Speech by

Hon. PETER BEATTIE

MEMBER FOR BRISBANE CENTRAL

Hansard 11 November 1998

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

Hon. P. D. BEATTIE (Brisbane Central— ALP) (Premier) (12.39 p.m.), in reply: I thank the honourable members for their contributions. I will go through the comments of each individual member and then perhaps after lunch I will come back and respond in detail to each of the questions raised by the honourable member for Gladstone, because I think that they are questions that need to be answered appropriately.

At the outset, it is important to say that, from the Government's point of view, this legislation is honourable, it is principled but it is also workable. We have sought to consult with the community and we have sought to come up with a piece of legislation that will work. That is what is very important. I thank the Scrutiny of Legislation Committee for its analysis of the Bill, which I think accurately captured the intent of the legislation. I also want to thank all members for their contributions. In passing, I note that the Scrutiny of Legislation Committee has indicated that the Bill appears to comply with the Federal Native Title Act. That is important in terms of getting this legislation into law. I also note the recent comments of the shadow Minister for Aboriginal Affairs, who described my Bill as a "template for the rest of the nation".

I further note the difficulties that Western Australia is experiencing in getting the Western Australian Upper House or, for that matter, the Federal Government to accept its minimalist approach. Suggestions that Queensland is seeking to undermine the Western Australian legislation are laughable. That claim was made and I simply dismiss it out of hand as nonsense. The Court Government is doing a great job at that all by itself.

In that context, the member for Broadwater might think very carefully before holding up the Western Australian model as the way forward for Queensland because that will not pass the four key tests required to make this law. If we were to go in the direction suggested by the member for Broadwater we would end up simply going backwards.

With the support of this House, the model of native title that my Government has put forward could set the standard for State legislation around the nation because it is fair, it is equitable and it is workable. It would be a high standard, a moral standard, a standard that will finally place native title in a workable framework and would enable us to put some of the politics behind us.

Let us return to some of the issues that were addressed by individual members. Yesterday, in a somewhat disappointing speech, the Leader of the Opposition described this Bill as an historic failure. That is what I call "leading with your chin" because if ever there was an historic failure on native title it occurred during the term of the last Government headed by the member for Surfers Paradise. I do not have any pleasure getting into the history of this matter and I would prefer not to even deal with it, but since we have had some of this distorted rhetoric I find it necessary to set it straight for the sake of the record.

The Leader of the Opposition distorted the facts. When he was in Government he sought to scare ordinary householders. He ignored due process to try to milk native title for as much political mileage as he could get but he barely got a political yard out of native title, let alone a mile. The Leader of the Opposition finds only one part of the Bill unacceptable but he will oppose all of it. What he finds unacceptable is the three-month period for notification. That is a standard feature of the Howard legislation. However, the Leader of the Opposition will oppose it.

He acknowledges that we have removed an explicit requirement for "good faith" negotiations on pastoral lease land but refuses to admit that this minimises the potential for abuse of the process. It helps the mining industry. The mining industry supported and welcomed this during our meetings and discussions. I thought there would have been some acknowledgment of our assistance to the mining industry. The alleged complaint is that these negotiating rights are greater than those available to pastoralists. Yet the Leader of the Opposition himself admitted in this debate that his alternative provisions—which we have yet to see—will still deliver rights which are "significantly greater than pastoralists...but they are only procedural rights." I fail to see the distinction. If one is about equal rights, does this mean that the timber-getter who has a permit to log a pastoral lease should have the same rights as the pastoralist regarding a mining application? This is what the Leader of the Opposition seems to be arguing. The answer is: of course not. There are different rights to land and different procedures that flow from those rights.

The point is: is the Leader of the Opposition really suggesting that all those with an interest in land have equal rights flowing from that interest? That is just nonsense. I would hope that we can move on because I am sick of the politics about native title. I think Queenslanders are sick of it, too. What Queenslanders want is a solution and something that will work. That is why I sat down with the three stakeholders—the pastoralists, the miners and indigenous Queenslanders—to try to come up with a solution that would work and that would pass the four tests.

I think all members of the House have to understand that the legislation has to pass four key tests before it becomes law. The first test is the Queensland parliamentary test, that is, being passed by this Parliament. The second test is that the legislation has to be approved by the Federal Government. That is why my officers have been in constant contact with Federal officers to negotiate a range of issues. Later on I will be dealing with a range of amendments which have been suggested by the Commonwealth. These are very procedural minor amendments which have been suggested by the Commonwealth so that this legislation can become law.

