Speech by

GARY FENLON

MEMBER FOR GREENSLOPES

Hansard 20 July 1999

NATIVE TITLE (QUEENSLAND) STATE PROVISIONS AMENDMENT BILL

Mr FENLON (Greenslopes—ALP) (4.24 p.m.): I rise today to support the Bill. In doing so, I have to note just how little those opposite have learned since they last came in here and pontificated about native title. They have moved nowhere and they have learnt nothing. But it certainly is very helpful to the public of Queensland to have this debate, to show again just how different from us those opposite are.

Everything that has been said in terms of showing that they have learnt nothing shows that they are still entrenched in that oblique resistance to this major change in the legal, political, social and cultural landscape of Australia. It is resistance which shows that they are still locked and entrenched in a set of values—a set of principles—which would indicate that they simply prefer straight conflicts—a straight fight—between the various interested parties. They want those parties out there on the ground slugging it out. The good old "divide and rule" principle would prevail if they were in Government to oversee the process. Indeed, while they were dividing and ruling, their own particular economic interests would surely prevail.

I am also amazed by the statements made by the member for Crows Nest in referring to the High Court as "socialists". What year is this? Is it 1999 or 1899? Even Tim Fischer had the good sense to tell the truth about what he saw as the High Court and what he wanted it to be. He at least referred to them as small-c conservatives, but he wanted them to be capital-c conservatives, which was Tim's very modest and delightful code for, "Yes, we know they are conservatives, but we want them to move about 10 degrees further to the right. We would like them to be far more conservative."

At least good old Tim was honest about that, even though it was completely wrong and improper for a senior politician in Australia to be making those sorts of implications—even demands—about the political colour of the High Court. That is unprecedented in Australia's history, and even within the Western World. It is unbelievable that senior politicians in a Westminster democracy would make such statements. It is astounding.

But even more astounding in terms of the political landscape of Australia is whom that is coming from, because the people from whom those statements are coming are those who are generally seen as representing the conservative forces—the conservative parties—in this country. It has been their traditional domain that they have been the advocates of the judiciary—the conservative judiciary—that certainly has prevailed in this country over the years. But, no, on this occasion we see the conservative forces in this country directly attacking the judiciary, directly attacking the integrity of that judiciary and, what is more, doing so in a bizarre and most inappropriate manner. It just shows where the conservative political forces in this State are heading. It shows their desperation in trying to get into bed with One Nation. We heard exactly the same line from One Nation members today in terms of an attack on these authorities that made an independent and well-considered decision based on very substantial and sophisticated hearings over a very long period. Because they cannot accept the umpire's decision, they have to attack it, but they have to do it together. It is, indeed, the "One" National Party and the One Nation Party now in Queensland working together to attack the judiciary, and in doing so what an indictment that is on the conservative side of politics of this country.

Let the Hansard record show that this has been the stance taken by the conservatives in this House—calling the members of the High Court socialists. What absurdity! Are we imagining that the

High Court judges are down there by Lake Burley Griffin reading their copies of the Socialist Worker or sitting around discussing the merits of Das Kapital? I do not think so. These people are fundamentally conservative in terms of where they have come from to get to their positions. I believe that is a point well accepted by all parties historically in Australian politics. Historically, the High Court has been a buffer in terms of change, but it seems that the ground has suddenly changed beyond small-c conservatives and capital-c conservatives. Now, according to the claims of those on the other side of the House, apparently we have capital-s socialists on the High Court.

I will touch on some of the important aspects of this legislation to illustrate again the general theme that has been taken up in this Bill which confirms the very great distance on these matters between those on the other side of the House and the party of which I am a part, and very proudly so. This Bill reconciles two competing interests of all Queenslanders. The first is the advantage of sustaining the growth of the mining industry and the second is the fundamental cultural significance of recognising and protecting the rights and interests of indigenous people. This legislation takes these two needs and provides a balance. It ensures the efficient management of the mining industry while providing native title holders with tangible rights and safeguards.

A clear example of the neat balance achieved by this legislation is found in the section 43 scheme. To explain this scheme it is necessary to understand that mining involves grants of mining tenements over essentially three broad categories of land. The first category of land concerns freehold land—land where native title is most likely to have been extinguished. The second category is land, such as pastoral lease land, where it is possible that native title might coexist. The third category of land is section 43 land. Section 43 land is land where native title is most likely to exist, such as unallocated State land. It is this third category which is covered by the section 43 scheme.

It is clear that these section 43 dealings involve land where native title is most susceptible to extinguishment. Therefore, this is where native title rights and interests need greatest protection. This was recognised by the Commonwealth Native Title Act and this is delivered by this Queensland legislation.

Of the four schemes provided in this Bill, the section 43 scheme accords greatest rights of notification, consultation and negotiation to native title parties. Yet at the same time the scheme is also of benefit to the mining industry as it provides a streamlined process for exploration and mining. The result is a fair outcome and an advancement of opportunities for everyone.

I remind the House that the requirements in this Bill are additional to the requirements in the Mineral Resources Act 1989. The requirements of the section 43 scheme are in addition to the requirements in the Mineral Resources Act 1989. The requirements in the section 43 scheme will also apply if an applicant under a section 43A scheme elects for them to apply, instead of the requirements of the section 43A scheme.

