Speech by

Mr S. SANTORO

MEMBER FOR CLAYFIELD

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LAND AND RESOURCES TRIBUNAL BILL

Mr SANTORO (Clayfield—LP) (5.09 p.m.): It gives me great pleasure to be able to join in the debate on the Land and Resources Tribunal Bill and particularly to support the comments that have been made so far by the honourable member for Surfers Paradise and Leader of the Opposition and the honourable member for Keppel. They have made very sensible contributions. Whilst supporting the Bill, they also expressed reservations, which I think in some cases are worth reiterating.

Two of the stated objects of this Bill are to implement Stage 3 of the Premier's native title strategy by providing for the establishment of a tribunal to deal with future acts which might affect native title with respect to mining and provide for an independent body required under the alternative State provision sections of the Commonwealth Native Title Act. To the extent that unless this Bill is passed and an independent body is established no alternative State provisions can commence, the Opposition supports it.

However, with this Bill we again see a graphic example of how this Government cannot get its act together and produce timely legislation. This Bill should have been introduced simultaneously with the alternative provisions Bill. It should have been debated with that Bill and it should have been submitted to the Commonwealth Government co-jointly with it. The Premier knows that, until this House passes legislation setting up an independent body, neither the Commonwealth Government nor the Senate can deal with the Stage 2 legislation that we passed in this place in November.

The Premier knows that, despite all of his never-ending rhetoric about decisive action to tackle native title and create jobs, this Bill has sat around now for almost four months. This Government has allowed four valuable months to slip away and it has done so because last year it could not even present a comprehensive package of native title legislation to this Chamber. Instead, we are subject to a death of a thousand cuts with a bit of legislation here and there and, while the Government dithers, economic growth and jobs are put at risk. Just last week, we saw this Government introduce only one new Bill for debate. This Parliament has not sat since November, yet in the first sitting week the Government could not come forward with more than one solitary Bill. Whether we look at infrastructure projects, legislation or administration generally, it is a shocking indictment that we witness a Government that has not got what it takes.

One would think that with an issue as central as native title, the Government could have acted more quickly, more decisively and with more sense of direction. The Premier knows that the Governments of the Northern Territory and Western Australia were able to present to their Parliaments a comprehensive package of native title reforms. If those Governments can do so, why can this administration not match their achievement? There is no doubt that this Parliament needs to enact legislation establishing an independent body that meets the requirements of the Commonwealth Native Title Act. Until we do so, the alternative State provisions, which this Parliament has already passed, will remain in a state of limbo. So putting in place an appropriate independent body to hear matters under the Native Title Act is a matter towards which we should all be working.

Nevertheless, when I look at this Bill I can see a number of problems that need to be raised and debated properly. Firstly, in common with other members, I question the status being granted to the presiding members of the tribunal. This tribunal is not the Supreme Court, it is not the District Court; it is a tribunal of quite limited

jurisdiction. I would readily concede that the matters that the tribunal will have to decide will be important, but I can see no justification whatsoever in giving to the presiding members of this body the status, in effect, of either a justice of the Supreme Court or a judge of the District Court.

The Supreme and District Courts deal with all manner of civil and criminal law. In most cases, any person who is dissatisfied with a decision of either court has the ability to appeal to the Court of Appeal and, from that body, possibly as far as the High Court. In comparison, the legislation that we are debating is merely establishing a tribunal—and I repeat that: a tribunal—and not a court of law. It is a body which, as I will discuss shortly, is subject to wide powers of ministerial override and so far as some non-presiding members are concerned, there is no right of appeal on matters of fact and only discretionary rights of appeal on matters of law. In short, it is a body that lacks true independence, is of limited jurisdiction and operates largely on its own. So to give to presiding members of this body the same entitlements as judges of the Supreme and District Courts is not only not necessary but also strikes at the status of judges of the superior courts of Queensland.

I suggest to the Premier that if this Government is establishing a body to which it thinks it can appoint people whom it favours, then that will not only undermine the credibility of this tribunal but also the whole judicial system. In his reply, I ask the Premier to explain to this House why he has overseen the drafting of legislation that elevates presiding members to that status while there is absolutely nothing in the Commonwealth Native Title Act that would require it.

As I said, this tribunal is not a body with self-executing decision-making powers; it is subject to broad powers of ministerial override. This point is made abundantly clear by the Scrutiny of Legislation Committee in Alert Digest No. 1 of 1999. The committee recommends that the Bill be amended to make it clear to readers that decisions of the tribunal are subject to ministerial override. As a firm believer in plain English drafting of legislation, I support this suggestion and I hope that at the Committee stage the Premier will be moving a minor amendment to give effect to this sensible suggestion.