The third test is the test of the Senate. There is no point beating our chests here and carrying on like gorillas. We need to have an Act that will work. We need to have a piece of legislation that will pass not only this Parliament and the Federal Government test but also the Senate test. The fourth and final test is the High Court test in which any legislation that we pass will not be overruled by the High Court. Those four tests provide a difficult maze for any Government to weave its way through. In my view, this legislation passes those four tests and achieves the impossible, if you like. That is why it is important that we have that degree of goodwill. We put aside the bunkum and the nonsense and the politics and the cheap point scoring that we have seen in relation to native title. This has been a genuine effort to come up with a workable outcome. That is the way we have done it.

Let me deal with what was said by Dr Watson, the Leader of the Liberal Party. Dr Watson tried to make the point that there are some vagaries about the Bill. He complained about vagaries in our definition of "negotiation" in the Bill. That is certainly not a comment I have heard from the mining industry. The mining industry does not believe that there are any vagaries about it at all. There are no vagaries about it. It is simply not true. It is just wrong. We really have to ask, "Will the real Dr Watson stand up?" because if the real Dr Watson had delivered the member for Moggill's speech, even his friend Sherlock Holmes would have struggled to find any content within it in terms of the detail of this Bill.

The member for Moggill claims that we are putting this hybrid model up for no good reason. For the life of me! The good reason is to get something through that will work and provide certainty and stability and pass the four tests that I have already outlined to the House. Members opposite refuse to recognise the fact that if we had done nothing—and let us remember this—the Howard Government native title scheme would have continued on in Queensland and the mining industry would have revolted. That would have happened because the right to negotiate would have remained over all mining tenures, including exploration. That is why we are doing this. That is the good reason why we are doing this. As I said, it is about coming back with a fundamental approach that will work.

If we had pushed the minimalist approach the indigenous community would have walked away from the system and taken up their battle through common law action. I invite honourable members to think about that. These would have been common law actions which would have delayed the process even further. Both of those alternatives would not have been in the interests of the State, in the interests of job growth or in the interests of the future of the economy. That is why we had to do something.

I am disappointed that the Leader of the Liberal Party took that view because being confronted with those choices was a good reason to negotiate a compromise. I should again put on record today my appreciation to the Indigenous Working Group, to the Mining Council and to the pastoralists for their participation in the stakeholder meeting that I called. We did not all agree in the end but, as I said right at the outset and as I have said subsequently since, I did not expect every group to agree because when it comes to an issue such as this, when we have views that are so far apart, the best that we can

do is get the model that will pass the four tests—a model that the parties can live with. That is what I sought to do.

If Dr Watson was genuinely concerned about the ability of parties to hold up projects he would not be advocating a head-in-the-sand approach which would guarantee that projects would be frozen for years upon years. That is what would have happened if we had not introduced this legislation. Contrast this with the approach adopted in my Government's Bill which triggers a procedural clock that cannot be stopped unless the parties agree to do so, subject to other common law rights. That is why the four-stage test will be passed by this Bill, in my view.

The Opposition Leader has tried to play on fears of delays and injunctions. What a great irony! The coalition approach practically guaranteed that there would be delays and injunctions. That is what I have tried to do—to take the lawyers out of this as much as is humanly possible. My Government is about putting in place a strict, but fair, procedural regime that brings the parties to the negotiation table. Surely that is what we should do. My approach is underlined by precise definitions of the obligations on all the parties, including native title claimants. They have precise obligations under the Bill. There are restrictions on what they may claim and what they may raise, and a failure to work constructively towards an agreement will see any party losing out in the end. That is specifically provided for in the Bill.

I have to say that I listened to the debate yesterday with increasing dismay and wondered whether I was in a time warp. Members of the Opposition seem to be obsessed with the issues that were debated in the lead-up to the passage of the Commonwealth Native Title Act. They are living in the past. They refuse to acknowledge the passage of time or, more precisely, the passage of amendments to the Commonwealth Native Title Act. I almost despair of the Opposition. When will those opposite face the fact that the Native Title Act is law? That is what we have to accept from the Commonwealth. Whether we like it or not, it is the law. Whilst it may amuse them to dwell on the Senate debate, it finished four months ago. We are now in Queensland, in November 1998, and we are debating State legislation which is bounded by the framework of the Commonwealth law. We are talking about a solution and we are talking about certainty. As the debate progressed the contributions became more colourful.

