Speech by

Hon. V. LESTER

MEMBER FOR KEPPEL

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LAND AND RESOURCES TRIBUNAL BILL

Hon. V. P. LESTER (Keppel—NPA) (4.28 p.m.): In spite of the constant opposition of the Labor Party at both Federal and State levels, one of the main virtues of the Commonwealth Government's native title reforms last year was to give to those States that wished to take it up the opportunity to craft legislation within just parameters that would advance job creation projects by cutting through the bottlenecks caused by the right-to-negotiate process.

The so-called alternative State provision clauses have enabled those jurisdictions with an historically expanding minerals industry to legislate to ensure that this industry is given the necessary legislative and administrative framework to continue to prosper and create jobs and wealth. It is a matter of considerable regret that last year, when this House debated the second stage of the Beattie Labor Government's native title legislation package, what was passed was in fact a job retarding Bill.

From a Government that constantly drones on about jobs, jobs, jobs we see an unremitting litany of legislation and administrative directions that will have the opposite effect. We see a job destroying and job inhibiting Government that seeks with ever growing desperation to cover up its abysmal failure with self-praise and glib media sound grabs. This Bill is merely a continuation of the Beattie Government's failed native title strategy. However, it does have some merits, but it is constructed on a base of failed and half-baked decisions and has elements which should cause concern.

I will deal first with the elements of the legislation which are positive. First, it is clear that, if any alternative State provisions are to be approved by the Commonwealth Minister, there must be an independent person or body in place to hear any objection by any native title claimant objecting about the doing of an act that affects their registered native title rights and interests. The legislation that we are debating will establish such an independent body, and its passage is an essential prerequisite to the Commonwealth agreeing to any alternative State provisions. Yet for a Government that is so keen to help the mining industry, the snail's path progress of the Premier's native title legislation is a matter of regret.

The Premier knows full well that until such time as this Bill is properly debated and passed by this Parliament the Federal Government is not in a position to finally deal with the Stage 2 alternative provision legislation which we debated last November. Some four months have elapsed since the Stage 2 legislation was debated by this House, and yet in that four months this Bill has languished on the Notice Paper. Four months of valuable time has been squandered because the Premier could not get his act together last year and produce for this House a comprehensive package of native title reforms.

The Governments of the Northern Territory and Western Australia were able to do so, and yet this Government was not. It tries to hide its ineptitude behind claims that it is a consultative Government. It tries to make a virtue out of necessity. Yet it is all too clear that this Government and this Premier have approached native title reform just as they have approached most other matters—with an indecisiveness and lack of vision. This is a Government more interested in buying off the various pressure groups knocking at its door than in developing legislation that is in this State's interests.

So while the Opposition is pleased that an independent body is being established, it is less than impressed by the failure of the Government to present this Bill at the same time as the Stage 2 legislation. If the Government had done this, not only would there have been a better parliamentary debate; the reform agenda could also have been advanced by at least four months.

The second positive feature of this Bill is the replacement of the Wardens Court. Over the past couple of years there was a growing concern in the rural community that the Wardens Court was not operating in a fair and even manner. There was a widespread conviction that the court favoured the interests of the mining community over the interests of landowners. All of these pent-up concerns came well and truly out into the open when the Court of Appeal ruled in November 1997 that the mining warden, Mr Frank Windridge, had denied natural justice to central Queensland grazier Mr Edward Wall.

The Court of Appeal found that the mining warden had taken evidence from South Blackwater Coal after closing public hearings and without notifying Mr Wall. Apparently the mining warden had contacted the mining company through a Mines Department officer and then attended a meeting in the company's office to hear new material. After that decision was handed down, various rural representatives said publicly that they had lost confidence in the court and no longer had an expectation that they would get a fair go. In these circumstances it is most probably good that the slate is wiped clean and that there is a fresh start.

