Speech by

Mr L. SPRINGBORG

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PRIMARY INDUSTRY BODIES REFORM BILL

Mr SPRINGBORG (Warwick—NPA) (Deputy Leader of the Opposition) (4.26 p.m.): This Bill represents a wholesale change to the way in which the five key primary industry bodies which are covered by this Bill operate and are structured. It overturns decades of stable arrangements and replaces them with not just a series of untested models but models that have not yet been finalised. Starting in June, this Government organised a series of meetings with the five primary producer representative bodies. In one case, it amounted to three meetings between June and September, taking just over three and a half hours in total, when that primary producer group was informed of the Government's position. There was no real consultation. It could not be called consultation when the meetings were so short, the information so basic and the Government was simply telling the primary producer organisations what it was going to do.

On top of that, the Government insisted on strict confidentiality arrangements, which meant that there was no real capacity for the rank-and-file membership of the organisations to have a say. It is a travesty of justice that the Government has rushed in legislation after very basic and limited consultation with the peak bodies and yet has denied to the many thousands of grassroots primary producer members any say at all. Instead, these thousands of Queenslanders were shut out of the process. Their views were neither sought nor heeded. Even worse than that, the Government insisted that their representatives maintain a code of silence so that they were deliberately kept in the dark.

It is not as if we are talking about a minor matter here. What we are debating is legislation that strips away compulsory membership and levies. It forces five primary producer bodies to totally restructure. New legal corporate structures will be put in place. The implications of having new corporate structures are potentially immense. There are tax implications, both in the transitional phase and thereafter. There are asset implications: who owns what, and on what terms? There are human resource implications: will any staff be displaced? There are district implications: who will own and manage the resources in the districts in the future and on what terms? There are legislative implications: who will pay, who will choose, and who will determine the various tasks that, at the moment, are funded by industry-funded representatives? This is a particular issue in the sugar industry.

All of these and other issues are at stake. And yet, despite this, we are debating a Bill, developed in haste, and now pushed to the top of the Notice Paper so that it can be enacted before Christmas. This Government has treated the various primary producer bodies and their membership in a very shoddy fashion. The Government has said to these bodies, "You must create a replacement corporation, and these are some of the options." It has then fallen on the primary producer bodies, in a ridiculously short time frame, to seek legal and accounting advice on what sort of corporate entity is best suited to their needs and then what sort of structure within that type of entity. As my friend the member for Hinchinbrook pointed out when discussing the implications for the QFVG, there are a number of different approaches that these bodies have had to ponder. Yet all of this is occurring within ridiculously short time frames, in an atmosphere of tension and with the statutory sword of Damocles hanging over the heads of producer bodies.

Clause 14 states that if a producer body has not appointed a replacement corporation by the day after the Act is assented to, then the director-general of the Department of Primary Industries can go to the Supreme Court and seek an order winding up the primary producer body. That is the sort of

threat that is hanging over the producer bodies. Clause 2 provides that the bulk of the Bill is deemed to have commenced on 29 October. This retrospective operation is to ensure that the producer bodies start their efforts on restructuring immediately, even though the legal basis for them to do so is not enacted and even though they have to restructure in a legal vacuum.

These problems were highlighted by the Scrutiny of legislation Committee in Alert Digest No. 13, which was quoted extensively by the member for Crows Nest in his most comprehensive contribution to this Parliament. On this point, I need not repeat what the member has quoted, except to say that I share the following concerns of the committee—

> "... that in some cases practical difficulties imposed by the requirement that the transfer date be the day after the day of Assent may prevent the replacement corporation being appointed in time, thus creating the potential for the producer body to be wound up."

From a constitutional point of view, I also agree with these comments of the committee—

> "... these provisions pre-empt the Legislative Assembly. It appears to be anticipated that producer bodies will undertake certain activities, contrary to the existing legislation, on the basis that these activities will be retrospectively validated."

The Government is approaching the task of this Parliament in a very odd way. To adopt the words of the committee, it is pre-empting this Parliament. Some may say that it has adopted a very arrogant stance, treating this House as a rubber stamp and highlighting its contempt by the way in which this Bill has been drafted.

