Speech by

Mr DOUG SLACK

MEMBER FOR BURNETT

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STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION AMENDMENT BILL

Mr SLACK (Burnett—NPA) (11.30 a.m.): Honourable members on this side of the House support the better administration of development issues in Queensland, and that support is unequivocal. The coalition parties are the real pro-development parties in this State, as the record of development years since 1957 clearly shows. But being pro-development does not mean being in favour of mechanisms under which mates' deals can be done. That is the great risk of the unfettered acquisition power which this Bill, if passed, will present to the Government of the day and the Minister of the day. That is why we cannot support that element of this proposed legislation.

We all understand the need for speed—and I expect that the present Minister does, too, even if he cannot quite find the means to achieve speed within the overburden of bureaucracy that he and his colleagues have created—and we appreciate that sometimes things have to be done that are not to the taste of particular people. There is no reason, however, why such acquisitions cannot be processed through the existing provisions of the Coordinator-General's powers. These powers are extensive—and properly so—but they are also subject to strict control.

There is every reason in a rule of law democracy like ours—and long may the people reign—to insist that, in each case, such compulsion as is decided upon as necessary should be made the subject of parliamentary authority. It is the Parliament that is supreme— on behalf of the people—in our system of government. The Executive governs at the pleasure of the people. I urge the Government to consider this fact and the democratic benefits that flow from it. This House is not an obstacle to progress. There is a lot to be done. Indeed, it is open to the Government to come before the Parliament rather more often than it does. Acquiring private land by Executive order seems to us on this side of the House to be something that should be an infrequent expectation rather than the rule. I am sure that private land-holders would agree.

The State Development and Public Works Organization Act is a very important piece of legislation. It is worth recording today—as it is always worth remembering—that since 1938, Queensland has been fortunate in having generic statutes which have promoted public works and sensible development throughout the State. The Opposition also appreciates and is supportive of the increasingly important role that the private sector is playing and will increasingly play in this area. Nonetheless, this Bill is deficient in a crucial and, ultimately, very damaging way. It contains a number of provisions which have already caused widespread concern and with which the Opposition has major quarrel.

The wide and totally discretionary provisions of this Bill will allow private sector developers to obtain authorisation from the Coordinator-General to enter onto land to investigate the potential for the development of infrastructure facilities. Under this proposed legislation, the Coordinator-General is empowered to expropriate that land or native title claims over it. We believe that these powers pose a number of risks which need to be properly exposed.

At its heart, this Bill aims at granting powers to severely interfere with private citizens' most fundamental rights, but in a way which deprives those citizens of almost any redress. It grants to the Coordinator-General of this State powers that have the capacity to destroy people's businesses, lifestyle and sense of community, yet at the same time exempts that public servant from any sort of merit-

based review of these decisions. It glosses over these significant drawbacks by the provisions of paper-thin procedural steps designed, in an after-the-event way, to inform the Parliament of what has occurred. It provides the Parliament with no before-the-fact power to express a view and denies it the means of overturning these decisions.

This damage to democracy is alarming enough. Yet from the viewpoint of any concerned citizen, there is worse damage lurking in the wings: the capacity offered by this legislation to corrupt the system. It gives draconian and unreviewable powers to Cabinet and a public servant which could result in a financial windfall to particular private sector development proponents. I will repeat that: it gives draconian and unreviewable powers to Cabinet and a public servant which could result in a financial windfall to particular private sector development proponents.

In the process, this Bill will result in a procession of private sector developers coming cap in hand to the Minister, the Premier and the Coordinator-General seeking favours— favours which will result in ordinary Queenslanders potentially losing their homes. There is no doubt about that, from my experience when I was Minister for Economic Development in this State. As you know, Mr Deputy Speaker, we had many people coming into the office seeking approval for their developments in this State, and Government support. Most of those were worthy of support. But there are those occasions when businesspeople come into the office looking for personal gain. There is no doubt that, under this Bill, we will see more of that element approaching the Coordinator-General, the Minister and the Cabinet for their pet projects in this State.

If this is not enabling or at least facilitating potentially unethical or even corrupt activity in the future, then people only need to consider the implications of this legislation. This Bill poses dangers—not just to property owners and native title claimants, but to the ethical underpinning of government in Queensland. I just wonder what the Premier's ethics adviser would say if he was asked to comment on the implications of this proposed legislation.

