Speech by

Hon. PETER BEATTIE

MEMBER FOR BRISBANE CENTRAL

Hansard 19 November 1998

LAND AND RESOURCES TRIBUNAL BILL

Hon. P. D. BEATTIE (Brisbane Central— ALP) (Premier) (7.30 p.m.): I move—

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

I am particularly proud to introduce this legislation, because it is part of my strategy to fix the issue of native title, which is what I set out to do. It is a most important step towards the completion of my Government's commitment to introduce a comprehensive package of legislation dealing with native title in Queensland.

I remind the House of the action that the Queensland Labor Government has taken to date in this critical matter. In July, the first piece of legislation introduced by this Government was the Native Title (Queensland) State Provisions Act 1998. That legislation settled once and for all the question of whether native title was extinguished by the granting of certain tenures. It also put paid to the scare tactics on this issue so beloved of the Opposition. We moved quickly and fixed the issue.

On 11 November, only one week ago, this Parliament debated and passed the Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998. That legislation integrated the way the State deals with native title matters into the Mineral Resources Act. Again, we moved to fix the issue of native title. In the debate on that legislation, I stressed that it was the result of a comprehensive process of consultation with all major groups that would be affected by it: the mining industry, the representatives of the indigenous community and the pastoral industry. I also flagged the Government's intention to introduce legislation to establish a Queensland-based body to hear and determine mining applications, including where native title issues are involved.

I would like to remind the House of the technical and constitutional background to this legislation and how we are fixing the issue. Section 26 of the Commonwealth Native Title Act 1993—which I will refer to as the NTA—provides that the right to negotiate applies to the creation of a right to mine. This includes not just the mining leases, but also tenures that allow exploration and prospecting and the extraction of petroleum or gas. However, the grant of such tenures may be excluded from the right to negotiate if the Commonwealth Minister approves alternative State provisions that comply with requirements outlined in sections 43 or 43A of the NTA. These were the subject of the Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998, passed by Parliament on 11 November 1998 as part of our fix-it strategy.

In particular, the Commonwealth conditions require that: objections be heard by an independent body; that body when determining objections include a member of the National Native Title Tribunal, the NNTT; and there is provision for compensation for the effect of an Act on native title and that any dispute about compensation must be determined by an independent person or body. Without the legislation establishing the body to hear objections and determine compensation, the State's native title regime will not function at all.

This legislation creates the tribunal contemplated by the Native Title (Queensland) State Provisions Amendment (No. 2) Act 1998 and is part of our solution to fix the problem. The tribunal is known as the Land and Resources Tribunal. The legislation abolishes the Warden's Court under the Mineral Resources Act 1989 and transfers its functions to the tribunal. However, the warden's determinative functions under that Act are not altered.

It is important that the new tribunal is seen to have appropriate expertise. For that reason, the president of the tribunal is a position equivalent in work and salary to a Supreme Court judge. However, the appointee will be entitled "president" rather than "judge" and will not be appointed to the Supreme Court as such. The president will be assisted by a minimum of two persons equivalent to District Court judges—but, again, they will not be members of the District Court—who are deputy presidents of the tribunal. Collectively, the members are known as presiding members. Their appointments are, like judges, for life, subject to retirement at 70 years.

In addition, there are other appointments to a panel to assist the presiding members. There will be three officers appointed to five-year terms, known as referees of the tribunal, but they will not have the power to vote. These positions are essentially advisory to the work of the presiding members. They will assist in outcomes and they will assist in making this process work. They will be filled by eminently qualified people, but will not have voting rights on the tribunal. I stress that they will not have voting rights on the tribunal. I repeat: the referees, like all panel members, will be eminently qualified people, but they will not have voting rights on the tribunal. They will be eminently qualified, they will be independent people, but they will not have voting rights. They are there to assist in the streamlining and working of this process. They are a part of our solution to this whole problem.

The first of the referees is the mediation referee, to reflect the important role that mediation plays in the State's response to native title issues and in keeping the State's "negotiation not litigation" policy at the forefront of the tribunal's processes. This person will need to be a legal practitioner of at least five years' standing, with sufficient understanding of alternative dispute resolution principles and practice. In other words, he or she will be a person who can help to facilitate an outcome.

Secondly, there is the indigenous referee, to reflect the importance of cultural heritage and indigenous issues in the work of the tribunal. This person will need to have a high level of professional expertise in, for example, the resolution of cultural heritage issues and a record of publications in a relevant field in journals of high academic standing, or at least five years' experience in a managerial or administrative role. Again, that will be a highly qualified person.

Thirdly, there is the mining referee. This position replaces the position of the Mining Warden, which is located in the portfolio of the Minister for Mines and Energy. The Mining Warden position in that Minister's portfolio will cease to exist. The mining referee will be a new position specific to the tribunal, which will be located in the Justice portfolio under my colleague the Attorney-General and Minister for Justice and Minister for The Arts. The mining referee must be a lawyer of at least five years' standing, with knowledge of the mining industry and other relevant experience.

