Speech by

Mr SANTO SANTORO

MEMBER FOR CLAYFIELD

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NATIVE TITLE (QUEENSLAND) STATE PROVISIONS AMENDMENT BILL

Mr SANTORO (Clayfield—LP) (3.45 p.m.): I concur with comments made by honourable members to my right—that at least the previous speaker said what she said with a smile on her face.

I rise to speak on the Native Title (Queensland) State Provisions Amendment Bill. It is almost one year since the Premier and his colleagues formed Government in this State. How many times have we heard that the Premier was going to fix native title? We were told that this Government had all the answers and would kick-start mining in a way which would involve indigenous Queenslanders. We were told that we were going to see an outbreak of action and consensus. Instead, what we have is more confusion, more delays and more buck passing. What is worse, we are now debating legislation that is overly complicated. If it ever does get the tick from the Federal Attorney-General and the Senate, it will hang like a millstone around the necks of all those who have to try to work through it.

It is a dud—a very expensive, complicated and counterproductive dud, but a dud nonetheless. If anyone was looking for a testament in relation to this Government of smoke and mirrors, non-activity and buck passing, this piece of legislation is it. Let me be absolutely honest. I have great difficulties in understanding this Bill. After listening to the honourable member who has just preceded me, I am aware that other members in this place also have difficulty with this Bill.

The Premier was quite right when he said that there would be a need for not less than 13 separate determinations by the Federal Attorney-General. That highlights the complicated nature of this Bill. Let me deal with each of my concerns.

Firstly, I am concerned that the Premier has attempted to pass the blame for this exercise onto the Federal Government. The member who has just preceded me repeated that assertion. A reading of the Premier's speech would lead one to think that the Federal Government was being pedantic. The Premier waxed lyrical about how the Commonwealth was insisting on technical purity and that enough was enough.

From my own discussions with my Federal colleagues, I have been informed that the Bill presented to the Commonwealth by the Premier was full of errors. It was a mess. That means that the concerns that I and others expressed last year about this House being presented with a rushed Bill were absolutely correct. The Commonwealth looked at the Bill pushed through by the Labor Party last year from the viewpoint of technical compliance with the Federal Native Title Act and from the viewpoint of workability. The terrible indictment on this Premier and this Government is that the Bill failed on both counts. It was full—I repeat full—of technical errors. Worse still, parts of the Bill did not work and did not make sense. Almost every single page of the Bill had to be rewritten. Hundreds of amendments had to be made. That is what we are doing today. Today, we are debating literally 734 amendments to a substantive Bill. To add insult to injury, we will then be debating another 90 amendments to the amendments. What a joke!

Mr Cooper: The Bill should be withdrawn.

Mr SANTORO: Of course the Bill should be withdrawn. The honourable member for Crows Nest is absolutely correct. The Bill should be withdrawn, rewritten, cleaned up, made to make sense, made to work and made to mean something to the people who have a vital interest in this type of legislation, including the indigenous people of this State. The indigenous people of Queensland have bucketed this Government high

and low about the contents of this piece of legislative vandalism.

Yet, instead of admitting his error, the Premier, when introducing this Bill, attempted to pass the blame for this situation onto the Commonwealth. The Premier should have thanked the Commonwealth for at least preventing another badly drafted Beattie Labor Government Bill being perpetrated on the people of Queensland.

My second concern involves the inordinate delay in getting an alternative State provisions regime in place so that our mining industry can start moving ahead. Again we have a situation where the Premier claimed that only his legislation would be able to get through all the barriers—from Cabinet approval through to the Senate. We were told that only the Beattie native title template would be able to get through the barriers and only the Premier's legislation would become operational. That was November last year. It now looks as if the Northern Territory legislation, of which the Premier was so dismissive, will not be disallowed by the Senate. I might add that at least that legislation has already been processed by the Federal Attorney-General's Department and has received the necessary determination by the Federal Attorney-General.

How much longer do we have to wait before this Government and this Premier actually present this House with sensibly and competently drafted native title legislation?

My third concern about this Bill is that this Parliament has been treated almost with contempt. The Premier's speech told us nothing about this Bill and how it differed from the Bill passed in November last year. The Explanatory Notes, while a model of clarity— and I certainly am not critical of the public servants involved in this exercise—did not deal with the central issue of how this Bill was different from the Bill that it is replacing. I join with the Scrutiny of Legislation Committee in expressing my concern about this matter. For the information of the House, I point out that the committee said in part—

> "Unfortunately, the Explanatory Notes to the legislation do not highlight the changes made to the original Parts 12 to 18 of the 1998 Act by the new Parts 12 to 19. The Second Reading Speech merely refers to Commonwealth Government insistence on technical purity.
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> ...
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> The Committee notes that the Explanatory Notes do not clarify, on a clause by clause basis, the nature of the changes effected by each provision of the Bill. The Committee is therefore concerned that the Explanatory Notes do not provide the standard of explanation necessary to comprehend the change effected by each clause of the Bill."