Another concern about this Bill is the fact that a range of State taxes, and not just stamp duty, will have to be paid as a result of the forced transfer of rights and liabilities. A string of transfers will have to occur: transfers from secondary bodies to the primary producer bodies, transfers from primary producer bodies to the replacement corporations and then after that time there may well have to be further transfers and restructuring. Yet in his second-reading speech, the Minister said that stamp duty relief would be offered, but that it would not be enshrined in the Bill; instead, it will be a grace and favour exercise solely at the discretion of the Government. As the Minister indicated, even the terms of this stamp duty exemption are yet to be worked out with Treasury.

What about all of the other State taxes and charges that may be activated as a result of this Bill? What about Titles Office fees? What about changes to bills of sale or sugarcane liens? There may be quite a number of other charges as well. These are just a few that I contemplate will be activated. Are these bodies going to be forced to come cap in hand to seek some relief, which may or may not be comprehensive? The answer is definitely yes, because, as the Minister says, the relief will be ex gratia. That means that it is solely at the discretion of the Executive. That is a fairly dangerous exercise, and at the moment I think that we are seeing that sort of thing with the impending tree-clearing guidelines. On the one hand, the Government is saying that there might be compensation and, on the other hand, we are hearing that there might not be. It is totally unsatisfactory that these key industry bodies are being placed in this situation. The Minister should have ensured that this Bill was drafted so that there was some certainty and justice. Instead, like the rest of this unfair package, we see maximum discretion being vested in the Executive and these key primary producer bodies being placed at their mercy.

I would like to comment on a range of issues about this Bill because, from the viewpoint of the rule of law as well as procedural fairness, they raise some important and troubling issues. As time is short, I will deal with only one, and that is the situation facing staff of primary producer organisations. Under clauses 55 and 58, each person who immediately before the day of transfer to the replacement corporation was an officer of the producer body but who is not employed by the replacement corporation will go out of office without any compensation being paid. At the outset, let me say that I am not suggesting that anyone is going to be sacked or that the five primary producer bodies would act in any way that would be other than fair. However, we are dealing with a Government that presents this House with a Bill that specifically and deliberately denies people who may be sacked any compensation. This is a complete denial of these persons' rights and liberties and is an affront to all of the principles of the unfair dismissal laws that the Labor Party drones on about in this place and elsewhere. If a conservative Government did this, we would have trade unions and the Labor Party screaming from the rafters about unfair treatment, jackboots legislation and all the rest of it. Yet this Government comes in, forces major structural changes on five key primary producer bodies, and then denies people compensation if they are displaced as a result. I think that any fair-minded person would say that that is very unfair and sets a bad precedent.

At the heart of the explanations given by this Government for producing such a rushed and draconian piece of legislation is the claim that they had no choice, that there is a legal cloud over the existing legislation and that urgent reform is needed. That has been the claim, and there has been no evidence produced to substantiate it. If the Government has received legal advice from the Crown Solicitor or the Solicitor-General to back up these claims, it should have come to this Parliament with those advices and, I think, given us an opportunity to be able to see that advice substantiated. Instead,

we have to deal with claims by the Minister which appear, from my perspective at least, to be very shallow and without much substance.

At the very heart of this Bill is the suggestion that the raising of compulsory levies under the Fruit Marketing Organisation Act 1923 and the Primary Producers' Organisation and Marketing Act 1926 will be struck down by the operation of section 90 of the Commonwealth Constitution. Section 90 gives the Federal Parliament the exclusive power to levy duties of excise. The suggestion has been made that these compulsory levies amount to duties of excise. Of course, the reality is that what constitutes a duty of excise, even after 1997, is a matter of greater uncertainty. This has been the case since 1901, and really not much has changed over the years.