I want to make one point very clear, though, from the beginning. When I was Minister for Economic Development in the coalition Government, and particularly when I was overseeing the Surat/Dawson project, I was all too aware of the need for the State to encourage private sector capital in public works and public infrastructure. There is no debate about the pressing need for all Governments to work in a productive relationship with the private sector to provide the capital needed for essential public infrastructure. Under both the Goss and Borbidge Governments, guidelines were issued on how such private capital should be raised and the proper steps that needed to be put in place to facilitate the process. The debate is not an ideological one about the desirability of private capital in public infrastructure but the means of facilitating this and the need to balance the rights of all parties, especially property owners.

Let me also deal with another issue from the outset. When we were in Government, and shortly after the Wik decision was given, advice was given by the Public Service on speeding up much-needed infrastructure projects which were stalled because of native title claims. We were advised that, under the Native Title Act, we could extinguish native title claims for the benefit of a private third party, provided it was for public infrastructure. We were also advised that we could not simply extinguish native title, as this would be struck down by the Racial Discrimination Act, and the legislation also had to deal with the expropriation of freehold property interests.

At that time, we gave the initial go-ahead for the drafting of legislation. But when we considered the implications of the proposal, we dropped it immediately. I am talking about early 1997. When we looked at the proposal, it was abundantly clear to the Government and coalition members that broad-based legislation that allowed the Government to expropriate freehold title and extinguish native title to benefit third-party developers was over the top, dangerous and manifestly unfair. We accepted that there would be a need in some cases to expropriate private land for third-party private developers when essential infrastructure was at stake. The Opposition still does. But we also were strongly of the opinion that this could be properly achieved by means of the individual Acts of Parliament. And from memory, the Transport (Gladstone East End to Harbour Corridor) Act 1996 is an example of this. I remember the present Minister for State Development being in the House when that particular legislation was debated.

We have to look at this matter in context. Every time part of a State forest is revoked we have a proper, sometimes even very lengthy, debate. Parliament is given the automatic right to exercise some sort of supervision and the Minister has to come into this Chamber and explain the reasons for the proposed revocation. The same principle should be applied to private land and native title claims that are being expropriated or extinguished—perhaps more so.

I would have thought that if ever the Crown decides to use its powers to move in and snuff out property ownership rights—not for the people of Queensland but for a private developer waiting in the wings—it is a matter of public importance. It is a matter that requires a proper explanation to this Parliament. It is necessary that we have a genuine open debate to consider whether to revoke or

modify the decision. Landowners and native title claimants deserve that, because the real issue is whether the power of the State to expropriate people's property is being properly used. All options must be looked at.

The Opposition's concern with this legislation is not—and I repeat not—a question of facilitating private capital infusions into public infrastructure; nor even the capacity of the State, in rare circumstances, to expropriate property rights for essential privately funded infrastructure projects. Our opposition is based on the width of this proposal and the lack of checks and balances. There is a real risk that many ordinary people's rights will be unfairly obliterated in the absence of any proper parliamentary scrutiny and accountability. I would have expected that Government members would have been very conscious of these facts. I am very surprised that the Government is bringing such legislation before the Parliament, considering the moral outcries that we have had from Government members about protecting the rights of individuals.

The Opposition is supportive of the clauses which provide a framework for the Coordinator-General's environmental impact statement. We are supportive of the amendments to the Code relating to conflicts of interests for members of projects boards. We are supportive of the updating of enforcement provisions for land use established within an approved development scheme and the provision for compensation for loss in land value as a result of an approved development scheme. We are very supportive of that. Nevertheless, I am a little concerned about the width of these provisions, particularly as land uses permitted by a development scheme are deemed to be permitted use for local government and other authority purposes. I also note that the penalties prescribed for breaches of this aspect of the Bill are in excess of $100,000. I would like to know the attitude of the Local Government Association to this aspect of the Bill.

I join with the Scrutiny of Legislation Committee in seeking some type of justification for the Minister imposing such draconian penalties. I hope the Minister has made a note of that. I am particularly aware of the need to ensure that proper account is taken of environmental effects associated with significant projects. The amendments contained in the Bill to this effect are welcome.