Additional and suitably qualified members of the tribunal, known as non-presiding members, are to be appointed by the Governor in Council or ex-officio from the Land Court and the land tribunals. These members sit in an assessor role with a presiding member, but, like the referees, they do not have voting rights. I repeat: they do not have voting rights. They are there to assist in making the process work. As members can see, this is a very practical, workable model.

For convenience, the tribunal for a hearing where there is no native title issue can consist of the mining referee alone sitting as a single-member panel or as presiding member and one or more non-presiding members sitting as a multiple-member panel. Whether the proceedings are heard by a single or multiple member panel is dependent upon a number of factors including:

the nature of the mining application concerned;

the complexity of the subject matter; and

the desire of the parties to the proceedings to have the matter heard by a single or multiple-member panel.

Where native title is in issue, all parties have access to a multiple-member panel comprised of a member or members to decide the issue, with additional panel members to assist the presiding member on particular issues such as cultural heritage and the taking of culturally sensitive evidence from indigenous people. As members would know, this is an area of some sensitivity. It is also an area that has caused some delay, which is why it is important that it be dealt with in a way that produces an outcome, but a fair outcome.

The tribunal model is designed to—

ensure that proceedings involving important projects, complex legal issues or substantive legal rights can be heard by a multiple-member panel consisting of at least one presiding member—in some cases the president;

allow the "day to day" proceedings to continue to be heard by a single-member panel because it is necessary to preserve some quick and cost-effective course for the simple proceedings;

have as minimum as possible disruption on the current processes under the Mineral Resources Act 1989; and

meet the requirements of the NTA for the State's native title regime to become effective.

The tribunal will have processes for dealing with cultural heritage aspects of native title matters referred to the tribunal. For example, there will be processes for handling sensitive evidence of a cultural nature to ensure the proper level of confidentiality and respect for the evidence, the persons giving it and the people from whom it comes. The tribunal will also be sufficiently resourced to enable it to travel to regional centres to hear cases and make determinations. That will assist streamlining and speedy decision making. This will be an important factor in its credibility and profile.

Although it forms part of the Justice portfolio, the tribunal will be a separate administrative unit with its own budget and administrative systems. It will report separately to the Parliament through its Minister. This will enable the Minister and the Government to monitor both the pressure on the tribunal and its performance.

In this context I have asked the Attorney-General to establish a review of the operation of the tribunal after it has been in existence for two years and to report to Cabinet on that review so that Cabinet can review how it is performing and make any appropriate changes, if necessary.

Importantly, the independent financial reporting of the tribunal will also facilitate possible Commonwealth funding assistance for it, which my officers are currently discussing with the Commonwealth Treasury. We would expect the Commonwealth to contribute in a significant way in a funding sense to the operation of the tribunal.

The jurisdiction of the tribunal may be summarised as follows—

those functions presently undertaken by the Warden and the Warden's Court in particular under the Mineral Resources Act 1989 and the Fossicking Act 1994 less the penal provisions which are transferred to the courts;

those functions which will be required by the Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998 which provides the alternative State provisions for the Mineral Resources Act 1989 and the Fossicking Act 1994;

an exclusive jurisdiction with respect to the enforcement and interpretation of negotiated agreements under the Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998;

a jurisdiction arising under the Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987; and

the recipient of a future jurisdiction for those future Acts which will be legislated for next year such as hard-rock quarrying and compulsory acquisitions, etc.

The tribunal is styled as a "tribunal" rather than a "court" for solid reasons. Given that the decisions of the tribunal are subject to Ministerial override it is not appropriate that the independent body which is established under the Bill be described as a court. It is for this same reason that the presiding members, while equivalent in all aspects to judges, are not in fact to be appointed as judges.

The Commonwealth NTA requires that a member of the National Native Title Tribunal, or NNTT, participate in the determination of an objection under the ASP. It is my preferred position that the presiding members of the tribunal will also become members of the NNTT. The Bill provides for compliance with this requirement in any case.

In other words, the fact that there was this Commonwealth requirement in effect determined that it would become a tribunal and not a court, because of the need, as I said, under the Commonwealth NTA legislation for the requirement that a member of the National Native Title Tribunal participate in the determination of an objection under the ASP. That was the source of some drafting difficulties for us and caused some angst, which is why we had to come up with this solution. Had that Commonwealth requirement not been in existence, it would have been much easier for us. Nevertheless, because it is in existence, because it is the law, we have complied with it and drafted accordingly. However, I do not want any suggestion of criticism as a result of this matter not being a court but rather a tribunal; it has largely come about because of Federal requirements.

