Speech by

Mr S. SANTORO

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STATE DEVELOPMENT AND PUBLIC WORKS ORGANISATION AMENDMENT BILL

Mr SANTORO (Clayfield—LP) (3.04 p.m.): Since 1938 the Coordinator-General and his officers have played a central role in the development of Queensland. Queensland's first Coordinator-General, Sir John Kemp, planned and executed many of Queensland's biggest public works and war-time projects, including the Cairncross Dock at Colmslie, the East-West Road from Tennant Creek to Mount Isa and the Burdekin River high-level road and rail bridge. His successors have built on that record and it is a matter of some pride that Queensland has a discrete piece of legislation such as the State Development and Public Works Organization Act which attempts to ensure that there is the appropriate legislative machinery in place so that we continue to have a proactive and visionary approach to public works.

The Minister has outlined four main amendments to the Act but, as he points out, the main theme which underlines this Bill is the increasing involvement of the private sector in public infrastructure. Under both the Goss and Borbidge Governments, guidelines were issued to regulate and promote the involvement of the private sector in public infrastructure, because it is increasingly obvious that, without private capital injections into public works, our State will not progress as quickly or as constructively as we would all like.

Projects such as Briztram—now renamed Brisbane Light Rail—and the $3 billion Surat/Dawson project would not have been able to proceed if the private sector was not involved and contributing significant sums of money. Indeed, projects such as Briztram were specifically designed by the Borbidge Government to be joint ventures with the private sector because the coalition realised in Government that the private sector will increasingly play a pivotal role in the provision of public services. So I do not have a problem with legislation that is designed to recognise this basic fact of life and which will facilitate the ongoing partnership of private and public capital in the provision of public infrastructure.

May I say in passing that I welcome the Deputy Premier's commitment to private sector participation in the electricity market and a free and open competition policy. Any attempt to stymie proposed coal-fired power stations such as Millmerran or the extension of existing ones such as Tarong in favour of the Chevron project would be regressive and inappropriate. However, along with other speakers on this side of the House, I am very concerned about certain aspects of this Bill.

Shortly I will deal with the power to expropriate land. However, prior to the exercise of that power, this Bill enables a private sector developer to make an application to the Coordinator-General to enter a person's land to investigate its potential and suitability for the development of an infrastructure facility. Once on the land, the developer may be empowered by the Coordinator-General—and here I quote from the Bill—

> "(i) to do anything on the land;
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> (ii) to bring anything onto the land; or
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> (iii) to temporarily leave machinery, equipment or other items on the land."

The Bill gives as examples of things that may be authorised by the Coordinator-General as including "clear vegetation, or otherwise disturb the land, to the extent necessary". The decision to grant such an authority is not even subject to any form of merits review. In other words, if the decision is unjust and will cause hardship—possibly terrible personal hardship to a

property owner—then it is just bad luck for that person or family.

It should be a matter of concern to all members of this Parliament that we have actually reached the stage at which we are presented with legislation by a Government which gives a public servant the power to authorise a private citizen or company to enter private property and literally flatten it without that property owner even having the right to challenge the correctness of the authorisation. Let there be no mistake: this Bill gives almost unfettered power to the Coordinator-General to allow private developers to move onto private property and pretty much do what they want. I would have thought that years of bitter experience with disputes between land-holders and the mining industry would have taught the Labor Party something about the need for the very careful balancing of rights. Unfortunately, this Bill shows all too clearly that the Labor Party has learnt nothing; it treats the rights of private landowners with little more than contempt.

However, the proposal to empower the Coordinator-General to expropriate privately owned land and native title interests for private third parties is potentially an even more dangerous move which has the capacity to significantly impair the rights of many Queenslanders. Essentially, as has already been explained, it is proposed to amend section 78 to allow the Coordinator-General to acquire land if it is required for an infrastructure facility which is of significance, particularly economically or socially, to Australia, Queensland or the region in which the facility is to be constructed.

