Speech by

John-Paul Langbroek

MEMBER FOR SURFERS PARADISE

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VEGETATION MANAGEMENT AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—Lib) (6.11 pm): I rise to make a contribution to the debate on the Vegetation Management Amendment Bill 2008. In doing so I put on record my support for my coalition colleagues and congratulate the shadow minister on his presentation and note my serious concern about the underlying motive of the bill. Much has been said about the practical effect of this legislation on landowners. One of the most notable aspects of this bill of course is its retrospectivity. The member for Clayfield spoke at length on this point, and I, too, want to reflect on the wider implications of this bill. This bill represents ex post facto law. This is evident not only in the legislation at division 5 but also in the minister's second reading speech where he stated unequivocally—

The bill makes clear that the amendments have retrospective effect for all purposes, including all civil and criminal proceedings ...

Queenslanders have every right to be wary of a government which imposes retroactive effect on any legislation, particularly that which attaches criminal liability. Generally, the very notion of legislation that is retrospective in effect is an affront on the judiciary and the populace to which it applies. This is because it assaults the very pillars upon which our legal system was built—the principles of the rule of law and the separation of powers.

Ex post facto or retrospective law means from something done afterward. It is a law that effectively changes the legal status of facts and relationships and, in many cases, the legal consequences of events that existed or occurred before the event—that is, the passage of the retrospective legislation. The question that instinctively arises whenever retrospective legislation is brought before this House is whether it adheres to principles of jurisprudence and follows the long-established rules of the Queensland parliament. That is why I note the early references to the *Cabinet Handbook* of the Goss Labor government. Page 65 outlined policy regarding retrospective laws. It states—

Rights should not be removed or liabilities imposed retrospectively unless there are exceptional circumstances.

The Goss bible on legislative standards does not define exceptional circumstances. Indeed, the term has been subject to debate in the past—most recently in the federal parliament with respect to exceptional circumstances relief for farmers affected by drought. John Anderson, the former Deputy Prime Minister, suggested exceptional circumstances meant rare and severe events. When I read this bill, I find it difficult to consolidate its objective with such high standards. I cannot envisage the rare and severe circumstances that would justify the enactment of retrospective legislation in this parliament with respect to vegetation management. As my colleagues have stated, it appears more a case of a poorly drafted law being manipulated to suit the Bligh government's agenda. Such motive might amount to an abuse of parliamentary sovereignty. There is no question that the legislature has the power to enact ex post facto laws where necessary. It is a sovereign right of parliament and the Constitution does not prohibit the passage of such law in certain circumstances. However, it is not an absolute right.

The contentious nature of retrospective legislation has not escaped many members today, and we note the current government has a penchant for passing such laws. I think there is a debate as to whether it is 149 times or 158 times since 1998-99. The Bligh government's Queensland legislation handbook cautions against retrospective legislation, stating there must be good reason for parliament to enact laws

that apply before the event. Chapter 7 of the handbook addresses fundamental legislative principles. It states—

Strong argument is required to justify an adverse effect on rights and liberties or the imposition of obligations retrospectively.

It goes on to suggest that retrospective laws should generally be opposed but for situations where legislation is curative. I do not believe this bill satisfies such circumstances.

The issue of retrospectivity was examined in the case of Liyanage v The Queen. In that case it was established that as a matter of principle criminal culpability should be determined only on the basis of established rules and should not be applied retrospectively. This bill would give the state the power to prosecute persons for past acts carried out within the bounds of the law that this bill attaches criminal liability to. It is repugnant to the concept of the rule of law—that government authority is legitimately exercised only in accordance with written publicly disclosed laws and enforced in accordance with due process.

International and common law condemns retrospectivity in law. In the High Court case of Maxwell and Murphy, Chief Justice Dixon said—

The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to past events.

Again, in Watson and Lee the court said—

To bind a citizen by a law, the terms of which he has no means of knowing, would be a mark of tyranny.

As an aspect of law, retrospectivity in some cases has been struck down by the courts as unconstitutional. In the definitive War Crimes Act case of 1991, the High Court deemed legislation that sought to enact retrospective criminal laws constitutionally invalid on the basis that it violated the rule of law and implied rights of judicial process and procedural fairness that arose out of chapter 3 of the Commonwealth Constitution. This position is consistent with international law which generally condemns ex post facto law, particularly where it imposes criminal liability. Article 15 of the United Nations International Covenant on Civil and Political Rights, to which Australia is a signatory, states—

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.

The European Convention on Human Rights also denounces the concept of retroactive laws. The Queensland coalition recognises that there may be occasionally rare and exceptional circumstances which justify the enactment of retrospective legislation. The Premier's legislation handbook states that such laws will be more easily accepted if they have a beneficial impact on those they seek to govern. It cannot be said that the Vegetation Management Amendment Bill 2008 achieves this end, nor does it invoke any other guiding principles on retrospectivity, including effectiveness of law, justice, reasonable expectation and/or effective administration. In fact, it is because of this ineffective administration that this bill is before the House. The members opposite could not get it right the first time, so they are having another crack at it at the expense of Queenslanders. What it means is that Queenslanders cannot have confidence that they are living by the law if the government can change it on a whim.

In closing, I want to reflect on comments the former member for Robina made during my first term in the parliament which inspired the way I view retrospective legislation such as the bill now before the House. He said that retrospective law changes the ground rules on which we do business. This can only be justified if there is a bona fide need and genuine purpose to amending the law. As this bill does not meet such a standard, I cannot support it.