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Native title legislation wrong in principle

by Kristen Smith
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GOOD guys rarely win. The sentiment struck me when I visited former shadow minister for indigenous affairs Daryl Melham during one of his loneliest political moments.

It was 2000, and he was sitting in his new cupboard-sized office after resigning as shadow minister.

Queensland was preparing to welcome its controversial native title legislation, which so upset Melham that he considered he could no longer continue in his post.

The legislation was the last straw for Melham and the Queensland Indigenous Working Group, representing Aboriginal traditional owners in this state after a solid three-year "war" between government and stakeholders.

In 1998, the Howard Government passed the Native Title Amendment Act after the High Court's 1996 ruling on a native title claim by the Wik peoples of Cape York.

However, indigenous people protested when the amendments became known as the Wik amendments.

They said the legislation was so far from "the principles of Wik" that it could not be considered a response to the ruling.

The Wik judgment resulted in many things, including the moment Aunty Gladys Tybingoompa performed "shake a leg" on the front steps of the High Court.

That day, the court ruled that pastoral leases and native title could co-exist, but in cases of irreconcilable conflict, rights of pastoralists should win.

The Howard Government's Native Title Amendment Act grasped the sentiment of the qualification regarding potential conflicts, and magnified it, essentially guaranteeing rights of indigenous people would be less than other stakeholders.

So that the Act would not conflict with domestic law, the Government suspended the Racial Discrimination Act, which would have outlawed the Native Title Amendment Act.

Most significantly, the Act placed the right to negotiate in the hands of the states, a move that would prove to bring Premier Peter Beattie and Melham unstuck.

The states were offered the option of having native title dealt with according to Federal legislation, or devising their own regimes.

Beattie chose a state regime and, after lengthy negotiations, got an almost-satisfactory result, with the right to negotiate over high-impact mineral exploration permits remaining the main sticking point. But Melham was not going to trade his beliefs just for Beattie's sake.

Labor Caucus cooled its interpretation of the right to negotiate, but Melham wasn't budging an inch.

The then opposition leader, Kim Beazley, gave his support, Beattie had his legislation and Melham resigned.

Beattie's legislation proceeded -- but never delivered.

The regime has now been scrapped, with Queensland reverting to the federal scheme after years of dissatisfaction from pastoralists, traditional owners and miners.

I rang Melham yesterday to ask if he would resume his post as shadow minister now things were "straightened out". He knew immediately what I meant.

"I'm never going back," was his response. Maybe not, but the Premier's backflip has certainly vindicated him.

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