Speech by

GARY FENLON

MEMBER FOR GREENSLOPES

Hansard 9 & 10 March 1999

LAND AND RESOURCES TRIBUNAL BILL

Mr FENLON (Greenslopes—ALP) (5.53 p.m.): I welcome this opportunity today to contribute to the consideration of the Land and Resources Tribunal Bill. I do not think any member of this House can underestimate the complexity of the native title issue. Indeed, for the previous Government this complexity was an excuse to do nothing. Unlike the Borbidge Government, the Beattie Government has not avoided the difficult issues. Close to the top of these difficult issues has indeed been the issue of native title.

Almost immediately on coming to Government, the Premier announced the formation of his Native Title Task Force. The Native Title Task Force, which the Premier personally chaired, involved in the consultation process for the first time the various and diverse interest groups that were and continue to be affected by the issue of native title. Importantly, from the outset the Government adopted the approach that fighting out native title issues in the courts did not provide the way forward. Whilst litigation has its place, the Government has built its approach to formulating a new process for dealing with native title issues on a commitment to encourage all players in the process to work together to reach agreement.

Litigation has been hugely expensive for Queensland taxpayers. It has dragged on for years and ultimately failed in practical terms to clarify the day-to-day impact of native title. The decisions in Mabo, Waanyi and Wik left indigenous people still without any clear guidance as to their rights and interests in land management in this State. It is ironic that the Bjelke-Petersen Government had such a strenuous role in creating these precedents.

Where dramatic breakthroughs and concrete outcomes have been achieved, it has not been through litigation but, instead, through solution-based agreements negotiated in good faith and with the goodwill of all interested parties. The Beattie Labor Government approach has shifted the focus to encouraging and facilitating these agreements, particularly in the light of the new stature afforded to the agreements under the Commonwealth Native Title Act. Indeed, I understand that in a number of cases the officers of the Directorate of Native Title Services are assisting parties to native title disputes to resolve these issues through indigenous land use agreements. I would encourage both land-holders and indigenous parties to seriously consider the benefits that these agreements can provide to all parties.

It is in this atmosphere of negotiation and not litigation that the tribunal we are debating today must be considered. Whilst the presiding members and non-presiding members of the tribunal will be eminently and suitably qualified to undertake these responsibilities—and in the case of the presiding members qualified to be appointed to a Supreme Court—it is important to note that the tribunal is not a court but a tribunal. As a tribunal the organisation will be far better able to ensure that its processes and hearings are culturally sensitive.

The tribunal must observe the rules of natural justice, but it is not bound by the rules of evidence. That characteristic will allow the tribunal proceedings to be conducted in an informal manner and will permit decisions which will be more acceptable to all parties. As the Premier has stated, it is envisaged that the tribunal will not be a Brisbane-bound body but will conduct hearings throughout the State of Queensland.

As noted by the report of the Scrutiny of Legislation Committee, in its remarks on whether the Bill has sufficient regard to Aboriginal tradition and island custom, the tribunal will take into account such issues as: its degree of formality in procedures; the degree to which it relaxes the strict evidentiary rules; the taking of group evidence from indigenous witnesses; the exercise of taking evidence in a culturally sensitive manner; the way in which the tribunal deals with indigenous witnesses who may not have the same fluency in English as do the members of this House; and, finally, a recognition that the framing of a question to an indigenous witness, given their mode of response to such questions, will be influenced by cultural factors. How it does this will ultimately be the test of the success of the tribunal. In all these things the Bill achieves the necessary balance.

The Premier's native title strategy also recognises the important role that mediation will play in his "negotiate, not litigate" solution to the native title issue. The Bill recognises the importance of mediation through the office of the mediation referee. The mediation referee must be legally qualified and have, in the opinion of the Governor in Council, a high level of knowledge or experience in two or more of the following: dispute resolution, mediation, land title and land use issues, or something else considered by the Governor in Council to have substantial relevance to the duties of the mediation referee.

Mr FENLON (Greenslopes—ALP) (11.54 a.m.): I have some final matters to deal with in relation to the Land and Resources Tribunal Bill. Honourable members will note that Division 5 of Part 4 of the Bill outlines specific rules to assist the parties to a mediation conducted by the Land and Resources Tribunal, and clause 67 importantly notes that a member of the tribunal who participates as a mediator can then not be a member of the tribunal which subsequently considers the matter. This, I note, is one provision amongst others contained in the Bill which will ensure that the members of the tribunal act in an ethical and appropriate manner when exercising the jurisdiction that has been granted to the tribunal.

The provisions of the Bill which I have outlined to the House should provide indigenous persons who come before the tribunal with confidence that they will be treated fairly, appropriately and with the justice which they have been for too long denied. It is a piece of legislation which guarantees that there is a sound and fair process that all parties can pursue in dealing with the myriad permutations and computations that are before us in terms of the different land packages and the different historical circumstances pertaining to them. I support the Bill before the House.