Speech by

Andrew Cripps

MEMBER FOR HINCHINBROOK

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ACQUISITION OF LAND AND OTHER LEGISLATION AMENDMENT BILL

Mr CRIPPS (Hinchinbrook—LNP) (4.49 pm): I rise to make a contribution to the debate on the Acquisition of Land and Other Legislation Amendment Bill 2008. The primary objective of this bill, according to the explanatory notes accompanying it, is to amend the Acquisition of Land Act 1967 to overcome uncertainties arising from the Queensland Court of Appeal decision of Sorrento Medical Service Pty Ltd v Chief Executive, Department of Main Roads, which is known as the Sorrento decision. The bill proposes to do so by 'narrowing the meaning of the term "interest" in the act to limit the class of persons who must be served with a notice of intention to resume and who may be entitled to claim compensation' as a result of a compulsory acquisition of land by the Queensland government.

The explanatory notes accompanying the bill state that the bill is intended to 'clarify process matters and modernise the act by codifying current practices, providing transparency and improving consistency of payment of compensation among the constructing authorities such as what constitutes compensable disturbance items' following a compulsory acquisition—for example, assisting with moving costs, phone and internet reconnections. The bill also proposes to 'impose a statutory time limit on allowing a claim for compensation of three years', although a mechanism will be included that enables claims outside the statutory period to be accepted by the constructing authorities at their discretion or by order of the Land Court where it considers the circumstances for that out-of-time claim to be reasonable.

The bill proposes to broaden the class of claimants entitled to be paid consequential costs for the purchase of a replacement property to include consequential costs on investment properties and provide the Land Court with jurisdiction over the recovery of overpayment of compensation to property owners following a compulsory acquisition. The bill will also make a number of minor amendments to the Land Act 1994 to rectify anomalies that arose as a consequence of the commencement of the Land and Other Legislation Amendment Bill 2007 and also remove several provisions dealing with the winding up of the Brigalow Corporation and make consequential amendments to the Integrated Planning Act and the South Bank Corporation Act.

This bill is important. The LNP opposition takes private property rights seriously. The LNP has a strong belief in private property rights and a track record of standing up for private property owners. Private property rights should be keenly protected and only interfered with where there is a clear and pressing benefit to the wider community. The laws of compulsory acquisition, although longstanding and settled in Queensland, are always a subject that will attract considerable attention. The LNP opposition will not be opposing this bill, although I will be outlining a number of concerns I have in relation to some of its provisions which I hope the Minister for Natural Resources and Water will take on board.

My attention was immediately drawn to the language of the explanatory notes accompanying the bill which state amongst other things under 'Reasons for the policy objectives' that—

It is in the State's interest that compulsory acquisitions are settled expediently to avoid delays in project starting dates and with minimal community objection.

I was immediately concerned because this statement in the explanatory notes that the interests of the state will be prioritised by these amendments and that it was the aim of the amendments to minimise community objection to projects that required the compulsory acquisition of land seemed to me to have little regard for private property rights, individuals and communities. It is true, as stated by the Minister for Natural Resources and Water in his second reading speech, that Queensland's population is rapidly increasing. The rationale for these amendments—prioritising the interests of the state in respect of the law of compulsory acquisition—is that Queensland desperately needs more economic and community infrastructure to provide for that rapidly increasing population, and that is also true enough.

One could, however, put an argument that almost two decades of Labor government in Queensland have failed to appropriately plan for all sorts of required economic and community infrastructure to accommodate this strong population growth and that this has significantly contributed to a range of problems being faced throughout Queensland, including the frustrations that the government is now indicating it is presently experiencing in respect of the provisions of the Acquisition of Land Act.

Strong population growth is not a new phenomenon in Queensland. Previous governments in Queensland seemed to be able to quite capably deliver infrastructure in time to provide for the increasing population—notwithstanding the fact that those governments operated within the parameters of the present Acquisition of Land Act, which the Minister for Natural Resources and Water also pointed out in his second reading speech has not been substantially amended for 40 years. These amendments have been notionally presented to the Queensland parliament with the intention of streamlining and modernising the act, but in fact it is clear that they are intended to facilitate the rushed efforts of the state government to play catch-up as far as its infrastructure projects are concerned.

