Speech by

Mr S. SANTORO

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

Mr SANTORO (Clayfield—LP) (12.18 p.m.): Over the past six years, native title has never ceased to hold the centre stage of political debate and policy development. In part, this is because it acutely affects not only the indigenous inhabitants of our nation but also the people on the land whose leasehold interests have been left under a cloud. In part, it is because the impact of the Keating Government's badly drafted Federal legislation has been to stymie mineral and petroleum development and exploration and act as a brake on economic development. Finally, it is because native title has been grabbed by various groups and used as a means of pushing their own agenda, even if that meant massive social and economic disruption. In that regard, all honourable members have only to recall the disgraceful antics of Mr Yanner during the Century Zinc negotiations.

The Premier was right in saying that this is an historic piece of legislation, although, as he does during most of his speeches, he meandered all over the place, heaped unnecessary praise on himself, and, in the process, confused rather than elucidated what is a very long and difficult Bill. Let me start from a point that the Premier made and with which all members in this House would concur. The Premier said that without sustainable growth and development we will all have a limited future. He then pointed out that truism that it all comes down to jobs and the dignity that meaningful work brings with it. It was a mantra, he said, that would be repeated again and again by him and his Government. Let me just say this: I would hope that the Premier would not just parrot that mantra repeatedly, but take it to heart and actually do something about it.

Talk is no substitute for positive action. Talk is no substitute for misconceived legislation that will, in reality, have the very opposite impact of what the Premier claims it will have. This Bill will, in reality, have a detrimental impact on jobs. It is a missed opportunity. It is a Bill designed to placate the Left Wing of the Labor Party rather than honestly facing the reality of the intersection between the mining industry and all other stakeholders in this debate—and by that I mean both the indigenous community and the pastoral industry.

Let me touch on a few preliminary points. The Premier claimed that this Bill was a model for all Australia because of the extensive process of consultation that was carried out with all interested parties. If that is the case, then the persons tasked by the Premier to consult were either asleep on the job or hard of hearing. Almost all of the parties consulted have criticised the process, if not the result. The ABC reported on 20 October—just the day before the Premier introduced his Bill—that Aboriginal leaders claimed that there had been no consultation on the Bill. Let me quote from the ABC report—

> "The Queensland Indigenous Group says it received a draft copy of the first instalment of native title legislation from the Government early this year, but this time they have not. The group's legal adviser James Fitzgerald says it is absolutely unacceptable to be making laws affecting Aboriginal people without at least consulting them."

Mr Fitzgerald made the following observations—

> "The major concern we have is that we simply do not know what is in Premier Beattie's Bill. We are aware that it will probably be tabled this week, we are aware that it will probably deal with the State's alternative to the right to negotiate for native title holders where new mining is proposed. But we simply don't know what the contents of the Bill are."

So much for consultation with the representatives of the indigenous community—let alone the mining industry or the pastoralists!

But this leads me to my second preliminary observation. It is clear that this Bill was rushed in. It has all the hallmarks of legislation cobbled together in haste. It is long, complex and extremely difficult to read and, indeed, to understand. For a Government wanting to freeze the lawyers out, it has presented to this House a Bill that will be a lawyer's breakfast. I would defy anybody to claim that small miners, for example, would have a clue how this legislation will operate without ongoing and very expensive legal advice. However, what is particularly concerning about this package is that we are being presented with Bills one by one and over an extended period without the ability to compare them and to gauge the cumulative effect of their impact.

Unlike Western Australia or the Northern Territory, where a package of Bills was introduced and parliamentarians could compare the various pieces of legislation and consult with interested stakeholders on the overall impact of the package, we are presented by the Premier with a dribble of legislation over a period of months. First came the intermediate period Act and exclusive tenure Bill. Now we are considering the alternative State provisions exercise. Next will come the tribunal legislation. And perhaps down the track we will see initiatives dealing with the pastoral community, the petroleum industry and, of course, cultural heritage matters. Only at the end of this process will we see a complete picture. By that stage, I suggest that it will be too late. So I say to the Premier that the process that the Government has put in place to deal with native title is piecemeal and unsatisfactory from a parliamentary accountability point of view.

