Speech by

Hon. RUSSELL COOPER

MEMBER FOR CROWS NEST

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

Hon. T. R. COOPER (Crows Nest—NPA) (9.18 p.m.): I rise to take part in the debate on the Native Title (Queensland) State Provisions Amendment Bill (No. 2) to put the case not for myself or anyone on this side of the House necessarily but for the pastoralists out there—the landowners and the farmers—who are the people who have been affected by this stupid drivel ever since it came in back in 1993. That is exactly what it is.

Perhaps we could have lived with Mabo, but then came the Wik decision, which was one of the most divisive and disgraceful decisions and which has set this country on a divisive path. That is the tragedy. People talk about reconciliation, but I do not know how on earth anyone will ever get reconciliation after a decision such as Wik, which has been followed by legislation. Poor old "Little Johnny" gets the blame for just about everything. Those opposite tend to forget that it was Paul Keating who implemented Labor policy on top of the Mabo decision. That is a fact, and we all know that. To have to listen to the high, pompous, holier than thou drivel coming from members on the other side of the House is enough to make anyone sick, because this is not going to resolve the issue at all. Government members should let this through, and then they will see just how divisive it is. Not one member opposite has offered his or her frontyard or backyard. There is no way in the world that they would do that. If it is going to be fair to all, they should offer up their own backyards and see how they go.

I want to outline some of the background behind the right to negotiate and this Bill before the Parliament. When the Native Title Act was developed by the Commonwealth in 1993, Aborigines were given a unique right to negotiate over mining projects on native title land. Achievements of benefits from, and even a veto over, mining projects had been a goal of Aborigines both in development of the Act and historically. The fate of Aboriginal influence over mining had been a central factor in major land rights cases in the courts prior to Mabo, and it was the core issue in the development of the Northern Territory Land Rights Act in the 1970s, when Aborigines achieved a veto over mining. It was Gough Whitlam and Labor, though, who wanted the Northern Territory model to apply nationwide.

The right was granted for mining projects on native title land in 1993 by the Commonwealth, ostensibly on the premise that it needed to provide Aborigines with special benefits in the Native Title Act to make up for what was assumed at the time to have been near wholesale extinguishment of native title. Also, it was said to be necessary because the Constitution demanded that any Commonwealth legislation in relation to Aborigines had to be beneficial, and there was allegedly concern that, without a right to negotiate, the Native Title Act might not meet the constitutional requirement.

It is arguable whether these explanations were genuine or simply an artifice to enable the ALP to deliver on long-held policy. The right to negotiate thus set in place did not attract a great deal of attention at that time in Queensland, because it was then widely assumed that native title could exist principally only on vacant Crown land, and only approximately 2% of Queensland was vacant Crown land. It was always going to have a massive impact in Western Australia, where 40% of the State is vacant Crown land and where historical reservations in pastoral leases protecting some elements of native title made mining on pastoral land subject to the right to negotiate from the very beginning.

The bulk of Queensland—some 75%—is held under various pastoral and agricultural tenures that do not carry WA-style native title reservations, and it was assumed then that neither native title nor the right to negotiate would apply here because a majority of the High Court had held in the Mabo judgment of 1992 that, while native title had survived settlement, it had largely since been extinguished by inconsistent grant. The majority held that, where titles which provided exclusive possession had been granted, native title had been totally extinguished. Where grants were less than exclusive, possession of native title was extinguished to the extent of the inconsistency. The majority also held that freehold and most forms of leasehold, including pastoral leasehold, were grants of exclusive possession which had extinguished all native title except where the leases held carried specific reservations, as in Western Australia.

The issue became of significant interest in Queensland when the High Court ruled early in 1996 that the National Native Title Tribunal had erred in rejecting the Waanyi native title claim over some pastoral land in far-north-west Queensland. The claim also covered the Century Zinc ore body. The court said that the issue as to whether or not pastoral leases extinguished native title was alive in the Wik case and that the NNTT must accept it. The Wik case was a pre-Native Title Act land claim launched in 1993 over, initially, 11 pastoral properties on Cape York.

