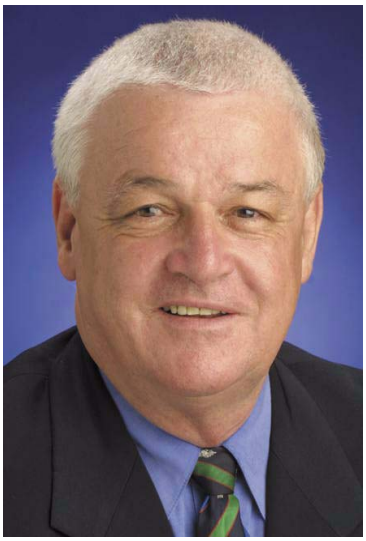

Speech by

Paul Hoolihan

MEMBER FOR KEPPEL

Hansard Wednesday, 19 May 2004

PRIVATE PROPERTY PROTECTION BILL

Mr HOOLIHAN (Keppel—ALP) (8.43 p.m.): I rise to oppose these bills. I will mention shortly the Land Acquisition Amendment Bill, which appears only to duplicate well-established government policy. I will deal firstly with the Private Property Protection Bill. I thought it was rather interesting to hear the member for Warrego mention the separation of powers. It has always amazed me that no-one from the National Party ever seems to be able to explain the doctrine of the separation of powers and yet the member stood up and relied on it.

Basically, if we were to accept the tenets of this bill, we would witness a fundamental shift from a society based on shared membership of communities to one based on aggressive individualism. I listened to what has been said. It appears that those opposite want to make one law for those people on the land and another law for urban people. I bear in mind that the definition of private property relates to land Queensland wide.

What would be created by this legislation is neighbour pitted against neighbour and rural communities pitted against urban ones in a legal battleground for personal compensation claims. While compensation provisions will be available to both rural people and property owners, there is considerable potential for significantly greater costs associated with city based claims. It could become a gravy train for lawyers and consultants. They would be feasting on the spoils of litigious fervour at every stage of the event.

The effect of the bill is to add a complicated and expensive step to the process of enacting legislation. As the only test for compensation relates to the ownership of private property, foreign persons and transnational companies, especially those with the financial capacity to take maximum advantage of the legalistic framework proposed, will be able to seek potentially huge payouts funded by Queensland taxpayers.

If members do not think that will be the effect, they should look at clause 19 of the bill and subsection (2) which deals with the amount of compensation. The whole bill deals with the private property impact statement and then goes on about the reduction in fair market value. Subclause (3) reads that for subsection (2), it is not necessary for the impact to have been identified in a private property impact statement. So we can dream up anything later anyway. That is what could happen.

It has the potential to see the donation of public resources—the member for Kallangur mentioned schools—and resources that could have otherwise been targeted to meeting local development, environmental and community programs to create windfalls for investors overseas. It makes overseas interests the winners and Queensland communities the losers. It is a recipe for impoverishing the remainder of the community to enrich some property holders.

The bill, if passed, would certainly have unexpected and bizarre fiscal consequences out of all proportion to the state's obligation to minimise overbearing legislation. Large compensation payouts to individuals would have a significant flow-on effect on budgets and regulatory evolution that would bequeath a less congenial society in economic, social and environmental terms for generations to come.

For instance, under section 54 of the Coastal Protection and Management Act 1995, government can declare or amend a coastal management control district by regulation. Such subordinate legislation would be captured by this bill and is just one of the triggers which could promote massive claims for compensation from the old white-shoe brigade.

The bill would require the state to pay compensation for loss of market value, even if the new restriction on clearing has saved the land-holder money by preventing uneconomic property development of marginal country and also save the community and future generations billions of dollars in repair, remediation costs and reduced capitalisation of natural assets. This is particularly objectionable in the case of leasehold land on which the trees are the state's property. The bill would require the state to pay compensation to others when it wishes to change by statute the way it deals with its own property.

The use of changes in market value to estimate compensation is not only risky but is illogical to anyone with a basic appreciation of the long-term imperatives of sustained resource management and inherent flaws within the land market. The proposed legislation extends the statutory right for compensation for seizure of real property to compensation for notional loss of intangible value on account of regulatory restrictions; in other words, for exercising parliament's prerogative to pass legislation. Any legislation which fetters any right of parliament to carry out its duty should be avoided.

The bill is based on a myopic view of the creation and maintenance of property rights and values. It is legislation that defines property which in turn preserves the entitlements and specifies the obligations. In western legal systems, without government there is no property. Regulations guarantee private property owners their freedom to manage. It is state regulation that guarantees the correctness of their title, legal access to their front gate and protection from fraud or intimidation by the commercial interests.

The value of land is determined not only by its productive capacity but also by the community. Land attracts a value because of the growth and development of the community in which it is situated, including the public infrastructure and other private investment constructed at no cost to the individual land-holder. The land-holder enjoys the benefits of public investment. This could be seen as part of the social contract between the individuals and the community. It could be argued that landowners have already received a significant subsidy from the community through increased land values associated with every law or every action which increases their property value, every road, every Landcare grant and every new school.

The bill does not provide for payment by land-holders of a tax whenever they enjoy rising land values from this source. One response to balance the fiscal impacts of liberal compensation provisions would be the levying of betterment—that is, by charging land-holders every time the state constructs some infrastructure or provides some service that increases property values. Betterment is simple enough if levied only on development approvals in urban areas, but if extended beyond that to general increases in property value the calculations would be enormously complex and land-holders would be sorted into winners and losers regardless of need rather than members of a shared community.

In relation to the Land Acquisition Amendment Bill, that really only duplicates well-established government policy and sets out and extends the basis on which courts allow compensation. If anyone wants to take into account what sort of compensation the people who proposed this bill are talking about, they should look at clause 4 and the new subsection (2A) (g). Any taxation liability, including capital gains tax, is going to be paid by the state. I would urge members to oppose the bills.