Speech by

Hon. PETER BEATTIE

MEMBER FOR BRISBANE CENTRAL

Hansard 20 & 21 July 1999

NATIVE TITLE (QUEENSLAND) STATE PROVISIONS AMENDMENT BILL

Hon. P. D. BEATTIE (Brisbane Central— ALP) (Premier) (5.59 p.m.), in reply: I thank all members for their contributions to the debate on the Native Title (Queensland) State Provisions Amendment Bill. I would like to address some of the particular remarks made by members opposite, but in light of the time I am happy to adjourn the debate and reply tomorrow.

Hon. P. D. BEATTIE (Brisbane Central— ALP) (Premier) (12.54 p.m.), continuing: I would like to thank all members for the contributions they have made to the debate on the Native Title (Queensland) State Provisions Amendment Bill 1999. I would like to address some of the particular remarks made by members opposite. I will do that in my usual style—that is, in detail.

The Leader of the Opposition is becoming entirely predictable on this issue. Yesterday, he spent some time ranting and raving about the lengthy history of this legislation. Indeed, I think his injuries from the past in this matter are being reflected in his contribution.

I have apologised to the House about the number of times I have had to bring this legislation back before the Parliament in order to ensure compliance with the Federal Minister's requirements. Let me make this absolutely clear—even so clear that those on the other side of the House can understand: these are requirements of the Federal Government. It is the Federal legislation that requires these changes. Under the Act passed by the Federal Parliament these matters require the approval of the Federal Parliament and the Senate. I have made it clear many times that that is the case.

These amendments do not fundamentally change in any way the significance of the legislation or its clauses. They are minor amendments required by the Commonwealth. It is a bit rich for the Leader of the Opposition to claim that I have been simply buck-passing the problem to the Federal Government. These are the amendments that the Federal Government wants. It is absolutely clear why these amendments are here.

This Government has consulted exhaustively with the Federal Government right from the start—even before I introduced the legislation for the first time last October. The legislation was passed by this House last November. If it had not been for the Federal Government's concern to protect itself from every remote possibility of judicial review, the alternative State provisions would have been law months ago. It has taken from November to July, and people are sick and tired of the delay. Everyone wants the delay to end. If people in the community are being affected by native title issues which will be resolved by this legislation, they should be informed that the delay has been caused by the Federal Government and not by my Government.

Let us be absolutely clear. Many of the matters that I have seen bubbling around could be dealt with under my legislation. It is the Federal Government that solely, totally and wholly wears the responsibility.

Mr Springborg: And the Senate.

Mr BEATTIE: Yes, I am happy to add the Senate into that. It is the Federal Government's responsibility. These laws will deal with native title in the way in which it should be dealt with. I have had some frustration with these delays—to the extent that I rang Daryl Williams myself and discussed the issue with him. I said to him, "For heaven's sake, all I want is some resolution out of this, Daryl. I don't

want an ongoing fight with you. I want it resolved." He indicated that there were certain limitations involving bureaucratic approval and so on. I made it very clear to him that we wanted the matters resolved and that the delays were, in my view, unacceptable. I rang him in the spirit of resolving these issues.

People should not be left with the impression that Queensland alone is having difficulty in getting alternative State provisions through the Commonwealth Government. I might say that the Commonwealth Government dumped this on the States. We have acted to put a regime in place and the Commonwealth Government has delayed the approvals.

The Northern Territory has taken its regime back for amendment more times than we have. The Northern Territory's regime is now subject to a disallowance motion before the Senate. Western Australia has effectively abandoned its attempt to impose a scorched earth State regime. Western Australia has reverted to the Commonwealth right to negotiate provisions. I hope the Deputy Leader of the National Party heard what I just said—Western Australia has effectively abandoned its attempt to impose a scorched earth State regime and has reverted to the Commonwealth right to negotiate provisions.

Queensland is in a better position than any other State or Territory in bringing about its own set of native title procedures. This is because we included all interested parties in the process. I brought all sides together to sit down and discuss this issue in an inclusive style. All sides to the debate are keen to see the new regime in place so that it can be given a chance to work. The parties have been very constructive in their comments on the many subsequent amendments.

