



Speech by

Hon. Liddy Clark

MEMBER FOR CLAYFIELD

Hansard Wednesday, 20 October 2004

LOCAL GOVERNMENT (COMMUNITY GOVERNMENT AREAS) BILL

Hon. E.A. CLARK (Clayfield—ALP) (Minister for Aboriginal and Torres Strait Islander Policy) (7.53 p.m.): I am delighted to have the opportunity to speak in support of this landmark piece of legislation. This bill is one of the cornerstones of the Beattie government's agenda for change for indigenous Queenslanders. We believe that, together with the community governance improvement strategy, it will bring major improvements in the governance of our Aboriginal communities. Good governance brings, in turn, better service, economic growth and jobs. It is an essential platform for a better quality of life.

This bill will give indigenous councils the tools they need to deliver effective and accountable governance to their communities. It balances best practice laws for local government with the need for flexibility to accommodate the specific cultures, histories and economic circumstances of remote Aboriginal communities.

In speaking in support of this bill tonight, I want to do four things. Firstly, I want to provide a bit of background and broader context for the bill. Secondly, I want to explain the very comprehensive and inclusive consultation process that the government has undertaken in preparing the bill. Thirdly, I want to highlight key aspects of the bill that directly respond to the issues raised by Aboriginal communities in our consultations. Finally, I want to briefly highlight the changes that this bill makes to the legislation that remains within my portfolio.

This bill brings to fruition the efforts of many people who have worked towards reform of the laws for Aboriginal councils for a number of years. Aboriginal community governance is a very complex area and there have been a number of reviews and reform efforts over the two decades since the community services legislation was introduced.

Recommendations for change to this legislation were made in the following reports: the Legislation Review Committee in 1991, chaired by Uncle Eric Deeral from the Hope Vale community; the Parliamentary Committee for Public Accounts in 1991 and 1993, which some of the members of this House were involved in; the Aboriginal and Torres Strait Islander Women's Task Force on Violence report in 1999; the Aboriginal Coordinating Council review of the Community Services Act in 2001; and Justice Tony Fitzgerald's Cape York Justice Study report in 2001. Over the years numerous initiatives and reforms have been introduced in response to those recommendations. However, the underlying problems with the current laws have never been satisfactorily resolved. By the time of the Cape York Justice Study, it became clear that a more comprehensive approach was needed.

The impetus for this approach was the Beattie government's response to the Cape York Justice Study, the Meeting Challenges, Making Choices strategy. When the government consulted indigenous communities about the Cape York Justice Study recommendations in late 2001 and early 2002, the feedback was unambiguous. Firstly, alcohol and violence were critical issues that needed to be addressed but, secondly, and almost as important in many people's minds, the council system needed to be fixed if there was to be any sustainable improvement in remote indigenous communities. In Meeting Challenges, Making Choices, the government responded to this.

Of course, the government's alcohol reforms are well known and are already making a positive difference. As part of our MCMC response in 2002, the government also committed to a community governance improvement strategy and a comprehensive review of the laws for Aboriginal councils. These commitments were essential as a part of the infrastructure for the broad agenda of reform being set in place under MCMC. We recognise that the problems of alcohol, violence and social breakdown could not be overcome without strong and effective leadership from the key players which, of course, includes the councils. Working in partnership with indigenous communities and across government, we are delivering on our commitments in Meeting Challenges, Making Choices and the bill before the House tonight is another step in this process.

I believe the process we have followed has been exemplary. This is important because good process leads to good and lasting outcomes. In recent years governments of all persuasions have been talking about the need for genuine partnerships and effective community engagement when dealing with indigenous peoples. In developing this bill, we have put this philosophy into practice. At every stage we have kept the community informed and, in turn, we have listened. As I will show in a moment, we have not only listened, but we have responded.

In this day and age, the community expects that public policy will not only be the result of inclusive consultation but also be evidence based. In developing this bill, we have also conducted research into best practice in indigenous governance both from Australia and overseas. The first step in our consultation process was the release of a green paper, 'Making choices about community governance', in March 2003. The green paper set out a wide range of options for discussion based on our research and based on previous reports and consultations. We circulated almost 2,000 copies of the green paper to indigenous communities and other stakeholders.

The Department of Aboriginal and Torres Strait Islander Policy conducted 35 presentations to Aboriginal councils and residents of Aboriginal communities. Approximately 250 people attended those presentations, including 86 Aboriginal councillors and council staff. We received 71 written responses to the green paper.

On the basis of our green paper consultations, in October 2003 the government released a white paper setting out our proposed new laws for Aboriginal community governance. Again, the Department of Aboriginal and Torres Strait Islander Policy, this time in conjunction with the Department of Local Government and Planning, visited all Aboriginal councils to explain the proposals and gain their comments. In May this year a consultation draft of the bill was released. The Department of Aboriginal and Torres Strait Islander Policy and the Department of Local Government and Planning again visited all Aboriginal communities to seek feedback on the detailed provisions. We also gave the community a plain English summary and fact sheet so that people could clearly understand the issues and give informed feedback. Following each of our consultation stages, we have carefully analysed the feedback and published a report summarising the results. This ensures that people know how their feedback fits into the bigger picture.

This process did not rely on consultation with a few peak bodies or mailing out papers and expecting detailed written comments. This process involved getting out to Aboriginal communities and directly engaging the people who are most affected by these laws—the people who are expected to use them on a day-to-day basis. If we are serious about developing good laws for Aboriginal communities, there is no substitute for rolling up our sleeves and meeting the Aboriginal councillors and their constituents on their own turf face to face as genuine partners. This is what our new way of doing business with indigenous Queenslanders is all about—genuine partnership and negotiation through direct community engagement. The negotiation tables that we are conducting with indigenous communities will continue to put these principles into practice. Consulting widely and listening to the community concerns is of no value if we do not act on this feedback.

