native title. There are many layers and types of indigenous land use agreements. These include regional agreements, agreements specific to one property, industry agreements and mining development agreements. The Commonwealth legislation now recognises the force of such agreements, and the Native Title Services Unit of my department is actively facilitating them. I am proud to point to the Western Yalanji agreement that was recently signed, bringing to end a long and unnecessarily painful series of stand-offs. We played a role in that as a Government.

3: mediation of native title claims. That is being achieved, with some notable successes in recent weeks where, in contrast, the coalition had tried to deny the parties the opportunity to reach settlement. My Government's approach has saved the State literally several millions of dollars in legal costs that would have been spent had the Opposition still occupied this side of the House.

4: clarify the extent of the Commonwealth's financial assistance to the State for compensation arising from native title claims. Although this has been delayed by the recent Federal election, we are working constructively with the Commonwealth on this matter.

Finally, and most importantly, to develop a State regime for dealing with native title issues in the context of mining activity, which is what this legislation is about today.

Any resolution of the point where native title interests intersect with mining activity has to recognise and accommodate five realities. First, it has to recognise the simple fact that, without sustainable growth and development, we all have a limited future. It does not matter whether we are black or white, or live in Brisbane or in an isolated community in the gulf, that truism remains. It all comes down to jobs, and the dignity that meaningful work brings with it. This is a mantra honourable members will hear repeated time and again by me and my Government, and it is one which has helped to shape the development of this legislation.

This legislation deals with the grant of mining exploration and with mining development approvals. It establishes unambiguous and fair processes that will allow mining companies to explore for and exploit mineral resources. It integrates the resolution of native title issues squarely with the way in which mining applications are processed. This legislation does not deal with exploration and development of gas and oil or pipeline tenures. On coming to office, the Government took over a

review of the legislation regulating oil and gas and pipelines development begun by the previous Government.

I recognise that general mining activity differs in some important respects from oil and gas, and I have instructed my officers to extend the review of that legislation to include native title matters. I expect that my Minister for Mines and Energy will bring forward new legislation as soon as possible, but only after appropriate consultation with all stakeholders. I expect the new legislation will simplify the granting of petroleum and gas leases. I need hardly remind the House of the importance of mining to Queensland. The industry is a major employer. It has promoted the development of large areas of inaccessible and harsh territory. It has brought wealth and jobs directly to individuals and more generally to the community through royalties and taxes.

This brings me to the second reality about mining. The wealth that comes from mining belongs to the whole community. Mining companies may make their profits, and this Government hopes the profits are commensurate with the risks miners must take to find and exploit the resources and we wish them well. Those profits flow to employees, to shareholders, to the communities in which they live and work and to the other businesses that depend on them. But let me remind the House that it is the people who ultimately own the resources, and it is the Government that grants a licence for their exploitation. It is a usual condition of granting a licence that the interests of the people who hold title to the land where the resources are located are recognised and, where relevant, are recompensed.

Native title exists in many areas of Queensland where minerals are found. This is the third reality. It is not something to be frightened of or resisted or denied; it is simply a fact recognised by the High Court and by the Howard Government—by the Federal Government of this country. Native title holders are entitled to some basic expectations: first, they may expect to be consulted about the plans of a mining company to explore in areas where native title exists; second, this process must give them the opportunity to explain to the mining company where there are sensitive specific areas or broader issues arising from the cultural heritage of the indigenous people involved.

This legislation establishes appropriate procedures for exploration to happen in a way that is consistent with the requirements of the Commonwealth Native Title Act, with the practical aspects of mining exploration and with the articulation of native title cultural heritage. In this context, I have requested my department and the Department of Environment and Heritage to expedite a long overdue revision of the State's cultural heritage legislation. This antiquated and conceptually flawed legislation simply cannot cope with contemporary understanding about cultural heritage or its management. I expect this review to be a difficult one, but it will involve consultation with the stakeholders. Again, as I said, all stakeholders will be given ample opportunity to contribute to the development of relevant and balanced new legislation.

