Speech by

# Mrs E. CUNNINGHAM

## MEMBER FOR GLADSTONE

Hansard 13 April 1999

### TRANSPORT (SOUTH BANK CORPORATION AREA LAND) BILL

**Mrs LIZ CUNNINGHAM** (Gladstone—IND) (2.30 p.m.): I rise to speak on the Transport (South Bank Corporation Area Land) Bill with a high level of concern because of the implications of what this Parliament is proposing to do. There is a conflict between the Acquisition of Land Act, used to facilitate the resumption, and the South Bank Corporation Act 1989.

Whilst it does not relate directly to this Bill, I would like to take this opportunity to acknowledge the fairness of the Minister for Transport in a recent answer he gave me concerning the non-recognition of older vehicles. I have sent this information around my electorate. The Federal Government had indicated that it was proposing, in some way, to make older vehicles that used leaded fuel illegal. I submitted a question to the Minister seeking his position on that matter. He replied by saying that provided a vehicle is roadworthy and is sound it should remain on the road. I think most Queenslanders would agree with that. If a vehicle is not safe it should not be on the road. I think the Minister ably presented a fair and just attitude in that matter.

I am sure the Minister will pass on some further information at the end of this debate, but it is of concern that there appears to be a lack of natural justice for the people involved in these resumptions. The previous speaker indicated that the route for this corridor has already changed several times. So there has been a high level of difficulty in identifying an appropriate route for this road network.

A number of resumptions were required within the area of South Bank, but only two landowners chose to take the matter to court. The two landowners won their case in the Supreme Court. According to the transcript of the judgment, they won their case because the State's acquisition powers contradicted powers conferred under the South Bank Corporation Act 1989. It was stated in the judgment—

> "... the land cannot lawfully be used for the purpose for which it was resumed, hence its resumption is unlawful."

The State's legal advice prior to judgment indicated that there was nothing within the South Bank Corporation Act which excluded the land from acquisition. So, in effect, the legal advice given to the Government at the time was that acquisition was not precluded under the South Bank Corporation Act. That advice was wrong.

I think most members received a letter from Executive Chef Pty Ltd, one of the two landowners who took the issue to court. In that letter the following comment is made—

> "... because the approved plan of development for the South Bank site clearly provided for a bus corridor in a location different to that which was eventually chosen."

It goes on—

> "There are mechanisms within the South Bank Act for making changes to the approved development plan and those mechanisms were partly applied in changes which were gazetted in January 1998."

I have had a look at the South Bank Corporation Act, and the Act contains a mechanism for planning approvals not only to be instituted but also to be amended. There is a process at law under the South Bank Corporation Act where changes to the approved plan can be made. The writer of this letter indicated that some of those mechanisms were applied in January 1998. The letter goes on to say—

"Parliament was made aware of potential problems as early as Ms Bligh's speech of 26/8/97, and again when the Parliamentary Works Committee found that there was potential for legal problems in the tabling of their report No. 42 of October 1997, and yet no logical steps were taken by the available mechanisms provided to address these problems. In other words the problems was ignored in the hope that it would simply go away."

I acknowledge that the current Minister was not the Minister at that time. This issue goes across two Governments of different persuasions. I hope that no-one in this House would lay blame on anyone.

There is what I regard as a very significant move afoot where the Government has taken certain action. At least two of the landowners affected by these compulsory acquisitions acted on their legal rights and approached the Supreme Court. They won their case and now this Parliament is going to remedy the situation by moving the goalposts and almost changing the game altogether. I am concerned about that not only because of this issue but also because of the precedent that it creates.

I have already acknowledged that these acquisitions began during the time of the previous Government. The Supreme Court judgment very clearly lists the steps that were taken. The nub of the judgment appears to be that the resumptions were illegal because the Act used to institute the resumptions was in conflict with the South Bank Corporation Act, which covers the land in question.

There are a couple of issues that I want to raise with the Minister. The two landowners who went to the Supreme Court were Noble and Elenis. In his second-reading speech, the Minister said that all attempts to negotiate a reasonable and fair settlement have been unsuccessful. Mr and Mrs Noble question that. They refer again to Ms Bligh's speech in August 1997 and say—

"... a significant proportion of our business comes from our location as a supplier to students of the adjacent Southbank Institute of TAFE. We have steadfastly maintained that if our business could be picked up and moved to a similar location nearby, that we would be perfectly happy."