There are four mining tenements provided for under the section 43 scheme: mining claims not on alternative provision areas; high impact exploration permits not on alternative provision areas; a high impact mineral development licence not on alternative provision areas; and other mining leases not on alternative provision areas. I remind the House that an alternative provision area is defined in the Commonwealth Native Title Act. In general terms, an alternative provision area is non-exclusive land that is or was covered by freehold or a lease which did not extinguish native title rights and interests, or is or was reserved or dedicated for a public purpose and is or was used for that or a similar purpose.

An example of non-exclusive land that is not an alternative provision area is land which has always been unallocated State land. Non-exclusive land is land where native title has not been extinguished but only where that land is on the landward side of the mean high-water mark. The additional requirements for the section 43 scheme are specified in detail in Division 4 of Part 17 of the Bill. Part 17 relates to mining leases.

The other forms of tenement that come within the section 43 scheme are less detailed. The additional requirements that apply are notification and registration, consultation and negotiation, objection, hearing, and notice of grant. I will now elaborate on these additional requirements—first, the notification and registration.

An applicant for a mining lease other than a surface alluvium—gold or tin—mining lease must give written notice about the application to the native title notification parties and the native title registrar. The native title registrar is the registrar of the National Native Title Tribunal. The applicant must also publish the notice in a newspaper circulated in the area of the proposed lease and in a publication catering for the interests of Aboriginal people or Torres Strait Islanders, which also circulates in the geographical area of the mining lease and is published at least once a month. That notice must be given and published at any time between three months prior to lodgment of the application and 28 days after the certificate of application is endorsed by the mining registrar. A longer period may be allowed.

The native title notification parties for the land covered by the application are the registered native title bodies corporate, the registered native title claimants and the relevant representative Aboriginal or Torres Strait Islander bodies. The notice must state that any registered native title party has a right to be consulted about the proposed lease, to object to its grant and to negotiate about the grant. The notice must also specify the notification day, which is the day by which the notice will have been received by or come to the attention of all relevant parties, and the closing day, which must be at least three months after notification day.

The expression "registered native title party" generally means the registered native title bodies corporate and registered native title claimants in relation to the land, but it may also include other parties, including claimants who are registered within one month of the closing day. The applicant must also advise the mining registrar that the notice has been given and of the names and addresses of the registered native title parties. If there are no registered native title parties with respect to the application or those parties do not object to the application, the process under Division 4 of Part 17 will stop. The mining lease may then be granted, provided the usual requirements of Part 7 are met.

I now turn to consultation and negotiation. If the Division 4 process has not stopped, consultation and negotiation in good faith is required with a view to obtaining the agreement of the registered native title parties to the grant of the mining lease and any conditions. The parties to the consultation and negotiation are the applicant, the registered native title parties and the State, although if the parties agree the State may stop having a role or have only a particular role.

Division 4 includes guidelines about the process for consultation and negotiation in good faith and allows any party to ask for mediation to help in resolving relevant issues. If the consultation and negotiation parties reach agreement, the parties must lodge a certificate with the mining registrar and give a copy to the tribunal. The process under Division 4 of Part 17 will then stop, and the mining lease may be granted provided the usual requirements of Part 7 are met.

I turn now to the issue of objection. A registered native title party may lodge an objection to the proposed mining lease at any time before agreement is reached or before the proposed mining lease is referred to the Land and Resources Tribunal. The objection may be withdrawn at any time before agreement or referral and must be withdrawn if agreement is reached. An objection by a registered native title party about the effect of the lease on the party's registered native title rights and interests may only be made under Division 4 of Part 17.

I turn now to the issue of hearing. The tribunal must hear an objection that is not withdrawn. The tribunal is also open to any consultation and negotiation party to refer the proposed mining lease to the tribunal to make a native title issues decision about whether or not the proposed mining lease should be granted and, if so, on what conditions. A party cannot refer the mining lease to the tribunal until the later of six months after the notification day or three months after the mining registrar displays notice about the environmental impact statement, if any. However, if no referral is made within three months of that time, the Minister may reject the mining lease application. The hearing by the tribunal will be combined with any hearing required under Part 7, for example, to hear objections made by other land-holders.

Subdivision 5 outlines the requirements for the combined hearing and the matters to be taken into account by the tribunal in making its native title issues decision. Those matters reflect the requirements of section 39 of the Commonwealth Native Title Act. In certain circumstances, the Minister may overrule the native title issues decision or ask the tribunal to make a decision urgently if it is in the interests of Queensland.

Finally, I turn to the notice of grant. If the mining lease is granted, the holder must give notice of the grant and any conditions to each registered native title party within 28 days of receiving notice of the grant.

Members can see from these amendments that the changes proposed under this Bill provide more machinery and more mechanism to drive the original ethos of this Bill towards negotiation and settlement between the parties and towards bringing the various parties together to ensure that all of the interested groups have appropriate processes at their disposal, with reasonable time frames and reasonable judicial capacities to determine outcomes at critical stages of the process. Again, that is in stark contrast to what would be desired by members opposite—to have blood on the streets and to have those parties fighting it out and, indeed, for particular economic interests to prevail out of that. And those economic interests do not necessarily always coincide with the prospect of enhancing mining in this State and the development of jobs. I support the Bill.

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