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Member: Mr STONE

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Mr Speaker Dondas took the Chair at 10 am.

Mr STONE (Mines and Energy): Mr Speaker, I rise to make a statement on the impact of the proposed Commonwealth Native Title Bill on the mining and petroleum industry in the Territory. The so-called 'enlightened practical response to Mabo' guarantees that the majority of Territorians will remain second-class citizens in their own country. From the Prime Minister down to our own Leader of the Opposition, Brian Ede, we are told not to confuse Mabo with land rights. However, Mabo native title is about land rights. They are inseparable ...

Mr EDE: A point of order, Mr Speaker! It is customary in this House that members be referred to by their correct titles and not by their personal names.

Mr Coulter: You do not want to be named, do you?

Mr Ede: It is a matter of maintaining some dignity.

Mr SPEAKER: Order! The honourable Minister for Mines and Energy must refer to honourable members by their electorates or their titles.

Mr STONE: To his everlasting disgrace and shame, the Leader of the Opposition has sold out Territorians and peddled the great Canberra lie. The Prime Minister urges national uniformity on native title and a spirit of reconciliation, but he turns a deaf ear when the land rights legislation is put on the table. It will be one set of rules for Australia and another for the Northern Territory, and that is what this is all about. Australia will have the Native Title Bill and Territorians will have the Native Title Bill plus the Land Rights Act. Territorians have suffered yet again at the hands of southern politicians, aided and abetted by the local branch of the ALP.

But, why should that matter to Territorians? Is mining so very important to the Territory? The simple fact is that mining remains the most important sector within the Northern Territory economy. This year, mining will account for some 21% of Northern Territory GDP. In simple terms, that is approximately $1600m. This compares with the contribution of mining to Australia's GDP of 4.1%. Some 3500 Territorians are directly employed in the mining industry. Literally thousands of other Territorians have benefited from mining, from the corner store to the local service station.

The Native Title Bill will impact on mining nationally but, taken together with the Land Rights Act, it will have a far more dramatic impact on our economy. Territorians deserve at the very least equal consideration with other Australians when it comes to land management issues. I tell the Leader of the Opposition that equality and equity are all we want. All we ask is that Territorians be treated in the same way as other Australians. In effect, the Prime Minister has committed the Territory to having a different land management system than the rest of Australia. Does the Leader of the Opposition agree with that? Does he think that it is in the interests of the majority of Territorians?

The Chief Minister has argued consistently that there should be a national approach to Mabo. A national approach is both sensible and fair and would do justice to all parties concerned. That was the reason why the

Chief Minister took the time to brief the Prime Minister personally. It is now a matter of record that the Prime Minister reiterated his support for a single, national, uniform approach - except for the Northern Territory of Australia. Prime Minister Keating describes the Native Title Bill as a chance for equality - equality for all Australians. For all Australians except Territorians! Is that what the Leader of the Opposition stands for? Is that what Territorians could expect from a future Territory Labor government?

This government objects to the bill because we are determined to see Territorians treated in the same way as all other Australians. We have been told by the federal Labor government that the Native Title Bill is a compromise between the power of the states and the power of the federal government - a compromise between the interests of Aboriginals and the mining industry. The Prime Minister told the nation that Aboriginals would not have a right to veto development on land declared under native title. However, that right of veto will continue to exist in the Territory under the Aboriginal Land Rights (Northern Territory) Act - an act which, as its title suggests, applies only in the Territory.

The proposed regime of law, together with the Land Rights Act, does not serve the majority of Territorians and yet it has been welcomed enthusiastically by the Northern Territory Branch of the Australian Labor Party. It has been fought for vigorously and defended by the Leader of the Opposition and the shadow mines and energy spokesman. He advocates publicly that no veto should be attached to native title and, in the same breath; he defends the veto in the Land Rights Act. Is the Leader of the Opposition serious in advancing that argument? Why does he defend the veto in the Land Rights Act? It is because that is what he has been told to do by Canberra. He trotted dutifully down to Canberra to obtain his instructions from the Prime Minister, to sell Territorians down the river.