This legislation before the House also establishes procedures for companies to develop the resources they may have found through exploration. It is only at this stage that the parties involved, including the State, can gain a clear understanding of the nature of the resource and the impact of its exploitation both in general terms and specifically on the interests of the native title holders. It is the assessment of these interests that presents the greatest challenges to all parties involved, but it is impossible to assess an interest without an adequate chance to articulate it. This is just plain commonsense. It is the fourth reality.

It is not sufficient—in fact, it is downright negligent—to say that only courts and lawyers are able to decide these matters and that, therefore, the only viable approach is to establish the bare minimum procedural rights allowed by the Commonwealth Native Title Act. Let us be very clear. The difference between the Opposition and the Government in relation to this matter is that the process I am outlining in this Bill is designed to remove lawyers from making this a minefield for themselves. The other side of politics is about clogging these matters in the courts.

A system based on bare minimum procedural rights across-the-board leads inexorably to the door of the courthouse, because it only encourages one or both parties to raise the stakes. I think that lawyers have done well enough out of native title. This may serve the interests of those who prefer the litigation route, such as the Opposition, or who make their living from it, but it does not serve the interests of the community who want only to see projects approved and jobs flowing, and that is what we want.

Indeed, the community is completely frustrated by the legal fun and games and the politics of the coalition. My Government does not wish to see any more players going for unreasonably high stakes. There is no point in tacitly encouraging the pursuit of either ambit claims or the ambit denial of reasonable expectations. Legal trench warfare is about as productive as its namesake on the Western Front in 1917.

My Government's approach emphasises constructive negotiation about all relevant issues that arise from the mining project and a speedy resolution, including the making of determinations by a Queensland-based tribunal, if resolution cannot be achieved by negotiation.

The procedures established in this Bill allow for both sides to state their case and to negotiate. The time scales that provide the framework for these discussions are deliberately tight, but they give all parties an adequate chance to put their case. If they attempt to employ unfair delaying tactics, they run the risk of the procedural clock rolling on regardless. When they get to the determination stage, they run the risk of losing altogether.

The fifth reality is that whatever Queensland does must be consistent with the Commonwealth Native Title Act, which I will refer to as the NTA. The NTA imposes restrictions on what we can do at the State level but also gives us some flexibility to mould the regime to suit Queensland's circumstances. Before this Commonwealth Bill becomes law in Queensland, it must first be approved by the appropriate Commonwealth Minister and the Senate. While I am confident this Bill has been drafted to meet the Commonwealth criteria, there is a possibility we may be asked to consider technical amendments at a later time to ensure compliance. I put Parliament on notice to that effect today.

Western Australia and the Northern Territory have already had the experience of the Commonwealth requiring changes to their first attempts at legislation in this field. I do not anticipate that being a problem for us. I note it for the record. Indeed, the history of the native title debate in Australia leads one to be cautious about predicting practically anything that might arise from it. I can give members of Parliament, industry and indigenous representatives an assurance that I will be keeping a very careful eye on the debate as it unfolds to make sure this legislation remains technically correct and practical.

The legislation I am introducing balances the books in many senses of that term. Let me now come to certain aspects of the legislation in detail. To help those opposite, I can sum up the intent of the legislation by saying that it imposes a minimum but adequate set of requirements for dealing with native title during the exploration phase of mining activity. These are linked to sections 26A and 43A of the Commonwealth Native Title Act.

In relation to exploration in particular, we have developed a streamlined but fair process. I recognise that some indigenous interests would prefer something more comprehensive, but the simplified exploration procedural requirements reflect our recognition of the need to get the mining industry moving again after the drought caused by the former coalition Government's fumbling after two and a half years of a freeze which cost this State thousands of jobs.

In the second, development, phase of mining, there are more comprehensive requirements about the way native title parties can be involved in discussions about the impact of the mining activity on their native title rights and interests. These reflect an innovative blend of section 43 and 43A criteria. It also reflects my Government's practical way of dealing with these issues.

