Speech by

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STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION AMENDMENT BILL

Miss SIMPSON (Maroochydore—NPA) (10.35 p.m.): This is a property confiscation Bill. It has been mentioned earlier in the debate that this type of legislation was presented to the coalition party room and it was rightly rejected. I remember that well, because I said that I would cross the floor if it went ahead. Certainly it presented a major shift in laws for acquisition of land, conferring benefits on third parties with significant power delegated to bureaucrats. Fortunately, my colleagues agreed, and agreed strongly. State development projects of significance should be under stand-alone legislation. It is a shame that the Labor caucus did not treat this Bill with the same contempt that we did.

Acquisition laws need to be strengthened in favour of landowners, not weakened. There are already third party acquisition powers within the Petroleum Act, a 70 year old Act. I have had experience in dealing with this Act on behalf of constituents who have found a petroleum pipeline going through their properties. The difficulty with third-party acquisition where there is no control in this way is that there are third parties, private business people, who know that they have the back-up of the Government, of law, in order to use that law for compulsory acquisition. That was certainly the experience we found on the Sunshine Coast. That is certainly why that piece of legislation, which is far narrower than this piece of legislation, is bad law, needs to be overhauled and needs to be brought back to give power back to the people and establish proper controls so that there is a balance between State development and private property rights.

But here we are. We have a piece of legislation that goes far wider. It is dealing with third-party acquisition for a very broad definition—for just about anything the Government wants to dream up. In 1970, Colin Hughes, the man the Premier has indicated will be looking at our Constitution, wrote—

> "Queensland politics are the politics of development, concerned with things and places rather than people and ideas."

If ever there was a Bill which this Parliament had to debate in recent years which places things and places over the rights and needs of the people of this State, then this is it. This Bill is a testament to the singular incapacity of the Labor Party to appreciate that private landowners—and that includes the vast majority of citizens—have rights that should not be limited, revoked or trampled on simply because a company from the big end of town comes knocking on the door of the Government of the day or of the Coordinator-General.

This Bill is testament to the contempt that the Labor Party has for any form of checks and balances and the right of Parliament to exercise some form of proper accountability. It grants in clause after clause massive and largely unchecked powers which, if exercised, will disadvantage many small landowners and Queensland families. All in all, this is a Bill which should be of great concern to property owners, or any citizens who believe that absolute power corrupts absolutely, because this is a Bill which has the capacity to corrupt and corrode the body politic.

At its core this Bill seeks to give to the Coordinator-General, who is currently the Director-General of the Department of State Development, the power to provide access rights to private developers who want to enter upon private property when consideration has been given to the construction of infrastructure facilities, and also a follow-up power to enable the Coordinator-General to actually expropriate the private land and, in some cases, claim native title rights in order to facilitate the private

developer proceeding with the construction of the infrastructure facility. In other words, this is a comprehensive expropriation Bill covering all types of land tenure and all types of claims.

The first area of concern I have is with the power proposed to be vested in the Coordinator-General to grant authorisation to a person to enter an area of land for the purpose of investigating the potential and suitability of the land for the development of an infrastructure facility. The authorisation power vested in the Coordinator-General will be wide enough for that officer to authorise a private developer and any employees or subcontractors of the developer to do anything on the land, bring anything onto the land or temporarily leave machinery, equipment or other items on the land. When one looks to see what safeguards are proposed in this Bill, one finds that this Bill virtually gives the Coordinator-General carte blanche. As the Explanatory Notes make abundantly clear, the Coordinator-General's power to grant or refuse an authorisation cannot be subject to a review on the merits of the decision.

The Explanatory Notes go on to justify this most serious deprivation of citizens' rights on the basis that it is similar to power found in the Transport Infrastructure Act 1994. The notes also go on to point out that there may be some limited remedies under the Judicial Review Act and then say—and I quote because it is almost laughable—

> "Importantly, the decision to permit entry is taken by the Coordinator General and not by the person benefiting from the decision."

Of course, the power to enter onto private property, bulldoze vegetation, make tracks, ruin crops and generally destroy the amenity of the landowner would not be made by the developer doing that, unless we have reached the stage of actually legalising trespass and destruction of property.

The real point is that the Coordinator-General is simply the Director-General of the Department of State Development—a hand-picked person who went through no merit selection process and who owes his job and his immediate future to the graces of the Premier and his Minister. The Coordinator-General is not an independent officer and, in these circumstances, to give this person powers to allow a developer to enter onto private property and carry out intrusive activities and not subject that decision to any form of merit review is regressive and quite dangerous. It places many property owners at the mercy of the Coordinator-General and the whims of the Government of the day. It demonstrates an absolute disregard for the rights of citizens and, in the scheme of things, places private developers in a very advantageous position. It places this Government and the Coordinator-General in a position to grant major favours to developers.