For the benefit of honourable members, I want to draw attention to key aspects of the bill that respond to the needs and concerns expressed during our consultations. Firstly, the central thrust of the bill is to ensure that councils in Aboriginal communities meet the benchmarks for accountability and corporate governance in the Local Government Act. During our consultations on the green paper, Aboriginal communities were unequivocal that they expected the same standards of governance as other local governments in Queensland. Communities did raise concern about the current level of capacity of Aboriginal councils to meet these high standards. We are responding to these concerns through our community governance improvement strategy.

A particularly difficult policy issue for the bill has been the electoral model for councils. A number of reports over the years have said that the current model is unsuitable for indigenous communities. One of the more common concerns has been that councils are unrepresentative because they are dominated by larger families and because important social groups such as women and traditional owners are not sufficiently represented. Through the green paper, we proposed a number of options for communities to consider. The overwhelming feedback was that there was no one model that will suit all communities and that the law must contain flexibility. The result has been that the standard electoral model in the Local

Government Act will continue to be the benchmark, but communities will have the opportunity to seek variations to this model according to their own needs.

For example, communities can guarantee the representation of traditional owners or change the way the mayor is elected or introduce a model to elect councillors based on clan groupings. In other words, we have tailored the system to be more responsive to community needs, acknowledging that there are important differences between communities. This approach is supported by previous reports and by international research on indigenous governance. In the Cape York Justice Study Justice Fitzgerald stated that governance arrangements that are more consistent with customary law and traditional authority structures should lead to more ordered self-managed and self-regulated communities. Our approach is also supported by the world renowned Harvard project on American Indian economic development. Through two decades of research in the US and Canada, the Harvard project has demonstrated that sustainable improvements for indigenous communities will only occur where governing structures are designed by those communities themselves. In particular, the Harvard project has found that there must be a cultural fit between the way a community government is structured and the cultural values of the local community. The electoral model in this bill not only responds to the community's desire for flexibility; it also reflects best practice in indigenous governance.

While I am on the topic of flexible local governance arrangements, I want to draw honourable members' attention to one of the most innovative aspects of the bill. As a direct result of our consultations on the green paper, we have introduced the concept of local services committees. The bill permits an Aboriginal council to fully delegate some of its decision-making powers to a local services committee which may include members of the community. This goes further than the Local Government Act. The new laws respond to the realities of Aboriginal communities. Aboriginal councils are expected to administer a much wider array of responsibilities than other local governments. In our consultations, Aboriginal women's groups told us that they would like to be formally delegated the responsibility for managing functions such as the child care program and women's shelter. The way these communities are structured and the way they operate can be set out in a local law. Again, this maximises the opportunity for Aboriginal communities to tailor their governance arrangements to their local circumstances and cultural values.

The issue which Aboriginal communities were most vocal about in our consultations on the draft bill was the title of the councils. This is a matter of great symbolic importance for many Aboriginal communities. Some Aboriginal councils told us that, although they are willing to make the transition to shire council status, they want to be able to retain their cultural identity in their title by referring to themselves as Aboriginal shire councils. This was also seen as important to indicate to the world that these are councils that exercise jurisdiction over Aboriginal trust land. The government acknowledges Aboriginal communities' rights to assert their cultural identity. The bill does not force these councils to identify as Aboriginal but instead provides the option of adopting the title 'shire council' or 'Aboriginal shire council'.

Before concluding, I want to briefly mention the changes that this bill makes to the laws that remain in the Aboriginal and Torres Strait Islander Policy portfolio. While the bill removes the outdated laws for Aboriginal councils from the Community Services (Aborigines) Act 1984, the residual parts of that act will remain in my portfolio. They cover a range of issues for Aboriginal communities such as the operation of Aboriginal police, community justice groups, possession and consumption of alcohol, entry to trust areas, and the Aborigines Welfare Fund. The Community Services (Aborigines) Act 1984 will be renamed the Aboriginal Communities (Justice and Land Matters) Act 1984.

This bill delivers a historic break from the past and ushers in a new era of opportunity for Aboriginal communities. It will vanquish the legacy of paternalistic and oppressive policies and it will create a foundation for genuine self-government by Aboriginal communities. To achieve these objectives, the way we undertake the journey is as important as the destination. The first step towards undoing the legacy of the past is to engage in genuine partnership with indigenous Queenslanders in building a better future. I believe this bill demonstrates how that can be done. We have been entirely open in our approach and responsive to the wishes of our communities and councils. We have worked in partnership with Aboriginal peoples, together exploring all of the options and coming up with a broadly agreed result—a practical solution to a difficult set of problems.

In keeping with our policy on indigenous issues, we have lifted the bar. We have set new standards for Aboriginal community governance in line with best practice for both indigenous peoples and local government generally. We have done so, however, in a way that is flexible, recognising the realities of life in Aboriginal communities and being respectful of their distinctive cultural identity. In Meeting Challenges, Making Choices we identified community governance as one of the key mechanisms for change in our drive to achieve a better future for indigenous people, a future where Aboriginal and Torres Strait Islander Queenslanders have the same prospects for health, prosperity and quality of life as all other Queenslanders. This legislation is an important step in that direction, and I commend the bill to the House.