



Speech by

**Hon. D. WELLS**

**MEMBER FOR MURRUMBIDGE**

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Hansard 9 September 2003

### **MARINE PARKS AMENDMENT BILL**

**Hon. D. M. WELLS** (Murrumbidgee—ALP) (Minister for Environment) (3.49 p.m.), in reply: Before I refer to the bill, I take on board what the honourable member for Toowoomba South said about the circumstances of his distinguished predecessor. I take that on board. I have put in place an instruction to my department that when the Herbarium undertakes reviews of the vegetation mapping of a particular area it should do it region by region and that there should be adequate notice given to the community of when the Herbarium is operating in a region. That should mitigate the likelihood of any such thing recurring in the future. I will write further to the honourable member for Toowoomba South in respect of the matters that he has raised in this parliament. I will make sure that the officers of my department are aware of the matters that he has raised in this debate.

I now turn to the substance of the bill. I thank honourable members who took part in the debate. I thank the honourable members for Gaven, Barron River, Cairns, Kawana and other honourable members on this side of the House for their contributions and for their participation. I also thank the honourable members for Southern Downs, Keppel, Robina, Tablelands, Hinchinbrook, Gladstone, Toowoomba South and Nicklin for their contributions to the debate.

I appreciate the support of the opposition for this bill. I was interested in what it had to say. This is a rare instance of complete unanimity by members of the opposition. They all agree with the bill, but they all disagree with the reasons for introducing the bill. They all think that it would have been a good idea if, at some stage during the statutory process, we had tweaked the result so that it did not have to get to parliament. I think the honourable member for Nicklin got it right when he said that bringing this matter to the parliament is the right way to deal with this case. What is so inappropriate about a statutory process that makes the parliament the final arbiter of the rights of citizens? What is so bad about a referral to the democratic process? What is it about their jobs, I ask honourable members of the National Party opposition, that they do not like doing in that they have a problem with a statutory process ending up here? That is how it is and that is, indeed, how it ought to be.

Where a case does not fit the rigid guidelines established by the laws and regulations passed by a parliament and where it needs further consideration by the representatives of the people the appropriate thing is for it to come back to parliament. The appropriate thing for any minister or any government to do is to ensure that it gets back to parliament. That is why when my departmental officers said, 'We are going to have to make a decision that has such-and-such a consequence,' I said, 'You are the statutory decision makers. You make the decision that you must make.' If a different policy decision needed to be made further down the track by the parliament, then so be it. I do not have a problem with the people's elected representatives making decisions, and neither should the opposition. That is the democratic way and it is the post-Fitzgerald way.

The honourable member for Southern Downs, as he indicated, had a conversation with me—a constructive and fruitful conversation—at the parliamentary estimates about this. In the course of that constructive and fruitful conversation in which we discussed a wide range of things, he indicated that somehow or other the process should have been tweaked so that it did not end up with such a disaster as having the people's elected representatives making a decision about it. I just did not buy that. The whole reason for having a statutory decision maker is so that you can pursue a democratic process. The democratic process is that the parliament decides this is the law and this is the process through which you will go. Once that is decided people have vested rights—they have democratic rights—to

have that process undertaken. If the process is undertaken in such a way that it leads to a result that was not envisaged by the statute makers in the first place, for—let us be frank about it—none of us are infallible and none of us are omniscient and none of us can see every exigency which might occur, then the fail-safe result is for the parliament to make a decision. That is an open and accountable process. It is a frank process. It is a democratic process and it is one that I would have thought that everybody in the opposition should have agreed with. Yet we had speaker after speaker from the opposition saying, 'We support the conclusion, but we do not accept the premises.' I thank them for supporting the conclusion. I thank them for getting to the right place in the end, but this is how it ought to be because this is the post-Fitzgerald way.

During the estimates process and in this House the honourable member for Southern Downs, the Leader of the Opposition and shadow minister for environment, raised the question of Sun Aqua. Exactly the same process is involved there in a question relating to another marine park. The statutory decision maker in respect of Sun Aqua has to make a decision as to whether it is a good idea to have such a development as Sun Aqua in a marine park. That is a real decision as evidenced by virtue of a recent decision of my department to allow a scallop farm in Hervey Bay. It is a real decision which has to be made on the basis of the statute and on the basis of the environmental science involved. It is a scientific decision. The question is whether it is sustainable. The question that the statutory decision maker eventually gets asked is, 'Is it sustainable in the context of a marine park to have this kind of development, having regard to the purposes of the marine park?' The answer to the question can be yes or no. It is a real question that needs to be determined.