If the phrase used in the explanatory notes 'settled expediently' refers to finalising the payment arrangements for compensation due to the dispossessed owner, then it is hard to understand why these amendments are needed to avoid delays in starting projects because the settlement of payable compensation does not prevent a constructing authority from gaining access to the acquired land and commencing the purpose for which the land was acquired. If, however, 'settled expediently' means that the process for the taking of land is streamlined and the gazettal of the resumption is expedited, thereby reducing the time taken in the resumption process, then the proposed amendments are still not needed to avoid delays in project starting dates.

Debate, on motion of Mr Cripps, adjourned.

Mr CRIPPS (Hinchinbrook—LNP) (4.57 pm): The compulsory acquisition process under the act has been used effectively for over 40 years and the time frames for this process are well known. Realistically, if the government had planned its projects properly and not been forced to play catch-up in delivering infrastructure, then it would have allowed sufficient time in its project plans to complete this tried and tested acquisition process. It is really difficult to understand how the explanatory notes can insist that minimising legitimate objections from the community can be in the interests of the state of Queensland—which includes, one assumes, those communities. I can concede, however, that minimising such objections would be in the interests of the present government of Queensland, but perhaps that is more an accurate reflection of the attitude of the government than the actual intention of the bill.

As mentioned earlier, the primary objective of the bill is to amend the Acquisition of Land Act 1967 to overcome uncertainties arising from the Queensland Court of Appeal decision of Sorrento Medical Service Pty Ltd v Chief Executive, Department of Main Roads, by 'narrowing the meaning of the term "interest" in the act to limit the class of persons who must be served with a notice of intention to resume and who may be entitled to claim compensation'. The Sorrento decision made it clear that the entire definition of the word 'interest' in relation to land as defined under section 36 of the Acts Interpretation Act 1954 applies to the Acquisition of Land Act. This means that an interest includes a right, power or privilege over, or in relation to, the land.

Sorrento Medical had an interest in a number of car parks adjacent to the premises of the practice. As a result of the compulsory acquisition of land resumed by Main Roads Queensland for the purposes of road widening, two of those car parking spaces were lost. Main Roads Queensland reached agreement with the registered owners of the land and on-site buildings in respect of the amount of compensation for this compulsory acquisition. Main Roads Queensland refused to pay any compensation to Sorrento Medical, presumably on the grounds that it only had a contractual interest in the site and as such was not entitled to compensation.

Both the Land Court and the Land Appeal Court determined that, as Sorrento Medical did not have a proprietary interest in the land resumed, it was not entitled to compensation. On appeal, this view was overturned by the Queensland Court of Appeal. The Court of Appeal was asked to determine whether a contractual right, being a right of personal property, amounted to an interest in the real property that was being resumed. Justice Chesterman of the Court of Appeal said, in part—

... the appellant's right was a proprietary nature. Its contractual right was a right of property. The property was destroyed by the resumption. It was not a right of real property, or an interest in the land, but it was nevertheless a right of a proprietary nature. The question is whether the appellant's contractual right was a right over, or in relation to, the resumed land and whether the statutory

context provided by s12 clause 5 precludes the application of the extended definition of interest which appears in the Acts Interpretation Act.

As to whether the definition of the term 'interest' found in the Acts Interpretation Act should be used in determining the meaning of 'estate and interest of every person entitled to the whole or any part of the land' that could be then converted to a right to claim compensation under section 12(5) of the act, Justice Chesterman said—

I conclude that the appellant had a right or power over or in relation to the land taken by the respondent. In my opinion such a right or power is an interest in the resumed land for the purposes of s12 (5). That is so because the definition of 'interest' found in the Acts Interpretation Act is the applicable one, the statutory context and subject matter not indicating or requiring otherwise.