Sitting suspended from 1 p.m. to 2.30 p.m.

Mr BEATTIE: Prior to the luncheon recess, I said that the member for Tablelands told us that native title had stopped cows from getting to water. Again, the law is that pastoral rights have precedence at all times.

Mr Nelson interjected.

Mr BEATTIE: I understand that. I am just saying that that is what the law says.

The member for Burdekin gave us an interesting but entirely fictitious rendition of the history of the Whitlam Government. How one could portray the events of a quarter of a century ago as relevant to this debate is a bit beyond me. Once again, that was illustrative of the level of criticism. It is important that we look at reality and at how this legislation should apply.

Several Opposition speakers referred to cultural heritage, notably the member for Indooroopilly. Beneath the obvious scaremongering, the Opposition has missed the point that I made in my second-reading speech that the Government is already reviewing the cultural heritage legislation. We have quickly identified the problems with this legislation and are working to put in place better procedures that will deal with these issues fairly and efficiently. I remind the coalition also that the review is being undertaken with the maximum possible public exposure and consultation to ensure an outcome that is balanced and reasonable. Suggestions made yesterday that there is already a defined outcome in relation to this cultural heritage legislation are fictitious and untrue.

Listening to the Opposition yesterday and today, I was reminded of two literary figures. The first was Pirondello, who framed that lovely play about three characters in search of an author. The second one was the poor Spaniard, who went about the place flogging his near dead horse and tilting at windmills. Speaking of horses, this Opposition has been in place for just four months but already it appears, based on this debate, to be well on the road to the knackery. Forgive me for saying that, but after its performance on native title I can be forgiven. It has not entered into the spirit of a positive outcome, which is what I thought it would do.

In my second-reading speech introducing the Bill into the House, I said that the Government would welcome comments on the native title regime it establishes for mining approvals. In the few weeks since introducing the Bill, I and my native title team have conducted public information meetings in several major regional centres, including Cairns, Townsville and Rockhampton. I attended a State council meeting of the Queensland Mining Council to spell out, along with the Native Title Task Force, the detail of the Bill. Attendances at those meetings ran into the hundreds. The debate was vigorous, informed and helpful. Perhaps more than a debate, it was a discussion and a consultation.

As I indicated, we have held detailed briefings with representatives of the Queensland Mining Council, the Queensland Indigenous Working Group, the small mining sector, pastoralists, fishing representatives and other interested parties. We have also briefed the Independent members of this House. I thank both the Independent member for Nicklin and the Independent member for Gladstone for the keen interest they have taken in this legislation. I put on record that both of them have spent a considerable amount of time going through the detail of this complex legislation. The people of Queensland need to appreciate that both of the Independents have put in what I believe—and I am not trying to sound presumptuous—is the maximum effort required to deal with this legislation. People need to be aware that they have gone to that considerable effort.

Importantly also, my native title team has held further detailed briefings with Commonwealth officials. I remind the House that the legislation must pass the test of the Commonwealth Minister and Senate for it to become law in Queensland. Commonwealth officials have given us detailed comments, and many of those are reflected in the technical amendments I will propose to the Bill. Although three clauses are amended and one additional clause is added, there is a large number of amendments, a significant number of which have come about as a result of this consultation with the Commonwealth. They are technical. Nevertheless, I felt that since that approval was necessary we should be listening to the Commonwealth on those technical matters.

As I fully expected, comment from many sources on this complex legislation has been very detailed and lengthy. Submissions have run to hundreds of pages, and I am grateful that all commentators have applauded the depth of thought that has gone into the Bill. Unfortunately, I cannot offer the same compliment in respect of the contribution to this debate made by the Leader of the Opposition. He has not given this matter the thought that is required.

Apart from that, I place on record my appreciation for all of those who provided comments. I have accepted some of the suggestions made to the Government and will move on them in Committee. But some of the suggestions would have changed the fundamental direction of the legislation. Although I have given them full consideration, I have not included them, because they would have moved away from the heart and soul of the legislation.

