Speech by

Andrew Cripps

MEMBER FOR HINCHINBROOK

Hansard Wednesday, 24 March 2010

NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT BILL

Mr CRIPPS (Hinchinbrook—LNP) (12.50 pm): I rise to make a contribution to the debate on the Natural Resources and Other Legislation Amendment Bill. The bill proposes to amend a large number of different natural resources related acts. I propose to concentrate on the amendments relating to the Land Act 1994, the Survey and Mapping Infrastructure Act 2003 and the Water Act 2000 to introduce a feature based methodology to resolve uncertainty in the location of ambulatory boundaries adjoining tidal and non-tidal waters, clarify the lateral extent of the state's management powers in non-tidal watercourses in the Water Act and clearly differentiate between the boundary of the state's ownership of a watercourse and the non-tidal jurisdiction line for managing the watercourse by removing state ownership matters from the Water Act and inserting them into the Land Act; the Forestry Act 1959, its regulations and other acts, to facilitate the restructure of the state's interest in Forestry Plantations Queensland and to amend the Forestry Act and other legislation to provide a regulatory framework for this restructure to occur; and the Water Act 2000 to provide for the finalisation of the Lower Balonne provisions for the Condamine and Balonne resource operations plan.

I wish to firstly deal with the proposed amendments to the Land Act, the Survey and Mapping Infrastructure Act and the Water Act to introduce feature based methodology to resolve uncertainty in the location of ambulatory boundaries adjoining tidal and non-tidal waters. My electorate of Hinchinbrook is a coastal electorate stretching from the mouth of the Johnstone River near Innisfail in the north to the mouth of the Bohle River in Townsville to the south. That is between 250 and 300 kilometres of coastline along which there are many beachfront properties under a variety of forms of land tenure. The western boundary of my electorate generally runs along the top of the Great Dividing Range, being the watershed and the boundary of the local government authorities in the area. My electorate covers some of the wettest country in Australia and so we have many, many watercourses along which there are also many adjacent properties. With all of this coastline and with all of these watercourses come many issues concerning ambulatory boundaries.

As the shadow minister for natural resources, the member for Callide, outlined yesterday during his contribution to this debate, issues concerning ambulatory property boundaries adjoining tidal waters, such as properties on the beachfront, and non-tidal waters, such as properties adjacent to a watercourse, have been and continue to be notoriously complicated. I appreciate the difficulty facing the department to try to come up with some sort of mechanism to determine ambulatory boundaries that can achieve some sort of certainty for a range of stakeholders, most importantly landowners.

Certainly, coastal areas can naturally erode and accrete over time. These are entirely natural coastal processes as naturally occurring suspended sediments travel along the coast and tidal processes interact with dunes and the foreshore area. Similarly, the banks of watercourses both big and small naturally shift over time. In a very wet area such as the electorate of Hinchinbrook they can move suddenly and significantly during a major flood event. Mother Nature has little regard for lines drawn by human beings on maps from time to time indicating property boundaries. Yet the importance of these property boundaries

cannot be overstated. It is an elaborate system that we have developed over hundreds of years. Public confidence in this system is dependent on it being stable and widely accepted. Its stability underpins the economic and financial and even the social fabric of our community. For this reason it is desirable to resolve issues of uncertainty where it is at all possible to try to ensure the integrity of the system of land tenure, including the issue of ambulatory boundaries.

The proposed amendment is a fundamental shift in the way that ambulatory boundaries will be determined. There is no doubt that previous attempts to define ambulatory boundaries have been less than perfect and have been frequently argued over and even contested in legal proceedings. There is no doubt that the existing system struggles to provide certainty to landowners. This bill proposes that the pendulum swing in the other direction to confer on the chief executive of the department the ability to declare where an ambulatory boundary is at any given time. In effect, this bill proposes to give the minister the capacity to make a decision about ambulatory boundaries. I am uncomfortable with this insofar as it does nothing to reduce uncertainty for the landowner—only the type of uncertainty that a landowner may encounter. Although the landowner may now know with more certainty where their boundary is at any given time, they will not know the basis on which it may change at any given time. Most concerning of all is the fact that the bill proposes to allow these changes to ambulatory boundaries without any provision for compensation to the landowner or landowners affected.

I turn now to the amendments in the bill relating to the Forestry Act 1959 to facilitate the restructure of the state's interest in Forestry Plantations Queensland and provide a regulatory framework for this restructure to occur. This is an issue on which the shadow minister for natural resources, the member for Callide, has clearly outlined the position of the LNP opposition. As these amendments relate to the Bligh Labor government's asset sales agenda the LNP opposition will be opposing these provisions.

It was very interesting yesterday during the debate on the Revenue and Other Legislation Amendment Bill when I canvassed the issue of the amendments in that bill that proposed to insert a new section into the Infrastructure Investment (Asset Restructuring and Disposal) Act to deal with the issues relating to the change of status of government owned assets—in this case Forestry Plantations Queensland—as a result of their proposed divestment by the Bligh government. The explanatory notes accompanying that bill advised that, as these entities would no longer be publicly owned, the bill proposed to insert a new section into the act to afford certain protections to the government and these entities. Without this new provision it appeared that such a change in ownership would trigger certain contractual rights as far as third parties were concerned where they may be required to give consent to the change of ownership.

