Speech by

Hon. R. E. BORBIDGE

MEMBER FOR SURFERS PARADISE

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STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION AMENDMENT BILL

Hon. R. E. BORBIDGE (Surfers Paradise—NPA) (Leader of the Opposition) (12.20 p.m.): We have a number of major concerns with this Bill and they all engage the proposed power for the State to compulsorily acquire private property for the benefit of third parties in relation to public infrastructure projects with minimal accountability. One case for seeking the power is simply put. With the growing use of private entities to build public infrastructure there have been, and will be more, occasions when an ability to acquire private property in order to build a facility that is clearly a public infrastructure facility but which has third-party involvement may well be absolutely crucial as to whether that infrastructure project can proceed in a timely manner or indeed at all.

Currently, compulsory acquisitions of any property rights—whoever holds them—can be readily made in Queensland to ensure the provision of public services only when public infrastructure is being built by the public sector. When public infrastructure is built, owned or managed by the private sector, compulsory acquisition can only be achieved by project specific legislation. We simply have not had in this State a head of power for such acquisitions in the same way as it exists for publicly built public infrastructure.

What the Government seeks to do in this Bill is to avoid the degree of scrutiny involved in the status quo of project specific legislation by seeking a general head of power for such acquisitions. Under the terms of the Bill, Parliament would be informed after the event—not before, not during, but after. So it is a very significant increase in Executive power that is being sought. Without any meaningful reference to Parliament, the Government would be able to take people's property and give it to other private people. But just why this power is being sought is only partly explained by the growing use of private sector entities to build public infrastructure. Indeed, that is the cover for the real purpose. The real purpose concerns the threat to the development of this State brought about by native title.

Currently, any public infrastructure project engaging a third party provides an opportunity for what Bill Hayden has referred to as "extortion": "Pay the ambit claim or we'll tie you up in the right to negotiate." It will not happen every time, but the potential is there every time. Amendments to the Native Title Act achieved under the 10-point plan last year at the Commonwealth level give this Government and all State Governments an ability to acquire native title for public infrastructure when the beneficiary is a third party without attracting a right to negotiate—and I wonder whether the Deputy Premier has told the caucus and the backbench all of this. That is the key: without attracting a right to negotiate. This represents a significant shift in the Commonwealth's position.

Under the original Native Title Act, any compulsory acquisition of native title for the benefit of a third party attracted a right to negotiate, whether the project involved was a purely private project or a public infrastructure facility. What the Commonwealth said to that, particularly in the wake of the Wik decision, was that that was inequitable—certainly as far as the acquisitions for public infrastructure were concerned. In most jurisdictions in the country where the appropriate head of power existed, the property rights of non-Aboriginal Australians could be resumed for the benefit of a third party with no greater access to procedural rights than if the acquisition was for a public purpose. But when native title rights were to be acquired in the same circumstances, this attracted a very powerful set of procedural rights—the right to negotiate—and that is a circumstance that is simply not on.

There was a situation in which one set of property rights attracted far greater procedural rights than all others, and this gratuitous inequality became even more apparent in the wake of the High Court's Wik decision. Up until that decision, it was at least the case that Aborigines could achieve that right only where it was the case that they were the only title holders, other than the Crown, which was almost exclusively only on vacant Crown land. That limited application tended to obscure the discrepancy of the special right that they enjoyed compared with the rights available to all other Australians.

But after Wik there was nowhere to hide. What we had then was a situation in which the differential in rights was quite glaring. There was a situation in which a leaseholder or a freeholder, depending on the jurisdiction, would have very limited procedural rights when their rights over a piece of land were to be compulsorily acquired for an infrastructure project which engaged a benefit for a third party, but native title rights attracted the full and very significant authority of the right to negotiate procedures. That was despite the fact that in the Wik decision a majority of the bench held that, where there was a clash between the rights of pastoralists and the rights of native title holders, the rights of the pastoralists would prevail.

So there was the extraordinary situation in which the statutory rights of the title of one land-holder were stronger than the other set of rights—the native title rights—but the native title rights achieved massively greater procedural rights. That was a nonsense and it was fixed by the coalition in the Wik amendments to the Native Title Act. What was proposed by the coalition was that both sets of title holders should be treated equally when it came to compulsory acquisitions for the benefit of third parties—at least where the project involved infrastructure for the general public. It is that development which has been the principal catalyst to this move by the Government.