With the court, in a majority of 2-1, deciding that a person with a contractual right relating to land could claim compensation, the state government has obviously been advised that it is uncertain as to how widely this expanded compensation right could be applied. The government has responded by proposing in clause 8 of the bill to insert section 12(5C) into the act which will exclude any person from claiming compensation who has only an interest in land under a services contract for the land. The LNP supports this amendment. A line in the sand has to be drawn as far as compensable interest in land is concerned for the purposes of the Acquisition of Land Act.

Clause 8 of the bill also inserts section 12(9) into the act which explains the meaning of 'services contract' as 'a contract merely for the provision of services on, to, or in relation to, the land' in question. However, a person who has a contract for the provision of services to the land and has a right to reside on any part of the land will not be excluded from claiming compensation. This proposed provision will not remove a right to claim compensation that is held by a person with a contractual right to enter the land and to use the land. In contrast, someone who has a contractual right to enter the land to do something or provide a service for the owner of the land will not be entitled to compensation.

In the context of compulsory land acquisition, disturbance refers to those incidental costs which are the reasonable and probable results of the acquisition and are not directly reflected in the assessment of the value of the land taken such as removal costs, electricity and telephone connections, the redirection of mail, and valuation and legal fees. Disturbance is not referred to in the section of the Acquisition of Land Act that sets out the heads of claim to assess compensation. However, it has been recognised as of special value to the owner and is currently assessed separately by constructing authorities in line with the substantial body of case law.

As the law on disturbance comes from case law, claimants and their solicitors are often required to research the case law, thereby increasing the fees of a claimant's solicitor and the time involved in reaching settlement for an acquired property. Over time the courts have determined and defined what is appropriately regarded as disturbance. The bill seeks to provide a list of costs that are to be considered as costs attributable to disturbance including legal, valuation and other professional costs reasonably incurred by the claimant in relation to the preparation and filing of the claim for compensation; applicable stamp duty either incurred or that might be incurred for the purchase of equivalently valued replacement land; costs incurred in relation to the discharge of a mortgage and the execution of a new mortgage but only to the extent that the new mortgage secured the repayment of the balance owed on the discharged mortgage; removal and storage costs relating to the relocation from the land taken; costs relating to the connection to services or utilities on relocating from the taken land; an amount attributed to the loss of profits resulting from the interruption of the claimant's business as a consequence of the land being taken; and any other economic loss and costs incurred by the claimant as a direct consequence of the taking of the land.

I must raise with the minister a concern that I have about clause 14(5)(a) of the bill. I would ask the minister to seek advice that there has not been a drafting error in respect of this proposed subsection. The proposed subsection as it appears in the bill presently reads—

... legal costs and valuation or other professional fees reasonably incurred by the claimant in relation to the preparation and filing of the claimant's claim for compensation.

The use of the word 'or' must be regarded as a drafting error because the current practice is for all professional fees that are reasonably incurred by the claimant in relation to the preparation and filing of a claim for compensation to be compensable. The use of the word 'or', as this provision is currently drafted—and I am not a lawyer—appears to me to insert a disjunctive into the entitlement for disturbance costs. That means a claimant will be entitled to claim either the legal costs and valuation fees or their legal costs and other professional fees.

That is not the basis upon which disturbance is presently calculated. If this amendment to the act is an attempt to codify current practice, this subsection should be amended to read 'legal costs, valuation and other professional fees reasonably incurred by the claimant in relation to the preparation and filing of the claim for compensation'. Perhaps the minister would indicate in his summing-up if he intends to take that suggestion on board and perhaps do something about it in the consideration in detail stage of the bill.

While the listing of items will reduce ambiguity about what is and is not able to be claimed as disturbance costs, the risk is that the act will not be responsive to case law decisions, especially in relation to the provisions providing for other reasonably incurred financial costs and other economic losses and costs which can be interpreted in various ways between property owners and constructing authorities.