In particular, I raised the issue of the fact that FPQ has pursued hardwood plantation joint partnerships with private landowners. FPQ has established several thousand hectares of hardwood estate that are mainly planted on private lands accessed through land rental agreements. I asked the Treasurer yesterday exactly what the implications of the divestment by the Bligh government of FPQ were for private landowners who have signed contracts with FPQ to establish hardwood plantations on their properties. As I said yesterday, there are obviously some implications, otherwise clause 87 of that bill would not have been necessary. Obviously, landowners who presently have a contract with FPQ for the establishment of hardwood plantations on their properties currently have certain contractual rights relating to their right to consent to a change of ownership of FPQ, with which they have a contract which the Bligh Labor government legislated away yesterday. The Bligh government will deprive these landowners of those contractual rights and it proposes to do so without any compensation.

Clause 126 of the bill that we are debating today asserts that agreements in place before FPQ is divested will continue to be in force after divestment takes place. But the provisions of the bill that this parliament considered and passed yesterday mean that this will not necessarily be so. The Bligh government yesterday legislated away existing contractual rights whereby private landowners currently party to contracts with FPQ will no longer be given the opportunity to exercise those rights to consent to a change of ownership of the entity with which they have an existing contract.

It is not actually the case, as stated in the bill that we are debating today, that the agreements in place now will be in force without any change after the divestment takes place. I asked the Treasurer what the implications were for the lack of certainty these landowners have experienced in entering into contracts with the Bligh government. I also asked the Treasurer if other parties needed to be cautious about entering into contracts with the Bligh government in the future when it is clear that it is prepared to legislate to deprive contractual partners of certain contractual rights when it suits it—in this case the divestment of a state government owned entity in the form of FPQ.

What were the Treasurer's answers? In response to my question the Treasurer said that existing contracts, whether they relate to customers, joint venture partners or other people in commercial arrangements, would all be transferred holus-bolus to the new entity. The Treasurer argued, therefore, that the issue around compensation would not arise. That is the proposition being put to the House in clause

126 of the bill that we are debating today: that existing contracts would remain in force after the Bligh government divests itself of FPQ. But as I have already argued, this is not necessarily so.

Mr CRIPPS (Hinchinbrook—LNP) (2.30 pm): Before the luncheon adjournment, I was arguing that the advice provided yesterday by the Treasurer during the consideration in detail of the revenue bill and the advice contained in clause 126 of the natural resources bill we are debating today are not necessarily accurate. Yesterday during the consideration in detail of the revenue bill, I put a scenario to the Treasurer whereby, if I were a landowner and I had an existing plantation forestry agreement with FPQ, it was made on the basis that FPQ is the other partner in that contract. I have made the decision to enter into a commercial contract with FPQ based on the understanding that FPQ, a Queensland government owned entity, was to be the other party in that contract. In the event that FPQ proposes to cease to be a party to that contract, as is occurring in this situation because the Bligh government has decided to divest itself of FPQ, a private landowner faces the prospect of being party to a contract with a different entity. As we know, in ordinary circumstances the private landowner would have the opportunity to exercise contractual rights to object to that change in ownership. Indeed, we now know that landowners with a contract with FPQ did have such a contractual right until yesterday, when the Bligh government moved to legislate those rights away. They will no longer have those rights after FPQ is sold. Why did the government need to do that? I asked another question to try to get it out of the Treasurer and this time the Treasurer was able to shed a bit more light on the issue.

The Treasurer advised that in previous transactions there were complications created by contracting parties unreasonably withholding consent to such arrangements. The Treasurer went on to say that in those circumstances this amendment merely provides the opportunity for the government to progress this transaction and provide certainty for the future owner. What the Treasurer and the Bligh government consider to be an unreasonable basis on which the continuing party to the contract may choose to withhold consent to a proposal for a change in ownership of the other party to that contract may be perfectly reasonable and legitimate to the continuing party. Last night the point was canvassed well by the shadow Treasurer, the member for Clayfield, during the consideration in detail of the revenue bill and by the shadow minister for natural resources, the member for Callide, during his contribution to the second reading debate on the natural resources bill. This is a significant issue for my electorate of Hinchinbrook as there are substantial FPQ estates in the Herbert River district, and the Kennedy Valley and Cardwell areas.

Above all, the real issue is that the Treasurer dismissed the notion that there was any need for a safety net, that there was any need for provision to be made for compensation to be made available to ensure that the continuing parties—the private landowners—to these existing contracts currently with FPQ, but soon to be with some other entity, are not unfairly disadvantaged in the future in the event of a problem that would not have arisen if FPQ was still a party to the contract in question. Notwithstanding that the Treasurer says he cannot see any circumstances in which continuing parties to these contracts may be disadvantaged, I think there is an obvious risk involved. Why else would the government need to legislate away the existing contractual rights of the private landowners in the revenue bill that was passed yesterday? The implication for the natural resources bill that we are considering today is that the provisions in the bill and the advice in the explanatory notes, that the terms and conditions of existing contracts will not change after the divestment of FPQ, are not necessarily accurate and members should consider those issues carefully.