The achievement of the coalition in the Native Title Act amendments has given this Government the opportunity to ensure that there will be some ability to control the native title issue where it threatens public infrastructure engaging the private sector, because without that development, even the power that the Government now seeks would be relatively useless in many circumstances because it would have to build into the equation the months and the years which a right to negotiate might take to complete. In relation to some instances of infrastructure for the public, that could, of course, be disastrous. The Government simply would not have the time.

We very nearly did not have the time, for example, in delivering gas in the south-west pipeline from Ballera to Brisbane. Brisbane was just a few weeks away from running out of gas when that project was completed. If we had had to engage a right to negotiate process, only one outcome would have been possible—we would have had to pay native title claimants what they wanted or watch Brisbane run out of gas. Obviously that is unacceptable, and a compulsory acquisition power becomes very attractive. That is what the Government seeks.

Ironically, the achievement of the coalition in setting the stage for this benefit for development in the State of Queensland was vigorously opposed by Labor in the Senate. Nick Bolkus fought tooth and nail to try to protect the continuation of the right to negotiate for compulsory acquisitions of native title for the benefit of third parties in relation to the provision of public infrastructure—tooth and nail—in December 1997, in April 1998 and in July 1998. They never rolled over because they wanted to retain a system whereby Aborigines would have a right to negotiate and pastoralists would have the lesser procedural rights. Senator Bolkus was supported in that to the very end by the Democrats and by the Greens. So at one level it is very refreshing to see that this Labor Government is prepared to fly in the face of what Labor fought so hard to defend in the Senate—although I suspect that caucus was not told—but the power that it seeks goes too far.

There are three major issues. The first is the lack of accountability. What is proposed here is that the Coordinator-General can instigate a process which, via an Executive Council minute, triggers the compulsory acquisition. Parliament will learn of it after the event, and that is not good enough. The compulsory acquisition power is an onerous power at the best of times. Even when compensation is adequate and the cause totally appropriate, in relation to some piece of much-needed infrastructure constructed by the public for the public the pain and the dislocation that it could cause is immense.

Any expansion of this right, particularly for something as controversial as taking one person's private property to give to another person, has to be very tightly constrained. The Executive being able to achieve these sorts of acquisitions without some meaningful reference to the Parliament is simply not on. We believe that any use of this power should therefore only be on the basis of project specific legislation. We grappled ourselves with the same issue in Government. It came asunder at the end on this very point and on the basis that Labor's filibustering of resolution of the wider issues in the Senate left the outcome unclear as we left office.

The second major issue concerns the looseness of the definition of projects that will enliven this power. There is an apparent attempt in the Bill to constrain them. They are listed at page 27 of the Bill

and the list that appears there in large measure matches the list in section 253 of the amended Native Title Act. Again, I wonder if the caucus was told.

As with the Commonwealth Act, there is a catch-all phrase which we find too loose, and it concerns social infrastructure. What exactly constitutes social infrastructure? The Bill does not tell us. Section 253 does not really tell us. In the hands of an unscrupulous Government, we are concerned that it could be made to mean just about anything—up to and including commercial projects for Labor mates. The power is too broad and too open to abuse, which is another reason the Government should subject every proposed use to the House via project specific legislation.

Our third major concern is probably an insoluble one for the Government, thanks to the web Labor has spun on this whole native title issue, and it concerns the procedural issues. The Bill seeks that all titleholders whose property is subject to compulsory acquisition for public infrastructure involving a benefit for a third party will have their compensation determined in the same place, at the same time, on the same criteria. That is simply not going to work. It is not going to work because Aborigines will have a special right of appeal to the Land and Resources Tribunal—if we ever see the Land and Resources Tribunal.

The Premier's whole raft of native title legislation is so shot through with inadequacies that yesterday he had to bring it back to the House for around 200 amendments. So any use of this power is some way off and has in all probability been completely stymied by Senator Harradine's latest dictate to the country and by the imminent shift in the balance of power to the Democrats, who are even sillier than Senator Harradine on these issues.

The man who said that he had fixed native title has not, almost 12 months after the Commonwealth finally produced some sort of a blueprint, inadequate as it was thanks to the Labor Party and Senator Harradine. In any event, Labor is essentially sticking to its view that Aborigines should continue to have special rights—in advance of the rights available to all other Australians—to appeal compensation provisions. That is certainly going to lead to problems. In my view it is not just probable but certain that we will see good use of that appeal mechanism such that Aborigines will seek to up the amount of compensation they receive. And I do not blame them for that. Nobody could blame them for that. That is human nature.