The bill proposes to codify and standardise the practices of constructing authorities regarding what constitutes a consequential cost for the purchase of a replacement principal place of residence. The bill will also broaden the class of claimants entitled to be paid consequential costs to include payment of consequential costs for the repayment of an investment property. Currently the payment of consequential compensation to owners of investment properties to recompense them for replacement costs reasonably incurred is not payable. The proposed amendments to section 18 of the act by way of clause 12 of this bill seem to term 'investment property' to mean any land held for investment purposes. The question of course then follows what holding land for investment purposes means. This is not entirely clear from my reading of the bill as that term has not been defined. The question I have, Minister, is: is it only income-producing properties that will be considered to be investment properties—

Mr DEPUTY SPEAKER (Mr Hoolihan): Order! I remind the member that, although you are questioning the minister, you are speaking to the Speaker.

Mr CRIPPS: Thank you, Mr Deputy Speaker. Through you, of course, my question to the minister is: is it only income-producing properties that will be considered to be investment properties, or could the definition include properties held with a view to capital growth but which are not presently income producing? Through you, of course, Mr Deputy Speaker, perhaps the minister could clarify that point in his summing-up of the second reading debate.

Undoubtedly there is an increasing trend toward community title schemes for residential units, business premises and commercial offices. Many residential schemes have in excess of 50 units. If a notice of intention to resume had to be served on all owners, the process would certainly become time consuming and costly. The complexity of dealing with all owners of common property has been recognised in section 18 of the act, which provides a mechanism to deal with claims for compensation solely through the body corporate.

However, the current act does not make it clear that if common property is proposed to be resumed then the body corporate is the only entity that ought to be served with a notice of intention to resume. The LNP certainly understands the difficulty of this situation. Generally speaking, the purpose of receiving a notice of intention to resume is to warn potentially affected landowners of the government's proposal to compulsorily acquire their interest in the land in question. This notification gives the owners a statutorily enshrined right to natural justice whereby they have the right to be heard if they choose to object to the proposed compulsory taking of their interest in the land that the government wants for its purposes.

It could be argued that this proposed amendment takes away a unit owner's right to natural justice and the resumption process. Each individual unit owner in a body corporate scheme owns his or her share of the common property as a tenant in common with the other unit owners. The taking of common property from a body corporate is thereby the taking of an interest from each of the individual unit owners who are part of that body corporate.

To remove the requirement for providing each individual unit owner in a body corporate scheme with a notice of intention from the constructing authority and place an obligation upon that body corporate to notify each individual unit owner of the resumption at the next general meeting would arguably deprive unit owners of the right to object on two grounds. Firstly, as the individual unit owners are not entitled to be served with a notice of intention to resume, it is unclear whether they continue to have any standing to object to the proposed resumption due to the operation of section 8(1) of the Acquisition of Land Act. Secondly, should an individual unit owner have standing to object, in practice they may not find out about the resumption in sufficient time to exercise this right because the timing of the body corporate to notify unit owners, being the next general meeting, has no reference to the strict time frames under section 7(3)(d) of the act for lodging an objection, which I understand is 30 days. I invite the minister to clarify those issues in his summing-up.

Currently under the act there is no power to amend the description or area of land in a gazetted resumption notice. This can cause problems because the resumption plans are approximations of required land only and there are at times minor discrepancies between the resumption plans and the survey plan. This is another amendment in this bill designed to streamline and simplify the process of compulsory acquisition.

I turn now to the proposed amendments to section 8 of the act to provide an exception to the requirement for the objection process to be restarted. If the owner of the land agrees to the amendment, whether or not the owner is the objector, this appears to potentially create an unusual set of circumstances that could cause problems for this objection process. The proposed amendment to section 8 appears to have an unusual relationship with the newly proposed section 7(4AB) of the act, which provides that the period for making an objection starts again upon the serving of the amended notice. The effect of these provisions read together could be that a recipient of an amended notice would not have the right to object should the owner of the land agree to the amendment, if they objected to the first notice, but the same

person would have this right had they not objected to the first notice or had the landowner not agreed to the amendment.

It is far from an ideal situation for the act to provide for a right to object that is then limited for certain interest holders should the owner of the land agree to amend the notice. I am not sure that this is a desirable arrangement. I am not sure it is even the intention of the state government to create a situation like this. I would ask that the minister have a look at the two proposed amendments and consider whether they need to be reconsidered.