The Premier may mouth mantras about jobs, but all honourable members know that the mining industry is facing a particularly difficult time. The world economy is going through a period of contraction, and the State and its industries face the prospect of low and uncertain commodity prices, disruption in the economies of the major purchasers of our commodities and cutthroat competition from our economic competitors. In this context, this Government should be doing everything possible to encourage mineral exploration and extraction—not, as it is, burdening the mining community with unnecessary costs, delays and uncertainty. Only Queensland's competitors elsewhere in Australia and overseas will benefit from such a myopic approach.

The debate on native title often hides one critical issue. Responsibilities placed on mining companies to our indigenous community do not end with the Native Title Act. Mining companies are required to protect the cultural heritage and environment of indigenous communities under a range of other statutes. Of significance, the Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987 requires that a permit be obtained prior to undertaking survey work for the identification and subsequent management of places of significance. Applicants must be able to demonstrate to the Minister that they have permission from the relevant land-holders to undertake such survey work. Subsequently, but prior to the granting of permits, the Government notifies the public of the application for the permit to ensure that any parties' interests, including potential native title holders, are properly considered. Before the Minister gives his permission, the Minister must have regard to whether sufficient consultation has taken place with all persons who might be affected by the work to which the permit relates.

The clear object of this Act is to ensure that the interests of indigenous people are represented and protected. These obligations are independent of native title and apply across all land tenures, including the exclusive possession tenures. Under the coalition Government and the Goss Government, this Act was used to protect sites of cultural significance. And in that regard, the mining and petroleum industries were cooperative. I could mention, as examples of major projects where this Act came into play, the Tenneco gas pipeline, the Sun Metals zinc refinery at Townsville and, of course, the Ernest Henry Mine. So it is not as if the Native Title Act stands alone. It is but one of a number of pieces of legislation designed to protect and advance the real, the enduring and the legitimate interests and aspirations of the indigenous peoples of Queensland. It is not as if it is only under the Native Title Act that the mining industry has to consult with indigenous persons—far from it. In reality, there are a range of statutes of both a State and Federal nature, as well as local authority by-laws, that impose a range of duties on the mining industry. Accordingly, when the Premier talks publicly about minimalist Federal requirements, which he is boosting under this Bill, what this really means is that, on top of all of the other requirements heaped on the mining industry, he will add even more.

That leads me to the nub of this legislation. This Bill exists only because the Federal Parliament allows the State to enact so-called alternative State provisions as a means of overcoming the problems that were previously created by the right to negotiate process. The Federal legislation envisages two types of State regimes for large-scale mining activity: one pursuant to section 43, which allows the States and Territories to legislate for their own form of right to negotiate based on the revised Federal Act; and one pursuant to section 43A, which is less prescriptive. Provision is also made in sections 26A, 26B and 26C for exploration, fossicking and generally smaller-scale mining activities.

As I mentioned, the section 43 requirements are stricter, and the rationale for this is pretty clear. The type of land that section 43 was intended by the Federal Parliament to be concerned with was unallocated State land, where the interference with the land is minimal and the likelihood of native title continues to exist at a reasonable level. From the outset, all parties have recognised that this type of land was legitimately open to native title claims; and, of course, that should be the case. The Federal Government, however, recognised that, in the case of non-exclusive tenures, a much less prescriptive and time-consuming process was in order, which is why, in the Premier's language, a "minimalist" set of requirements is set out for the States and Territories in section 43A. However, in reality, the requirements mandated in section 43A are far from minimalist. They are quite extensive and address quite a number of issues of procedural fairness and judicial supervision. The Queensland Mining Council has publicly accepted the fairness of the various consultation and review requirements mandated by section 43A. The requirements imposed on parties under a section 43A regime—as distinct from a section 43 regime—are, by their very nature, less severe. For example, there is not a requirement to negotiate but, instead, a general obligation to consult, including possible mediation.