The first point I make is that the proposed infrastructure facility does not have to be of national or even Statewide significance. It can be a facility which has significance only within a particular region. In other words, the development can be of localised importance only, yet this is sufficient to activate the expropriation powers under this legislation. I would like the Minister in his response to explain what a region is supposed to mean and what guidelines will be put in place to ensure that the discretions vested in the Coordinator-General of the day are appropriately exercised.

The second matter is that the provision refers to both economic and social impacts. The significance of this becomes clearer when we read further provisions of the Bill. In considering whether a proposed infrastructure facility will be of economic or social significance, the Bill sets out a range of factors. Included among them are community well-being, economic growth and employment levels. In the context of a depressed regional economy, the simple fact of the matter is that almost any development of any kind will stimulate employment levels. So this criterion, for example, is almost meaningless. Economic growth is another criterion that is value neutral and could be used to justify almost any proposal a major financier put to the Coordinator-General.

Of course, the acquisition of the land must be for an infrastructure facility, and this term is defined in what at first appears to be a restrictive manner. Nevertheless, in the list of facilities that would activate the Coordinator-General's powers is "social infrastructure, including, for example hospitals and schools". There is no doubt these days, with the proliferation of private schools and private hospitals, that these are pertinent examples, but social infrastructure is a term with a very wide meaning. I put it to the Minister that, in the context of a regional centre, the construction of a shopping centre which would house the post office, a dentist, doctor and various shops would be social infrastructure and would stimulate community well-being, economic growth and employment levels. The very same example could be used in almost any outer suburban locality.

Further, it would be desirable for a totally new community such as Mango Hill to have a range of services for the local population, whether they be shops, bakeries, hospitals, schools, retirement villages, car yards or petrol stations. As I read this Bill, there is absolutely nothing to prevent the Coordinator-General using his powers to move in and expropriate private property in order to advantage a private developer who wants to construct any of the structures I mentioned. So the first point that I think needs to be made is that the scope for the expropriation of private property under this Bill is not as limited as would first appear and potentially covers almost any form of commercial development.

The next issue is the safeguards proposed to prevent this power being misused. The first so-called safeguard is that the infrastructure facility has to be approved by the Governor in Council as one having national, State or regional significance. Of course, that approval is only by Gazette notice. In short, there is a political decision made by Cabinet and notified in the Gazette that a particular project, in the view of the Minister, has significance. In addition, when the Coordinator-General takes the land, he or she must prepare a statement giving reasons for the taking of the land and the negotiations by the private enterprise proponent with the owners of the land to acquire the land by agreement, and the Minister has to table that statement in the Legislative Assembly within three sitting days after the taking of the land.

Even the Explanatory Notes circulated with this Bill highlight that the statement of reasons will be a truncated document. It states—

> "The statement would provide the (non-commercial in confidence) reasons for the taking, addressing the criteria contained in the legislation. "

The statement will be a sanitised version of events, simply highlighting the nature of the attempts by the private sector proponent in attempting to buy the property in question and the reasons the Coordinator-General is stepping in. No doubt the Coordinator-General would outline that this or that project fell within one of the headings under the definition of "infrastructure facility" and that the project in question had been gazetted as being of national, State or regional significance. All in all, this would lead relatively nowhere in terms of the inherent merits or justice of the expropriation but would simply ensure that the four corners of the legislation had been complied with.

With all due respect to the Minister, these are not safeguards at all. They are merely procedural requirements designed to give a veneer of respectability to the expropriation. The reality is that there are no additional checks and balances introduced by this Bill and the capacity of the Government of the day, through the Coordinator-General, to move in and expropriate private property without parliamentary scrutiny is not only unsatisfactory but also extremely unfair.

The Opposition is not against this element of the legislation simply on the basis that there can never be a case where the State should acquire private land for a private third party who is intending to construct some type of infrastructure facility. Far from it. The Opposition recognises that there will be circumstances in which this will need to occur and, as I mentioned earlier, with the increasing involvement of the private sector in public infrastructure, this need will indeed increase. But this highlights the danger of a Bill such as this.

