



Speech by

Hon. Kerry Shine

MEMBER FOR TOOWOOMBA NORTH

Hansard Thursday, 23 August 2007

LAND COURT AND OTHER LEGISLATION AMENDMENT BILL

Hon. KG SHINE (Toowoomba North—ALP) (Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland) (4.38 pm), in reply: Since my appointment as Attorney-General and Minister for Justice last year I have worked to ensure that the courts are provided with adequate resources. This bill amalgamates the Land and Resources Tribunal into the Land Court but ensures that there are appropriate and sufficient resources in the Land Court to deal with mining related matters.

The bill recognises the vital significance of the resources industry to the state economy. Despite the mining boom, the number of mining matters before the Land and Resources Tribunal has increased only slightly in recent years and by 10 per cent annually in the past two years. Two of the existing judicial officers of the Land and Resources Tribunal will be offered positions in the Land Court. Those judicial officers have been dealing with mining related matters for some years and have extensive experience in this area. In addition, the other members of the Land Court have diverse and substantial experience, including in mining matters. For the future, additional areas of expertise as criteria for appointment as Land Court members are added by the bill. This includes experience in mining or petroleum issues. Extra resources will be made available to the busy District Court so that this court can dispose of its workload efficiently. The President of the Land and Resources Tribunal will be offered appointment to the District Court with provision for compensation for any financial loss.

The changes made by the bill support judicial independence, particularly the convention that where a tribunal is abolished its members should be offered reappointment to another body on terms no worse than they enjoy currently. As this bill abolishes the Land and Resources Tribunal at a future date, this bill applies that convention to the existing judicial officers of the Land and Resources Tribunal. Under the bill, they will be offered appointments in other bodies with time allowed for acceptance.

The bill imposes an additional accountability measure on the Land Court in the form of a requirement for an annual report. It should be noted that, like other courts, the Land Court has an easily accessible web site through which its daily list, important decisions and information for self-represented parties can be accessed.

The bill will also involve Indigenous people in decision making. The bill establishes a new cultural heritage division in the Land Court and establishes the statutory role of Indigenous assessors to assist the Land Court in that division. The role of an Indigenous assessor is to advise the court about matters within their knowledge and experience relevant to a question arising in the proceedings. The Land and Resources Tribunal is retained for a period to dispose of matters arising under the alternative state provisions jurisdiction for those mining tenement applications and grants subject to that jurisdiction. It is anticipated that by the repeal date of 31 December 2011 there will have been a substantial exhaustion of these matters—that is, tenements will have expired. In addition, parties will be able to take advantage of the alternative approaches, such as making and registering an Indigenous land use agreement—ILUA—for the proposed tenement grant. Therefore, this bill achieves a realignment of the responsibilities of the Land Court to include mining related matters. It also provides additional resources for the District Court.

Some matters were raised specifically by honourable members. I commend all honourable members for their contributions.

Mr McArdle: We are as one.

Mr SHINE: They are as one. I commend on this occasion all honourable members on both sides of the House. Some of what the member for Darling Downs had to say towards end of his contribution was, in fact, relevant. Having said that, there are some issues that were raised by the honourable member for Caloundra that I might address at this stage as it might save time during the consideration in detail stage. The member referred to acting magistrates and stated that he was concerned about the possible need for re-education of retired magistrates who were appointed to act as acting magistrates. I can inform the honourable member that at the moment various measures are already in place to ensure a currency of knowledge. These include mentoring, in-house training and annual conferences. It is, of course, a matter for the court to organise its own training for the judiciary. It would be inappropriate for me to do that. But the member's point is taken on board. I am sure the Chief Magistrate has considered and will continue to consider the needs arising in that area.

The member also raised the issue of the retirement age and suggested extending the retirement age of magistrates from 65 to 70. The member asked what was my thinking and what was the government's thinking in relation to that. This is a matter that is open for consideration. The government has no current intention to change the retirement age.

With respect to questions of costs generally, I was at the Yeppoon conference and heard the Chief Justice's address. I believe that the provisions in this bill reflect what he was requesting the executive do. In fact, I cannot recall from what he said and from what I read in this bill any differences at all.

In relation to the question of the jurisdiction of the Federal Court in native title matters, the Land and Resources Tribunal itself will be kept until 31 December 2011. That is because of what are known as the alternative state provisions. Between 18 September 2000 and 31 March 2003, mining tenement applications were made which were subject to the alternative state provisions jurisdiction, which deals with certain matters under the Commonwealth Native Title Act 1993. The Federal Court does not have jurisdiction for these matters for that three-year period. The government is determined to ensure that the validity of those rights and interests that were created during that period are protected. This bill ensures their validity and it ensures that the tribunal remains in existence in order to fulfil functions as necessary. Members of the Land Court will be able to sit as members of the tribunal for that purpose. They will be the same people, but will have different purposes. In terms of the Federal Court, I believe that the member for Caloundra may be referring to the native title claims determination process where the Federal Court has exclusive jurisdiction.

The question was raised by, I think, the member for Darling Downs as to why there should be a separate cultural heritage division. The Land and Resources Tribunal has jurisdiction to deal with various Indigenous related matters. These include registered Indigenous land use agreements. In recognition of the significance of these Indigenous related issues, a new cultural heritage division will be established in the Land Court. The tribunal's current jurisdiction is transferred by the bill to the Land Court through this cultural heritage division. Based on previous experience, the number of matters to be dealt with is expected to be small. The creation of the cultural heritage division is essential to ensure that the Land Court has the jurisdiction that is acquired by this bill, such as the Aboriginal Cultural Heritage Act and the Torres Strait Islander Cultural Heritage Act 2003.

The honourable member for Darling Downs also raised the question of benefits for rural Queensland. There are, in fact, a range of benefits for Queensland, particularly rural Queensland, in this bill. These include streamlined processes, fostering judicial experience available for mining matters and increasing the number of District Court judges, bearing in mind the circuits of the District Court that are conducted throughout Queensland.

Finally, the honourable member for Darling Downs in his contribution referred to his information that there were delays in the hearing of certain matters in the Land Court and that the Land and Resources Tribunal was underutilised. Of course, that is the nub of why we are doing this merger. It is to transfer those available and excess resources from the tribunal to the Land Court to make things more efficient and to enable access to justice in this jurisdiction to be effected more quickly. I commend the bill to the House.