The Opposition has not looked at this Bill in a spirit of trying to pick faults. The Opposition is not trying to take any unnecessary partisan points. The need for all sides of politics to join together and facilitate major projects is essential. If the Opposition could have supported legislation designed to arm the Coordinator-General with proactive powers to achieve that worthwhile aim, we would have done so.

I can assure the Minister that, from my experience in this area, I am very supportive of the work of his department and its officers. I would have liked—and I say this very sincerely—to have been standing here today making a few short comments and indicating support for the measure. But the very nature of this Bill precludes this, and that is unfortunate. I say to the Minister that, unless this Bill is very substantially amended in Committee, it will cause a public backlash and impair the efforts of his department to facilitate major developments.

The first part of the Bill that causes grave concern is the power vested in the Coordinator-General to authorise a potential infrastructure provider to gain access to property for the purposes of undertaking an investigation into the suitability of the land for the planned infrastructure facility. The Coordinator-General can give the investigator and associated persons the power to enter and re-enter the land, to the extent reasonably necessary or convenient for that purpose. The Bill goes on to say that they are then able—

"(i) to do anything on the land; or

(ii) to bring anything onto the land; or

(iii) to temporarily leave machinery, equipment or other items on the land."

The Bill gives some examples of the things that could be authorised by the authority. I again quote from the relevant clause—

"1. To conduct surveys, investigate and take samples.

2. To clear vegetation, or otherwise disturb the land, to the extent reasonably necessary."

Who is to define the words "reasonably necessary"? The clause continues—

"3. To construct temporary access tracks using the land or using materials brought onto the land."

Who is going to check for parthenium weed, for instance?

It is abundantly clear that private sector developers who are given authorisation to enter onto a property can pretty much do as they wish. That is the reality. When we consider that heavy machinery will be brought on site, the amenity of the property owner or owners in question could be severely disrupted. In the context of sugar country, or land on the Darling Downs where grain is grown, the disruption could be absolutely disastrous.

It may be before the Minister's time, but I was involved in politics before I ever came to this Parliament. I remember the problems that land-holders faced with exploration by mining companies. I recall the damage that was done to properties through the digging up of soil and the bulldozing of soil to assess the potential of the property containing minerals. I remember the hassles that owners went through in order to get compensation and understanding of their problems from Government. These problems continued for a very long time. They caused a tremendous amount of angst in the country. This Bill has the potential to undo the work that was done in those days.

There is no doubt that severe economic hardship and stress could be caused to property owners. Despite this, there is no appeal on the merits from the decision of the Coordinator-General to grant, or refuse to grant, an investigator's authority in relation to the relevant land. There is the opportunity of relying on the Judicial Review Act but, as the Scrutiny of Legislation Committee pointed out in the Alert Digest tabled this morning, "Such proceedings are inherently more limited in nature than a rehearing or 'merits' review." There are a number of problems with these provisions. Firstly, I presume that in a modern competitive society we will get a number of private sector consortia coming to the Coordinator-General wanting to put their case for particular infrastructure projects. The definition of infrastructure facilities is certainly not narrowly drawn under the Bill.

What happens when one or two, or maybe three, consortia or public companies come to the Coordinator-General—and I would like the Minister to answer this—each of which wants to start investigating particular parcels of land? Is he going to say that X company or consortia is going to be allowed to enter on the land with its machinery but Y company or consortia is not? What will be the mechanism for determining which one has the right to enter onto the land? How is the Coordinator-General going to sort that out? Where does this leave the property owners? Are they going to be subjected to ongoing disruptions possibly involving major loss of amenity and income? That has not been satisfactorily explained.

Secondly, although the property owners can go to the Land Court, that action is limited to disputes about compensation. Many people have come to my office concerning proposed resumptions with regard to the Walla Weir in my area. These are compensation issues. These people have been very tardily treated by DNR. For over nine months that weir has inundated land and many of the people involved have not had their properties properly surveyed for compensation purposes.

Having said that, where do they go? The Minister answers, "They can go to the Land Court." However, the other day a solicitor came to see me with some of these people affected. They told me that it is out of the question, because at least $30,000 is involved before they even start. So under the provisions of this legislation, where can the average land-holder go to get justice if their fundamental ownership rights to their land are under threat? It is fine to say that, "Yes, there is the Land Court." It all sounds very nice and practical but, in reality——

Mr Elder: Where do they go now?

