Speech by

Andrew Cripps

MEMBER FOR HINCHINBROOK

Hansard Tuesday, 13 May 2008

ABORIGINAL AND TORRES STRAIT ISLANDER LAND AMENDMENT BILL; ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITIES (JUSTICE, LAND AND OTHER MATTERS) AND OTHER ACTS AMENDMENT BILL

Mr CRIPPS (Hinchinbrook—NPA) (4.19 pm): I rise to make a contribution to the debate on the Aboriginal and Torres Strait Islander Land Amendment Bill and the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) and Other Acts Amendment Bill being debated today as cognate bills. I reiterate the concerns expressed and, indeed, the objections recorded by my colleagues from the Queensland coalition who have spoken before me during the debate in relation to these two bills being inappropriately debated as cognate bills. One is a land bill being carried by the Minister for Natural Resources and Water and one is a communities bill being carried by the Minister for Communities and Minister for Aboriginal and Torres Strait Islander Partnerships. The only context in which the two bills are related is that of Indigenous communities, but they refer to two distinct policy areas. Neither bill is being treated with the respect it deserves given that both deal with quite different issues concerning Indigenous communities. The fact that two different ministers are responsible for the bills in question underlines this point.

I intend to confine my remarks to the Aboriginal and Torres Strait Islander Land Amendment Bill. The bill amends the Aboriginal Land Act 1991, the Land Act 1994, the Land Court Act 2000, the Local Government (Aboriginal Lands) Act 1978, the Native Title (Queensland) Act 1993 and the Torres Strait Islander Land Act 1991. The stated objective of the bill is to improve the lives of Indigenous Queenslanders through Indigenous land tenure reform. The bill proposes to enable homeownership and provide leases for social housing, provide greater certainty over the governance of townships and assist the transfer process for deed of grant in trust lands, facilitate the establishment of public infrastructure and encourage economic development in Indigenous communities.

Under the present legislation, leases over Indigenous lands such as DOGITs, reserves, Aboriginal land and Torres Strait Islander land cannot be renewed and, in the case of DOGITs and Indigenous reserves, are limited to 30 years. This has prevented homeownership amongst Indigenous Queenslanders living in those communities and has not provided the necessary certainty or security for genuine private and commercial investment in the community. Indigenous councils have identified this issue as one of the most pressing confronting their communities. Indeed, the Palm Island Select Committee, which reported to the Queensland parliament in August 2005, included recommendations proposing the simplification of existing tenure arrangements and processes, and the provision of long-term leases to facilitate homeownership and economic development in the Palm Island community. While those observations and recommendations related to Palm Island, they were and remain applicable to all Indigenous communities in the same land tenure circumstances as the Palm Island community. Furthermore, the Australian government has identified land tenure reform, including long-term leases for public housing bodies, as a

precondition for additional funding for housing in DOGIT communities, such is the impediment that it is considered to represent to their development.

The reality is that Indigenous communities find it difficult to attract private investment and commercial development. This is the case for a number of reasons, such as remoteness which affects many communities. Another reason is the inability of the shire councils to issue long-term leases or grant private freehold land to third-party proponents, which this bill seeks to address. The proposed amendments are required to enable renewable long-term leasing for residential infrastructure and commercial purposes to encourage homeownership and the development of Indigenous communities. Indigenous councils currently hold most transferable land, which has on it significant community assets. Some of those assets are secured by leases or reserves, but many, such as housing, are not. A significant amount of public infrastructure in Indigenous communities is not surveyed and does not have its own tenure. Therefore, identifying and isolating the above infrastructure has led to delays in transferring land, especially in DOGITs.

Declaring such particular parcels of land as not transferable will avoid the expensive and lengthy task of identifying and protecting the vast amount of public infrastructure in those communities. This will significantly speed up the transfer of the balance of the land. There is no general power to compulsorily acquire all interests in Indigenous lands for essential infrastructure such as schools, police stations, community housing and hospitals. The bill provides for the compulsory acquisition of Indigenous lands to deliver public infrastructure through the ordinary acquisition process.

The bill allows for longer term leases on Indigenous DOGITs and reserves of up to 99 years for private residential purposes. Leases for residential purposes were previously available, but for only 30 years. The bill provides greater security of tenure to Aboriginal people and Torres Strait Islanders by providing longer term leases with the ability to renew the lease. The bill will enable longer term leases of up to 99 years for commercial leases. This will be available only if certain requirements are met, including consultation. The bill will allow the state of Queensland to hold long-term leases of up to 99 years for the purposes of providing public infrastructure or, under the Housing Act 2003, to provide public housing. This capacity will also be extended to the Commonwealth government and councils for the purposes of providing public infrastructure. These long-term leases in relation to DOGITs are also available on Aboriginal or Torres Strait Islander land and can be also granted over Indigenous reserves and can be renewed.

In principle, these are important reforms that will allow Indigenous communities to offer more secure tenure for private investment and commercial development, as well as facilitate the provision of infrastructure that will encourage that investment and development. For the first time a form of incentive and initiative will be present in Indigenous communities. Individuals will have the opportunity to pursue personal goals and take opportunities as they present themselves to improve their circumstances and the circumstances of their families by purchasing a home of their own.