A. Exploration

The Bill deals with exploration tenures including prospecting permits, exploration permits and mineral development licences. There are amendments to the Mineral Resources Act necessary to take advantage of sections 26A and 43A of the NTA for exploration tenures. A limited number of exploration projects will comply with section 26A of the NTA, because of the requirement that it be "unlikely to have a significant impact on the particular land or waters concerned" (s. 26A(3)). Queensland is currently in the process of identifying the types of activities that satisfy those requirements.

Amendments to Part 3 (Prospecting Permits), Part 5 (Exploration Permits) and Part 6 (Mineral Development Licences) of the Mineral Resources Act are included to enact provisions that comply with section 26A of the NTA. This will allow "low impact exploration" to proceed without triggering the right to negotiate. It is intended that the notice provision will apply before grant and the consultation requirement will apply before entry.

For those exploration projects that require activities that do not satisfy section 26A(3) of the NTA, i.e. "high impact" activities, the Commonwealth's right to negotiate provisions would apply unless Queensland enacts alternative State provisions to take advantage of section 43A and 43 of the NTA. That is what this Bill achieves. Accordingly, this Bill contains amendments to Part 5 (Exploration Permits) and Part 6 (Mineral Development Licences) of the Mineral Resources Act that comply with section 43A of the NTA. These provisions will apply to high impact exploration tenures on land that satisfies the definition of "alternative provision area". This includes pastoral leases and the majority of reserves in the State.

Exploration tenures will be able to exclude unallocated State land (using what has been referred to as the "swiss cheese approach") by virtue of section 43B of the NTA. To make this clear, a section is included in the Bill which repeats section 43B of the NTA and incorporates it in the Native Title (Queensland) Act.

In situations where section 43 land exists, it is necessary to ensure that section 43B of the NTA can be taken advantage of so that the applicant may decide later whether to proceed with exploration on that part of the exploration permit or mineral development licence that is situated on unallocated State land.

The section 43A provisions for exploration tenures will only include the minimum requirements of section 43A to ensure that the 1,000 or so exploration permits and mineral development licences that are applied for each year in Queensland can be progressed as quickly and as simply as possible. It is intended that exploration tenures will be able to be granted in three stages: freehold and exclusive possession tenures in the usual course, alternative provision areas after complying with the maximum six-month section 43A process, and unallocated State land after complying with the full section 43 process. The section 43A process for exploration will be as follows—

Notification—2 months—the applicant must notify in writing: registered native title claimants, registered native title bodies corporate, and representative bodies.

Objection—the notice must provide that registered native title claimants and registered native title bodies corporate may lodge an objection to the granting of the exploration tenure so far as it affects registered native title rights and interests.

Consultation—2 months—the applicant must consult the registered native title claimants and registered native title bodies corporate who object about ways of minimising the impact of the exploration tenure on registered native title rights and interests, including about any access to the land or waters or the way in which any thing authorised by the Act may be done.

The parties may agree to seek mediation (whether private or via the independent arbitral body which the Government will also establish) any time during the two-month period. They may also use the conference provisions of the Mineral Resources Act.

Hearing of objections—2 months—if objections are not withdrawn they will be heard by the tribunal within 2 months.

Section 43

For high impact exploration tenures on unallocated State land, it will be necessary to comply with the NTA section 43 process that will be contained in Part 7A for mining lease applications on unallocated State land.

B. Fossicking permits

Amendments to the Fossicking Act are being made to allow fossicking to proceed as a low impact future act. This will be done by specifically excluding the grant of fossicking permits over land subject to an approved determination of native title.

C. Mining tenures

Mining tenures include mining claims and mining leases.

Section 26B

Amendments to Part 4 (Mining Claims) and Part 7 (Mining Leases) of the Mineral Resources Act are included to enact provisions that comply with section 26B of the NTA for mining claims and mining leases for alluvial gold and tin mining. These amendments will enable the grant of mining claims or mining leases for gold and tin mining over land where native title may exist, without following a right to negotiate or section 43 or 43A process, providing the following procedures are followed—

two months for notification to the registered native title claimants, native title body corporates and representative body ("interested native title parties");

two-month consultation period with the registered native title claimants about the things set out in section 26B(8) of the NTA; and

automatic referral to the tribunal for determination within three months if agreement cannot be reached after the two-month consultation period has expired.