However, the other point that needs to be made is that this tribunal is really an integral part of the native title policy process. Whilst it is a quasi-judicial body with a degree of independence, it is certainly not a court of law in the sense that most people would understand that term. It is incumbent on the Premier and this Government not only to amend the Bill to highlight this basic fact but also to ensure that a perception is not allowed to arise that this tribunal has members of equal status and authority to judges of the Supreme and District Courts. I emphasise this point, because I am very concerned that this Bill and this tribunal should in no way derogate from the status, authority, independence and good reputation of our courts of law.

As I mentioned, there is also no automatic right of appeal on questions of law from decisions of the tribunal to the president when it is constituted by a Land Court non-presiding member or a mining referee. The leave of the president is required, but the Bill is silent on the matters that have to be taken into account in determining whether leave should be granted or refused. The Scrutiny of Legislation Committee has queried whether leave should be required when appeal rights are confined simply to questions of law. The committee has also suggested that if there are good reasons for not allowing an automatic right of appeal, that the legislation should be amended to prescribe grounds for the granting of leave.

I cannot understand why litigants' rights are so narrowly regulated by this Bill. While in most instances hearings of the tribunal will be open to the public and the rules of natural justice must be observed, nevertheless the legislation requires the tribunal to—

> "Act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it."

However, in order to achieve this goal, this Bill provides that the tribunal is not bound by the rules of evidence, may inform itself of anything in the way it considers appropriate and may decide procedures to be followed for the proceeding. In short, litigants' rights are very much dependent upon the way in which the presiding or non-presiding member or members conduct the proceedings.

One would think that in circumstances such as these that it would be absolutely essential that a dissatisfied litigant be able to appeal as of right to the president. The matters that this tribunal will be hearing could involve projects worth hundreds of millions of dollars, or even more. With so much at stake, it is simply not good enough that people's rights are handled in this way. From reading parts of this Bill, one would think that we were dealing with the Small Claims Tribunal and not the Land and Resources Tribunal, or that the matters it would be hearing involved a dispute over two weeks' rental bond money and not whether, for example, a mine could proceed or not. The tribunal is granted by the Bill exclusive jurisdiction to resolve disputes over negotiated settlements and to prevent acts adversely affecting a matter of cultural significance—in other words, all the sorts of disputes that go right to the heart of most mining activity in Queensland. So I say to the Premier that action should be taken to protect litigants' rights by amending the Bill and

allowing an automatic right of appeal on questions of law and a discretionary appeal on questions of fact.

When I read the Bill, I was struck by the complexity of how the tribunal is to be constituted from time to time. There are presiding and non-presiding members. Of the non-presiding members, there is to be a Land Court non-presiding member, a land tribunal non-presiding member, an appointed non-presiding member and a referee non-presiding member. Of the referee non-presiding members, separate qualifications are set out for the mining referee non-presiding member, mediation referee non-presiding member and, finally, the indigenous referee non-presiding member. If all of this were not complicated enough, there is also the requirement that a member of the Native Title Tribunal also be party to various hearings.

I will not confuse this House by setting out the very complicated provisions dealing with the composition of various tribunal panels, except to say that it will take some time before people will get used to how this tribunal is constituted and how it will work. Perhaps there is a pressing need to constitute the tribunal in this way and, in that regard, I would simply ask the Premier if he could outline to the House why the provision relating to this tribunal has been drafted in this very complicated manner.

Nevertheless, two issues flow from the manner in which the legislation is drafted. Firstly, I note that Land Court members are deemed to be non-presiding members, and on a panel do not decide questions before the tribunal. Their role is to advise the presiding member or presiding members about matters within his or her knowledge and expertise that are relevant to a question and to help the presiding members in the conduct of the proceeding in a way the presiding members consider appropriate.

I have some concerns about co-opting onto the tribunal members of the Land Court and then relegating them to, in effect, an advisory role only. Not only is this bad as a matter of policy, as it strikes at the heart of those members' independence and status, but it is possibly illegal. I do not hold myself out as a constitutional expert, but the recent High Court decision in Kable's case may have some relevance to the question as to how far a State Parliament can go in interfering with the operation of courts in general and judicial officers in particular. Therefore, I ask the Premier whether the issue of Land Court non-presiding members has been carefully thought through and whether the Land Court is in agreement with this arrangement.