While it was not until the Wik decision of the High Court in December 1996 that the potential for coexisting native title on pastoral leases was established—by the court revising the view that it had expressed in Mabo that pastoral leases were grants of exclusive possession—it was, in fact, the Waanyi case which extended the reach of the right to negotiate to mining projects on pastoral land in Queensland. As soon as the court directed the NNTT to accept the Waanyi claim, a right to negotiate process for the Century project became inevitable, and the NNTT was forced to accept claims over pastoral leasehold land and, in practice, over all tenures short of private freehold land in Queensland, thus exposing virtually any and every mining project proposed in the State to the right to negotiate. That is where the damage was done.

Many people in the UGA, the National Farmers Federation, the Cattlemen's Union and all those people representing primary producers in this State felt that they could have lived with the Mabo decision itself. That Keating wanted to impose ALP policy as a result of that—and used it accordingly—caused enormous difficulties. However, the worst difficulty came when the High Court ruled in the Wik case, and that was when the trouble really started. It is of interest to note that, in the decision of the High Court in the Wik case, the three judges who supported the decision on Mabo, including the Chief Justice, opposed the decision in the Wik case. It was only in the advent—if I can put it in those terms—of Justice Michael Kirby that things started to change around. But as I said, that is where all the trouble started, and it has caused many problems within the pastoral industry. That is a shame. Of course, it is history that a letter was written by Bill Hayden to the then Premier, Rob Borbidge, wherein he said that some of the discussions that he had had with the people negotiating for the Aboriginal people were nothing short of extortion. That is how things get so far out of control.

I want to mention my discussions with the United Graziers Association. I refer to when the Mabo decision was made and Rick Farley was working for the National Farmers Federation. Of course, he was a lackey and a clone of the Prime Minister of the day, Paul Keating. Keating rang him one night and asked him to make sure that the National Farmers Federation supported the native title legislation stemming from Mabo. Of course, he jumped to that with alacrity, because that was his way. But by doing that, he committed the entire National Farmers Federation—of which the UGA was an affiliate—to that particular piece of legislation. Proof positive of that was when that fellow stood recently for the Democrats. I have always warned the UGA, the Cattlemen's Union and anyone else who would listen about his politics. He took us for a ride, and he took the UGA for a ride, as well.

The United Graziers Association is giving the following advice to its members in relation to native title agreements: people should deal only with local people; they should deal only with native title holders; there should be no commercial implications; there should be no interference with management; there should be access for specified purposes, and that must be specified clearly; the landowner can agree to preserve clearly identified sacred sites; there should not be a condition of the lease; the agreement must be enforceable on Aborigines; any agreement must comply with the code of conduct; and all the agreements must be voluntary. The UGA does not support regional agreements. As well, any agreement must have some advantage for both sides. The UGA believes that native title exists only where the court or legislation says it does.

The real Trojan Horse of all of this is another piece of legislation about which the UGA has warned me. I refer to the Queensland Government's option paper titled Cultural Heritage Protection for the Purposes of the Alternative State Procedures. It is a draft paper on cultural heritage. That is the Trojan Horse of enormous and immense danger to the pastoral industry. People in the pastoral industry have expressed extreme concern that, even if native title and the right to negotiate do not work, they will fall back on this, and this will be the vehicle which will cause great angst and trouble amongst people in the pastoral industry.

It goes on to say that the paper establishes the basic position that "the State of Queensland recognises that all country has meaning for Aboriginal and Torres Strait Islander People" and then moves on to develop special measures for dealing with land and resources within that framework, that is, the entire State of Queensland. That approach is likely to cause considerable unease for Australians of non-Aboriginal descent, particularly those who occupy and work the land or develop its resources. Government intervention in property and resource utilisation should be aimed at fairness, equity and efficiency. Governments should also recognise that democratic rights are individual rights under the law. Legislators should not encourage a particular racial or ethnic group to claim or expect in perpetuity special rights or privileges not available to other citizens.

The High Court principles established in Mabo and Wik were aimed at preserving the historical rights of indigenous people to continue to live in the traditional manner where they had been observing that lifestyle for centuries following white occupation and settlement. It was never intended that special rights in perpetuity be granted to people of mixed racial background living in the modern community as ordinary citizens, who have never so much as visited the land that they now wish to claim.

The response from the pastoral industry goes on to say that the current policy of minute inspection of land in the hope of finding or fabricating something that will give rise to intervention, protection or compensation will surely cause resentment among other Australians. The proposed establishment of a cultural heritage management strategy will certainly create the fear that that device will be used as a vehicle for political intervention by Aboriginal interests seeking to interfere with the use or development of land or to procure payment to allow certain activities to proceed. The pastoral industry fears that a CHMS regime will be used to coerce land-holders to enter into concessions or agreements for the benefit of one racial group that were not mentioned at the time the land was leased to them by the Crown for development and have never been part of the land management regime.