As time goes on there will be more and more private sector people who will find their way to the Premier's Department and the Department of State Development. They will say that this or that landowner will not sell out but that the land in question is needed if this or that infrastructure project is to proceed. What we will then see, depending on the particular project or the political status of the proponent, is a series of Public Service visits to the property in question and, if the landowner in question remains resistant to selling, the inevitable coup de grace by the Coordinator-General.

It is certainly my view that, if the Government of the day wants to step in and expropriate a person's property, not for the people of Queensland but for another private individual or company, this move should be subject to proper parliamentary scrutiny, preferably by means of a private Act of Parliament. It is not acceptable for this sort of power to be unilaterally exercised by a public servant without this Parliament having a right of veto.

We all know that since the last election merit selection for directors-general has been thrown out the back door. We all know that the Coordinator-General is at the moment the Director-General of the Department of State Development. Mr Rolfe, who is the incumbent Coordinator-General, was appointed without the position being advertised and without a selection panel. I am not wanting to be harsh on Mr Rolfe, but the point is that the Coordinator-General is not an independent officer, such as the Electoral Commissioner, the Ombudsman or the Auditor-General, but is hand picked by and totally loyal to the Government of the day.

There is absolutely no suggestion that the current Coordinator-General would exercise the powers being granted to him in any manner other than that wanted by his Minister and his Government. In other words, he owes his position to this Government and the perception, if not the reality, is that it would be highly improper and extremely unjust to vest such a person with the power to expropriate people's homes and land when the beneficiary of such expropriation is not the public but a private person or company.

The Minister has pointed out that, to ensure that there is a clear understanding of how this process will work, stakeholder groups will be invited to work with public servants in producing a guide which will outline the steps to be followed in negotiations between the proponent and the landowner. While this proposal is to be welcomed, like the other steps it really is just window dressing and, if I were to be harsh, akin to execution protocols—desirable as far as they go but in no way limiting the ultimate damage that will be caused.

The Minister would no doubt be fully aware that the coalition was presented with a proposal similar to this Bill by the Public Service shortly after the High Court handed down the Wik decision. At that time and prior to the passage of the Prime Minister's 10-point legislation, there was a lot of concern about the impact that various native title claims were having on the ability of local authorities and local businesses to provide essential infrastructure services for their communities. As I recall, there were particular problems around Winton.

The Government was informed that, if it were to assist local authorities and private infrastructure providers to deal immediately and effectively with native title, there would need to be compulsory acquisition legislation drafted that would allow the Government to acquire the native title on behalf of a third party. However, because of the operation of the Racial Discrimination Act, it would be illegal for this compulsory acquisition to be limited to native title, as it would have to apply to freehold title as well.

The coalition initially gave the go-ahead to the drafting of this legislation, but within a very short period all work on this proposal was stopped. We realised that, in an endeavour to kick-start certain much-needed infrastructure

projects, we would be putting in place potentially dangerous legislation which could be misused. We came to the conclusion that whatever benefits were achievable by the legislation would be far outweighed by the risk that any future Government could misuse the power and that if there was a case for expropriating private property for private interests that case should be submitted to this House and be subject to appropriate parliamentary and public scrutiny.

I did not then, nor do I now, oppose the power to take private land or native title claims for infrastructure projects being financed by the private sector. However, my instinctive opposition to giving this type of power to the Government of the day without recourse to Parliament remains. In fact, this proposal is even worse than the one that was put forward a few years ago. Under this Bill, the actual taking of the land is by a public servant—the Coordinator-General—and not the Governor in Council.

I find it passing strange that this Government, which allegedly was going to introduce new standards of behaviour and accountability, has seen fit to introduce legislation which we rejected two years ago as being unfair and dangerous and as having the potentiality to corrupt the system.

