Speech by

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ABORIGINAL CULTURAL HERITAGE BILL; TORRES STRAIT ISLANDER CULTURAL HERITAGE BILL

Mr SEENEY (Callide—NPA) (Deputy Leader of the Opposition) (5.40 p.m.): I rise to participate in the debate on the Aboriginal Cultural Heritage Bill and the Aboriginal and Torres Strait Islander Cultural Heritage Bill and I am pleased to lend the support of the opposition to their passage through the House. These two bills are the culmination of a five-year review of Queensland laws designed to protect indigenous cultural heritage. Aboriginal people have obviously had a close association with the Australian landscape that is tens of thousands of years old. Over this time a considerable amount of cultural heritage objects and heritage sites have been produced. Unfortunately, with the passage of time many of these have been lost.

Much of the significance of what remains has also been lost as the Aboriginal population has been assimilated into the wider Australian community and has lost touch with its cultural roots. Most people would now recognise that the need to reserve and protect the Aboriginal cultural heritage items and places that remain is an important part of the heritage of all Australians, not just Aboriginal Australians.

In general, Aboriginal cultural heritage refers to the sites, places, objects, stories and documents that relate to the history of Aboriginal occupational and the use of Australia before and shortly after European settlement. For the purposes of this bill, Aboriginal cultural heritage is defined as—

... anything that is—

(a) a significant Aboriginal area ...

(b) a significant Aboriginal object; or

(c) evidence, of archaeological or historical significance, of Aboriginal occupation of an area of Queensland.

The Torres Strait Islander Cultural Heritage Bill, which is being considered in conjunction with the Aboriginal Cultural Heritage Bill, defines Torres Strait heritage and culture in a similar way.

Physical evidence of Aboriginal or Torres Strait Islander cultural heritage includes artefacts, scar trees, carvings, burials and ceremonial places to name but a few examples. Non-physical aspects of Aboriginal and Torres Strait Islander cultural heritage include the teaching of environmental and ecological knowledge, songs, stories and art. Some of these examples of cultural heritage are more easily identifiable than others. Indeed, some of them are much more readily preserved and protected than others. That diversity—in regard to what constitutes Aboriginal and Torres Strait Islander heritage and culture—coupled with a corresponding diversity in appropriate protection strategies, has presented a considerable challenge for the drafters of these bills and for all interest groups who have been involved in the process and who have an interest in and a commitment to protecting this Aboriginal and Torres Strait Islander cultural heritage.

I do not believe that there is any disagreement that these cultural heritage items need to be respected and protected. There is a general agreement about that within the community and, I think, within this parliament. How that is achieved and to what extent that protection overrides future uses and competing uses are issues of sometimes differing viewpoints, especially in regard to places of significance. Just how significant a place is and why it is significant and to whom it is significant are all very subjective measures, yet determining those things is at the heart of any protective regime. It is much easier with artefacts that can be collected and protected away from where they were found and in

most cases are not site specific. It is a very different situation when protection is extended, as it is in these bills, to places of significance.

While those places may well have been significant, and may well still be significant to some people, in most cases that significance is not readily apparent. In addition, it is very difficult to quantify that significance and determine just how important or significant those places are and to whom and why. Hence the potential for spurious claims is obvious. It is all too easy to have situations arise where the concept of significant places is misused. Any statute that sets out to provide quite legitimate protection to the values of those significant places must also guard against the regrettable but almost inevitable misuse of its provisions.

The review of Queensland's cultural heritage laws was first announced in December 1998 to address inadequacies in the current legislative framework. The Cultural Record (Landscapes Queensland and Queensland Estates) Act 1987 is widely regarded as being an inadequate tool to protect indigenous cultural heritage and areas of Aboriginal and Torres Strait Islander cultural significance. It also provides little guidance about how proponents may address cultural heritage matters with certainty in a timely or cost-efficient manner. It certainly was subject to misuse in a way that did nothing for either the indigenous population, whose cultural heritage it sought to protect, or the other interest groups that needed to work in that particular community and that had a similar interest in protecting the cultural heritage of previous indigenous populations.

