



Speech by

Hon. S. ROBERTSON

MEMBER FOR STRETTON

Hansard 15 May 2001

NATURAL RESOURCES LEGISLATION AMENDMENT BILL

Hon. S. ROBERTSON (Stretton—ALP) (Minister for Natural Resources and Minister for Mines) (2.31 p.m.): I move—

That the bill be now read a second time.

This bill proposes to make amendments to a number of acts within my portfolio to improve their operation. These acts include the Aboriginal Land Act 1991, the Acquisition of Land Act 1967, the Coal Mining Safety and Health Act 1999, the Explosives Act 1999, the Land Act 1994, the Land Court Act 2000, the Land Title Act 1994 and the Torres Strait Islander Land Act 1991.

The amendments to the Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991 will insert machinery provisions, which will allow the chairperson of the land tribunals, established under those acts, to be appointed on a part-time or full-time basis. The amendments will give greater flexibility in the appointments of chairpersons of the tribunals.

The Acquisition of Land Act 1967 provides for the payment of an advance of compensation to the owner of the land being acquired. However, the act precludes the payment of an advance of compensation to a person who is, for example, the lessee of the land acquired. This anomaly has the potential to cause financial hardship to such persons by, for example, preventing early relocation of the business conducted on the acquired land. The amendment will rectify this by recognising new categories of persons able to receive compensation advances.

The amendment to the Coal Mining Safety and Health Act 1999 is in itself a safety precaution. The amendment will insert a transitional provision to ensure mine rescue services previously accredited under the Coal Mining Act 1925 continue to have accreditation until accreditation is in place under the Coal Mining Safety and Health Act 1999. Without this amendment, and until accreditation of the existing mine rescue service is reconfirmed, operating mining companies may be technically in breach of the act, particularly those provisions relating to safety.

The Office of Parliamentary Counsel is drafting new regulations to replace those continued under the transitional arrangements of the Explosives Act 1999. However, these replacement regulations will not commence by the current regulations expiry date of 30 June 2001. An extension of the transitional time to 30 June 2002 is proposed to ensure regulatory control of explosives is maintained until the replacement regulation is implemented.

The amendments to the Land Act 1994 relate to a new plan format for easements and covenants, a new form of public utility easement for water impounded by a weir, streamlining of plan requirements for future easements, the priority as between a prior registered mortgagee and a registered writ of execution and the administrative arrangements for port lands under the act. These amendments are, in part, the result of a review initiative by my department, together with submissions from stakeholders. The plans of survey available administratively, under the Land Act 1994, do not include a plan capable of being prepared without ground survey and the use of typical survey requirements of pins in the ground, monuments or survey marks.

The amendments will provide for a new plan. The explanatory format plan will be capable of defining the extent of particular interests, for example, easements and covenants, using attributes and information available in the Land Registry, as well as other information of a standard satisfactory to the

chief executive. The chief executive will set the content and use of these plans. People other than surveyors will be able to complete the plan, in appropriate circumstances. The plan format will also be made available under the Land Title Act 1994.

The construction or upgrading of weirs on rivers or streams results in the inundation of land behind the weir. In many instances, the affected land is acquired compulsorily, or by agreement with the landowner, under the provisions of the Acquisition of Land Act 1967. Compensation is paid to the landowner under that act. As an alternative to that type of acquisition and to minimise the trauma of compulsory acquisition, a water storage arrangement in the form of an easement will be able to be created by agreement between the landowner and a public utility provider. This arrangement, which will be registered against the land as a public utility easement under the Land Act 1994, will allow the owner to retain ownership of the land. It will show the extent of the inundation, as well as the rights of the parties to the agreement about the use and access of the water under storage. To minimise the administrative costs of showing the extent of the inundation, these easements will be able to use the proposed explanatory plan I previously referred to.

A technical amendment is also to be made to the Land Act 1994, which will be replicated in the Land Title Act 1994, to clarify the legal position of particular legal interests where a mortgagee exercises power of sale under a mortgage. As the issue is of a complex nature, I will provide honourable members with some background to the proposed amendment.