Section 26C

Amendments are made to Part 7 of the Mineral Resources Act (mining leases) to allow approved opal and gem mining areas. At this point I wish to express my appreciation for the efforts of the representatives of the small mining sector and the Indigenous Working Group who have worked closely under the umbrella of the Native Title Task Force to get the small mining sector back on track. I am appalled at the stupidity of the previous coalition Government's freeze on mining activity in Queensland which almost drove the small mining sector to the wall. This Bill gives them a breath of fresh air and a new hope.

I am very pleased to announce that my officers are currently preparing a Statewide framework understanding between the Small Miners Association and peak indigenous bodies to allow small mining to proceed. Similarly, representatives of the commercial fishing sector and indigenous representatives are working cooperatively to ensure the long-term viability of the industry and dealing with native title matters, including training and job opportunities for indigenous people. It just shows what can be achieved if you sit down and listen to what people are saying to you, and get agreements about the real issues instead of playing base politics.

Section 43A

In this Bill, Queensland is enacting legislation that complies with section 43A of the NTA for mining leases and mining claims, but that provides additional procedural rights than the basic section 43A process. We have canvassed options for a combined section 43 and 43A process that sought to meet the requirements of both provisions, but that required a slightly lesser standard of procedural rights on section 43A land. After consultation with the Commonwealth, Queensland now intends to enact separate, but similar, section 43A and 43 processes. The Commonwealth made it clear that it was necessary for an enhanced section 43A process to clearly and completely address each of the criteria in section 43A.

It is proposed that the section 43A process will, for the most part, be similar to the section 43 process, except as follows. The right to object will be fully enunciated to ensure compliance with section 43A(4)(b). It will allow consultation and mediation about those matters required by section 43A(4)(d), that is, the impact of the proposed tenure on registered native title rights and interests, including about ways of minimising that impact, about access to the land or waters concerned, and the way in which anything authorised by the Act may be done. It will also include a mutual obligation for negotiation with a view to obtaining the agreement of the registered native title parties to the granting of the tenure. The scope of the negotiations will be defined by enunciating the criteria that the tribunal must or may take into account in determining the matter. We have borrowed concepts from section 39 of the NTA to assist the tribunal in making its determinations, but in a two-tier fashion which separates those matters which must be considered from those relevant matters which may be taken into account. It expressly excludes a determination being made about matters relating to the profits or royalties of the mining venture.

Section 43

Queensland proposes a section 43 process that complies with section 43 of the NTA, but that adapts and extends the minimum requirements of that provision to suit Queensland—in other words, a Queensland model, a Queensland approach to suit Queensland's situations. The main features (that differ from section 43 itself) are as follows—

Notification—three months

The applicant mining company notifies (including public notice) up to three months before lodging its mining lease application. There will be an "opt out" provision for registered native title claimants who do not object to the grant of the tenure. There will be an overlap month, after the three-month period, to allow claims to be registered. This will be the first month of the negotiation stage.

Consultation and Negotiation—three months

The parties may agree on the role that the Government party will play in the process. During the first month (the overlap month) the applicant must consult the registered native title parties about the details of the project. This will require the presentation of the same information that goes to ordinary title holders. The registered native title parties must then detail and document the effect of the tenure on registered native title rights and interests. There will be some clear criteria established for how the parties should approach the negotiations and what they should negotiate about. The tribunal will have power to adjourn the hearing for three months (maximum) if the applicant or the Government party have not approached the negotiations in an honest attempt to reach agreement. If the registered native title party has not approached the negotiations in the same spirit, the tribunal can still make its determination.

Determination

This will be combined with the hearing under the Mineral Resources Act 1989 to ensure that there is only one recommendation to the Minister for Mines and Energy about the grant of the lease.