I note that these bills have undergone major revisions and reviews since they were first mooted in 1998. They are very different from the first consultative drafts that were released for discussion and consultation. To put it mildly, I am very pleased about that. I do not think that I would be standing here lending the support of the opposition to this legislation had it been introduced in the form that it was first released for consultation. I am pleased that that process of community consultation, in this instance at least, has refined these statutes to a point where they can be supported by the opposition in this parliament and they will receive the support of the overwhelming majority of the Queensland electorate. So I am pleased that we were able to reach that point in those intervening years, even though it has taken a little time.

I am also pleased that the government has been able to listen to the concerns that were raised during that consultative process and has taken those concerns into account. It has arrived at a compromise position. It was always going to be difficult to find a position that balanced the competing issues that are apparent in this area of statute. The bill before the House has achieved that delicate balance and that, if nothing else, is a victory for that consultative process.

The bill before the House sets out rules about ownership, custodianship and possession of Aboriginal cultural heritage, outlining that ownership of cultural heritage generally lies with the state. However, clause 15 provides that Aboriginal human remains are owned by the Aboriginal people who have a traditional or family link with the human remains. This is supported by clause 17, which makes advice of Aboriginal human remains compulsory with heavy fines for anybody not reporting.

I think that most people would acknowledge that human remains, ancestral remains especially, are probably the most sensitive of all the items covered by this cultural heritage legislation. It is appropriate that there be a strict reporting mechanism within the bill. It is also appropriate that heavy fines should apply to people who either do not acknowledge their obligation to report the existence of such remains or interfere with them in some inappropriate way. I support that part of the bill.

The bill enables the minister to grant a stop order for an activity if there are reasonable grounds for concluding that a particular activity will harm or have a significant adverse effect on Aboriginal cultural heritage. The bill makes it an offence to possess an object that is of Aboriginal cultural heritage if the person knows, or ought reasonably to know, it is of Aboriginal cultural heritage.

I am pleased, however, that the bills recognise that people who may have an artefact that has been passed down through generations will not be committing an offence under the act. In the transitional provisions, clause 161 confirms that the act is not intended to interfere with the ownership of Aboriginal cultural heritage as it existed before the commencement of the act. That is important, because there are a significant number of people who have collections of one size or another of Aboriginal cultural heritage items that have been discovered or picked up over the years. There would be few station homesteads throughout western Queensland that do not have an Aboriginal axe or a spearhead or something like that that has been found on the property over the years. It would be quite impossible and quite inappropriate to try to gather all of that material and put it into some other ownership system. I am pleased that these bills do not attempt to do that. I am pleased that these bills recognise that those collections, whether that collection amounts to a single item or a larger collection of artefacts, remain the property of the person who was the legal owner of that before the introduction of these bills.

In contrast to the Queensland Heritage Act 1992 where protection is given only to items listed by the Queensland Heritage Council, these bills establish blanket protection of cultural heritage items

irrespective of whether they have been identified or registered. They establish a broad duty of care responsibility on all Queenslanders not to cause damage or to destroy these cultural heritage items or places. The detail of that duty of care obligation is not yet clear, as the guidelines are to be set out by regulation. It is important that the duty of care obligations should mirror what are reasonable and appropriate expectations with regard to cultural heritage items and places. While I certainly support the concept of establishing a broad duty of care, the one area of unease that I have with this legislation probably relates to the lack of detail that is yet available about how that duty of care obligation is going to be defined and the guidelines that are going to be produced by regulation by the minister and what those guidelines will entail.

I can only hope that when those guidelines are gazetted they do continue the approach that has been taken with the body of the legislation in adopting a reasonable balance between the competing interest groups or between the interest groups that sometimes can be competing but hopefully can be complementary towards the protection of Aboriginal cultural heritage items and places. But it will be very important to get those guidelines right. I believe the duty of care concept is a good one. It is a good legislative model, but it will succeed or fail based on the compilation of those guidelines. It will succeed or fail based on how well those guidelines are put together and how that duty of care is to be defined and discharged by those who have an obligation to do so. I am also pleased to note that in the explanatory notes there is again an emphasis on the consultation process in the compilation of those duty of care guidelines. I hope and trust that we will get a similar outcome from that process that we have seen from the broad community consultation that has led to the bills being before the House today. It is important that that duty of care obligation mirror what is reasonable and appropriate.