Mr SLACK: That is where the department tells those people to go.

Mr Elder: They go to the Land Court.

Mr SLACK: If people disagree with their valuations, they are told to go to the Land Court. However, this Government is supposed to look after the little fellow. Land-holders are not all big millionaires. In fact, 99.9% of them are little fellows who are struggling.

Mr Borbidge: The Minister doesn't care.

Mr SLACK: The Minister does not care. He does not understand the reality that the price of justice in the Land Court is too prohibitive for many of them to access. We need to have a compassionate and understanding approach. However, what have we had? We have not had a compassionate and understanding approach to many of these people's problems. Nine months down the track, their rights have been completely overruled. They have not even had a sensible——

Mr Elder: Am I responsible for the operation of the Land Court?

Mr SLACK: No.

Mr Elder: Am I responsible for the operation of the Land Court in this State as well?

Mr SLACK: The Minister is deliberately misrepresenting what I am saying. I am saying that this Government has to deal with the effect that the cost of access to the Land Court—not to the judgment of the Land Court, just to access—has on the average, ordinary person who has a block of land. I am saying that the provisions of this Bill do not adequately protect those people.

Mr Borbidge: The Government is making it worse.

Mr SLACK: That is the point. That is what the Minister does not understand.

Mr Elder interjected.

Mr Borbidge interjected.

Mr DEPUTY SPEAKER (Mr D'Arcy): Order! I think the debate should return to some sort of propriety. Members should speak through the Chair.

Mr SLACK: Really, all that the land-holders in question can do is to try to privately fund an expensive Supreme Court judicial review application which, as the Scrutiny of Legislation Committee points out, goes not to the substance of the decision. I ask honourable members: how many land-holders would have the cash to go to the Supreme Court to try to fight the Coordinator-General? That is the reality and the Minister knows that. I would suggest very few land-holders indeed——

Mr Elder: What happens now?

Mr SLACK: I am not talking about what is happening now; I am talking about the provisions of this Bill that accentuate the problems that exist. The Bill is making the situation worse, not better. It is broadening the whole issue so that more people can be caught up in the net. It is no consolation to those people who would be threatened by the provisions of this Bill that they can go to the Land Court, the Supreme Court or access judicial review.

So the end result is that we have a very significant power vested in the Coordinator-General. If that power is exercised for the benefit of private sector developers, it could result in significant disruption to the lifestyle and business of many ordinary Queenslanders. Perhaps one could mount a case for this power if there were at least some checks and balances, which is what we have been talking about—for example, if a property owner could come before an independent body and argue that a decision to grant access was fundamentally flawed, that the decision was wrong and would result in hardship or that the decision was unmeritorious and was harmful to that landowner and the local economy. Under this Bill, none of that can occur.

What is more, this is not a Bill of limited effect or operation, such as the Transport Legislation Amendment Act (No. 2) 1998. It is a widely drafted Bill that could operate anywhere and at any time. Of even more concern are the powers vested in the Coordinator-General to actually expropriate the property in question. This power can be exercised only in certain circumstances. The first is when the Governor in Council has actually approved by gazette notice that a particular infrastructure facility is of significance, particularly economically or socially, to Australia, Queensland, or the region in which the facility is to be constructed. The issue to be noted is that the facility does not have to be of significance either nationally or throughout the State, it can be of significance in a particular region. That is the issue. According to this Bill, once the facility is of significance in a particular region, it is irrelevant as to whether it is of significance to the State or to Australia; the region would take precedence. That is a very broad definition. Of course, that term is of indefinite meaning. However, the end result is that a project that may be relatively small and have an impact in only one part of the State will be able to trigger the expropriation and extinguishment powers under this Bill.

I turn now to how the term "infrastructure facility" is defined. The definition is based on the definition of that term under the Commonwealth Native Title Act. However, the State definition is wider still. In the first place, the term "spaceport" is added. I wonder why the word "spaceport" came into this particular definition in the Bill. I ask the Minister whether the addition of this word has been deliberate and whether the powers under this Bill are intended to be used with respect to certain spaceport developments. In particular—and the Minister knows what I am referring to—is it intended to be used for a particular spaceport development in my own area?