In respect of this case and in respect of Sun Aqua, honourable members might guess what the answer might be. A commonsense guess might lead them to one conclusion or the other on the basis of the evidence before them, but it would only be a guess. It would be a guess by the honourable member and it would be a guess by me because I do not know what the results of statutory processes are going to be. I make it my business not to know. In respect of the Sun Aqua matter, I said to the statutory decision makers, 'I want you to make this decision coldly and on the basis of the science without regard to what you think or believe the government might want because this is a statutory process and it needs to be gone through.' The parliament sets out a statutory process and that statutory process accords people certain rights. The statutory decision maker, being an administrative officer, is not there to make a policy decision, but this parliament is. If, because of their shyness or their diffidence or their humility, honourable members on the other side of the House in the National Party are reluctant to make a statutory decision, perhaps that bears some interest for those who are determining suitability for high office.

I do not have a problem, nor do honourable members on this side of the House and nor—from his remarks—does the honourable member for Nicklin, nor the honourable member for Gladstone, with parliament making a decision about the rights of individuals in this state because that is what they are elected for. That is where the decision should be made. That is where the decision is most clear, most transparent. That is where it is appropriate that the decision should be made.

The bill before the House is a one-off piece of legislation. It is one which corrects a situation which would otherwise have occurred. Honourable members in the National Party gave great credit to the member for Barron River for her work in ensuring that this legislative resolution came about. Without the gratuitous vitriol that honourable members on the other side of the House poured upon the member for Barron River, I would like to say something which has exactly the same thought content of what they were saying, but I would like to say it in a complimentary way. I would like to thank the honourable member for her contribution for the suggestions that she made that enabled this legislative resolution of the problem to come to pass. I would like to thank her for her contribution to a resolution of something which, had it not been for the ultimate mechanism of the people's House, would have led to a suboptimal result.

It would have been suboptimal because, from an environmental point of view, this is the outcome that we want. From an environmental point of view, we did not want people who were thinking about doing developments in far-north Queensland walking through virgin tracts of forest deciding that this would be a good place for a development. We want developments to take place in a place where the territory was already degraded, as the moonscape through which the Premier and I walked was degraded. This is the place where a development should occur from an environmental point of view and this is where it is going to occur. It is a win-win for everyone: it is a win for the environment, it is a win for the people of far-north Queensland and, in the end, it is a win for democracy.

In the contribution of the member for Barron River, she said that I would respond to what the Environmental Defender's Office asked in terms of what happened if the deed of agreement was violated. I will respond. The question that the Environmental Defender's Office asked is one of some legal complexity. I will give only the shortest possible answer here, but I will write to the Environmental Defender's Office detailing the full legalities of it. In brief, if a deed of agreement were breached—and I do not imagine for one minute that this one is going to be—that breach does not of itself void the

contract. To void a contract, it is necessary to breach a fundamental term of the contract. In order for that to occur, something pretty serious has to break down. If a fundamental term of this or any other contract were breached in circumstances such as this, then the ordinary processes of government would take over and somebody else would do the job. We will, presumably in the context of a breach of such an agreement, still have a government in Queensland and that government will do what governments do—just get on with the job. The routine processes of government will cope with it. For example, other agencies would be able to undertake the dredging, or whatever it might be, in the circumstances that might be raised. So in lay terms, that answers the question of the Environmental Defender's Office. However, that office is staffed with people who have quite clear and well worked out legal views on a large number of issues. I am anxious to respond to them completely and adequately, so I will do that in writing.

I thank honourable members for their support for this outcome. The outcome is the best result for everybody. It is the best result all round. In conclusion, this is the people's House. This is the authentic voice of the people of Queensland. If anybody has a problem with calling into play the authentic voice of the people of this state, then that person's commitment to democracy is something that they need to re-examine.

Motion agreed to.