The sad fact is that the Territory ALP has argued for months behind the scenes to retain the veto in the Land Rights Act. The much-publicized trip to Canberra by the Leader of the Opposition was a complete sham. He knew the outcome of the meeting before he went to Canberra. The Leader of the Opposition had been supporting the veto in the Aboriginal Land Rights Act while, at the same time, advocating publicly that there should be no veto attached to native title because he was willing and able to sacrifice the interests of Territorians in a gamble that they would not find out he was involved in negotiations to ensure that the veto in the Aboriginal Land Rights Act remained.

The federal Labor government is desperate to have Labor elected in the Territory, and it must be patently obvious to all of us why it wants a compliant Territory Labor government. Blind Freddy could work out what Paul Keating and the Leader of the Opposition have in line for the Territory. We say no veto for the Territory. For the record, a limited veto that applies in Western Australia on some land holdings should also be abolished. The Leader of the Opposition can stop hiding behind an isolated aberration that occurs in Western Australia and that is opposed equally by this government.

If the Leader of the Opposition believes for one moment that the federal government has the support of the Australian people on this issue, then I suggest that those opposite consider the results of a survey conducted recently by the Australian Mining Industry Council. The national opinion poll on Mabo/native title was conducted for the Australian Mining Industry Council between 9 and 14 November. It showed that Australians have strong

doubts about the economic implications of the Mabo/native title issue, a belief in equal treatment for all and serious concerns about the federal government's Mabo response. Some 64% of the 1200 people polled around Australia rejected Commonwealth control of land management. The levels of 'very concerned/somewhat concerned' responses about the possible effects of Mabo were very high: 86% if existing property titles were put at risk; 85% if employment opportunity

possibilities were reduced; 82% if economic development was delayed; and 81% if mining investment was discouraged. Those statistics contradict completely the statements made by the Leader of the Opposition. The fact is that Australians, let alone Territorians, do not support the line that he has adopted as his own.

The Leader of the Opposition is on the public record as saying that he supports amendments to the Land Rights Act. In the same breath, he says that the legislation does not stop people from developing in the Northern Territory. Nevertheless, the Leader of the Opposition states that, if elected, he will provide 'additional funding' to assist in the 'fast-tracking' of exploration and mining under the Land Rights Act. The Leader of the Opposition has asked for it. As was put to him by the Northern Territory Chamber of Mines and Petroleum, 'if the Northern Territory Land Rights Act is not preventing development in the Northern Territory, why does he see a need for amendments and additional taxpayers' funding for fast-tracking?'

Mr Ede: Because we can do better. We will do better.

Mr STONE: The Leader of the Opposition says that he can do better. The questions have been raised now over a week of sittings and we have yet to hear what he would do.

Mr Ede: We will do better.

Mr STONE: Mr Speaker, there has been a history of Labor politicians who claim, in the one breath, that the Land Rights Act does not inhibit development and, in the next, that they support amendment of it. However, they cannot tell us what those amendments are to be other than to keep interjecting across the Chamber that they will do better.

Mr Bell: We can't tell what yours are from one week's end to the other either.

Mr STONE: They cannot tell us what they would really do.

Mr Ede: What are you going to do?

Mr STONE: Perhaps what they want to see is the reintroduction of the second veto.

Mr Ede: You have been in government for 20 years and you have not worked out what to do.

Mr STONE: What better example is there than the undertakings to amend the Land Rights Act given by Ministers Tickner and Griffiths before the last federal election? Members opposite must absolutely cringe when they are reminded of the role they have played in all of this. In October 1992, Ministers Tickner and Griffiths announced that they would be releasing a paper canvassing

various options to amend the Aboriginal Land Rights Act to break the stalemate created by the land councils in advising their clients not to enter into exploration agreements. Although the matter was listed

for discussion by the federal Cabinet in December of 1992, the matter was shelved until after the election. Surprise, surprise! Nothing further has been heard from the Commonwealth on this matter. Have members opposite attempted to have this reinstated on the Cabinet agenda? Of course not - they are happy with its 'business as usual' approach.