If legislatures are stupid enough to entrench inequality such that it gives Aborigines an opportunity to up the ante, then of course they are going to take advantage of it. And I have no doubt that they will be successful. I have no doubt that the appointees to the Land and Resources Tribunal will be of a calibre that will be acceptable to the Nick Bolkuses and the Daryl Melhams of the world. I am sure they will be the sort of people who will leap at the opportunity to ensure that the Labor view—that the incremental value of native title is perhaps 50% greater than freehold—will be upheld in that tribunal. That compares with the sort of incremental compensation available to all other Australians in relation to particularly comprehensive dislocation of some 10%. I can assure honourable members opposite that the first time a freeholder or a leaseholder ends up with less compensation than native title holders, those opposite will lose whatever remaining support or credibility they have in the bush.

I understand that the inequality the Government has in mind could in fact be even greater than we see in the Bill as it is presented. I understand that certain Aboriginal groups—indeed, the Indigenous Working Group—are incensed at the fact that they were not consulted in relation to this legislation and in fact we may see amendments emerging, presumably at the Committee stage, which will further institutionalise the fundamental inequality of this aspect of the Bill. That is, we will see the already significantly great procedural rights available to Aborigines in relation to this aspect of the Bill enhanced.

Indeed, I suspect that the sorry motion the Premier dealt with yesterday was another aspect of his effort to toady to these groups to try to overcome the damage he has done to his reputation in that quarter on the basis of what this Bill as it is currently before the Parliament contains. I can understand why the Premier did not want the sorry motion and this Bill debated on the same day, because this particular Bill as presented makes this Government look like a pack of cynical, empty political hypocrites in regard to the resolution brought forward by the Premier yesterday. All the Premier is likely to achieve by that effort, presuming the politically correct response is given by his colleagues, is a massive liability for the State for compensation. I would like to see the Crown Law advice on the significance of his cynical motion of yesterday.

In summary, this aspect of the Bill will not have coalition support. It lacks adequate accountability, it is open to abuse and it seeks to institutionalise—probably even more deeply than we now see in the Bill—the inequality of rights of those whose property might be resumed under it.

It is refreshing to see this Labor Government flying so completely in the face of Federal Labor's position in the Senate, but again I bet the Deputy Premier did not tell caucus the ramifications of the Bill as presented, just as he did not tell the Indigenous Working Group. Still, it is refreshing that at least he

has been prepared to take this position in relation to Federal Labor's preparedness to take advantage of a situation whereby it can acquire native title rights without engaging the right to negotiate.

Properly used, the facility has the ability to ensure that some infrastructure projects will be able to proceed in a timely manner. Another potential benefit is that some native title claimants will be somewhat more constrained in relation to blackmailing States and developers on the basis that the compulsory acquisition power is there. It therefore has the potential to reduce the costs, as well as the delays, associated with the understandable efforts of Aboriginal people to capitalise on the stupidity and the irresponsibility of successive Labor Governments at the State and the Commonwealth level.

What has been delivered to the nation as a result of Labor's ridiculous approach to native title, despite the remedial efforts of the coalition, is a legislative framework that is a politically correct nightmare. It will continue to be that. For these reasons, the coalition cannot support the compulsory acquisition powers sought in this Bill.

Mr Reynolds: Fancy you having the temerity to mention native title.

Mr BORBIDGE: In response to the interjection by the member for Townsville, I say this: we on this side of the House know that the Indigenous Working Group was absolutely furious that the Deputy Premier had not consulted it. We know that the Indigenous Working Group threatened to go public. We know that the Premier was subject to representations from the Indigenous Working Group. We know that a deal had to be done, because the Deputy Premier snowed the caucus and ended up introducing into this Parliament legislation that would have weakened the land rights regime of his own Government in this State. So there had to be a square-off.

The pressure was on for the Deputy Premier to bring forward some amendments. We will wait and see whether he has been rolled by Mr Beattie for the second time in a week. Part of the square-off, because he had the Indigenous Working Group so upset with this legislation, was the timing of the sorry motion yesterday—not the act of a genuine Government but a behind-the-scenes deal because of the problems the Deputy Premier had caused for the Labor Party in respect of the legislation before the House.

How cynical can you get! Of course, the Deputy Premier is the master of cynicism. I reckon it is a fair bet that some of the matters I have detailed to the Parliament today were not detailed to the caucus when the Deputy Premier sought the support of his colleagues to introduce this legislation into the Parliament.