The committee also referred to the complexity of the legislation. In short, we have a totally rewritten Bill presented to this House with no explanation of the nature of the changes and no attempt at all to set out in tabular form the changes and the reasons for each and every one of them. I join with the committee in expressing my belief that simply saying that a couple of hundred amendments are necessary because of the insistence by the Commonwealth on technical purity is simply not good enough.

The Premier was supposed to be bringing new standards of behaviour into this Parliament. Instead, he is treating this House with thinly veiled contempt. When the Premier responds to members' contributions, he should use that opportunity to outline the changes made to the Bill and why they were made, or do so clause by clause during the Committee stage. As it is, members are placed in an almost impossible position in trying to comment in any sort of intelligent way on this Bill.

My next concern relates to the extent of consultation that has gone into this Bill and the accuracy of the Explanatory Notes. All of us have been left with a pretty nasty taste in our mouths by the claims by the QIWG that the Explanatory Notes to the State Development and Public Works Organization Amendment Bill dealt falsely—and I repeat, falsely—with the level of consultation with that body. I note for the public record that, under this Bill, there are no comments about the results of consultation. I seek some clarification as to what sort of consultation occurred in relation to this Bill and whether the stakeholders expressed support for this initiative.

My next area of concern relates to whether we are again being presented with a legislative lemon. The last time we debated a native title Bill, we were presented with a rushed job that was amended extensively in the Committee stage and then picked to pieces by the Commonwealth. No doubt, having regard to the Premier's comments when he introduced this Bill, we will be presented with further amendments after discussions with the Commonwealth, that is, amendments on top of the major amendment that we are debating, on top of the amendments to the major amendments that have been circulated after the major amendment came into the House. At this stage, I want to know whether this Bill is now in a satisfactory state so that the Federal Attorney-General can look to the issue of determinations without his officers advising him that this Bill is full of technical errors. Can the Premier give such an undertaking to this House today, or whenever he rises to answer our queries?

The next matter that I want to raise with the Premier is a matter that he has not yet dealt with. I want to know just what time periods we as a

community are looking at. I will not go into great detail on this issue, because it has been addressed very, very well by the honourable member for Warrego and the Honourable Leader of the Opposition. However, it just seems to me that there would appear to be at least three major areas critical to the State's economy requiring urgent legislation. Those areas are petroleum leases, hard rock quarrying and cultural heritage legislation. For a long time, the Premier has been promising new cultural heritage legislation and in his speech he mentioned that it may be ready by the end of the year. I seek some information—indeed, some reassurance—from the Premier as to when all of these areas are going to be dealt with because, if the Premier has not noticed, I point out that time is slipping away. No doubt the Premier's advisers can correct me, but it is my belief that the Northern Territory package of native title legislation passed by that Parliament last year dealt with petroleum issues. If that is the case—and, as I said, I stand to be corrected—then surely to goodness this State can act a little quicker than it is at the moment.

My next concern relates also partially to timing, but it is in relation to parliamentary scrutiny. This is a concern that I have expressed every time I have risen in this Chamber to speak to native title Bills over the past 12 months. When the Western Australia and Northern Territory Parliaments debated native title reforms, they were presented with a comprehensive package of legislation. Parliamentarians were able to look at the sum total of the reforms and make sensible decisions about the desirability or otherwise of the reforms in a cumulative sense. Instead, we are presented with a dribble of reforms over an extensive period, compounded in this case by the same Bill introduced twice but totally rewritten the second time around, and with no explanation of the nature or the effect of the changes. After this Bill has been introduced, we get another 94 amendments to the amending Bill. Increasingly, as the Scrutiny of Legislation Committee has highlighted, the reality is that members of this Parliament are placed in a difficult, if not impossible, position when it comes to attempting to exercise any sort of scrutiny at all.

The next issue that flows from all of this is the fact that, at the end of the day, if this legislation eventually gets through all of the hurdles, it is going to have to be adopted and obeyed by the general community. The fact of the matter is that this legislation is unduly complicated and very difficult to understand. There are literally hundreds of small miners in rural Queensland who will be obliged to comply with this Bill, and they will not have a clue how to do so. What is more, most of the small firms of solicitors in rural areas also will not have the expertise to come to grips quickly with these new laws. The practical effect of all of this complication and lack of understanding based on a lack of consultation and a lack of commitment to the principle of simple and easily understood and read legislation is more delays to the mining industry, which is crying out for help, which is crying out for legislative simplicity and which is crying out for legislative fairness and equity.

The almost inevitable consequence of this Bill will be the growth of a new industry of native title lawyers. Those lawyers will be based in Brisbane and the larger regional centres. In recent times, the Premier has made much about ambulance-chasing lawyers. This Bill will promote and facilitate a lawyers' haven. It is legislation that is so difficult, so complicated and so convoluted that ordinary Queenslanders would be totally lost in trying to come to grips with it, and many will have no option other than to pay enormous amounts of money in legal fees just to try to keep operating, let alone exploring and eventually commencing a genuine mining operation. I am not saying that native title presents any Governments with easy, plain English drafting opportunities. However, this Bill transforms an already complicated matter into an almost impossible one.