It has been stated again and again by various persons in all fields that persons claiming native title are given, by the right to negotiate—even in a modified section 43 form—rights which go far and beyond those of all other Australians. In legislation of this type, each time that that right is expanded to include land tenures covering half of this State, it is at the expense of both the mining industry and pastoralists. Often we see the Premier and others attempt to justify this by downplaying the rights of other parties. For example, Terry O'Shane, the Chairman of the Indigenous Working Group, when being interviewed by Carolyn Tucker on 22 October, claimed that the rights held by pastoralists were of a far lesser importance than native title rights. O'Shane said—

> "They graze their cattle so they have no property rights so to speak."

The rights that Aboriginal people have are common law rights, which are property rights. The rights that pastoralists have are just leasing rights. By that I mean that they lease country—they lease the grass for grazing rights from the Commonwealth, so the land on which they live is Crown land which belongs to you and I. Now, over that is some grass on which they graze their cattle; so they have no property rights, so to speak.

Apart from being wrong in most of what was said, that quote highlights the way in which pastoralists and the mining industry have been viewed in the development of native title legislation. Indeed, in somewhat similar language in his own second-reading speech, when justifying this Bill, the Premier said—

> "... it is the people who ultimately own the resources, and it is the Government that grants a licence for their exploration."

In a technical legal sense that is true. However, the Premier did not go on to point out that, in the Wik case, Justice Drummond rejected a claim by the indigenous groups that ownership of minerals and petroleum lay with the Crown. There is no native title over minerals or gas as such. There is no appreciation in the comments of the Premier that, although the minerals may be owned by the Crown, they are worthless unless they are mined, unless mining companies extract them from the soil, transport them, process them and sell them. What we have in this Bill is a deliberate policy of the Government to add extra burdens onto the mining industry, to add extra costs and to create delays—all in the name of allegedly evening up the slate, having "given" something to miners and pastoralists under the first of the Premier's native title Bills.

Both Western Australia and the Northern Territory have introduced legislation that firmly and decisively takes advantage of the section 43A option. In those jurisdictions, legislation has been prepared that gives the necessary framework for mining to proceed in conjunction with the views and needs of the indigenous community. The Premier made a number of silly statements about section 43A. For example, he claimed that a system based on bare minimum procedural rights across the board leads inexorably to the courthouse. How is that so? The Federal Parliament has outlined in considerable detail in section 43A what must be legislated for by a State or Territory when enacting alternative State provisions. If Queensland was to do what other jurisdictions have done and take the lead of the Federal Parliament, it would lead to no extra litigation, and—if I am not mistaken—would actually lessen the risk of litigation. In common with most of the Premier's claims, this is another claim that is driven by theatrics rather than reality.

The reality of this Bill is that, despite the golden opportunity given by the Federal Parliament, this Government is intent on imposing on the mining community the type of negotiation mandated under section 43 on land that falls under section 43A. The Premier has publicly extolled the virtues of requiring costly negotiations on most applications across all land tenure types. I stress: all land tenure types. At the end of the day, we are presented with a very complex Bill, full of contradictions and replete with cobbled-together compromises that will drive mining activity out of Queensland.

The Premier mentioned that he had tried to merge sections 43 and 43A processes in a Queensland Bill. What he did not mention is that that exercise was a complete legal and policy

failure and he had to retreat. But what did he come up with at the end of that retreat? A Bill that has so many processes and so many requirements and so many policy contradictions that it is bound to satisfy almost nobody! It does not please me to have to say that this Bill is an abject failure. It fails Aboriginal Queenslanders, it fails the mining community, and its fails the general community. Aboriginal peoples would be far better served by legislation that encourages mining, because only a strong economy supported by the revenue generated by mining can provide sustainable and tangible benefits to our indigenous and rural citizens. Instead, this Bill risks contracting mining activity, and, as a consequence, limiting real opportunities for Aboriginal communities.

As I said at the outset, this Bill represents a wasted opportunity. The tragedy is that all Queenslanders will suffer as a result of the latest Beattie initiative in job destruction. I end my contribution by quoting from a relevant press release of the Queensland Mining Council that was issued on 30 October. The council said that the Bill—

> "... threatens future investment, projects and jobs. It is a major disincentive to development. It will set Queensland at a disadvantage to the rest of Australia and the world."

Of course, as that eventually comes to pass, Mr Beattie and his Government will pay a very heavy political price.