How many times over the years have we heard from the Labor Party about the alleged corruption of others? One has only to refer to the history of Labor in this State, from the days of Ted Theodore and his AWU backers to "Fine Cut" Foley, to see just which is the party of nepotism, cronyism and corruption. It is the Labor Party. Yet this Bill actually has the capacity to entrench cronyism in this State and at the highest levels. It gives undemocratic powers to a hand-picked Labor director-general to grant or refuse, as he sees fit, the right to private developers to enter upon private land and do all manner of things and, after that, to move in and expropriate the property in question from under the landowner irrespective of the wishes of the landowner.

This Bill is a very wide-reaching Bill. Really, the only limitation on its scope is that marked out by the various Gazette notices approved by the Governor in Council—a matter about which I will speak in a moment. I recognise that compensation is to be paid in the event of damage done by the developers. However, if a dispute arises and the parties have to go to the Land Court for determination of compensation, in many cases citizens will not have the money to pay for proper representation. Certainly, they will not have the resources that the other side will have.

This is already a problem under the existing Acquisition of Land Act. Surely, any member of this place knows how difficult it is when they advocate on behalf of constituents who have to deal with existing acquisition laws, because they are not on an even playing field. They also know that they are not on an even playing field when it comes to negotiating the price for one's land. One does not get to choose the market into which they are selling by force or with the threat of that power of acquisition behind them. I ask the Minister how, in terms of assistance or advice, he intends to deal with the issue of impecunious landowners who have been disadvantaged by a developer who has been granted access to their land.

Another point I would like to know about is the limit of authorisations. I can see nothing in this Bill which would prevent exploration work near to a dwelling house or, indeed, over crops and the like. Is it possible under this Bill that a person exercising the right of access could actually destroy crops, sheds, dams, fences or other structures? The Minister may be able to explain this aspect of the legislation, because on first glance it would appear that unless the Coordinator-General specifically prevents this occurring by clear words in his authorisation, a developer could do any of those things provided that compensation is given at the end of the exploration.

This aspect of the Bill would be bad enough but, as I mentioned, it goes on to empower the Coordinator-General to take an estate in fee simple for the purposes of an infrastructure facility that is of significance, economically or socially, to Australia, Queensland or regionally, provided this facility has been approved by the Governor in Council by means of a Gazette notice as having that significance. If the Government of the day claims that the proposed facility will stimulate variously named developments, which range from resource development to community wellbeing, such a decision can be made.

The term "infrastructure facility" is defined in a way which aligns it very closely to the definition of "infrastructure facility" in section 253 of the Commonwealth Native Title Act, and the reason for that is all too clear. It is quite significant that the definition in this Bill is significantly wider than that found in the Commonwealth Act. Unlike section 253, the definition in this Bill adds social infrastructure, which is defined to include hospitals and schools but which could also include any number of developments. In fact, in the context of many regional areas, I would think that this definition is wide enough to include almost any infrastructure designed to support a community. What is social infrastructure if it is not development designed to support a community? A shopping centre, a McDonald's, a Red Rooster, a restaurant, a petrol station, a bank, an office block or any number of such developments would, in many people's opinion, fall within the generic concept of social infrastructure. What this means is that the Coordinator-General is empowered—after the developers have finished exploring a person's land and after the landowners have told the developer that they will not sell and that they do not want to sell—to move in unilaterally and take the land off them.

What are the protections that this Bill contains to limit this power of expropriation—the power given to a public servant to forcibly take a family's property once a developer wants it? First, the Minister would claim that the development in question would have to be a big one—one that will benefit the whole community. If that was the case, why is it that the Bill does not place a limitation on the extent of the power to confiscate for projects that are of national significance, or at least projects that are of Statewide significance? I do not agree with this legislation, but at least then the Minister might be able to claim that, however draconian and potentially unfair this Bill is, the overwhelming benefits for the whole community are such that, unfortunately, some sacrifices have to be made. Yet this clearly is not the case. This Bill can be activated even if the proposed development only has significance in the region in which the facility is to be constructed.

As I said, in the context, say, of far-western Queensland, one could argue that the building of a McDonald's at Cunnamulla would have major regional significance in promoting employment levels and community wellbeing. In essence then, providing that this draconian power can be used for projects that have only regional significance ensures that this power can be used regularly and for projects that are relatively small. The Minister might say that this power cannot be exercised unless the Governor in Council has first approved the infrastructure facility as one that has such significance. If he did, then it would be a pretty lame defence, because there is no capacity for the Parliament to debate or disallow the Gazette notice. Under this Bill, the initial decision by the Cabinet through the Governor in Council to allow the Coordinator-General to exercise the power to expropriate private property for a private third-party developer is not subject to any form of review. There is no—and I repeat "no"—accountability.