This Bill applies not just to future mining activity but also to the more than 1,000 applications for mining tenements or mining leases that are currently before the Department of Mines and Energy. In those circumstances, the provisions of Part 19, which deal with transitional provisions, are absolutely critical not just for miners but also to the economic wellbeing of Queensland. When one reads that part of the Bill, it becomes clear that the mining registrar must give to the applicant of any application lodged with the department that is still current notice of the quaintly termed "notification commencement day" for the application. Depending on the nature of the claim, those existing claimants are defaulted back to the provisions of the Bill. For example, where an existing applicant nominates a surface alluvium—gold or tin—mining claim, that person is given four months from the time of the notification commencement date to lodge an application under proposed section 444 and comply with the requirements of that provision. Of course, in common with most of the other provisions in the Bill, proposed section 444 is overly complex and places a vast array of hurdles in the way of any miner proceeding. For example, the application has to be given to each native title notification party for the land in question as well as the native title registrar.

However, what is deeply troubling is what the application must contain. It must state, firstly, whether or not the application has been lodged; secondly, give a clear description of the land and its location; thirdly, details of the proposed activities proposed for the land and an outline of the expected impact on the land of the proposed activities.

Just interposing here, so far so good, but then the Bill continues: fifthly, that the applicant

must consult with each registered native title body corporate for the land over which the application relates as well as—and I repeat, as well as—each registered native title claimant for the land; sixthly, a nominated consultation day at least two months after the giving of the notice; and, seventhly, that the native title notification parties have a right to be heard by the Native Title Tribunal about whether the claim should be granted and other matters relating to the grant.

That means that before any of the more than 1,000 mining claims that are lodged with the Department of Mines and Energy and that are lined in queues and are no doubt covered in dust—not mining dust but bureaucratic and legislative dust—they must comply with those requirements. As if the hurdles were not already high enough. That means that every single miner falling within, for example, proposed section 444 must consult with each and every native title claimant and, in addition, the Government has interposed native title bodies corporate into this convoluted process. I presume that those native title bodies corporate are in fact federally mandated representative bodies, some of which are almost broke, embroiled in one controversy after the next and riddled with political infighting. I want the Premier to deal explicitly with this point. I ask: is it the case that all existing mining claims, or at least the vast majority, will not only have to be ticked off by each and every native title claimant over the subject land but, in addition, there face a further barrier in the form of representative bodies? I also wish the Premier to deal with this issue: if that is the case, why has the Government insisted on miners dealing not only with people who have lodged a claim but also with people who may have no interest in or knowledge of the subject land and who may reside and operate hundreds of kilometres away?

In the time available to me and given my other commitments today, I have not had a chance to look at the 94 amendments that have been circulated to see whether any of my questions have been answered.

Mr Fouras interjected.

Mr SANTORO: I am ready to stake my place in this Parliament on the belief that the vast majority of my concerns have not been covered by these 94 amendments. If the honourable member for Ashgrove or the honourable member for Greenslopes or any of the people who inanely accept the advice of their Minister and Government in an unthinking and not very clever manner have the answers to the questions that I have asked, let them provide those answers to me in their contributions. However, because no-one has written any for them, undoubtedly they will not make any.

What worries me is that if representative bodies are given automatic locus standi to appear before the Native Title Tribunal for each and every existing mining claim, two results are bound to flow. The first is that whatever else the Premier may claim, he cannot deny that the delays and frustrations experienced by miners who have been waiting for months if not years for their applications to be processed will be exacerbated and drawn out even further by the State Government's mandated processes. Secondly, if by legislation this Government has bestowed legitimacy and a place at the table for representative bodies for more than 1,000 existing claims and all future ones, those same bodies will inevitably come to the State Government looking for funding. They will say to the Government that, if the Government has decided that they should play a role and that role will be a massive time-consuming and expensive one, the taxpayers of Queensland should pay for the privilege. I ask the Premier: as a result of this legislation, are indigenous representative bodies now approaching the State Government for funding? If they are, is it the intention of the Government to provide funds?

The Leader of the Opposition pointed out that this Government has done absolutely nothing to solve the existing backlog. My fear is that not only has the Government done nothing positive but it is actually doing something negative to make the backlog worse, to heap process upon process and to make the task of the smaller miners and those without enormous capital reserves very difficult indeed.

From the very first time in 1993 when I rose to discuss legislation on native title, I have attempted to be as positive as I could about the various points of view and interests. Native title is a debate not only about land and money but also about culture, belonging, family tradition and the most dearly held beliefs of both indigenous and non-indigenous Queenslanders. It is a most sensitive issue and one that raises enormously important, complex and difficult issues yet it also impacts very directly on the future of the State from an economic perspective. The challenge facing all Governments is to come up with legislation that is fair and workable. On both counts, this legislation fails, and fails dismally, because it is unfair and unworkable. It is unfair because it places enormous burdens on miners who simply do not have the means of dealing with the processes, the costs and the complex paperwork that the legislation requires and it is unfair on the indigenous residents of the State and nation. As other speakers before me have said, the legislation should be withdrawn, rewritten and dispensed with immediately.

Time expired.