This legislation, as with the State native title regime in general, will not become law until after the legislation has been nominated by me to the Commonwealth Attorney-General. However, unlike the legislation passed last week, only the Commonwealth Minister, and not the Senate, has to be satisfied that the Land and Resource Tribunal is an "independent body" for the purposes of the NTS.

The Bill amends the Acts Interpretation Act 1954 to include the Land and Resources Tribunal and makes necessary amendments to the Fossicking Act 1994, Judges (Salaries and Allowances) Act 1967, and the Mineral Resources Act 1989 to reflect the establishment of the tribunal.

As with the other elements of the Government's native title package, this Bill has been the subject of consultation with the key stakeholders in an unprecedented way. This has not happened anywhere else in Australia. As I said last week, we have involved people from the fishing industry and people such as small miners, who have never been involved in this process anywhere else in Australia.

It has also involved the other stakeholders that I have mentioned—the mining industry, the pastoralists and indigenous leaders. I am confident that it has their support.

Consultation has occurred with representatives from indigenous, pastoral and mining interests through and outside the Native Title Working Group. The model proposed in the Bill was discussed with Commonwealth officials. I must also observe that the tribunal is integral to the State native title regime, which will have a beneficial impact on stalled mineral development projects— stalled, I might add, by the deliberate inaction of the Leader of the Opposition when he was in Government.

In the medium to long term, my Government's response to native title will provide an additional revenue base to the State. Today, I was intrigued to hear the Leader of the Opposition trying to blame our native title legislation for delays in Century Zinc, when in fact the legislation does not come into effect until it is approved by the Commonwealth. The existing law that operates at the moment, outside the validation legislation we passed initially, is in fact a law passed by the coalition at a Federal and State level. As I said, the only exception to that is the validation legislation of leases between 1994 and 1996. This legislation will also have an important impact on job generation which, if the Opposition has missed the point, is what my Government is about.

I said earlier that this legislation, and indeed the whole package of legislation containing the Queensland native title response, has to be referred to the Commonwealth Attorney-General. It would be reasonable to expect this process to take some months. Therefore, the introduction of the Queensland regime may take a little while for reasons beyond our control. In the meantime, let me make one point very clear: I expect this regime to be operational by June next year—that is our program—and if there is any delay that will not be our fault, that will be the Commonwealth Government's fault. Nevertheless, there is another point that I want to make very clear. No-one should be under any illusions that they can get away with delaying negotiations in which they might currently be involved in the foolish hope that they might have a better chance under the State's new rules. This warning applies equally to any party—mining company or indigenous interest.

The opportunities for and the potential of Queensland are without limit. However, the patience of this Government does have limits. There are several projects currently bogged down in apparently fruitless talks, such as the NORQEB power dispute. Over the Christmas break, I will be keeping a close eye on developments in these matters—and up until then as well. My Government will take whatever action is necessary if resolution of these issues is frustrated by the unreasonable actions of any party. I give a very clear warning tonight in the Parliament: we will not sit by and allow these projects to be delayed by unreasonable actions of any party. Everyone involved has now been put very clearly on notice. No-one in this Parliament or in the community should be surprised if the Government moves quickly, as we are doing, to resolve some of these outstanding issues.

The State's native title response that I have developed over the past few months is based upon fairness—fairness of principle and fairness in process. I noticed in the Australian today that the Court Government in Western Australia is still trying to play a very draconian role. As I said, I noticed in the Australian that the Upper House in Western Australia is considering amendments adopted by the Queensland Parliament and sees our Queensland legislation as a precedent for dealing with these sorts of issues. The Premier of Western Australia is behaving in a very belligerent way, trying to resist the Upper House in Western Australia pursuing our legislation as a model and is in fact threatening to withdraw his legislation. If he does so, the full right to negotiate applies in Western Australia. That belligerent, childish attitude will not achieve what he wants. What he should do is come up with the workable, practical model that we have implemented and follow the advice of the Upper House in Western Australia.

As I said, the State's native title response, which I have developed over the past few months in consultation with the stakeholders, is based upon fairness—fairness of principle and fairness in process. But at the end of the day, any party who does not play fair can expect a measured, fair but very clear message from my Government.

Finally, I thank again the major interest groups for their comments on this legislation. I acknowledge also the efforts of the officers of my department, who have again redefined the working day so that this legislation can be brought before the Parliament to meet the commitment I gave four months ago. I stress that I promised the people of Queensland that we would have this legislation in the Parliament before the end of the year. I promised the people of Queensland that we would legislate to resolve and fix this issue. This is the third piece of legislation that we have introduced into this Parliament—having been in Government only for about four and a half months—to fix this issue of native title. I have kept my word to the people of Queensland. We have delivered a model to fix this issue. I commend the Bill to the House.