The definition then adds—

"... social infrastructure, including, for example, hospitals and schools."

This addition explodes the potential scope for the operation of this Bill. Social infrastructure could cover almost any form of development. When this expanded definition is combined with the ability of the Governor in Council to trigger the provisions of the Bill when a development may be of only regional significance, one begins to understand why so many people are worried about how this Bill will operate. I do not think that many people have become aware of the implications of the Bill. However, if those factors are combined—the expanded definition and the ability of the Governor in Council to trigger the provisions of the Bill when a development may be of only regional significance—one begins to understand why so many people are worried about it. I have deliberately repeated that because of its implications.

Concerned citizens would get no relief when they see that, when considering whether a facility would be of economic or social significance, the Bill requires simply that the facility must have the potential to stimulate one of the following: community development, economic growth, or employment levels. All in all, that could mean that a shopping centre in a regional centre which resulted in increased job opportunities for an economically depressed community would trigger the operation of the Bill.

Mr Elder: No.

Mr SLACK: The Minister should look at the definition and put himself into the real world. I do not believe that the Minister understands the Bill. What happens when somebody comes in and the

Minister says, "No, you cannot do it."? The person takes the matter to court, or there is pressure put on other people in the area. The Minister has the power. What are the checks and balances to preclude that from happening? I am certainly supportive of encouraging any private developer to develop commercial centres, but I am not supportive of providing that, when such a developer cannot strike a deal with the land-holder to sell, that developer can then walk down George Street and get the Government to move in and expropriate the land. That is what the Bill means. If somebody refuses to sell, that is what then happens. In reality, negotiations fall through because of human nature and money being involved. So then the developer trots down to see the Minister, and it goes on from there.

Mr Elder: What happens now?

Mr SLACK: Yes, because the Minister has those definitions that I have just referred to that give him the power to allow, under those definitions, a broad-scale development to take place. That is where corruption can come into it. That is the end result that can occur. I am talking about reality. I am talking about human nature which, obviously, the Minister does not understand or appreciate.

I return to the trigger mechanism of this Bill, which is the approval of the Governor in Council. That decision has to be notified only by notice in the Government Gazette.

Mr Elder interjected.

Mr SLACK: I am answering the Minister's question. There is no means by which this Parliament can pull up the Cabinet and say, in effect, "No, the development that you have ticked is too small, too localised, will not have the benefits claimed, or is inappropriate for any number of reasons." The members opposite complained about old Joh! Good heavens!

Instead, the road to expropriation and extinguishment begins with a decision of the Cabinet that the people of Queensland, through this Parliament, have no capacity to scrutinise before it is acted upon. If we go forward in time, when the Coordinator-General exercises his expropriation or extinguishment powers, what accountability mechanisms are provided for? The only accountability mechanism is that the Coordinator-General is required to set out the reasons for the taking of the land, which are to be tabled in this House. As the Explanatory Notes highlight all too clearly, this explanation will not include commercial-in-confidence information. The written document will most probably just outline the bare bones of the matter and will not be very illuminating. In addition, what can we in this House do about it? I suggest precious little unless the Government of the day actually allows the Opposition of the day time to debate urgency motions to prevent the exercise of the power.

I return to the issue of social infrastructure and regional significance. Where is Matt Foley on this?

Mr Gibbs: You have become so democratic since you have been in Opposition.

Mr SLACK: I am pleased to hear the Minister opposite speak about this, because I am about protecting people's property rights.

Mr Gibbs: You were never a democrat when you were in Government.

Mr SLACK: Let me assure the Minister that I am very concerned about people's rights and compensation, which the content of this Bill has the potential to override. I return to the issue of social infrastructure and regional significance.

The very broad and quite nebulous way that the Bill has been drafted ensures that there is maximum scope for the use of the expropriation powers. I want to know why an expanded definition of "infrastructure facility" was included in this Bill and why the infrastructure was not limited to projects of national and Statewide significance, which I have already mentioned. If the Minister says that social infrastructure includes hospitals and schools and asks whether the Opposition is supportive of that sort of development, then of course I would answer in the affirmative. However, social infrastructure is not limited to hospitals and schools. Social infrastructure could cover almost any development designed to support a regional community, and the Minister knows that full well. It would cover garages, shopping centres, commercial office blocks, theme parks and entertainment centres, including cinemas.

