Speech by

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MEMBER FOR GLADSTONE

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LAND AND RESOURCES TRIBUNAL BILL

Mrs LIZ CUNNINGHAM (Gladstone—IND) (11.56 a.m.): I rise to speak to the Land and Resources Tribunal Bill. I want to make a couple of comments and raise some questions on the basis of some correspondence that I have received. Initially, I would like to express my appreciation to the Premier for the accessibility of his staff to answer questions from my office and also for briefings on the amendments. I value that assistance.

What is commendable in this legislation is that it has generally bipartisan support. I noticed in Mine Talk that the Mining Council has given support to the principle of the Bill and that the Government has established a tripartite committee comprised of Aboriginal, farming and mining representatives to watch the progress of native title over the next couple of years. The Mining Council said—

> "We support this initiative. The Mining Council's Chief Executive, Michael Pinnock, will represent us on this group."

The fact that there has been close consultation has ensured that, generally, the legislation has received support.

I notice that the legislation addresses some concerns that have existed for some time with regard to the Mining Wardens Court. I hope for everybody's sake—particularly the landowners and other parties who are affected in actions before the court—that it is an effective replacement because a lot of grief has been generated over the years by dissatisfaction and frustration in dealings with the court.

There are just a couple of issues from which I would seek the Premier's response. The intention is that proceedings will be heard by a single or a multiple-member panel. I believe that the decision as to the composition of the panel rests with the president. One of the three major criteria for the president's decision is whether the parties desire to have the proceedings heard by a single or a multiple-member panel. However, in the event where the president decides on a single-member panel but there are concerns raised by one or both of the parties that it should be a multiple-member panel, is there a mechanism whereby the parties can express that dissatisfaction or perhaps appeal that decision?

I also notice that, in the Premier's second-reading speech and in some of the documentation that I have looked at since, this tribunal will deal with cultural and heritage issues. I understand that there is another Bill still to come. A paper was circulated about that particular function of the tribunal, and I believe that it was subsequently withdrawn. However, there are some concerns about the clarity of the issues that may be referred to the tribunal in relation to cultural and heritage issues. I want to go back to that point. There is one particular clause in the Bill on which I will be seeking some clarification.

In the Northern Territory, I believe that the intention is that the chairperson of the tribunal must also be a legal practitioner and will be appointed for a minimum of five years. My understanding is that the chairperson can be reappointed after that period. I wondered why it is that, in the Queensland legislation, the chairperson is a lifetime appointment under the Supreme Court Rules. What rationale was used in not adopting the Northern Territory model? I understand that the generic argument is security of tenure and independence of the tribunal. However, in relation to the Industrial Relations

Commission in Queensland, there was a concern that the independence not only exist but also be seen to exist. The members of that commission were appointed and eligible for reappointment at the termination of their terms. Historically, other than Mr Dempsey, I believe their reappointments continued without any major changes, unless one of them resigned. That mechanism of reappointing a person after a specified term allowed for transparency in that, if the person did his or her job in a responsible and impartial manner, that appointment was made automatically. I wondered what the rationale was to use the Supreme Court process where a review of the person's performance, albeit a very public review, cannot occur now. The appointments are made and the effectiveness of the tribunal will hinge quite directly on the people who are appointed initially. Unless there is a major problem, there is no opportunity to review the make-up of that tribunal for whatever reason, whether that be inappropriateness or whether that be a demonstrated lack of ability because of what the tribunal ends up having to do. I just wondered why we did not adopt the Northern Territory model where the appointments were for five years and members can be reappointed.

I know that the Queensland Indigenous Working Group appreciated very much the liaison that occurred between the department and them. I just wondered, with the most recent group of amendments that were circulated yesterday, whether they were also put before not only the Indigenous Working Group but also the grazing and horticultural organisations to get their feedback. I just wondered whether they had had a chance to comment on those amendments and the impacts that they will have on the legislation. I also wonder whether the Premier could advise whether it is his intention to expand the Land and Resources Tribunal Bill to cover petroleum tenures; or will that be covered by alternative legislation?

The Indigenous Working Group raised a number of issues about the importance of the independence of the tribunal. I do not think that anybody would underestimate the critical nature of that independence not only being in existence but also being seen to be in existence. One of the concerns that they expressed was that the tribunal act quite independently of the Minister responsible. That has been achieved in great measure by the amendments that the department circulated and brought up to my office, which we went through. I wondered whether that had satisfied the group's concern about what is like a separation of powers issue or whether they still had reservations. The Premier's officers went through and explained clearly why, in a couple of instances, the Minister had been taken out of the decision-making process. I am sure that, on the face of it, that should give some comfort to not only the Indigenous Working Group but also to others who are affected.