I thank the indigenous community and the mining industry for accepting the balance of the Government's decision, despite the outcome not fully meeting their respective requirements. That is what happens when people sit down together in an attempt to come up with a fair outcome.

A question raised was whether renewals of mining leases were covered by this legislation. This matter has been the subject of some debate over recent months. I refer members to amendment No. 11 which has already been circulated. I should say that, in order to facilitate this debate today, I arranged for all the amendments to be circulated yesterday. All amendments were circulated yesterday to all members of the House so that everyone knows the detail exactly.

Prior to that, I arranged for briefings to be given to the Leader of the Opposition and other leaders. The Independents were also offered briefings. On Monday an offer was made to provide the full detail, including the reasons. I think that detail was provided on Tuesday morning. Offers were also made for additional briefings. No-one in this House will be surprised by any of these amendments because they have not only been around for at least 24 hours, but detailed briefings and reasons have also been distributed to the House.

Amendment No. 11 makes it clear that the Commonwealth exemption of simple renewals from native title processes extends to the State regime. The Leader of the Opposition claims that I have attempted to conceal the extent and detail of the amendments contained within the original Bill. All parties, including the Opposition, were fully briefed on the detail of each individual change to the original sections of the November Bill.

Sitting suspended from 1 p.m. to 2.30 p.m.

Mr BEATTIE: Before lunch, I was referring to certain matters raised by the Leader of the Opposition. He claimed that I had attempted to conceal the extent and detail of the amendments contained within the original Bill. All parties, including the Opposition, are fully briefed on the detail of each individual change to the original sections of the amendment Bill. I know that these changes are detailed and complex. That is why I felt that the Parliament would be in the best position to interpret the Bill. The provisions were reprinted in full rather than through a couple of hundred piecemeal amendments. I have nothing to hide in this legislation and, on the face of it, that is obvious. That is borne out by the fact that the Queensland Indigenous Working Group and the Queensland Mining Council have studied these changes in detail and have no complaints.

The member for Caboolture raised the issue of Mrs Nixon in Cape York. Some time ago, the member for Gladstone raised this issue. Late last year in Cairns, Mrs Nixon attended a community forum on native title convened by me. As a result of that contact, senior officers of my department spent some time with Mrs Nixon and her issue is now being dealt with by the tenure resolution group, which I have established in Cairns to drive through the resolution of complex tenure issues that exist in Cape York.

The Opposition members claim falsely—and they know it to be false—that my Government is continuing the freeze on mining leases, which they imposed. There is only one Government that ever froze issues, whether that be mining leases or capital works in this State, and it was the Borbidge/Sheldon Government. The response to the suggestion that we are freezing mining leases is that that is simply not true. My department has issued around 200 notices initiating right to negotiate

processes. The Borbidge Government hardly issued any and the companies were forced to bear the indemnity before they even got that far—something that caused the mining industry considerable angst.

Many of these notices relate to the small mining sector, whilst others include large projects from the space base to the Kogan Creek power station. I can inform the House that many leases are about to issue from the small mining process. Currently, small miners in Winton are signing an agreement that will see their mining applications granted in the next few weeks. I acknowledge the interest of the member for Gregory in this issue and thank him for leading the delegation from Winton, including the mayor, with whom I met last week when I indicated that these matters had been resolved.

The member for Gregory asked also whether, if the current approach did not yield results, we would re-examine the section 26C approach for gem fields provided under Commonwealth legislation. Firstly, I retain my confidence in the agreement-based approach to processing small mining tenures. The Winton agreement, which was signed in the past few days, reinforced that confidence and confirmed exactly what the Government's strategy is all about. We will look at any option that improves mining approval processes, including this section 26C approach, although this part contains some technical obstacles.

The member for Clayfield asked me for an undertaking that all Commonwealth concerns had been met. For months I have been seeking the same undertaking from the Commonwealth. We have been given verbal indications, but no written assurances. Perhaps the honourable member should direct the question to his colleagues in Canberra. This is one of the enormous frustrations about this process involving the Commonwealth. I have sought clear guarantees that these amendments would be the last. The stages are that, when the initial Bill came in, it contained amendments which were Federal amendments. I thought that was it. Then we went through this process and they came up with another lot and I thought that was it. Then they came up with some more and I thought that was it. Hopefully, this will be it. They have said verbally—they never give these things in writing—that those are all the amendments that they are seeking. Whether they change their view is a matter for them. However, we can act only on the advice we have been given. I hope that there will be no more amendments, but the matter is in the hands of the National/Liberal Party coalition in Canberra. It is a matter that Mr Santoro should direct to his mates in Canberra.