In this context, I ask the House to note that the model proposed by my Government for dealing with native title has also received positive comment at the national level and interstate. As I said before the luncheon recess, the Federal Labor spokesman for Indigenous Affairs has said that the Queensland model ought to be adopted as the template for a national approach. The Liberal Western Australian Government is going to fail in its attempt to introduce a scorched earth native title regime in that State. It will fail the four-point test that I referred to. The Court Government faces determined opposition from many fronts, including the Upper House of the Western Australian Parliament and prominent churchmen. It is no wonder the Leader of the Opposition in this House has abandoned his plan to introduce Western Australian style amendments to this Bill. He would have been left looking very foolish had he tried to continue to do so.

The Queensland Government is determined to get this legislation right. It is very complex and detailed, but we are determined to do our best to get it right. I do not apologise for the detail in the legislation nor for the amendments that I will move, bearing in mind the level of consultation that I referred to before. In fact, by way of illustration of the level of consultation, I point out that, only recently, there was a teleconference which lasted for 11 and a half hours between the Native Title Task Force and Commonwealth officials dealing with these technical amendments. In addition, there has been the consultation that I spoke about in relation to the Queensland Mining Council and the Queensland Indigenous Working Group. As I said, I propose to get these matters right, because it is important to get the legislation right for the future of Queensland—for all of the people who live here now and the generations who will come after.

Mining activity is a critical sector of the Queensland economy. Similarly, native title represents a range of important social and economic issues which my Government is determined to address comprehensively and fairly. I stress the word "fairly". Most of the amendments that I will be proposing to the Bill are of a purely technical nature, reflecting parliamentary drafting protocols and clarifications sought by the many commentators on the Bill, including, as I said—and I stress again—Commonwealth officials.

I want to make it clear again that none of the amendments that I will move alter the fundamental principles of the legislation that I introduced into the House a fortnight or so ago. The more I have discussed the legislation with many people and organisations and the more I have listened to their comments, the more satisfied I have become that we have in Queensland established a truly balanced way of dealing with native title and its relationship with mining development.

As I attended the meetings that I referred to before—in Cairns, Townsville, Rockhampton and Brisbane—that was very much the spirit of the response that I received from those who attended. As I said, the more I have discussed the legislation with many people and organisations and the more I have listened to their comments, the more satisfied I have become that we have in Queensland

established a truly balanced way of dealing with native title and its relationship with mining development. Those words were worth repeating.

To coin a phrase, no-one has laid a glove on the integrity of the regime. Nothing I have heard in this debate from the Opposition changes my view that the Government has, as best as it possibly can, got it right. Nothing changes my view that the Opposition simply does not understand native title and simply sees it as a vehicle for political advancement— as a vehicle for cheap political stunts. That is not the way to find a solution.

At the end of her contribution the member for Gladstone raised a number of questions, and I intend to answer them to the best of my ability. However, if the member wants to raise other matters, I am happy to deal with them at the Committee stage. I may not be answering these questions in the order that the member raised them, but I will go through the issues anyway.

The first question that was raised related to the definition of "claimant". The registration test in the Commonwealth Native Title Act must be passed before claimants can get access to the provisions of this Bill. At least one living member of the claimant group would have to prove to the satisfaction of the registrar that they were for some reason prevented or obstructed from exercising a traditional right of access. I am talking here about the Commonwealth legislation. It is impossible to see how the national tribunal—and I stress again, it is the national tribunal—could be satisfied that physical connection lost more than a century ago is sufficient to justify registration.

The member opposite also asked why mining has to carry the compensation for past injustices. The answer is that mining will not have to pay for past injustices; the State is liable for any such compensation. In terms of the agreement between the Commonwealth and the State, it will be on a 75/25 split. Mining will be required—and this is the point—to compensate for the future impact on native title that it may propose. That, I think, is the answer to those issues that were raised.

In terms of the access to legal assistance for pastoralists, there are two avenues: the first is legal aid and the second is the Commonwealth Attorney-General, under a new provision in the Commonwealth Native Title Act which provides for this. They are the two relevant sections. A question was raised about the parameters that will be set for the tribunal's consideration of "any other matters" in proposed new section 608. Proposed new section 608 limits the scope of "any other matters" to those things which the tribunal must consider under proposed new section 601. In other words, "any other matters" must relate to, and is limited to, the effect of the proposed mining lease on the enjoyment of registered native title rights and interests and the effect of the proposed mining lease on the economy of Australia, Queensland and the region.

