Speech by

Hon. JUDY SPENCE

MEMBER FOR MOUNT GRAVATT

Hansard 9 March 1999

LAND AND RESOURCES TRIBUNAL BILL

Hon. J. C. SPENCE (Mount Gravatt— ALP) (Minister for Aboriginal and Torres Strait Islander Policy and Minister for Women's Policy and Minister for Fair Trading) (4.04 p.m.): I believe that it is truly an historic day in the Queensland Parliament as the coalition offers its support to one stage of the Queensland Government's native title legislation. It is also an historic day because at lunchtime today the Government hosted a Women in Reconciliation lunch. That is the first time that such an event has occurred in the precincts of the Queensland Parliament. It was truly a wonderful lunch. Two women who were at the forefront of reconciliation and the native title debate spoke to us about what the process meant to them, and I refer to Auntie Ethel Munn and Camilla Cowley who, I believe, showed the rest of Australia just what could be achieved in the spirit of cooperation, goodwill and preparedness to listen. They really taught us all a lesson about native title and tolerance. Other speakers at the lunch included Jackie Huggins, a number of elders from the Brisbane and Queensland communities, and some Waanyi women from the Northern Territory.

Reconciliation takes many forms. Sometimes it is about public events where people have the opportunity to openly demonstrate their feelings with respect to reconciliation, sometimes it is about the Government listening to the needs of Aboriginal and Torres Strait Islander Queenslanders, and sometimes it is about enacting legislation such as we are doing today.

I am pleased to speak to the Land and Resources Tribunal Bill 1998, because I believe that this Bill establishes a sound and fair State-based regime for dealing with mining activity affecting native title rights. I understand that this legislation has caused some concern for Aboriginal and Torres Strait Islander people who have specified the need for an effective and truly independent arbitral body in determining the issue of land rights.

What I will outline today demonstrates that, through this Bill, this Government will achieve an independent, fair and just tribunal. Of equal importance, the legislation sets out clearly the rights of indigenous people, including sensitivity to their culture in the workings of the tribunal. The Land and Resources Tribunal is not about ensuring that the mighty mining dollar wins at all costs. It will make fair decisions about the rights of indigenous people and their legally recognised rights to their traditional lands. The Bill will promote and protect those rights.

This Government recognises the fundamental cultural importance of maintaining the strong links between Aboriginal and Torres Strait Islander people and their traditional lands. We respect the common law recognition of native title reflected in the Wik and Mabo decisions of the High Court. We are committed to reconciliation and to improving equity and fairness for all indigenous Queenslanders. This Government also recognises the need to give the mining industry a clear process so that it can proceed with projects with confidence—a move that will have a positive effect on job creation in this State.

I think that it is important to put the Government's position on native title in perspective and outline the substantial inroads that we have made since coming to office just eight months ago. In July last year, the Queensland Government established a Native Title Task Force to prepare its response to amendments to the Commonwealth Native Title Act. Premier Peter Beattie chaired this task force to demonstrate the seriousness with which this Government takes the issue of native title. It was a difficult

challenge and was of critical importance on two fronts: firstly, the native title issue had created a great deal of community division that had been born from a campaign of misinformation and political point scoring combined with some genuine misunderstanding and fear; and, secondly, it was vital for the State's job creation policy to give industry a straightforward and clear process so that development projects could proceed with confidence.

That led us to a critical shift in policy from a system based on litigation to one that was underpinned by negotiation. It was a fundamental shift that allowed the Government to get all interested stakeholders involved in developing a process for future development activity. That was significant, as it was the first time all parties had been brought together anywhere in Australia to find a cooperative solution to the conflict that had surrounded native title for so long. It was three months of intense consultation and negotiation, but finally we formulated a response that was built on the principles of acknowledging native title rights and giving industry a clear, less costly and less time consuming process. That led to the development of three pieces of legislation which would underpin the new native title regime. These are the Native Title (Queensland) State Provisions Act, the Native Title (Queensland) State Provisions Amendment Act (No. 2) and the Land and Resources Tribunal Bill. I will speak in detail about the Land and Resources Tribunal Bill in a moment, but I think it is important that I put the whole package in perspective by explaining a bit about the first two pieces of legislation.

In line with the Commonwealth amendments, the Beattie Government's first piece of legislation passed in September confirmed the extinguishment of native title on all tenures granting exclusive possession as per the detailed schedule included in the amended Federal legislation. It also guaranteed the validity of the intermediate period land management actions taken by the State between 1 January 1994, when the national Native Title Act began, and 23 December 1996, when the Wik judgment was handed down. This gave pastoralists, fishermen, miners and other leaseholders complete security that their tenures were legally valid. This Act also made it clear that native title holders whose rights and interests were extinguished were entitled to compensation. Negotiations are continuing between Queensland and the Commonwealth to secure financial assistance in paying this compensation.

The second Act goes to the heart of native title management in future mining in Queensland. Finding a way through the impasse which had stalled activity in the mining industry—a major driving force of the Queensland economy—was and remains critical to the Government's stated No. 1 priority of job creation. However, we also recognised that mining activity, particularly large-scale development, could profoundly affect native title rights and interests. The legislation, which was passed by this Parliament in November, promotes negotiation over litigation. It sets out clearly a number of detailed processes to apply in different circumstances, depending on the type of activity proposed and the type of land tenure involved. For instance, some exploration activity has minimal impact on land and water. In those cases, the legislation provides for a simpler, faster process with an obligation on developers to consult traditional owners.