I understand that the bill has been criticised for allowing the government to compulsorily acquire Indigenous land to deliver public infrastructure through the ordinary acquisition process. That criticism is based on the fact that presently Aboriginal land is inalienable and cannot be acquired by the state without the consent of Aboriginal people, pending the passage of this bill. However, enhanced property rights afforded to individuals and commercial interests in Aboriginal communities in the form of 99-year leases already represents a degree of departure from the previous arrangements relating to Aboriginal land as far as collective ownership of land held in trust is concerned.

If these extended lease arrangements are supported in principle to provide greater incentives for private and commercial investment, and greater opportunities for Indigenous people in those communities, then so should, in principle, new arrangements for compulsory acquisition of land in Indigenous communities to deliver public infrastructure through the ordinary acquisition process. Those are the realities of the environment in which landowners and communities operate throughout Queensland. That would be a consistent treatment of land in Queensland as far as land tenure, compulsory acquisition and compensation due to landowners affected by such acquisition is concerned. While those principles are to be supported, I acknowledge that 99-year leases, while an improvement on the current provision of 30-year leases, do not afford access by individual Indigenous people to full individual freehold property rights on that Indigenous land, if they sought them, yet they will be subject to compulsory acquisition laws. That is an inconsistent approach. As such, comparative rights are not being extended to Indigenous people on Indigenous land in those communities.

I also acknowledge that Indigenous Queenslanders taking out the 99-year leases do not have the opportunity to access the full market for land if they wish to sell that lease as the lease would only be permitted to be sold to another Indigenous person for 99 years, the state for not more than 99 years or another person who is not Indigenous for a period of only 10 years without the minister’s prior consent. This is another inconsistency where comparative rights are not being extended to Indigenous people on

Indigenous land in those communities, yet they will be subject to compulsory acquisition laws as if they had comparable individual freehold property rights.

We can see that, while the principles of this bill are to be supported, the detail of the state government's proposals has aspects that expect much of Indigenous communities insofar as the present inalienability of Aboriginal land is required to be surrendered, but offers little in the way of replacing that advantage with comparable property rights that underpin the basis for the commercial and economic progress that the bill is supposedly meant to achieve for individual people and Indigenous communities as a whole through these 99-year leases.

I have spoken before in this place about the report released in May 2007 by the Cape York Institute titled *From hand out to hand up*. That report proposed a series of welfare reforms for Indigenous communities which were subsequently implemented through the passage of the Family Responsibilities Commission Bill in March last year. During the debate on that bill I mentioned that I attended a conference organised by the Cape York Institute where this proposal was discussed. The conference proposed to challenge the predominant view that the answer to Indigenous disadvantage in Australia lay exclusively with improved service delivery to Indigenous communities. It was asserted that Indigenous communities needed to rebuild social norms which formed the foundation of a civil society. There was a strong view that without rebuilding these norms there would be future generations of Indigenous people condemned to endure the familiar social evils that have plagued Indigenous communities for some time.

The proposed solutions for many of these issues focused on providing economic opportunities and enhancing educational opportunities to individuals rather than community-wide or collective programs which were seen as having failed. There was a very extensive line-up of speakers at the conference from a range of backgrounds. I have previously nominated the contributions to the conference by Professor Ron Duncan, Professor Peter Saunders and of course Noel Pearson as being particularly important for the concept that the economic aspects of building a community, literally and figuratively, were vital to the dilemma facing Indigenous communities.

Professor Duncan argued strongly that the collective nature of ownership in Indigenous communities limited opportunities for economic development in these communities where there was no incentive to move forward as any gains would be lost to individuals through free rider problems. Professor Duncan's arguments are the essence of what the principles in this bill are seeking to address, even if the details appear to deliver less than a full realisation of those principles. Professor Saunders argued strongly that the significant levels of passive welfare attributed to Indigenous communities had not resulted in any observable improvements in the material welfare of Indigenous communities and, indeed, that the welfare diminished the capacity of those communities to function independently. The arguments of Professor Saunders were largely addressed in the Family Responsibilities Commission Bill.

Noel Pearson, who is the director of the Cape York Institute, argued that the modern global economy was a reality and that, if Indigenous Australians were to improve their material wellbeing, they would have to establish a place in it. Mr Pearson placed great value on the strength of well-developed social structures, particularly strong values, in the development of individual capacity to participate in the real economy. These social fundamentals were seen to be critical for individuals to pursue economic opportunities. In essence, Mr Pearson's arguments are a vision of the dual goals of the Family Responsibilities Commission Bill and the principles of this bill, the Aboriginal and Torres Strait Islander Land Amendment Bill, being delivered in concert. I see these two bills as having a very close relationship and that their individual success will be largely dependent on the success of the other.

The Cape York Institute developed the Cape York Welfare Reform Project, with recommendations for a new approach to the provision of financial assistance to participating Indigenous communities on Cape York. The principles of the institute's reform project included wide and substantial welfare reform, had a focus on economic development for communities and promoted incentives to encourage people to engage in the real economy. This bill will assist in facilitating at least some of those principles.

There are some aspects of this bill which are particularly interesting. Clause 49 of the bill amends section 88 of the Aboriginal Land Act to end the entitlement of the chief executive officer to receive a percentage of royalties from any mining activities on Aboriginal land and that all prescribed royalties will be delivered to the trustee of that Aboriginal land. This has the potential in the future to deliver to the trustees an enhanced revenue stream, and for the first time a landowner will be entitled to the full benefit of prescribed royalty payments. The Queensland coalition will watch the progress of this principle with interest. Subject to the concerns that I have nominated in my contribution and the concerns flagged by our shadow ministers earlier, I support the principles of this bill.