The pastoral industry also notes that that regime is intended to encompass the promotion of indigenous land use agreements, ILUAs. The pastoral industry is aware that ILUAs are the preferred approach of the present Government in addressing Aboriginal land and cultural issues, but the pastoral industry does not believe that being forced into agreements of that type will be a lasting solution to native title problems. Firstly, it would be unfair to expect land-holders to negotiate when they do not know their rights. Secondly, there is ample evidence in previous agreements of non-compliance, with no mechanism for redress. The pastoral industry also believes that the heritage protection regime as proposed in the draft paper will act as a de facto right to negotiate on all land, even land accepted as bestowing exclusive occupancy.

The pastoral industry has provided a submission to the Evatt inquiry. The thrust of that submission is that there should be a register of sites of significance to apply generally. Only sites that would meet a general test likely to be accepted by an average Australian citizen, regardless of race, as being of major cultural value and worthy of preservation should be subject to intervention. Where a site is nominated as being a secret site, such a site should be kept on a secret register under the control of a suitable independent person acceptable to the custodians who would confirm or deny the existence of a secret site where development was contemplated. The pastoral industry has a great suspicion of cultural heritage surveys. It does not support "fishing expeditions". Unless a traditional person can actually identify the nature and location of a site of significance in advance of inspection, then land-holders have a right to be sceptical if something is discovered by people who have not previously visited the site.

It would be possible to discuss the draft paper clause by clause, but the whole paper is dedicated to supporting a particular point of view in favour of one group. The pastoral industry believes that it needs to be reworked completely to show fairness, equity and balance. If anyone thinks that this issue will be all over after this legislation is passed, they can forget it. The problem will continue. Private land-holders along the proposed Chevron pipeline route in Queensland also have expressed extreme concern at many aspects of the proposed cultural heritage survey. More will be said and done about that as time goes by. As I said, the divisions will continue. They are certainly not over. The airy-fairy stuff that we hear from members opposite is simply not real.

The pastoral industry's response to the draft paper goes on to say that land-holders are sympathetic to the preservation of real sites of significance. That is part of our cultural heritage, but the process must not be misused for gaining political advantage or for extracting compensation payments. Another issue that is distressing land-holders concerns rumours that large compensation payments and/or sitting fees are being promised to Aboriginal people where the Chevron pipeline route passes through Aboriginal land or where Aboriginal people are involved in negotiations or assessment. If differential compensation is being paid and the Aboriginal people are receiving payments of a more generous nature than other land-holders, long-term resentment will surely follow.

Pastoral and other land-holders in north Queensland are certainly there for the long haul. They can appreciate that mining and pipeline companies would wish to be seen as good corporate citizens,

especially in relation to cultural issues that appeal to our city cousins. However, basic fairness is an important issue. The vast majority of land-holders view the establishment of the Chevron pipeline as being of positive benefit to Australia. They will continue in that support only if everybody is treated equally and the land-holders' own interests are not prejudiced. The pastoral industry has said that it is unable to accept the proposal as set out in the draft paper. The proposals do not provide procedural fairness for all the stakeholders involved. Non-Aboriginal Australians do not have access to similar procedures in the preservation of non-Aboriginal cultural sites. There is no objective test relating to site identification. There is no objective test relating to the magnitude of significance required for intervention. The administration is placed in the hands of special interest groups who are likely to oppress existing land-holders. It is likely that the regime will be used as a de facto right to negotiate. That will be brought through the back door after this native title legislation goes through. Many people believe that all the problems will be over after this legislation is passed. They can forget that; this is just the beginning.

Groups involved in the pastoral industry, including the United Graziers Association and various other pastoral groups that have played a watchdog role on the Premier's task force in relation to native title legislation, were told that, after this legislation was passed, they would continue in that role to monitor the performance of this legislation as well as any other legislation that might impinge on this legislation. Recently they were told that their job was finished, that it was all over red rover. They are dismayed that that is the case. They know as do I and other practical people that it is not over by any stretch of the imagination. It will only get worse. That is the tragedy of it.