In fact, it is interesting to note that Minister Tickner agrees on the one hand to the NLC's requests for extensions to negotiations on the grounds of 'unenforceability of mining provisions' and therefore 'fundamental problems in the act' whilst, on the other hand, he is approving agreements reached by the CLC with North Flinders, Sons of Gwalia and Kunapula Pty Ltd. Every serious commentator on the issue concedes that the Northern Territory is the model for how not to do it. Nevertheless, here we are heading down the same track, reinventing the wheel and learning nothing from our mistakes of the past. How aptly it was put by the Financial Review on Wednesday 17 November, when it stated in its editorial: 'It (the Native Title Bill) may not lock land away to the extent of the disastrous 1976 Northern Territory Land Rights Act, but it will give the holder of native title the power to obstruct mining activity'.

In addition, I refer the Assembly to comments made last week by the Minister for Primary Industry and Fisheries who informed us of the drafting error by ATSIC that had included the Territory government's Elliott stockyards and quarantine dip in land granted under the Aboriginal Land Rights Act to a local land trust. The new Aboriginal landowners had refused to give the facility back and were threatening to close it over December and January and ultimately to remove the yards and dip to develop the area as a poultry farm and sporting facility. It would cause enormous difficulty for the Territory's cattle industry if access to this facility were to be restricted or prevented. The estimated cost of replacing these yards and the dip is around $1m which would be a ridiculous and unnecessary cost when a perfectly adequate public facility is already in place.

I also refer the Assembly to the case of the Jommet block. NT Gas believed that it had agreed terms to operate and maintain its pipeline through Aboriginal land in December 1985. The terms included a small up-front payment and an annual rental indexed to the consumer price index. While the CLC executed reasonable agreements with NT Gas, the NLC sought to renegotiate pipeline access terms for all Aboriginal landowners under its jurisdiction. At one point, it requested $1m annually. That is the kind of activity that members opposite support. Of course, such a price would have placed in jeopardy the Territory government's intention to use gas as a

source of energy for the development of the Territory.

It would be fair to say, however, that at last someone in Canberra has learnt something from the Territory experience. There is an attempt now to avoid the problems of our legislation to provide for genuine development - that is, for everywhere else in the country except the Northern Territory. Territorians are told to sit back and shut up because, on the scale of things, we do not really count. Not only will we have to live with the Native Title Bill, but we will continue also to cop the Land Rights Act. Territory miners and all other land users face the spectre of a double layer of land rights legislation - Mabo and the Land Rights Act. The proposed native title legislation will apply to virtually the same land as the Land Rights Act in the Northern Territory which at this stage covers almost 50% of our land mass. Those are the facts of the matter.

How the opposition can attempt to isolate Mabo from land rights defies belief. Mabo is all about land rights. The full bench of the Federal Court

decided recently that granting of land under the Land Rights Act does not extinguish native title. In other words, the 2 forms of title are able to coexist over the same area of land. How on earth are miners and the other land users in the Territory, including Aboriginal people themselves, supposed to negotiate their way through the legal minefield that this proposition will create if the Native Title Bill is passed in its present form? Imagine the following scenario. Aboriginal freehold has been granted to a group of traditional owners over an area of land. A second group of Aboriginals, who consider the land is theirs by common law right, apply for the area pursuant to the native title legislation. This is not an unprecedented scenario. There are a number of areas in the Northern Territory where 2 or more different Aboriginal groups claim ownership. How is a mining company to deal with that situation? That is the question that the Leader of the Opposition must answer. The mining company is placed in a position of double jeopardy. First, it must make its way through the Land Rights Act and, with the passing of the Native Title Bill, it will have yet another layer of legalese to contend with.