In 1997, the High Court handed down two decisions, Ha v. New South Wales and Walter Hammond and Associates Pty Ltd v. New South Wales. Those cases adopted a broad view of what constitutes "excise" and, therefore, place added restrictions on the capacity of State Parliaments to raise moneys. In both of these cases, it was the view of the High Court that excise is a tax on any step in the production or distribution of goods. Yet all of this debate is rather academic and misses the point. Let us assume that this case had relevance to the bodies. The real question is whether it is fatal or whether the levies could or can be adjusted to ensure that the High Court's ruling was of no effect. For example— and the Minister can deny this—it is absolutely clear that if a levy is imposed on all growers in equal amounts so that there was no connection with the value of the primary produce, it could not be characterised as an excise. This is already the case with the Queensland Commercial Fishermen's Organisation. As I understand it, in that organisation, a flat fee option is the rule, so at least one of the five organisations is clearly operating in a legal and aboveboard manner. However, that is if one looks at it from the worst case scenario. The reality is that the latest lower court decision in this State upheld the levies. There is no legal crisis at all. There is no major doubt hanging over the industry.

The Minister also knows that in Ha's case the tax in question, which was levied by the New South Wales Government on tobacco, was levied at the rate of 100% of the value of the commodity. It was an over the top tax and, as a result of the actions of the New South Wales Government, which should have known better, the court struck down the tax. The compulsory levies under the two pieces of legislation that are to be repealed are entirely different. Under these statutes, it is clear that revenue raising is not the primary, or even a primary, consideration. The levies raised are to promote and protect the industries and their members. They are designed to promote the production, marketing and sale of the various primary products as well as research and defence of the industries. The revenue raised is incidental to the fees paid in connection with a regulatory regime that has a clear industry focus. I do not know who has been advising the Minister about the risk that these levies would or will be struck down. Whoever they are, I suggest that they do not understand the industries, the purpose of the levies or the various practical options available that make any legal challenge a nonsense.

In addition, my colleague the member for Crows Nest comprehensively demolished the suggestion of the Minister that there was an overwhelming and pressing urgency to pass legislation lest disgruntled growers start suing for fees paid in the past. It is true that such a scenario is open should such legislation ever be struck down. But even in that unlikely event, section 10A of the Limitation of Actions Act 1974 would come into play. That section limits claims for recovery of amounts paid as tax because the statute under which the tax was collected was ruled invalid to moneys paid within a year of the action being commenced. The term "tax" is defined in subsection (5) to include a levy under an Act. The point is obvious. There is no mad rush to pass legislation. Section 10A already deals with the quantum that can paid in the event that the legislation is ever struck down. There is no open-ended liability so far as the State is concerned. It is limited and precise, and the Minister would have been advised of this.

I have grave misgivings about this Bill. The objectives set out in clause 3 of the Bill are dry and legalistic. However, the goal of moving these bodies into a less regulated framework and allowing them more freedom to look after their members in a voluntary membership framework is not one to which I am opposed. I cite the success of the UGA, Graingrowers and the Cattlemen's Union as examples of how things could be done. I look forward also to seeing how the successor body which encompasses those organisations, Agforce, functions. And I know that it will function well.

I respect the view of the members of the five primary producer organisations. The coalition would never be a party to forcing fundamental and disruptive change on these bodies without proper consultation, without the

views of the membership being obtained and without the full implications of the move being determined. As it is, we are debating a rushed Bill that has been developed without the views of the membership being obtained or even sought. We have a Bill which sets unrealistically tight timetables and prescribes draconian punishment if these time frames are not met.

Then we have a Bill which gives no specific tax relief for these bodies on transfer of their assets, but only the promise of what one hopes will be a realistic and generous ex gratia payment. We even have a Bill that forces public servants to process documents in direct contravention of the law in the

hope that this Bill will be passed. No doubt these officers are in breach of many clauses of their own departmental codes of conduct in doing what they are being forced to do. We have a Bill that strips away any right to compensation for staff sacked as a result of these transfers. We have a Bill that has broad indirect consequences for other legislation, such as the Sugar Industry Act, and yet the Minister has not even addressed the issue.

In conclusion, this is a very bad Bill. The process that led up to it is flawed, the clauses in it are harsh, and any potential implications have not been worked out—all of this allegedly because of the fear of a legal challenge which, as I have pointed out, is not much of a risk at all. I hope that in his response the Minister provides the House with some credible explanations as to why he has dealt with these important industries in a totally unacceptable manner.