Currently section 13(1) of the act provides that when a constructing authority and a landowner agree that a remaining parcel of land that is to be taken will not be of practical use or value to the owner then the constructing authority shall take that remaining parcel of land also. Sometimes a resumption of land divides the remaining land and some owners would like constructing authorities to acquire one of the severed areas usually because it has been rendered impractical for the owner to use. In English common law the words 'shall' and 'may' are prima facie held to be discretionary. Clause 10(1) of the bill proposes that the constructing authority in such circumstances must take the remaining parcel of land.

Constructing authorities do not presently have the ability, when appropriate to transfer land that it owns to a claimant, to satisfy a claim for compensation. Clause 15 of the bill provides constructing entities with the power to transfer land to the claimant either in full or partial settlement of the compensation claim made by the landowner. This is of course subject to the claimant agreeing to the land transfer in the first place.

I support this principle because it has the possibility to assist property owners in Queensland. A variation on this situation reflects the circumstances of one of my constituents, Mr Lenny Di Bella, a sugarcane farmer at Silky Oak just south of Tully. Mr Di Bella had areas of his property resumed by the Department of Main Roads in early 2007 for the purpose of upgrading Lentini Road, an access road to the upgraded Bruce Highway between Tully and Corduroy Creek. Mr Di Bella lodged an objection with respect to this notice and made valid points about issues associated with that proposed resumption.

The upgrade of the Bruce Highway between Tully and Corduroy Creek has been on the books for some time. The ongoing nature of this project has meant that the plans and designs for this upgraded road, including its alignment, have changed significantly over time. Under previous plans for this project, Mr Di Bella had a significant proportion of his property resumed many years ago. This resumption, although now not part of the plan to upgrade the highway, continues to officially split Mr Di Bella's property in two.

So Mr Di Bella has actually gone through the compulsory acquisition process twice for his property in relation to the same project. His property is now a tapestry of freehold title and land owned by the state government. Mr Di Bella has for a long time attempted to ascertain what will now happen to this parcel of previously resumed land that has not ultimately been used for the project it was intended for. Indeed, I made representations on his behalf to try to find out in February 2007 but no answer has been forthcoming from the state government despite advice that this would occur.

Sugarcane farms, as the minister, being from north Queensland, would appreciate, need a critical mass of farming area to return certain economies of scale for the use of capital equipment. Mr Di Bella's farm enterprise is a family operation. The income from his enterprise needs to sustain his family. Multiple resumptions by the state government have undermined the viability of his family operation, not so much on a production basis because it is true that Mr Di Bella has had the capacity to continue to grow cane on the compulsorily acquired land that was ultimately not required for the upgraded highway project, but it certainly does compromise this family farming operation financially in terms of the tenure tapestry on his farm and the lack of security that he has in using his property as equity at the bank.

I hope the state government contacts Mr Lenny Di Bella—and I can facilitate that if the minister so desires—and says to him that it will try to assist him by giving him the opportunity to reacquire the easements on his property that are no longer required for the project that it was originally intended for. The Minister for Natural Resources and Water could do that because I understand these easements have since been transferred to his department. It would be a commendable thing for him to request an audit of similar circumstances across the state of Queensland where landowners have been similarly affected.

The amendments in this bill providing for property swaps and land acquisitions where parcels of land become unviable could have been a solution for Lenny Di Bella in the negotiation and objection process that he had to go through twice with the Department of Main Roads had they been in place. As such, I am pleased to lend my support to this aspect of the bill.

Most legal claims have a statutory limitation period. However, there is presently no statutory limitation on allowing a claim for compensation. Clause 13(3) of the bill places a maximum time limit of three years from the day the land was taken within which a claim for compensation may be served.

Claims for compensation out of time will be able to be lodged with the constructing authority if there is a reasonable argument for doing so. Alternatively, claimants will have a right of appeal to the Land Court where the constructing authority has not accepted the claim served on it outside the three-year statutory period. The Land Court can accept an out-of-time claim where the circumstances of the property owner warrant it. I am a bit concerned about this intention to impose a statutory time limit on allowing a claim for compensation of three years. The so-called safeguard that enables claims outside the statutory period to be accepted by the constructing authorities at their discretion or by an order of the Land Court where it considers it reasonable in the circumstances is hardly a beacon of light for property owners given that there was previously no statutory limitation.