What has been the track record of the Land Rights Act in the Territory up to today? History shows that negotiations with land councils for access to land for mineral and petroleum exploration are drawn-out and exhausting processes. After17 years of land rights in the Territory, as at 31 October this year, 434 exploration licence applications had been approved by the Northern Territory Minister for Mines and Energy to proceed to negotiation prior to grant. Of these 434 exploration licence applications, for one reason or another 69 ceased before the land councils gave them active consideration and 17 have yet to be lodged with the land councils. Some 348 applications actually reached the land councils, while a further 38 applications ceased for one reason or another. That leaves 310 applications that were given active consideration by

the land councils. Only 53 exploration licences have been negotiated successfully between land councils and mining companies, and only 43 of those have actually been granted. 137 have not received consent and were vetoed. Of the rest, 107 were withdrawn by the applicants and 120 are still in limbo, mostly with negotiations at a standstill because the land councils, particularly the Northern Land Council, are not prepared to adhere to the existing law that allows only one chance to veto mining activities rather than 2 as they want, and in this they are supported by Territory Labor.

This vacillation and frustration of applications has been supported by Minister Tickner. In the last year, he has rubber-stamped extensions to the negotiating period for 69 exploration licences despite the fact that the Land Rights Act sets clear limits on the time in which the negotiation should be completed. What a fiasco! What we have is the imposition of an artificial embargo on the mining industry in the Territory, aided and abetted by Minister Tickner. Does the Leader of the Opposition think that 43 exploration licences out of 310 active and considered applications is in the interests of the Territory? There are 12 mines on Aboriginal land in the Territory. All except 2 were not subject to the veto provisions of the Land Rights Act. They were lucky in that they predated the legislation. Those 2 mines are simply extensions to existing operations in the Tanami region where the traditional owners are supportive of mining activity.

Mr Ede: They are new mines. They are new ore bodies.

Mr STONE: They are extensions of existing operations. That interjection really highlights the ignorance of the Leader of the Opposition. When he makes interjections of that kind, he demonstrates that

he knows nothing about those operations. He knows even less about the mining sector.

For anyone wanting to be a miner in the Territory, that is the first hurdle. Having been approved by the minister and having negotiated successfully with the land council, on behalf of traditional owners, the would-be miner is ready to get down to business. However, not so fast - enter the proposed native title legislation that is to be laid across Australia. It has been established already that native title can coexist with the Land Rights Act and Aboriginal freehold. The Federal Court has decided that much. The native title legislation will allow Aboriginals, who believe that they have native title rights to an area, to make an application for determination of native title. If, during the course of determining whether the application is valid, those people believe that they may be entitled to compensation, perhaps for the action of granting tenure to a mining company, consideration of that compensation must commence immediately, even before the land is determined to be native title land.

To grant tenure to a mining or petroleum company in the first place, the government, not the applicant, must notify a range of interested parties and then receive submissions from native title parties and proceed to attempt to obtain their agreement to, and I quote from the bill, the 'doing of the act' (the grant of the title) and to determine the conditions upon which they believe the grant may be made. Whether the government likes it or not, we will be drawn into these negotiations - that is, of course, unless the government decides that the grant can be handled as an 'expedited process' which allows a grant to proceed without agreement, whereupon it is still required to wait 2 months for any objections to arise.

Anyone who believes that no objections will be raised in the Territory has not been paying attention to what has been happening here over the last 17 years during the life of the Land Rights Act. Once an objection to the expedited process declaration is received, an arbitral body is required to hear the objection and all interested parties are obliged to negotiate. The supporters of the bill will argue that this is not a veto, but anyone who has experience of these matters will say that there are many ways to veto a project, including delay, vacillation and time-wasting. Let's face it, only 43 exploration licences have been granted out of 434 applications under the Land Rights Act. Of 310 applications, which were then actively considered by the land council, only 53 were supported.