Now there is the opportunity for a one-stop shop arrangement, with the one body dealing with both native title and mining matters. So it makes sense that there be an amalgamation of the two processes and that we have a new body that can drive this process forward and, hopefully, rebuild bridges to the landowners. Whether this tribunal will in fact be able to achieve this is a moot point. From the wording of the legislation, already there are some matters that should raise doubts about how the tribunal will operate.

The third positive aspect of the legislation is that the Bill now provides that when conducting a tribunal hearing the tribunal must observe natural justice. It is appropriate to say that following the Court of Appeal's decision it is a positive and proper step to enshrine in the legislation the obligation on tribunal members to observe procedural fairness. While all judicial and quasi-judicial officers should do so as a matter of course, it does no harm to put the matter in the legislation for all to see, read and obey.

The final matter which I find positive about this Bill is the fact that it will be transferred from the Mines portfolio to that of Justice. Unless there are compelling reasons to the contrary, all tribunals should be within the Justice portfolio and their performance the responsibility of the Attorney-General and Minister for Justice. The Department of Justice and Attorney-General has considerable expertise in courts administration and is in a far better position to oversee the operations of this new body. In addition, it will help to overcome any perceptions of conflict of duty and interest.

In the past, when the Mining Wardens Court was under the Department of Mines and Energy, there were constant suggestions that the department was too close to the mining industry. No such suggestion could be made about the Department of Justice and Attorney-General. However, there are a number of less than satisfactory aspects to the legislation.

The tribunal is composed of at least three presiding members. Each of the presiding members is supposed to be appointed until attaining 70 years of age. The president will receive the salary, allowances and rates of allowances payable to a Supreme Court judge, and the deputy president will get the same salary and allowances package as a District Court judge. There is absolutely no requirement in the Commonwealth Native Title Act that the tribunal be composed of persons who are elevated to the same status, though not the position of, Supreme and District Court judges.

Over recent years the judiciary has, quite rightly, become increasingly concerned about the proliferation of tribunals. Tribunals, as the Attorney-General knows full well, should be established only as a matter of last resort. The reason for this is very simple. The greater the number of tribunals, the more that justice is made uneven and the greater the risk that the jurisdiction and stature of the courts of our nation are undermined and marginalised. I accept that setting up a tribunal in this instance is justified, but what I find totally unacceptable is that the presiding members are being elevated to the same status as the judges of the superior courts of Queensland.

By giving the tribunal members the same status as Supreme and District Court judges, this Government is creating an unhealthy precedent. Why give these members a status which is not required? Why give these members a status equivalent to justices and judges who are required to deal with the most complicated of civil and criminal matters and across the total spectrum of the law? I hope that this is not a case of mates' rates. There will be quite a degree of cynicism in the community that this Government is establishing an ad hoc body with a status for its presiding members above and beyond what is necessary and one to which it will be tempted to appoint its supporters.

The Opposition's concern is heightened by the wording of clause 8, which sets out the eligibility for appointment as a presiding member. The clause requires that a presiding member must, amongst other things, have knowledge or experience of indigenous issues and one or more of three other

matters. One of these is mining or petroleum issues. Yet the clause goes on to oust from judicial review the appointment of presiding members insofar as they fail collectively to possess any knowledge of mining or petroleum matters.

Quite rightly, in Alert Digest No. 1 of 1999 the Scrutiny of Legislation Committee has questioned whether this is appropriate, but there is an even bigger issue here. The Government is abolishing the Wardens Court, yet at the same time it is sending a clear message that, although knowledge of indigenous and land issues is absolutely essential for appointment as a presiding officer, knowledge or experience in mining or petroleum matters is not.

Again and again the Premier claims that he is doing everything he can to encourage mining investment, yet we see in this Bill a totally blinkered approach to this essential industry. How can this tribunal operate effectively if none of the presiding members has any experience or knowledge of mining or petroleum matters?

Let me repeat: this tribunal will be hearing more than simply native title matters. It is the primary body for matters arising from both the Mineral Resources Act and the Fossicking Act. In these circumstances, to legislatively oust judicial review from appointments because none of the presiding members has any knowledge or experience in mining matters is a retrograde step and has the potential to undermine the tribunal's effectiveness from the outset. If this clause is not amended, the Premier needs to give an undertaking to this Parliament that at least one of the presiding members will have the requisite knowledge or experience of mining and petroleum matters.