There are legitimate reasons that may prevent or restrain a dispossessed owner from making a claim within the new limitation period. A dispossessed owner may wish to wait until the works are completed so that the extent of any injurious effects caused by the resumption can be accurately ascertained. I ask honourable members to consider how property owners, in reality, will get a fair go when the constructing authority that compulsorily acquired the property in the first instance will be the same entity considering the merits of a property owner's request to submit a claim out of time. The only alternative is for the property owner in these circumstances to head off to the Land Court—a costly and quite possibly protracted process. I am a bit concerned about this situation, and I think the minister should be concerned.

Although the explanatory notes accompanying the bill say that there is notionally the ability for out-of-time claims for compensation to be accepted where the circumstances warrant it, I am concerned that the opportunity to do so in reality will either be unlikely to be accepted by the constructing authority or costly to pursue in the Land Court. The explanatory notes accompanying the bill insist that the absence of a statutory limitation creates uncertainty from a budgetary perspective for the state government as a justification for imposing this three-year time frame. I would have more confidence in this three-year limitation period for lodging a claim for compensation as an appropriate amendment if the options for property owners with legitimate reasons for putting in claims out of time were not so narrow and the prospects of their claims being accepted for consideration were, from my point of view, not so limited.

Clause 43 removes part 7A of the Brigalow and Other Lands Development Act 1962, with the explanatory notes advising that these provisions are now redundant. The explanatory notes accompanying the bill indicate that all loans to the Brigalow Corporation have now been repaid and all leases issued under the Brigalow and Other Lands Development Act 1962 have been freeholded. As there is no longer any reason for the corporation to continue to exist, it is being wound up. It would be remiss of me not to reflect for a short time on this part of the bill and mark the passing of the Brigalow Corporation. The Brigalow Corporation is a body corporate constituted solely by the chief executive of the Department of Natural Resources and Water.

Mr Rickuss interjected.

Mr DEPUTY SPEAKER (Mr Hoolihan): Order! Member for Lockyer, you will have your opportunity. I understand you are on the speaking list.

Mr CRIPPS: Mr Deputy Speaker, I am grateful for your protection. The corporation represents the Crown and has all of the privileges and immunities of the Crown. Until 1992 the Brigalow Corporation was known as the Corporation of the Land Administration Commission which was established under the Brigalow and Other Lands Development Act 1962 to administer the Fitzroy Brigalow Land Development Trust Fund and Agreement. The 1962 legislation implemented the terms of an agreement between the Commonwealth of Australia and the state of Queensland under which the Commonwealth agreed to provide the state with financial assistance to develop approximately 4,976,000 acres of land in the Fitzroy River Basin. In 1992 a number of statutory offices were abolished, including the Land Administration Commission. The powers of the office were assigned to the chief executive of the relevant department.

As the Fitzroy Brigalow Land Development Trust Fund and Agreement was still operational when the commission was abolished, it was necessary to replace the corporation with another body. The replacement body was the Brigalow Corporation. Therefore, although the Brigalow Corporation began under that name in 1993, it continued the Corporation of the Land Administration Commission which was formed in 1962. The Brigalow Corporation has remained in existence until now because there were a small number of advances made by the corporation to lessees under the Fitzroy Brigalow land development agreement that were still outstanding. These amendments indicate that those advances have now been recovered by the corporation. And so hopefully with the passage of this bill, the state of Queensland can close the door on the Brigalow Corporation—an entity that in recent years has occupied more than its fair share of time of many honourable members in this place. I certainly know that it has occupied some of my time and the time of a number of my colleagues who may or may not wish to elaborate on their experiences during their contributions to the debate on this bill.

The bill makes a number of acceptable changes to the law of compulsory acquisition in Queensland. As I said earlier, the LNP opposition will not be opposing this bill. I have canvassed a number of concerns that I have in relation to the bill, and I look forward to the Minister for Natural Resources and Water responding to those concerns. I commend the bill to the House.