The Nobles stressed that there had been no formal claim for compensation. Later on in the letter they go through the steps that occurred regarding valuations. Then this statement is made—

"This offer, of $865,000, was personally delivered by a Department representative and concluded with the condition that it was to be accepted by close of business the following day or it would be withdrawn and all negotiations would cease! We would have appreciated the opportunity to consider the new offer for a more reasonable period. Therefore your claim of 'all attempts to reach an agreement' should read 'two' or 'both attempts' and the second of which didn't provide a reasonable timeframe for a response and more significantly was made whilst the business valuation was afoot!"

My concern is that the Nobles have quite recently indicated a preparedness to continue negotiations. I can understand the landowners' concern. People much wiser than I have said that when one is considering buying a property or a business there are three issues to consider: location, location, location. In considering the requirement to relocate their business, these people were looking for an advantageous, or at least comparable, place for the business to relocate.

I also acknowledge that under the financial constraints placed on Government there must be an accountability mechanism for any moneys that are paid. However, given the situation that has occurred at South Bank, I wonder whether there is a mechanism under which compensation can be paid to allow these landowners to relocate to what may have been an appropriate location, albeit that the price of the property was rather expensive at $1m.

So I continue to ask the question that these landowners have asked. They feel aggrieved that perhaps all attempts were not made and that they perhaps were not given an adequate opportunity to consider the Government's final offer, the $865,000. The other issue that I ask the Minister to clarify comes from a newspaper report of November 1998, which referred to the Government gaining public comment to the proposals. The article states—

"Queensland Transport has two route choices for Woolloongabba and three for Buranda. Residents can choose between a tunnel under the existing roads or a fly over above them.

State Transport Minister Steve Bredhauer said Queensland Transport believed all the options had positives and negatives so the final decision came down to what the community preferred.

'I've decided the best way to resolve the issue is to allow the people who live near the areas in question to have the final say', Mr Bredhauer said."

I wonder whether there may be another option to consider as a location for this road without this Parliament overriding what most people would regard as a legal and fair outcome to a case that the landowners won in the courts. I am sure that there would be a technical answer to that, even though the construction phase cannot run over because of time constraints connected with the Olympic

Games. However, the intrinsic nature of this Bill is still this Parliament saying, "The Supreme Court came down in your favour but, stiff cheddar, we are going to override that, anyway."

I recall that in his second-reading speech the Minister said—

> "A Bill of Parliament is the only practical means for ensuring the timely acquisition of all land."

My fundamental concern, and I think the concern of many people, would be that this Parliament is choosing, after due process is complete, to ignore what has been a judicial outcome and bring in a Bill to override that natural justice. The Minister's second-reading speech states further—

> "Options other than a Bill of Parliament have been thoroughly investigated and taken to their logical conclusion."

I would be interested in hearing what sort of options were considered—whether they were other locations for the road or whether there were special elements of compensation for those two landowners—because I believe that there would be a high level of concern in the community about the approach that we are taking as a Parliament to this particular situation. Again, the Minister in his second-reading speech stated—

> "In responding through this Bill the Government is seeking to redress, not refute, the anomaly identified by the judgment."

I wonder whether we are redressing the problem. We are not changing the South Bank Corporation Act; we are not changing the Transport Act under which the acquisition is being made; we are just going to legislate to validate the actions of the Government in this instance, and the actions of the Government occurred because of faulty legal advice. That can happen: we are all human; we can all make mistakes. However, I again say to the Minister that from my perspective there is a great deal of concern about the approach that has been taken. We are not redressing the problem, because we are not looking at the powers conferred through the South Bank Corporation Act that override other Crown powers of acquisition; we are trying to remedy the situation by effectively almost setting aside a Supreme Court decision.

The other issue relates to retrospectivity. The Scrutiny of Legislation Committee's report makes clear that the proposal to retrospectively validate the actions of the Government are inconsistent with the principles of natural justice and certainly adversely affect the rights and liberties of the individuals concerned.

I am not sure what legal options are available to the other landowners who did not appeal to the court. I do not have any legal understanding of their options. However, if the acquisitions have been completed, then the Government would be clear on all of those except these two acquisitions to which the Supreme Court judgment related. I cannot help feeling that, through this Parliament doing what is being proposed in this legislation, we are sending all the wrong signals to our community, that is, that they can pursue all of their legal options and they can win on those legal options but it will not stand them in good stead because if the Government of the day, or the Parliament of the day—because we are all going to vote on this legislation—chooses to, it will just walk over them and change the rules.

Those are the main questions that I have to ask the Minister. Again, I appreciate that there are some very strict time constraints. However, I cannot help believing that the action that we are about to take will be sending very poor signals to the community in relation to their rights in law and their rights as citizens.