Lastly, the bill proposes to amend the Water Act 2000 to provide for the finalisation of the Lower Balonne provisions of the Condamine and Balonne resource operations plan. The Lower Balonne provisions of the draft Condamine and Balonne WRP were deferred from finalisation in December 2008 to enable the completion of an outstanding legal proceeding, which has now been concluded. While the Lower Balonne provisions have remained unfinalised, the water users in the area have been at a disadvantage compared to other water users in the catchment who have had their water entitlements converted to tradeable water allocations. The Lower Balonne catchment is the only major catchment in the Murray-Darling Basin that has not had tradeable water access entitlements. Their entitlements have been in limbo.

The Condamine and Balonne WRP has taken more than a decade to develop and finalise. As I mentioned during the recent debate on the LNP opposition's disallowance motion in relation to the Barron WRP, this is partly due to the complex nature of water entitlements in that area but also relates to the actions of the department in this process whereby the local knowledge and experience of landowners was not given the regard it should have been given in the first instance. Sadly, that was repeated in the development of the Barron WRP, which led to the recent disallowance motion. I fear it will again be the case in the development of the Wet Tropics WRP, which affects my electorate of Hinchinbrook, the development of which has just commenced. Those with the most experience in the Condamine-Balonne catchment, the landowners and entitlement owners, had to fight hard to have their intimate knowledge of the catchment recognised and accepted by the department.

As we heard from the member for Warrego last night during his contribution to the debate, the development of the Condamine and Balonne WRP has taken over a decade. All too often, the water

resource plans so far commenced by the government have taken extended periods of time to progress. While the amendments in this bill propose to finalise the Condamine and Balonne WRP, many WRPs commenced across the state are still in progress. One of those is certainly the Wet Tropics WRP, the development of which has just commenced.

In contrast to the Condamine and Balonne WRP, which is based on a relatively discrete area that shares similar issues and a similar stakeholder base, the Wet Tropics moratorium notice has been declared over at least half a dozen separate and distinct catchments, including the Herbert, Tully-Murray, Johnstone, Russell, Mulgrave and Daintree catchments. The stakeholders in those catchments are different between them. I have been advocating that the blanket Wet Tropics moratorium and the development of a Wet Tropics WRP ought to be progressed on a catchment-by-catchment basis. I can see a real threat that a problem, perhaps a legal problem, could develop in respect of water entitlements in one of the catchment areas I mentioned earlier and the progress of the whole Wet Tropics WRP could be delayed as a result. We know that legal delays do happen, because it has happened in respect to the WRP that this bill is proposing to finalise.

I cannot see why water entitlement holders in the catchment where the development of a WRP has been completed swiftly should be made to wait and the security of their water entitlements continue to be uncertain while legal proceedings drag on in another catchment area under this blanket Wet Tropics water moratorium. The recent commencement of the Wet Tropics water moratorium has thrown that area into a great deal of uncertainty. DERM has commenced 20-odd WRPs across the state. With all of the department's experience, including with the commencement, development and finalisation of the Condamine and Balonne WRP and the Barron WRP, it still cannot find a less confrontational approach to developing a WRP than declaring a sudden moratorium on water resources, bringing with it a great deal of uncertainty.

One can imagine the cynicism in the Wet Tropics area of Far North Queensland, which is the wettest region in Australia, for the need for a water resource moratorium. Indeed, last night the member for Warrego raised that issue during debate on the bill. It was not that long ago that former Premier Beattie proposed to bring huge volumes of water from North Queensland, supposedly to assist the struggling Murray-Darling Basin, and now the Bligh government has slapped a moratorium on water resources in the Wet Tropics because water is supposedly getting scarce.

So far the Minister for Natural Resources has not obliged my request to provide the data and evidence used by DERM to justify the Wet Tropics water moratorium, despite the fact that I have requested it from him. It is an all-too-familiar story. Last night we heard from the member for Warrego about the landowners in the Condamine-Balonne area who had to fight hard to get the department's data scrutinised by independent experts, who upheld the claims of the landowners. Whether it is the Condamine and Balonne WRP, the Barron WRP or the Wet Tropics WRP, the state government has consistently refused to give proper recognition to the knowledge and experience of local landowners.

I salute the entitlement holders of the Condamine-Balonne catchment for their tenacity. The Condamine and Balonne WRP has been a long time coming. Recently the LNP opposition was pleased to stand up for the water entitlement holders of the Barron by moving the disallowance motion in respect of area B allocations. They have been treated unfairly. I will continue to advocate strongly on behalf of water entitlement holders and landowners in the Wet Tropics for a fair and science based outcome for the Wet Tropics WRP.