



Speech by

**Hon. R. WELFORD**

**MEMBER FOR EVERTON**

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Hansard 25 August 1999

### **LAND COURT BILL**

**Hon. R. J. WELFORD** (Everton—ALP) (Minister for Environment and Heritage and Minister for Natural Resources) (11.43 a.m.): I move—

"That the Bill be now read a second time."

This Bill is designed to provide a short, separate piece of legislation to govern the constitution, composition, jurisdiction and powers of the Land Court. The Land Appeal Court is also constituted—and continued—under the Bill with power to hear appeals from the Land Court. Further appeals, on questions of law only, can be taken to the Court of Appeal.

The Land Court is presently established under provisions of the Land Act 1962. These provisions were not incorporated into the current Land Act 1994 because of the uncertainty which then existed as to the precise future of the court. Inclusion of the court in Land Acts of the past—from 1897 onwards—is probably more of an historical reasoning. The court jurisdiction then was largely to do with rentals, freeholding and other miscellaneous matters of Crown land administration. These matters are now of much less relative significance in the current court's jurisdiction and workload. A myriad of other legislation now confers jurisdiction on the court. The creation of a separate Act to cover the court's operation is consistent with the practice adopted for various interstate bodies with similar jurisdiction.

The Land Court Bill makes little substantive change to the present law. The main purpose is to provide the legislative base for extensive new procedural rules to govern the court's operation. The proposals for these new procedures were the subject of a report on the powers, rules and procedures of the Land Court presented by the court president to the Minister for Natural Resources in the previous Government in October 1996.

While the term "Land Court" has historically been used to describe the body being constituted, it does not strictly meet all the recognised criteria necessary to qualify for "court" status. While its decisions are "determinations" rather than "recommendations", its members are not appointed to permanent tenure. The existing practice of making "permanent" appointments for 15-year—renewable—terms is to remain.

While the term "Land Court" is to remain, its precise legal status as a "specialised judicial tribunal" is to be stated more clearly in the Bill. The Bill preserves the existing Land Court and rights of its members as well as retaining the references under Aboriginal land legislation. The provisions relating to the operation of a Queensland Native Title Tribunal are not carried over here. The Land and Resources Tribunal established under the Land and Resources Tribunal Act 1999 now covers this aspect.

Procedure of the court is to continue to be governed by equity and good conscience with the strict rules of evidence not applying. New features include the following. Firstly, uniform time limits of 42 days for the lodgement of appeals under the various Acts conferring jurisdiction will be maintained in this legislation. There presently exist variations in the time limits governing appeals in the range of Acts conferring jurisdiction. These appear to be more of historical origin than of present need. To avoid confusion by court users and to promote uniformity, a single time limit of 42 days is to apply.

Secondly, in relation to a right of appeal to the Land Appeal Court from all decisions of the Land Court, some legislation conferring appeal rights prevents any appeal to a higher level than the Land

Court, for example, the Water Resources Act. Aggrieved persons who have wanted to further appeal have been using alternative and inappropriate mechanisms such as judicial review as a means of taking their case beyond the Land Court decision. The proposal now is for all cases which are entitled to go to the Land Court also to have the right to appeal through that appeal path rather than alternatives.

Thirdly, a hearing by the Land Appeal Court is to be essentially a rehearing of the evidence already presented in the Land Court with very limited scope for additional evidence. Rather than have the Land Appeal Court hearing as a fresh hearing—as was the case prior to 1994—or allow additional evidence with the consent of both sides, strict limitations are now to apply to any appeal. The Land Appeal Court will have the discretion to allow new evidence only if its admission is necessary to avoid grave injustice and there is adequate reason as to why the evidence was not previously given. Such conditions will ensure that the initial Land Court hearing is not merely a trial run and will preserve valuable judicial time at the Land Appeal Court level.

Fourthly, appeal from the Land Appeal Court to the Court of Appeal would be by leave only. This is similar to the appeal provisions in the Integrated Planning Act 1997. As any case sought to be taken to the Court of Appeal will already have been through two levels of hearing, it is considered appropriate that further appeal should be on issues of law—as is the case now—and only with leave. Citizens' rights will still be preserved but the Court of Appeal will ensure that only appropriate cases proceed to it for full appeal hearing.

Fifthly, creation of a new Judicial Registrar position to deal with the new case management and alternative dispute resolution issues is incorporated. This is consistent with new enhanced powers of registrars in the new uniform court rules prepared by the Justice Department and the judiciary. While the Judicial Registrar position is effectively a new one, the functions of the position should relieve some of the workload presently placed on the five full-time members. Two of the members are temporary only. The need for additional permanent members can be assessed once the new procedural processes—especially case management and mediation—largely to be the responsibility of the Judicial Registrar, have been implemented.

The Justice Department, in close consultation with the judiciary, has recently finalised uniform procedural rules for the Supreme, District and Magistrates Courts— such rules commenced operation on 1 July this year. New rules for the Land Court to follow this Bill will be consistent with such uniform rules as far as possible. Some areas can be adopted—by reference—with little or no change. However, due to the specialist nature of the Land Court, additional provisions will be necessary in the Land Court rules. With modern techniques of case management— including alternative dispute resolution—to be adopted in the subsequent court rules, there is likely to be an overall cost saving— both in the court's operational costs and to the wider community. I commend the Bill to the House.

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