I would like to turn now to the native title implications of this measure, which are fairly and comprehensively set out in the Explanatory Notes. For the benefit of members opposite who may not have read the Explanatory Notes, I will quote them—

> "The Commonwealth has recognised that infrastructure is increasingly being provided by non-Government parties; and that it is inappropriate for acquisitions for infrastructure to be subject to the right to negotiate provisions of the Commonwealth Native Title Act 1993 (NTA). However, as these acquisitions may result in the extinguishment of native title, the native title holders are given additional rights to ensure the special nature of their rights can be taken into account.
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> Under the NTA, there are different procedures for the acquisition of native title rights and interests depending on who will benefit from the acquisition and the purpose of the acquisition. If the acquisition is by a Government party for a non-Government party then the right to negotiate provisions of the NTA will apply unless the acquisition is to provide an infrastructure facility. If the purpose is to provide an 'infrastructure facility', the native title holders must be given the same procedural rights as the owners of freehold under the Acquisition of Land Act 1967, as well as additional procedures within section 24MD(6B) of the NTA.
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> For the purposes of section 24MD(6B) of the NTA, an independent body must be nominated to hear objections, if any, from registered native title claimants or native title bodies corporate. "

The notes go on to provide clearly that this expedited procedure only applies to infrastructure projects as defined in section 253 of the Commonwealth Native Title Act. In the event that the State definition of "infrastructure" is wider, then the right to negotiate process has to be followed.

When one looks at the definition of "infrastructure facility" in section 253, one sees that the Queensland definition is wider in two respects. First, the Queensland definition in this Bill refers to a "spaceport", which is singularly missing from the Commonwealth Act, and there is also no mention whatsoever in the Commonwealth Bill about social infrastructure. People can draw their own conclusions as to why this Bill has been deliberately drafted to mirror section 253 in all but these respects.

I think that this aspect of this Bill is one of the most breathtaking pieces of political hypocrisy ever witnessed by this Parliament. Here we have a Government that claimed that it was going to fix native title by cooperation and negotiation; gone would be the days of confrontation and extinguishment; and, on top of that, we would get speedy and amicable resolutions which would respect indigenous rights. What we have less than 12 months after the Beattie Labor Government was sworn in is legislation designed to allow the Coordinator-General to move in and expropriate native title for private third-party interests where it is necessary to expedite infrastructure projects. This is a power for which even the coalition did not legislate. It cuts right across every single pronouncement of the Premier about native title and highlights just what an opportunistic and totally cynical administration we have now in power. If it was the coalition introducing this Bill, the Courier-Mail by now would have been running headlines about how the National and Liberal Parties were trampling over indigenous rights. Yet up until now I have not seen one column inch written on the implications of this Bill on native title. I hope that whoever is supposed to be covering native title for that paper reads this Bill a little bit more carefully and reflects this inescapable consequence of it.

On top of that, I wonder what the indigenous representatives are saying. Once again, if we had introduced this Bill we would have seen a procession of people screaming from the rafters about what a racist and regressive measure it was. Let there be no mistake.

Mr Elder interjected.

Mr SANTORO: In his reply, the Minister can

say to the Courier-Mail and to others in here why it is claptrap. We might have even further discussion at the Committee stage.

The power to expropriate native title to benefit private third parties has always been in the Native Title Act. It was, in fact, taken up by the Court Government a few years ago. I would like to know just what native title claims are about to be extinguished by this Bill. And if the so-called indigenous representative groups have not got the wherewithal to competently represent their communities by asking that question, then I am more than happy to do so.

All in all, this is a pretty tawdry Bill. It gives too much power to the Coordinator-General, too little supervisory powers to Parliament and opens the door to various interests who cannot get their way by proper negotiations with landowners coming cap in hand to the Government to do their dirty work. On top of that, the Beattie Government has shown clearly that its answer to expediting private sector infrastructure projects which involve native title claims is to move in and extinguish the native title. This is the Beattie/Elder one-point plan circa 1999.

This is a Government that is hollow at its core when it comes to principles. It is a Government that is value neutral, incompetent and shows all the signs of looking after its mates. This Bill is yet another example of the moral and political bankruptcy of the Beattie Labor Government.