Under the Land Act 1994, a registered mortgage is an interest in the lease the subject of the mortgage. The mortgagee has the power to sell under the mortgage where there is a default by the mortgagor, that is, the lessee. Where, on the other hand, the lessee also owes money to a person other than a mortgagee, and the lessee defaults on paying, the person owed the money, that is, the creditor, has the right to obtain a writ of execution through the courts for the money owed. The creditor may then register the writ under the Land Act 1994. The registration of the writ allows the land to be sold to recover the debt. It is, however, important to realise that, even though the writ may be registered, at law, the writ does not create a proprietary interest in the land for the judgment creditor.

Instances have arisen where a mortgagee, exercising the power of sale under the mortgage and whose mortgage is registered prior to the writ of execution, is in competition with a sale under the writ of execution for the same lot. The question at issue is whose rights prevail? Is it the mortgagee or the creditor under the writ? The courts have determined that a prior registered mortgagee can sell, and lodge a transfer, even where a writ is registered before the transfer is lodged. Examples of these decisions are *Commonwealth Bank v. Austral Lighting Pty Ltd* (1984) 2 Qd R 507 and more recently in a Supreme Court decision in 1999 of *Lawyers Private Mortgages v. Glenwood*.

Under the law, once the mortgagee's transfer to the new owner has registered, the creditor who sought enforcement against the previous owner has no right to claim against the new owner. The judgment creditor's rights now lie in a civil action against the previous owner. To give the new owner clear title, legislative power will be given to the chief executive to remove the writ from the land register. Additional machinery amendments to the dictionary will also be made to the act to support the principal amendments already outlined.

Amendments are to be made to the Land Court Act 2000 to allow the chairperson of the land tribunal under the Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991 to hold a concurrent appointment part-time as a member of the Land Court, and acting members of the Land Court to be appointed on a full-time or part-time basis.

The Land Title Act 1994 is to be amended in an identical fashion to that proposed in the Land Act 1994 for explanatory format plans, water storage public utility easements and the effect of a writ of execution on a transfer after a sale by a mortgagee. Other technical amendments of a clarifying nature are proposed to the Land Title Act 1994. The amendments are in relation to standard format lots and caveats. I will provide background information in each instance, to assist honourable members to understand the need for the amendments.

The first technical amendment concerns standard format lots. The review of the Body Corporate and Community Management Act 1997 in 1999 highlighted that the Land Title Act 1994 implied the characteristic of the base standard format lot existed but did not state it adequately. This amendment, which statutorily recognises the characteristic of the base standard format lot, will provide the requisite clarity.

The land, which is the base lot for subdivision under the Land Title Act 1994, is a statutory determined to be a standard format lot. The lot may be further subdivided by other plans, including further standard format plans of subdivision, building format plans of subdivision or volumetric plans of subdivision. A building format plan of subdivision, for a strata titled high-rise building, invariably results in a lot, which is the balance of the land remaining from the subdivision. This remaining land must still retain the characteristics of a standard format lot to allow it to be further subdivided or amalgamated with other standard format lots.

The second technical amendment concerns caveats. Under the Torrens system, a caveat is merely a mechanism to allow a person, who wishes to perfect their interest in a lot, to freeze the register in respect of that interest, whilst taking certain action in the courts and have the court decide on the validity of the applicant's interest. Caveats are regarded as an instrument under the Land Title Act 1994 for the purposes of the Land Registry's administrative functions to deal with the application for the caveat. Those administrative actions could include: allowing correction, withdrawal, requisition or rejection. However, caveats do, of themselves, create an interest in a lot. The proposed amendment will clarify the application of the administrative aspects of the Land Registry to apply to the caveat but ensure the caveat is not an instrument in itself that creates an interest.

In addition, minor machinery amendments are included to support the proposed amendments to the act. I commend the bill to the House.