The package of measures in this Bill represents a streamlined process for dealing with mining activity insofar as it intersects with native title matters. This will be the biggest shot in the arm for exploration and jobs in this State for a decade. I have mentioned several times a Queensland tribunal that is to be established to make determinations. This body will be established by legislation which the House will be asked to consider in the very near future. It is possible that the body will be brought into being by amalgamating several existing judicial-type functions which allow for economies of scale as well as increased specialisation and consistency of decision making. That decision has not yet been made, and it will be the subject of consultation with the stakeholders and my ministerial colleagues.

Finally, I would like to address some remarks to members on the other side of the House, and especially to the Leader of the Opposition. I ask the Leader of the Opposition to consider this. The Bill represents a new beginning for the mining industry. It represents a firm and clear foundation for the dignified resolution of native title matters on two levels—one pragmatic and one driven by principle.

From my discussions with people on all sides who conduct successful resolution of native title issues, this Bill largely reflects what they now do in the way they approach negotiations. In that sense it is pragmatic legislation.

If there are parties who, for reasons of their own, choose to follow the path of litigation at all costs, then that is their business. But I suspect that they will be a rapidly diminishing species and will not be doing their shareholders, or their constituents, any favours. This is not pragmatism. This approach is designed to get the issue of native title out of the courts and resolved by negotiation. There is a tribunal, if agreement cannot be achieved, to resolve it quickly and effectively. The time lines that are set out in this legislation will ensure it. Let me say again that my Government is about jobs. This legislation is about getting the jobs back into the mining industry and the businesses which depend on it. It is about getting the jobs back into the regions where the mining industry is so important to the local economy. If this is pragmatic then I am very happy to lead a pragmatic Government.

Let me talk about principle. On the level of principle, my Government is committed to establishing a regime that is nothing short of fair and balanced and equitable. In this light, I draw the attention of the Leader of the Opposition to the recent Damascus-like experience of the Prime Minister in relation to reconciliation between all Australians. If the Prime Minister can establish a Minister for reconciliation in this country, then surely the Opposition can adopt a constructive, positive attitude to resolving the issue of native title. If the Prime Minister can see the error of his ways, so can members opposite. If they do not, they will be marooned in a barren and mean-spirited ideological wasteland, while the rest of Australia passes them by. Queenslanders and other Australians are sick of the politics of native title. They want a model that will work, and we have delivered that model to the Parliament today.

Australians are watching Queensland at this moment. They are watching to see whether Queensland, which has been the arena for all the momentous native title decisions and developments, can rise to the occasion and settle this matter fairly without a grubby political brawl. That is what they are seeking. Members of this Parliament should not be sidetracked by anything the Leader of the Opposition might pull out of his back pocket. I suspect the Leader of the Opposition might be tempted to try to reduce this legislation to a bare minimum procedural scheme. The time for divisive tactics is finished. This morning in this House we saw the Leader of the Opposition attack this legislation before he had even seen the detail of it. The people of Queensland expect better than that, and so do I. I ask members of this House to keep their attention focused upon the big issues involved here and not to play petty politics.

Let me close by paying tribute to the representatives of the many business and indigenous organisations who have participated in the recent discussions. I expect to hear from them again when they have had the chance to fully consider all the provisions of the Bill, with which they were provided earlier today, and I welcome their comments. It is important to understand that, during this process, there was a constructive and positive attitude adopted by the pastoralists, the Indigenous Working Group and the Queensland Mining Council, all of whom represented their interests with dignity, and they represented their interests well. I also wish to acknowledge the untiring work of the Native Title Task Force in my department in developing this legislation. In particular, I acknowledge the hard work of Terry Hogan, Paul Smith and his team. In fact, some of them worked so hard that, last night, a couple of them did not go to bed; they worked to get this legislation before the House today. It is important that I acknowledge the contribution that they have made.

This Bill offers a workable solution. It is a solution that is available now to offer fairness and balance and to drive the creation of new jobs. It is the only solution that has been arrived at as a result of consultation in Australia. That is why I urge the Federal Government and the Senate, the Democrats and the Independents to ratify this Bill as soon as possible. I commend the Bill to the House.