Under the Native Title Bill, the government becomes involved in negotiations - involving more time and effort that will significantly delay the grant of tenure. Take the example of a mining company that is required to negotiate with the land council representing one group of traditional owners, on the one hand, whilst the government is negotiating with the native title applicants or their representative on the other. The Federal Court has told us already that the Land Rights Act and native title can exist together. Proposed section 196 of the Native Title Bill states that 'nothing in this act affects the rights of interest of any person under ... the Aboriginal Land Rights Act'. Who takes precedence in these circumstances? Which group of landowners has the final say - the native title owners or the Aboriginal freehold owners? Both groups may well have equal rights to compensation, but the native title owners have a say in the conditions to be put on the miner's title.

This is an absolutely ludicrous situation for the mining industry to be in, and I remind the Leader of the Opposition that it will happen only in the Territory and nowhere else in Australia. In essence, the Territory will

be burdened with the most onerous mining tenure scheme in Australia. The mining industry is a tough industry in which the elements pose enormous challenges. However, the heat and the

geology of the Tanami will fade into insignificance compared with the administrative burden of double land rights that will be put in the way of future projects in the Northern Territory.

Let us attempt a practical approach. Who do we sort out first? Mabo appears to enjoy the pre-eminence and therefore we will sort out the native titleholders first. But who are the native titleholders? Who will be the native title applicants for land that has been granted as Aboriginal freehold under the Land Rights Act? It could be that the Aboriginal freehold landowners may apply for native title to strengthen their tenure over their land and to prevent any other people laying claim to their land. It could be another group of Aboriginals, a group that does not own the freehold title but that believes that it has a traditional attachment to the land. In the Territory, there are a number of well-recorded situations where this is the case and where, on the face of it, a group of Aboriginals has traditional attachment to an area of land but has not succeeded in the land claim process. In some cases, these groups have an antagonistic relationship with the land council and the registered owners of Aboriginal freehold.

In these situations, how does the federal government expect the Territory government to reach an agreement with the native title owners which would meet the expectations of both those native title owners and the Aboriginal freehold title owners who are, by law, represented by the land councils? Perhaps the Leader of the Opposition can tell us in laymen's terms how it will work. After all, he is the great champion of this new system and therefore he has a responsibility and an opportunity today to spell it out for us.

Of course, there is recourse to an arbitral body, either the Commonwealth National Native Title Tribunal or a recognized Territory body. Both arbitral bodies have strict time limits within which to work and, for mining titles, are supposed to complete their deliberations within 8 months of the original advertising of the mining tenure application by the Territory. In the Territory, we are familiar with the requirements to adhere to timetables for negotiations with Aboriginal groups. The theory does not match reality. The Land Rights Act has similar strict timetables and - surprise, surprise - those timetables mean precious little. The fact is that the average time taken to have an exploration license granted on Aboriginal land is some 6.6 years. This compares to about 5 months on non-Aboriginal land. That tells its own story. It is little wonder that the land councils have agreed to only 53 exploration licences out of 310 active and considered applications.

The federal Minister for Aboriginal and Torres Strait Islander Affairs has agreed to extensions to the negotiation period for 69 exploration licences over the last 12 months. That is a de facto second veto. It is hardly in the spirit of the legislation but, then again, he is pandering to a sectional constituency at the expense of one of the most important sectors of Australian industry. Those 69 exploration licences account for 60% of the 120 exploration licences still supposedly under active negotiation. What a fiction that is! Anyone who has endeavoured to make their way

through the Native Title Bill would have little confidence that time frames laid down in it would be adhered to any better than those under the Land Rights Act. It is clearly the intention of the Prime Minister and the Leader of the Opposition that the Territory will be subject to both pieces of legislation. Mining companies and the Northern Territory government may

find themselves negotiating with 2 different Aboriginal groups for each tenement sought. The time needed to reach agreements will be cumulative as concurrent negotiations are not possible under the legislation.