The difference in approach from the old regime is important, as these bills recognise that Aboriginal and Torres Strait Islander people do not have statutory rights of access to other people's land to identify their cultural heritage. It is quite likely that significant cultural heritage items and places can and do exist on privately owned land and land where other rights are held by a variety of interest holders. Instead of giving rights of access and full responsibility and full ownership to indigenous groups, these bills recognise that we all have an interest in the preservation of this cultural heritage. These bills make it incumbent on all Queenslanders to act reasonably to identify and respect such cultural heritage items and places and they place that obligation on every one of us to exercise a reasonable duty of care to ensure that they are identified and protected.

One of the most important features of these two bills is this establishment of a duty of care to take reasonable and practical steps to be aware of and to avoid harming Aboriginal and Torres Strait Islander cultural heritage. It is the mechanism designed to support the bills' blanket protection of cultural heritage, and it is one that I support and commend. The duty of care concept is a creditable legislative model that has been adopted elsewhere in Queensland legislation, and it can be used more widely than it is. In this case, its purpose is to ensure that appropriate steps are taken to protect cultural heritage while at the same time allowing for some flexibility in how the legislation is applied to specific areas and activities where the risk of damage is high.

This duty of care is backed up by increased maximum penalties—up to $75,000 for individuals and $750,000 for corporations. Voluntary management plans will be an important mechanism for proponents to demonstrate how they have acted to meet their duty of care. In the case of high impact developments where the identified risk is higher, cultural heritage management plans will be mandatory. The legislation sets out when these cultural heritage management plans will be mandatory, and broadly those triggers are set so as to include projects where an environmental impact statement is required. The explanatory notes detail that the intent in this clause is to catch the projects that are most likely to have an impact on Aboriginal cultural heritage, and I believe that that is a reasonable approach and that these bills strike an appropriate balance.

The process for developing these plans is somewhat similar to an environmental impact statement. Proposed section 118 sets out that the project is to be managed to avoid or minimise harm to Aboriginal cultural heritage. To achieve certainty of time frame and process, the legislation establishes a four-month period which can be extended by agreement to develop a cultural heritage management plan about the assessment of cultural heritage and their management of impacts upon it. The cultural heritage management planning process requires notification and consultation with Aboriginal parties, and the bill sets out how this is to be carried through.

The bills provide that all agreed cultural heritage management plans are to be formally approved by the state, with any objections to be heard in the Land and Resources Tribunal. The bills integrate with native title processes by defining respective Aboriginal parties or Torres Strait Islander parties, as the case may be, as registered native title claimants or native title holders whose outer claim boundaries encompass part or all of the land concerned. The bills also provide that, where a person's or group's native title claim fails, that party will still be the Aboriginal or Torres Strait Islander party for the area to talk to about cultural heritage issues until another person becomes a registered native title

claimant. This should overcome previous problems experienced with the Cultural Record Act where proponents seek to identify the appropriate people to talk to about cultural heritage issues in the area and sometimes have enormous difficulty doing so. For example, in my electorate there have been some issues relating to the Burnett River dam project with concerns raised about who should be the appropriate cultural heritage monitors and the process surrounding cultural heritage management. Hopefully these new bills will make progress for such projects more easy to achieve.

There has been an issue about cultural heritage monitors and their employment which has achieved a degree of coverage in the local media and in the statewide media over a number of years now as we have waited for this legislation to come before the House. There has been some understandable concern about the way in which cultural heritage monitors have been employed on particular projects and the cost of those cultural heritage monitors.

There has certainly been understandable concern when what would appear to be an inappropriately large number of cultural heritage monitors are employed at rates of remuneration considerably more than what their compatriots in other jobs in those communities are receiving. This has led to a degree of friction, frustration and community disquiet in places such as Eidsvold, Theodore and other communities where a small number of people from the Aboriginal population have been able to be employed as cultural heritage monitors at rates of $30 an hour—the going rate for a number of projects. That did not do anything to produce harmony or sensible relationships between not just the Aboriginal population and different groups within it but also the Aboriginal population and the broader community.

Hopefully, this whole issue of cultural heritage monitors will be addressed in the detail of this bill and the guidelines that will set out how the duty of care is to be met. We might explore in the committee stage what the minister sees as being the number of cultural heritage monitors that need to be employed, their rates of remuneration and whether the minister sees this legislation as redressing the situations that have arisen up until now. They have produced quite serious situations.