Mr Santoro also asked whether cultural heritage legislation will be introduced this year. I can advise that we continue to work towards the passage of this legislation by the end of this year. That is our aim and hopefully that will be the outcome. These matters are subject to consultation. I want to get the legislation right. It may carry over to next year, but the aim is to do it this year.

The member for Clayfield also asked about the transitional provisions in Part 19. These provisions have been in place to ensure that there is not a flood of matters put into the process as soon as the State provisions are enacted. It is in everyone's interest that we do not take the West Australian approach of clogging the system with thousands of applications at once.

Having now addressed all the issues raised by members, I think that it is important that I clarify the process that occurs after this legislation is passed by this House. After Parliament passes this legislation and the Bill receives His Excellency's assent, I will then request in writing that the Commonwealth Attorney-General make a number of determinations. These are determinations that are made under the Commonwealth Native Title Act, namely, that Queensland's alternative State provisions legislation will apply instead of the Commonwealth's right to negotiate process. Subject to some continuing negotiation with the Commonwealth, I would anticipate that this request will formally be made by the end of this month. The Commonwealth Attorney-General must then undertake, in line with the provisions of the Commonwealth Native Title Act, consultation with various bodies. To take as an example and to illustrate the point, the Senate will seek three section 26A determinations. One of these section 26A determinations will relate to prospecting permits.

The relevant native title provisions for which the section 26A determinations will be sought are contained in what will shortly become Part 13 and Part 19 of the Mineral Resources Act. I will request that the Commonwealth Attorney-General determine in writing that the grant of a low-impact prospecting permit, in accordance with Parts 3, 13 and 19 of the Mineral Resources Act, is an approved exploration act. A total of 13 determinations will be sought.

Following the procedure demanded by section 26A, the Attorney-General must initially satisfy himself that the Queensland legislation does, on its face, meet the requirements of the Commonwealth Native Title Act. It is essential that the legislation, which is considered by the Commonwealth Attorney-General, meet the conditions of section 26A of the Commonwealth Native Title Act. Otherwise, we do not even get to first base in the process.

Although that may seem a simple process, let me assure members that it is not. It involves forensic scrutiny of each clause, each phrase and each word to ensure that it cannot be seen to be inconsistent with the Federal legislation. If the Commonwealth Attorney-General is initially satisfied that

the State provisions meet the conditions of the Commonwealth Native Title Act, he then must notify and invite submissions from any representative Aboriginal and Torres Strait Islander bodies and, in the case of section 26A, the general public as well. The Attorney-General considers those submissions and decides whether to accept or reject the State legislation.

The Northern Territory, which has received a determination from the Attorney-General but which is now subject to a disallowance motion, adopted a fundamentally different approach to Queensland in the development of its alternative State provisions. From the outset, my approach to develop this legislation has been to involve the key stakeholder groups. In contrast, the Northern Territory approach to their native title legislation was to exclude indigenous participation and involvement. They presented the end product on a take-it-or-leave-it basis to the indigenous parties.

Although this legislation before us today may be criticised by disaffected individuals, no-one can legitimately criticise the extensive consultation that has occurred in its development. The final step in the process of the commencement of the alternative State provisions is for the Attorney-General's determination to be put before both Houses of Federal Parliament as a disallowance instrument. Federal Parliament cannot make amendments to the State's legislation. It is a simple issue of allowance or disallowance. When I talk about amendments, I mean amendments as they go before the Parliament. We have had enough amendments suggested from here during this process.

In the event of there being no mention after 15 sitting days from the determination's publication or, if the motion is debated, it is unsuccessful, the determination stands and the alternative State provisions will substitute, for the making of the determination, for the Commonwealth's right to negotiate process.

With that quick summary of this future process—and I think that it is pretty clear how involved it is and I think that it is also pretty clear how efficient this State Government has been in bringing alternative provisions before the Parliament in a most efficient and extraordinarily successful manner—it now leaves us to deal with the clauses.