It is true that the minister can overrule the determination of an arbitral body in the interests of the state or territory. However, that will not necessarily speed up the grant process as the arbitral body has to complete its determination prior to the ministerial discretion being applied. That ministerial discretion will offer little comfort to miners as there are virtually no precedents for making the grant of mining and petroleum tenure on the basis of overriding national interest. The doublespeak from Canberra continues.

Thus, we are to believe that the Native Title Bill is a compromise between the interests of Aboriginals and industry. The bill is an impediment to mining, particularly when taken together with the Land Rights Act. Whether or not the Prime Minister or the Leader of the Opposition wants to hear it, there remains power to obstruct mining activity. That power is over and above that enjoyed by any other Australian. We can expect to see inordinate demands made on mining companies in exchange for Aboriginal people dropping objections, be they spurious or otherwise. The end result is a further disincentive to invest in Australia but, more particularly, in the Northern Territory. At a time when the federal government should be encouraging exploration activity and the development of mineral resources, it is in effect building barriers that will, in some cases, be insurmountable by industry.

If the Native Title bill is a recipe for 'confusion, complexity and frustration', as it was described by the head of BHP, Mr John Prescott, one wonders what he would have to say about Mabo together with the Land Rights Act. The Leader of the Opposition has an opportunity to tell us today why he supports one set of rules for Territorians and another set of rules for the rest of Australia. If, in its own words, the mining industry feels 'constrained' by the Land Rights Act, he can tell us how it will help to overlay native title legislation over the Territory with that Land Rights Act still intact.

The Northern Territory Labor Party has sold out Territorians yet again. In effect, the Prime Minister has committed the Territory to having a different land management system than the rest of Australia. That was and still remains the aim of the Leader of the Opposition. He is sitting in

this Assembly under false pretences in that his motives have not been fully explained to the people of the Territory. Over the course of this statement, I have posed a series of questions to the Leader of the Opposition, who is also the opposition spokesman on mines and energy, none of which he has addressed satisfactorily over the last week or in any other speech delivered anywhere else either inside or outside of this Assembly. I will put these questions again by way of summary in the hope that, at some stage in the very near future, the Leader of the Opposition will have the courage to give Territorians honest and clear answers to them.

Firstly, does he agree that the Territory should have a different land management system than the rest of Australia and does he think that this is in the interests of the majority of Territorians? Secondly, how can he seriously and publicly advocate that no veto should be attached to native title and, in same breath, defend the veto in the Land Rights Act? Thirdly, as was put to the Leader of the Opposition by the Northern Territory Chamber of Mines and Petroleum, if the Northern Territory Land Rights Act is not preventing development in the Northern Territory, why does he see a need for

amendments and additional taxpayers' funding for fast-tracking? Fourthly, how is a mining company to deal with a situation where Aboriginal freehold has been granted over an area of land to a group of traditional owners and a second group of Aboriginals, who consider that the land is theirs by common law right, applies subsequently for the area pursuant to the native title legislation? Fifthly, does he believe that 53 exploration leases supported by the land councils out of 310 active applications considered by them under the Land Rights Act is in the interests of the Territory? Finally, if the mining industry feels, in its own words, 'constrained' by the Land Rights Act, how will it help to overlay native title legislation over the Territory with that Land Rights Act still intact?

Those are some of the questions that I challenge the Leader of the Opposition to address because not only I and members on this side but also Territorians generally want to know where he stands. We do not want to hear the retort that he 'will do better' or that he 'will fix the problems'. We want to hear how he will actually do it. The questions are there. The response is up to him, and we will listen with great interest to what he has to say.

Mr Speaker, I move that the Assembly take note of the statement.

Reference:

http://notes.nt.gov.au/lant/hansard/HANSARD6.NSF/0044d01ca7b2aec748255fcd0024659c/4d3b040f1c9991f14825609f001d463a?OpenDocument