Others will discuss the native title implications of this Bill and I will keep my contributions short in that respect. However, it is patently clear that the Bill will allow the Coordinator-General to extinguish native title claims for the benefit of private third parties. A few months ago, the Premier claimed that with the establishment of the Indigenous Working Group there would be a full exchange of information and that legislation which respected native title and consultation would be the hallmark of his Government. Instead, what do we see? We see legislation that entrenches extinguishment. The issue in this instance is not the power to extinguish native title as an issue separate from the general Government power to expropriate private title that is proposed to be entrenched by this Bill. On this side of the House, we believe very firmly in overall laws that apply across-the-board and not in a sectional manner.

Nonetheless, the public silence of indigenous representatives over this proposed legislation has been curious. Perhaps, like ducks in a pond, all is quiet on the surface while furious paddling is going on below. Indeed, that may have been the reason for the sharp changes of precedence of this Bill on the Notice Paper this week. It is alleged that the Queensland Indigenous Working Group was unhappy with the Bill and with the absence, astonishing in the circumstances, of consultation during its preparation. The question arises: were they in fact supportive of it? If the QIWG is, in fact, supportive of legislation that allows the Coordinator-General to extinguish native title claims to benefit private third-party developers, then all I can say is that the arguments that they raised against John Howard's 10-point plan legislation over the last two years were hollow to the core.

This Bill is also of concern because it vests such wide and unaccountable powers in a public servant. The Coordinator-General will be empowered to take people's land or to allow massive disruption to people's lives and livelihood. In the context of the nature of the projects where those powers may be exercised, it also raises questions about the impact that that type of power could have on the Public Service in general and the Coordinator-General in particular. Surely the Minister and the Government can see that it is not wise to put a public servant in a position where he or she can benefit private developers enormously and then ensure that the decision of that public servant is neither subject to a merits review nor open to the scrutiny of Parliament. I would like the Minister to answer that. Without casting any aspersions on the integrity of either the current Coordinator-General or any other person who may fill that office, I simply note that the Bill has the potential to corrupt the development process and place that public servant in a most invidious or beneficial position.

The Opposition does not support these aspects of the Bill and I sincerely hope that something can be done to put some balance into the legislation. The Bill has all the hallmarks of a rushed exercise undertaken without enough serious thought. It is too wide, it is too unfair and its implications clearly have not been thought through. It is a Bill that could benefit a few to the detriment of many others. It is a Bill that could actually harm development in the State because of the negative type of debate that may surround future decisions. Sensible businesspeople want an open, transparent and accountable process, and one which is beyond reproach. They are already experiencing an arrogant, even dictatorial, attitude by some public servants and others. The statements and actions of Ministers have given them cause for alarm over their property rights and security. This only adds to the uncertainty.

Land-holders justifiably feel that their rights are being eroded. In the past, many who suffered severe economic hardship and loss of self-esteem because, for example, economic realities put at risk the family farm, which may be generations old, have been able to take some consolation from the fact that they felt that they owned their land. Indeed, they were very proud of the fact that they owned their land. They had pride of ownership. Under this Government and this type of legislation, they do not even have that any more. I do not believe that the honourable members opposite understand or appreciate that fact.

The other night I attended a meeting that was held at Kumbia. Over 200 people were there. I can understand that they were there out of concern for the future of their properties and their employment in the area relevant to development proposals. I am not saying that I am against the development proposals. However, there needs to be a balance in matters so that the traditional land rights of land-holders are protected and land-holders can have some confidence in the security of the system that they believe protects their land rights. This Bill further erodes that feeling of security. Statements like that of the Minister for Environment and Natural Resources on tree clearing guidelines on freehold land do not help to alleviate the feeling of dispossession that many of those people have because of the economic hardships that they are also suffering. If this Government had any feeling or understanding of that, it would not be bringing in such broad-based legislation. That is why I do not believe that the Minister and members of the Government have the understanding that is necessary to draft proper and balanced legislation that would ensure the future development of this State.