I also seek clarification from the Premier as to whether, upon the appointments of members to the Land and Resources Tribunal, as with the appointment of members to committees in this House, there will be a bipartisan position adopted, that is, that the proposed list of appointees be available to the Indigenous Working Group, the mining council and the graziers' and landowners' organisations to ensure that they are content with the proposed appointments. As I said, the success of the tribunal will hinge greatly on the confidence that all parties have in the tribunal as it is appointed. I wonder whether the Premier is intending to canvass with those groups that have been involved intrinsically in formulating this Bill whether they will have an opportunity to comment on the proposed appointments.

One of their concerns related to clause 14, which was the proposal to allow for temporary appointments not exceeding one year. I notice that the Premer's amendments that have been circulated reduce that time to six months. It was explained to me that that reduction, albeit to answer in some way those concerns, was also to accommodate the fact that every seven years the tribunal members are eligible for a leave of absence for six months. I think the feedback from the groups was fairly positive. They understood the need for that time. I just wondered whether there is still an opportunity, given unforeseen circumstances, for these appointments to be made not only to accommodate these leaves of absence but also for unforeseen circumstances and whether that six months' appointment can be extended by a reappointment for a period of six months.

One of the major concerns—and I know the Scrutiny of Legislation Committee raised this issue, and I just seek the Premier's own belief that this concern has been addressed not only adequately but also comprehensively—was that there was a potential for tribunal members to have a pecuniary interest, that is, that they could have an interest in mining activity. I believe that, under the Bill, they would still be able to have that mining interest provided that all parties to the mediation or the arbitration process were prepared to accept that interest and accept that the member who had the interest can act in an impartial manner. I wondered why that issue was not made more clear cut than that in the Bill—that tribunal members must not have a pecuniary interest. I know that the simple response to that is that the members of the tribunal have every right to have whatever economic investments they choose. However, that raises the spectre of a conflict of interest. Given the emotive nature of some of these issues, one could question why the harder line could not have been taken: that there be no pecuniary interest in relation to mining interests by members of the tribunal.

Clause 40 addresses the specific requirements for constituting the tribunal for proceedings. The Indigenous Working Group has said that, given the qualifications for appointment of the presiding

members under clause 8, appointed non-presiding members under clause 17 and referee non-presiding members under clause 18, there is no mandatory requirement for a three-member tribunal hearing a matter under the native title provisions of the Mineral Resources Act to include any person with experience in native title matters. Again, given the emotive nature of some of the cases, and the experience and the expertise that it is necessary to bring to those deliberations, I wonder why that requirement was not incorporated in the Bill. I ask the Premier to clarify that.

The final concern of the Indigenous Working Group that I wish to raise relates to clause 41 and the way that questions are to be decided. This relates to advice that will be given to non-presiding members on the issue before the tribunal. The obligation on the Land and Resources Tribunal is to observe natural justice. The Indigenous Working Group has requested that any advice that non-presiding members and non-voting members give to the tribunal be made in public so that all parties to the hearing, that is, all parties to the issue, are aware of all the information as it is presented. That concern of the working group has come up in a number of situations relating to landowners and issues affecting land tenure and right-to-use property where advice and information is passed on in such a manner that all parties are not given equal access to the information. I ask the Premier whether it is his intention to ensure that all parties to an action or to a tribunal matter will have equal access to the information as it is presented.

I commend the Premier on his amendment that allows at-risk agreements that are currently in the process of being decided to continue as if the Bill did not exist. There is always a great deal of concern associated with at-risk considerations, and there are a couple of such issues in my electorate. Landowners feel quite vulnerable in the whole process. On their behalf, I commend the Premier for the initiative that was taken in the amendments so that the at-risk agreements that are currently in place can continue without any impediment under the rules that people have come to know.

In closing, I ask the Premier to clarify to what extent the application for cultural and heritage issues will be applied under the Land and Resources Tribunal Bill and to what extent those issues will be addressed by a subsequent Bill. Landowners are concerned that claims under this particular heading may be difficult to defend because of a lack of clarity. I am keen to know to what extent the Bill covers those issues and to what extent an alternative Bill will cover those issues.