For a major development that has the potential to impact seriously on native title interests there are a range of procedures to be followed. These include a limited right to negotiate for native title holders on most land and a full right to negotiate on unallocated State land. The requirement for proper notification and negotiation in each case is set out in detail, with the maximum time for any proposal to be finally determined set at 12 months. There are built-in provisions to militate against any attempts to stall or subvert negotiations. This second piece of legislation also provided for the establishment of an independent tribunal to make final determinations on whether a mining activity should proceed in cases where negotiation fails to secure agreement between the native title holders and the miner.

As part of the package of legislation dealing with native title, the Land and Resources Tribunal Bill was introduced to this Parliament in November to meet the Federal requirement for an independent tribunal. The tribunal will absorb the functions of the Mining Wardens Court, as well as taking on responsibility for native title matters, including hearing objections, making determinations and ruling on compensation where there is any dispute. It will be headed by a president at the level of a Supreme Court judge, with two deputies at District Court judge level. All presiding members must have particular knowledge or experience of indigenous issues. The independence of the presiding members will be upheld by aligning their tenure, pension and leaves of absence to that of the judiciary.

Tribunal members will be assisted by three referees, one of whom will be indigenous, with specific expertise in certain areas but without voting rights on the tribunal. The indigenous referee will advise on cultural heritage and indigenous issues, which will ensure that the tribunal observes sensitivity and confidentiality in its dealings with native title holders. This referee will also focus on specific processes for dealing with the cultural heritage aspects of any application. The indigenous referee, like the other two referees, will be highly qualified in their respective areas of expertise. The mediation referee will ensure that the State's negotiation and litigation policy remains at the forefront of the tribunal's process. The mining referee will replace some of the dispute resolution functions of the current mining warden and will advise the tribunal about those functions previously performed by the warden.

The tribunal is designed to operate in a quick and cost-effective manner for non-contentious matters, but will provide full and expert consideration of all issues when complex legal matters and rights are involved. The particular needs of Aboriginal and Torres Strait Islander people have largely directed the way in which the tribunal is shaped and the processes it will follow. The tribunal promotes and protects the rights of Aboriginal and Torres Strait Islander people in the following ways. Consistent with the Commonwealth approach, the Queensland Government intends that the tribunal will be independent. This is central to the administrative workings of the tribunal and will ensure that the impartiality of proceedings cannot be questioned. This is particularly important for Aboriginal and Torres Strait Islander people who have concerns—and I would say they are legitimate concerns, based on the treatment of this issue by the previous administration—that the person heading the tribunal and other members of the tribunal have no vested interest in a particular outcome. The tribunal will report separately to State Parliament through the Attorney-General and Minister for Justice. Indigenous people can feel assured that there will be no external influences when decisions are being made and the tribunal will make its decisions based on the facts, the law and fairness.

It is the clear intention of the Queensland Government that there will be no possibility of members of the tribunal having a conflict of interest. The legislation sets down strict guidelines outlining the management of pecuniary interests and possible conflicts of interest. This will ensure that presiding and non-presiding members do not have a bias in determining the outcome of proceedings and carry out their responsibilities with independence. Members of the tribunal must fully disclose any pecuniary interests or any conflicts of interest. This disclosure ensures that natural justice will be upheld.

The legislation provides that a member of the National Native Title Tribunal can be a member of the tribunal and also requires that a National Native Title Tribunal member take part in any determinations. Importantly, the tribunal will ensure that its processes and hearings are culturally sensitive. All parties involved in proceedings may have legal representation, but this is not required. Also, hearings will be open to the public except in the interests of natural justice or to allow culturally sensitive issues to be dealt with appropriately. It is specified that the tribunal must observe natural justice and that it is not bound by the rules of evidence. This stems from the need to maintain informality and reach decisions that are more acceptable to all parties. For example, evidence will often need to be taken outdoors in remote locations, on or near land that is the subject of the hearing.

Knowing that Aboriginal culture and knowledge is partly contained within oral, dance and pictorial form, I am confident that this relaxation of evidentiary rules may allow for: indigenous people to provide oral histories and laws passed from generation to generation; groups to give evidence and to hear evidence from witnesses who are expert according to local customary laws; the tribunal receiving performances of ceremonial activities as evidence; and any lack of fluency in English of some indigenous witnesses to be taken into account and interpreters used if needed. This may also lead to increased sensitivity about possible misunderstandings arising from differences in language between indigenous and non-indigenous people. An appropriate degree of protection for culturally sensitive evidence will be given to indigenous witnesses and those who cannot speak about matters that are not traditionally disclosed. The tribunal will have mediation proceedings, which will be confidential in all respects, should any party have a particular grievance that they want heard.

The Queensland Indigenous Working Group has asked for clarification of a number of matters relating to the Bill to be recorded in Hansard, and I now do that as a member of the Cabinet subcommittee that has considered the native title legislation. Firstly, the cultural heritage review that is now under way may well yield recommendations relating to the operation of the Land and Resources Tribunal that may require subsequent amendment of this legislation. Similarly, the petroleum industry is not included in the tribunal's jurisdiction at this stage, as the Petroleum Act is currently the subject of review. Once that review is completed, the new Petroleum Act will no doubt include provisions that amend the legislation now being debated. Secondly, there has been concern that this Bill does not provide a mechanism that will allow urgent interlocutory orders to be obtained. The State believes the provisions of the LRT Bill in fact do provide such a mechanism for urgent interlocutory relief to protect cultural heritage at risk.

The Land and Resources Tribunal will ensure that the interests of Aboriginal and Torres Strait Islander people are at the forefront of decisions about land in this State. It will provide a process that is fair to all parties. It is a model that is an effective resolution to the substantial cultural and legal issues surrounding native title. I support the Bill.