The member for Gladstone also asked when the other pieces of legislation involving infrastructure will be introduced. Compulsory acquisition of native title will be dealt with in separate legislation early in 1999 as the next stage in the State's native title provisions. As I mentioned before, cultural heritage will be dealt with in the second half of 1999, or earlier if there can be agreement. Bearing in mind the complex and sensitive nature of this issue, I expect that the consultation with the various groups will take a considerable period and I expect that towards the end of 1999 is a more reasonable time. The tribunal legislation will be introduced in the current sittings.

I should say that I had hoped that we could have introduced and passed that legislation this year. However, because it took a lot more time in terms of going out, consulting, working it through and talking to the Commonwealth, we have not been able to finalise it. At this stage the intention is that, subject to prevailing circumstances, such as how much time I get after the Premiers Conference, I will take it to Cabinet next Monday and caucus next Monday afternoon, and hopefully I will introduce it into the Parliament next week. It will not become law this year. As the member would understand, next week is the last sitting week, so it would not be debated in the Parliament until March next year, the last week in February or whenever we decide to sit. There needs to be plenty of consultation in relation to that.

The issue of compensation in kind was raised and I gave a part answer before on the record, but I think I should give the member for Gladstone a more comprehensive one. The Bill provides for non-monetary compensation in two places: firstly, where agreement is reached without the need to go to the tribunal, and we have seen that in a number of instances; and, secondly, where agreement is not reached and the tribunal is asked to determine compensation, it can order non-monetary compensation if the native title holders ask for it. The need for the native title holders to ask for it is based on the Commonwealth Native Title Act. Again, it is a Commonwealth provision.

In terms of concern about damage likely to be caused by D9s during exploration, the member for Gladstone is quite right; this is a sensitive issue. The native title provisions for low-impact exploration permits allow only the minimal clearing required to establish a drill pad. That is all that is allowed. That is pretty clear. The consultation with native title parties must occur before entry and access to any Aboriginal sites. In any event, Queensland's cultural record Act still applies to the exploration permit. Further, the Mineral Resources Act requires any explorer to rehabilitate the land after exploration.

The member for Gladstone asked whether there was any chance of time limits spinning out for consultation and negotiation. The answer to that very simply is this: although there can be more than one adjustment of the three months if non-indigenous parties fail to comply with the law, delay might continue until the mining company or the State negotiate properly. Clearly, the mechanisms and time lines here in this Bill are designed to overcome those sorts of issues.

I conclude my remarks by saying two things, and I have said these at the public consultations. If there are two proposed new sections in this Bill that sum up the heart of how it will work in addition to the strict time lines which we talked about in these native title booklets—by the way, I table two of those native title booklets titled The Queensland Response for the information of members and for the record of this Parliament—they are proposed new section 590(3), which says—

> "A consultation and negotiation party must make every reasonable effort to reach agreement."

The second part of it deals with the tribunal. As honourable members know, when we are talking about exploration there is the consultation process, there is not a right to negotiate. We are talking about the issue of mining leases. So negotiation is the first stage, then if that fails, we get to the tribunal. The tribunal in proposed new section 608(1) says—

> "In making its native title issues decision, the tribunal must take into account the effect of the proposed mining lease on—
>
> (a) the enjoyment by the registered native title parties of their registered native title rights and interests; and
>
> (b) the economic or other significance of the proposed mining lease to the following—
>
> (i) Australia;
>
> (ii) Queensland;
>
> (iii) the region;
>
> (iv) the inhabitants of the area in which the land the subject of the proposed mining lease is located."

That is a must. In proposed new subsection 608(2) a number of things may be taken into account, and they are basically the remnants of section 39 of the Commonwealth Act. If I just draw the attention of members to those two proposed new sections—608 and 590—and the relevant subsections within them, then they will understand the spirit of this legislation.

Finally, I know that this legislation is controversial. The issue of native title has been a political football in this country for far too long. It was always going to be a controversial piece of legislation. That is why I implore all members of the House to give it serious consideration. We have sought to find a solution that is not only fair, reasonable and workable, but is principled and moral and one that will stand this State Parliament in good stead for generations. That is what this legislation is all about; it is about not just having a heart but having a workable solution to make that heart work. That is why I think this legislation is important. That is why I think it passes the four tests that I continue to refer to: the Queensland Parliament, the Federal Government, the Senate and the High Court. I would seek the support of all members in passing this legislation.