In this context, it is also to be borne in mind that the decisions of this tribunal are subject to ministerial override. This fact is highlighted in the Premier's speech, and examples of the override are set out in the Scrutiny of Legislation Committee's Alert Digest. In fact, the committee pointed out that there is no reference in the Bill to the existence of the override and pointed out that this omission could lead to a misunderstanding in the community of the status of the tribunal's decisions.

The committee recommended that the Bill be amended so as to make it clear to the community and litigants that decisions of the tribunal are subject to ministerial override. This is a sensible recommendation and one that I would hope the Premier and the Government would take up. It is only reasonable that they do so. It would put plain English into the legislation in an eminently relevant way, making the legislation a document which ordinary people could use.

I think the more significant element is that this tribunal, unlike the Supreme or District Courts, is subject to overriding political decisions. It is not a body which is independent of the policy process. It is not a body of either unlimited or almost unlimited jurisdiction or even a body whose decisions have to be accepted and followed as of right. It is a very limited body in almost every sense. In these circumstances, to elevate the presiding members to, in effect, the status of justices and judges of the superior courts is totally unjustified. I suggest strongly to the Premier that he reconsider this aspect of the legislation. I ask the Premier whether the views of the Chief Justice or the Chief Judge of the District Court were sought and, if so, whether they were in concurrence with this proposal.

Another troubling matter is the very limited appeal rights granted. The Bill limits a party to a proceeding before the tribunal to appeals on questions of law. I ask the Premier: why are appeal rights so circumscribed? Would there be any harm in allowing appeals on questions of fact? While there may be good reasons for limiting grounds of appeal, there is no logic in further hamstringing the process by requiring that when the appeal is against a decision of a Land Court non-presiding member or a mining referee such an appeal can only be instituted with the permission of the president of the tribunal.

The Scrutiny of Legislation Committee has noted that no grounds are set out in the legislation for the granting of leave. The committee has queried whether leave to appeal is necessary when appeal is confined to questions of law. It is not as if this tribunal were the High Court and special leave was needed before appeals were launched. There is, on its face, absolutely no good reason that litigants should have their rights so limited and so dependent on the exercise of broad and totally unlimited discretions.

The committee has recommended that if the Government believes leave to appeal is necessary it should give consideration to prescribing grounds for the granting of leave. I ask the Premier whether he will outline to this House the reasoning behind the current requirement for leave to appeal. If there are no good reasons, then I believe that this limitation on litigants' rights should be withdrawn forthwith. However, if there are good reasons then I support the committee's call for some legislative guidance, rather than leaving the granting of leave in a totally unregulated and vague state.

One final matter on which I seek some clarification relates to the provisions dealing with possible conflicts of interest by tribunal members. First, I agree that it is prudent to provide that a member must not hold or be entitled, directly or indirectly, to the benefits of an interest in a mining tenure. Having regard to the nature of most proceedings before the tribunal and the perception problems that the Wardens Court has faced, such a clause in the Bill would be desirable.

I wonder why the drafters of this legislation have gone out of their way to focus just on mining activities. It is not very difficult to imagine a host of other conflicts that could arise or which could raise perceptions of conflict. One area of risk relates to the indigenous issues referee. The qualifications for appointment to this position are very precise and are set out in clause 18. I would suggest to the Government that extreme care will have to be taken in this area as well, lest the same type of perception problems that arose with the mining warden crop up here.

If it is appropriate—and I think it is—that very specific prohibitions on mining interests are prescribed in clause 26, I would be interested to know why other detailed conflict provisions are also not included. I suggest that if a person is appointed as the indigenous issues referee and loses the confidence, for example, of the mining industry or landowners because of his or her links with indigenous organisations, then it will undermine the credibility of this tribunal. I ask the Premier whether any consideration was given to providing greater guidance in the Bill——

Time expired.

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