And what of the decision of the Coordinator-General to expropriate the land? As the Explanatory Notes point out, this decision is not subject to any form of merits-based review. So if this public servant decides to throw people out of their homes to benefit a developer, and this decision is poor, harsh, rushed or could be approached in a different way, then that is just bad luck. This public servant is given the power to make a bad decision, a harsh decision, even an appalling decision, and the property owners who are on the receiving end cannot do a thing.

I have already mentioned the Petroleum Act. I have seen the problems created when we have extraordinary powers in legislation. This legislation, though, goes far beyond the power of any other legislation we have seen before the Parliament. Certainly, we are talking about the rights of property owners versus Government entities and, in this case, delegated power from Government. We must have a more equal playing field. The Minister may say that the decision is subject to judicial review. But as he and his advisers know, the grounds of challenging such decisions are narrow and go to process and not the substance of the decision. This Act does not allow a citizen to go before an independent body and argue that, on the merits, the decision to throw them or their family off their property is wrong and should not proceed.

The Minister may say that the Coordinator-General has to give a written statement outlining the reasons for taking the land and the details of the negotiations that were held on the voluntary purchase of the property. He may also claim that this statement has to be tabled in this Parliament within three sitting days after the taking of the land. Again, this offers little or no joy to the aggrieved and evicted property owners. It is just an ex post facto means of the Coordinator-General justifying why he expropriated property. Again, there is no scope for Parliament to rescind the decision. There is no

automatic right for the Parliament to debate the document and disallow it. It is just a fait accompli and a bit of procedural window dressing that leads next to nowhere.

The Leader of the Opposition has already pointed out that we do not totally oppose the proposition that, in extraordinary circumstances, the State should be able to acquire private property for a third party which intends to provide needed public infrastructure facilities, but with stand-alone legislation with full parliamentary scrutiny.

The Minister quite correctly pointed out that increasingly money for public works is being provided by private capital, and it would not be realistic to assume that when private capital is being used for a public purpose that in some circumstances the State should not become involved and expedite the project by acquiring property. But the Opposition does not support this type of power being vested in a public servant. We do not support it being activated by administrative decision which is not subject to parliamentary approval. We do not support it being immune from accountability mechanisms.

Certainly, we regard it as an exceptional event and one which should be dealt with in a separate Bill presented to this Chamber. Either way, any proposed expropriation requires the full glare of the public spotlight. As it is, giving the power to expropriate property to a public servant acting at the behest of the Government is a most unsatisfactory situation. The risk is that this gives far too much unchecked power to too few people, and in the process could lead to corrupt activity. This Bill could well have been called the Labor Party (brown paper bag) facilitation Bill.

The other aspect of this Bill which deserves further explanation from the Government is the acquisition of native title claims. It is clear from reading both the Bill and the Explanatory Notes that the power to acquire land is not limited to freehold title. In fact, the power to acquire under this Bill seems to have been drafted specifically with the intention of applying to native title. I have already drawn attention to the fact that the definition of "infrastructure facility" in this Bill has been modelled on section 253 of the Native Title Act, although it is somewhat wider in application. The Explanatory Notes make it abundantly clear that one of the intentions of this Bill is to deal with native title.

The Premier and the Minister know that they cannot introduce legislation dealing only with the acquisition of native title. Any discriminatory State legislation of that type would be struck down by the Racial Discrimination Act.

It is surely one of the great ironies of modern political life that the Beattie Labor Government, which claimed that it would solve native title problems by negotiation and which rejected the extinguishment option, has seen fit to present this Bill to the Parliament less than one year after having been sworn in. The greater irony is that the Labor Government has exposed freehold title to extraordinary claims by Government. This Bill is a testament to the Labor Party's total hypocrisy.

Let me also point out one thing—and the Minister can correct me if I am wrong: under this Bill, when the Coordinator-General's expropriation powers are activated, the native title claim is extinguished. It is not suppressed and able to be revived later. It is wiped out. It goes far beyond anything allowed under the alternative State provisions which were part of the Howard 10-point plan legislation.

In conclusion, I am totally opposed to this Bill. It is a very dangerous measure which will result in many Queenslanders' interests being sold out and trampled upon. I oppose this Bill not because I am against the concept of promoting and facilitating private capital which is being invested in critical infrastructure projects, but because this Bill is so discretionary, is devoid of almost any accountability and vests so much power in a public servant and the Cabinet that it is not in the public interest.

If the price that has to be paid for promoting development is the enactment of legislation which has the potential to harm and deprive ordinary Queenslanders of their most basic rights and property, then I will not go along with it. In very stark terms, this Bill highlights the difference between the Labor Party and the coalition. We support the rights of people to own property and to have the freedom to advance themselves and their families through work and initiative and to profit from their labour.

In closing, I would like to renew my call for an overhaul of all land acquisition laws in Queensland to make them fairer for every Queenslander. We must also fight for fairer compensation and to recognise the uneven playing field between the Government and those whose land has been forcibly acquired. There is a need for the introduction of solatium and a need for compassion in dealing with people whose land has been forcibly acquired.

Time expired.