



Speech by

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MEMBER FOR SANDGATE

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NATIVE TITLE (QUEENSLAND) STATE PROVISIONS AMENDMENT BILL

Mr NUTTALL (Sandgate—ALP) (2.45 p.m.): I wish to take this opportunity to draw members' attention to a very important aspect of the Bill that is before us. That aspect relates to how compensation for the impact of a mining tenement on native title is to be dealt with under the alternative State provisions. The relevant provisions of the Bill are contained in what is to become Part 18 of the Mineral Resources Act. At its simplest, where the native title holder and the proponent cannot reach an agreement about compensation for the impact of a mining tenement on native title, the tribunal must deal with the issue of compensation. Of course, the tribunal to which I refer is the Land and Resources Tribunal.

In that regard, the tribunal can make two major types of compensation decisions. The first is a compensation trust decision, which is defined in what will become section 706 of the Mineral Resources Act. The definition of a compensation trust decision means that it is a decision of the tribunal about the payment of an amount of money to the tribunal, which will be held in trust for any entitlement to compensation for the doing of the relevant act. The second compensation decision that the tribunal can make is a straight-out compensation decision. This is also defined in section 706 of the Mineral Resources Act. A compensation decision means a decision of the tribunal other than a compensation trust decision which provides for the payment of a sum of money to be paid to a registered native title body corporate.

Section 707 sets out in legislation the entitlement that a person claiming native title has a legal right to be compensated for the effect on that person's native title rights and interests. Importantly, section 707 also notes that this entitlement to compensation is limited to a right to be compensated only once for the same effect of what is essentially the same act. It is clear from the scheme provided by Part 18 that it is the Government's policy to encourage proponents and the native title parties to settle issues of compensation by agreement just as it is the Government's policy that other issues regarding native title are best dealt with by negotiation and mediation resulting in agreement. This view is reinforced by the wording of section 709, which provides the procedural avenue whereby the proponent or the native title holder may apply to the tribunal to determine compensation only after they have attempted to reach an agreement on compensation.

Many people who read this legislation for the first time may wonder why it is necessary to distinguish between a compensation trust decision and a compensation decision of the tribunal. To understand the need for the two types of decisions, it is necessary to appreciate how the Mineral Resources Act presently operates and the requirements of the Native Title Act. In that regard and in respect of the operation of the Mineral Resources Act, I draw honourable members' attention to the appendix to the Explanatory Notes. I thank the Premier for including these friendly summaries of how mining tenements are granted in Queensland.

As noted in the appendix to the Explanatory Notes, there are five different types of mining tenements in this State. They are prospecting permits, mining claims, exploration permits, mineral development licences and mining leases. Each has a different role to play through the rights and entitlement it provides to the holder of the tenement in the development of a mineral resource. The

Mineral Resources Act provides that compensation, unless settled with the land-holder, is referred to the Wardens Court for determination and a decision of the warden may then be appealed to the Land Court. The amendments contained within the Land and Resources Tribunal Act, which were considered by this House earlier this year, when proclaimed will see these compensation matters referred to the Land and Resources Tribunal in the future.

Therefore, it is only appropriate that there be an extension of the existing practice that proponents be required to attempt to negotiate compensation with native title holders just as they must do with ordinary land-holders. The present requirement that attaches to mining claims and mining leases, namely, that compensation be settled with land-holders who will be affected before these tenements can be granted, will also apply to native title holders. That is, a proponent will be required, just as they presently are with non-native title land-holders, to enter into compensation agreements with native title land-holders. This requirement will extend to both the grant and the renewal of mining claims and mining leases. Where agreement cannot be reached, the issue of compensation will be dealt with by an application to the tribunal under section 709.

However, unlike ordinary or non-native title land-holders, native title holders fall within three major categories. It is because of these three categories of native title holders that it has been necessary for there to be two different types of decisions made by the tribunal, namely, the compensation trust decision and the compensation decision.

As members would be aware, there is no statutory definition of "native title" in this Act or, for that matter, any other Act. Instead, native title is defined and described by the common law. That is to say, native title holders hold their native title as recognised by the common law and not as the result of a statutory power or entitlement. What the Commonwealth Native Title Act did was to provide a process whereby the entitlements of common law native title holders could be integrated with statutory rights and statutory schemes. Therefore, the first category of native title holders, which is the over-arching and all-encompassing category, will be the holders of native title at common law. Existing within this category are the two other categories or subcategories. The first subcategory is registered native title claimants and the second subcategory is registered native title body corporates. Those two subcategories of common law native title holders, and the body corporates in particular, give special rights and procedural entitlements under this Bill with respect to compensation just as they are under the Commonwealth's right to negotiate procedures.

Whereas a native title holder at common law who is not a registered claimant or a registered native title body corporate or a native title holder who is a registered claimant may apply to the tribunal for compensation, the tribunal may only award a compensation trust decision. That is to say, until a native title holder at common law also has an approved determination by the Federal Court that native title exists, then that native title holder cannot receive any compensation from the tribunal. However, by making a compensation trust decision against the proponent, the tribunal ensures that a sum of money will be held in trust, which will then be made available through a compensation decision to the native title holder once they have an approved determination of native title.

In the event that the amount ordered to be held in trust by the tribunal under a compensation trust decision is not adequate to meet the amount that the tribunal finally awards to the registered native title body corporate under a compensation decision, section 721 makes it clear that the State Government is responsible to pay any difference. Again, to reduce this to its simplest, the compensation provisions ensure that native title holders who are either registered claimants or are a registered native title body corporate in relation to the land are treated in the same way as ordinary land-holders. The proponent must seek to obtain the agreement of registered native title claimants or the body corporate about compensation for the impact of a proposed mining claim or mining lease on their interests in the land. I commend the Bill to the House.