The second matter that arises concerns the National Native Title Tribunal. It is clear that there are two broad types of tribunal panels: a standard panel and a National Native Title Tribunal panel. As its name suggests, a National Native Title Tribunal is one on which a member of that body sits as a member. The Bill provides that a member of this tribunal can also be a member of the National Native Title Tribunal. In his speech, the Premier indicated that he hoped that there would be cross-membership of the two bodies and, from the viewpoint of convenience, there is much to be said for such a proposition. Obviously, however, whether that scenario eventuates is dependent on the attitude of the Commonwealth Government. It would be helpful to know whether discussions with the Commonwealth have commenced on this issue and, if they have, whether the Commonwealth has indicated a position. If the Commonwealth will not, for whatever reason, appoint a member of the State tribunal as a member of the national tribunal, an issue that will immediately arise is who will be picking up the tab for the member of the national tribunal travelling to Queensland and around the State when he or she is on a panel. Like so much of the debate on native title, it often comes down to an issue of funding. I would be interested to know just how far this issue, if it is one, has advanced.

A number of other issues could be raised. Some of the more technical ones are set out in the Alert Digest of the Scrutiny of Legislation Committee. On the whole, I am in agreement with the suggestions that the committee has made. The success or otherwise of the alternative State provisions will in large part be dependent on how this tribunal operates. However, as I said, the jurisdiction of this body goes further than that.

With the abolition of the Wardens Court, many issues of a non-native title and non-cultural heritage nature will be coming before it. Currently, the Wardens Court hears applications for mining leases and makes recommendations on the grant of such leases to the Minister. The court has jurisdiction in relation to mining claims and claims for compensation by an affected landowner when the parties cannot agree on the amount of compensation that is to be paid. It conducts inquiries into deaths or injuries occurring as a result of mining related accidents. It also has jurisdiction under the Fossicking Act. I know that there is a fair degree of unease about the proposed tribunal insofar as it will deal with non-native title issues. Over the past few years there has been quite a degree of dissatisfaction with the Wardens Court. However, at least that body was a specialist court that was focused on one area and over the years had built up quite a lot of expertise. There were problems, both actual and perceived.

There is merit in having a one-stop shop tribunal. So much can be conceded, but what a number of people are saying is that the proposed tribunal may not be the right body for the task and great care will have to be taken in the future to ensure that problems do not arise. Far too much is at stake to allow industry and community

dissatisfaction to arise. I ask both the Premier and the Attorney-General to take particular care to ensure that the non-native title work of the tribunal is not relegated to second place and that the concerns of the various industry bodies are taken on board should problems arise.

Before concluding, I reflect briefly on some of the comments made by the honourable member for Kurwongbah, particularly in relation to the Federal Minister for Aboriginal Affairs. In concluding her contribution, assisted via interjection by one of the Ministers sitting in the Chamber, the honourable member suggested that perhaps the Federal Minister was motivated by partisan and political reasons when he sought to change some aspects of jurisdiction in relation to land councils. Recently I had discussions with the Federal Minister. In fact, two weekends ago the entire coalition joint party room had discussions with the Federal Minister. The Federal Minister went through in great detail the changes that he was introducing within the regulations and the legislation that are to be enacted by the Federal Parliament. I reject out of hand any suggestion—and it was a scurrilous suggestion by the honourable member for Kurwongbah— that Dr John Herron, the Federal Minister, could in any way be politically motivated in this area of policy formulation, which should be bipartisan.

Dr Herron is highly regarded and much loved by those members of the Aboriginal communities who know that he is trying to make the whole system of administration and funding of Aboriginal affairs accountable to the very people who are most affected by policies and funding arrangements, that is, the Aboriginal communities themselves. The Honourable Federal Minister is seeking to make that part of his portfolio very responsive to the genuine needs and aspirations of ordinary members of the indigenous community of this nation. Like me, he abhors the growth of the Aboriginal industry that sucks up so much of the resources that should be directed straight into the communities and straight towards those people who are most affected by the problems that we often hear described by members opposite.

Mr Reeves: You just want him to leave so that you can take his seat.

Mr Reynolds: This is real Alice in Wonderland stuff.

Mr SANTORO: On behalf of my Federal parliamentary colleague, who obviously is not in this place to do so, I rebut the scurrilous suggestions of the honourable member for Kurwongbah and others in this Chamber—including those members opposite who interject inanely but do not have the courage to place themselves on the list to give either a prepared or an ad lib contribution. I have said what I think should be said. Again, I reject out of hand any suggestion that Dr Herron, the Honourable Federal Minister, is acting in a political and partisan manner.

I support the Bill with the reservations that I have expressed. I support the comments made in the beginning of the debate by the Honourable Leader of the Opposition.