To be fair, this is not something that has developed recently. It first came to my attention during the construction of the powerline from Calvale to Tarong before I was a member of this parliament, and before the current government was in office there was an issue as to the role of cultural heritage monitors and what responsibility the constructing authority at that stage, which was Powerlink, had in employing them—how many needed to be employed, who was an appropriate person to be a cultural heritage monitor, what were the responsibilities of those people and what was an appropriate level of pay. Unfortunately, there was a tendency by some constructing authorities to see it as the cheapest way to get the project through the legislative mess in existence prior to the introduction of this legislation to pay an inappropriate amount of money. I hope that this legislation can put an end to the problems by solving all of those issues that lead to disharmony in the community and do nothing to advance the protection of Aboriginal cultural heritage. However, this legislation, by detailing the processes for cultural heritage studies and the development of cultural heritage management plans for large projects such as the Burnett River dam, should allow everyone to know where they stand and what procedures must be followed.

I note the mining industry has also welcomed the changes made in this legislation. In a media release dated 21 August 2003, the Queensland Mining Council stated that the new legislation goes hand in hand with the recently announced native title protection conditions and will provide increased opportunities for companies to get back on the ground, exploring and developing new operations. However, while the legislation works in with native title processes, the bills do recognise that the existence of cultural heritage values does not depend on the existence of native title in an area. Where there are no registered native title claimants or holders for the land, cultural heritage values do not disappear. In those situations the Aboriginal party to talk to about cultural heritage issues is a person or group with a particular knowledge about traditions, customs or beliefs associated with the area or object.

Importantly, the bills before the House enable incorporated bodies to apply to be registered as a cultural heritage body for the particular area. These cultural heritage bodies will then have the explicit role of identifying the correct Aboriginal or Torres Strait Islander party for the area. The bill also sets out the procedures for carrying out a cultural heritage study and having its findings recorded in a cultural heritage register. The bills formalise the cultural heritage database of the 14,000 sites, places and objects that have been recognised and collated over the past 80 years by the Environmental Protection Agency. Information may be added to the database without undertaking a formal cultural heritage study. Information may be provided from the database on a needs basis to ensure the sensitivity and integrity of the information is respected.

Although I understand the cultural heritage database is to remain confidential, the bills also establish a cultural heritage register that is a publicly available list of sites, places and objects that have been registered following a comprehensive cultural heritage study. The bills link with the integrated development assessment system, or IDAS, by amending the Integrated Planning Regulation 1998 to

provide that the Department of Natural Resources and Mines acts as a concurrence agency for development applications involving a material change of use under a planning scheme affecting an area identified on the registers of Aboriginal or Torres Strait Islander cultural heritage.

In his second reading speech, the minister said that the legislation will not be commenced until essential preparatory work is completed, such as the establishment of the cultural heritage register and the finalisation of the duty of care guidelines. I understand the government is liaising with stakeholder groups, such as the Queensland Mining Council, the Queensland Farmers Federation and Agforce, about the duty of care guidelines. I welcome this, as I said before, and I stress again that the government must ensure that the duty of care guidelines keep within the spirit and the intent of this legislation, because it is to a very great degree on those duty of care guidelines that the success or otherwise of this legislation will rest.

I am pleased also that the government has set out that the legislation must be reviewed after five years. This is a new approach that is being adopted and it is essential that the government monitors its effectiveness and appropriateness. Overall, the opposition supports the protection of cultural heritage, as do almost all Queenslanders. But at the same time it is important to remember that the economic development of the state cannot be impeded by undue restrictions, and there are enough undue restrictions currently placed on the mining industry in particular. If we are going to achieve the protection of these cultural heritage items and places, it is important that we have a cooperative regime, that we have cooperation and support from all of the interest groups and all of the stakeholders who have a role to play in achieving that protection. It is important that people understand their responsibilities under the duty of care concepts laid out within these bills. But it is most important that they feel that it is in their interests, as it is in the interests of all Queenslanders, to preserve and protect the cultural heritage of the Aboriginal and Torres Strait Islander people. These bills are an important step in that direction. They represent a legislative model that I believe has credibility and it is one that should receive the support of this House. I commend it to the parliament.