Speech by

Jeff Seeney

MEMBER FOR CALLIDE

Hansard Tuesday, 27 October 2009

VEGETATION MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Mr SEENEY (Callide—LNP) (12.30 pm): The Vegetation Management and Other Legislation Amendment Bill 2009 is the eighth piece of legislation dealing with vegetation management that this government has introduced into this House since 1999. Eight pieces of legislation in less than 10 years about an issue that has at its heart a dependence on long-term decision making is an indication that for this government vegetation management is not about land management practices or preserving any environmental factors; it is simply a political opportunity that the Bligh Labor government grasps at every possible opportunity to advance its political cause. It has done it now on eight separate occasions in less than 10 years. Every time this government can see some political advantage in changing the vegetation management laws, it seizes the opportunity with both hands and introduces into this parliament another piece of legislation for its own political advantage.

And so it is with the piece of legislation before the House this afternoon. The bill before the House this afternoon is about politics. It is not about trees, vegetation or saving anything. It is not about providing better environmental outcomes. It is not about providing better land management outcomes. It is about base politics. It is about a political opportunity for a failing government. It is about repaying a debt that the government incurred in the last election campaign when it believed that it was in trouble politically. There was a deal done for preferences in 10 seats that it believed it needed to win. The issue of vegetation management was considered to be completely expendable in achieving that preference deal.

No-one should have been surprised by that, because since the original vegetation management legislation was introduced in this House in 1999 the changes that we have seen introduced progressively in the seven pieces of legislation that have followed that original legislation have all been politically motivated and have not been about science based land management. The changes have not been about addressing any established need; they have been about politics. I say very clearly to those people who might take an interest in this issue of vegetation management that they need to understand very clearly that the government's agenda is a political one. It is not about producing the best outcome for Queensland's landscapes or Queensland's biodiversity. It is not about producing the best outcome for Queensland landholders. It is about giving the government an opportunity to stand up in this parliament, as the minister has already done, and make outrageous and untrue accusations about what we on this side of politics might do. It is about giving the reliable old political football another kick.

The people in the great urban conglomerates of Queensland need to understand that Queensland land managers are, I believe, world leaders in managing the land that they are custodians of. I believe that the people of Queensland who do not have that close connection with the great land mass of Queensland can be confident that those Queenslanders who do want to manage that land in a very responsible way. Anyone who takes even a passing interest in land management practices across those broad areas of Queensland would have to be impressed by the level of professionalism and management that is applied to those great assets. It behoves the government to recognise the benefits of those men and women and

the great advancements that have been made in land management over the years rather than continue to use this issue as a convenient political opportunity every time it gets into some sort of political fix.

A responsible government would recognise the skills and abilities of landholders and the great store of intergenerational knowledge that has been accumulated by families who have managed areas of land for over 100 years in many cases. A responsible government would work with those people and provide the right incentives and assistance for those people to ensure that that level of land management continued to improve and continued to produce the outcomes that we all want to see, not least of whom the people who own and operate the land want to see because it is their core asset.

At its very basis the philosophy that this government adopts towards land management is absolutely flawed. The government would have us believe that the rights and interests of people who manage the land that is their core asset—in a great many cases their only asset—need to be subjugated to the power of some faceless bureaucrat who has five minutes experience and no local knowledge or long-term interest in the management of those land areas. Of course that is a nonsense. The best people to manage those land areas are those very people whose futures and family's futures depend upon them. Given the right tools, incentives and opportunities, I believe that those people have demonstrated that they are world leaders in managing landscapes such as are typical across Queensland.

I have no doubt that we will hear in this debate, as we have heard in the seven debates that have preceded it in the last 10 years, the incredibly ridiculous accusations that the current minister and members like the well-known member for Cook over there like to make about Queensland land managers generally and about those of us on this side of the House who understand the intricacies and detail of this issue infinitely more than the members on that side of the House. I have no doubt we will hear all of those accusations again. But the people of Queensland should know that we support, as we have always and will always support, responsible land management. We support the preservation of high-value areas and we support the concept of sustainability as an essential part of land management. We support the property rights of those people who own land areas in Queensland. We support a legislative system that achieves the proper balance between the rights of those people who own and manage the land as their basic livelihood and the expectations of the community.

We support achieving a proper balance in what is sometimes a difficult balance to achieve. We strongly support the concept that, where an individual's rights have to come second to the expectations of a community, then the community must pay adequate compensation to the individual who forgoes the rights that they previously had for the benefit of the community. Since this vegetation management legislation was first introduced in 1999 we have constantly argued those concepts. We have constantly argued for the rights of the people who own and manage that land to be respected. We have constantly argued for their skills and abilities to be recognised and respected.

However, the legislation before the House this afternoon does not do that. It is politically based legislation. It is the result of a preference deal. It takes no account of the long-time scales that are involved in land management. It continues to destroy the confidence that land managers should have that they can take decisions for the long term. The decisions that are taken about land management and vegetation management are undoubtedly decisions for the long term. They are intergenerational decisions. Decisions that land managers take, in the main, will affect their children and their grandchildren as much as they will affect them. How then can they adequately make those decisions in a regulatory regime that has changed eight times in 10 years? That is the absurdity that members of the government fail to grasp every time they seek to bring a little bit more political advantage from the vegetation management issue. Eight times in 10 years they have changed the regulatory regime that manages an area where long-term decisions are essential. Yet as they introduced this legislation into the House it is obvious that they still have not recognised that.

We were told in 2006 that that had been recognised, that the legislation in 2006 drew a line in the sand, that it would provide the certainty that landholders needed; it would provide the certainty that was supposedly then recognised to be an essential part of achieving the sustainable outcomes that we all wanted to see. The 2006 legislation clearly differentiated between remnant vegetation and regrowth areas. At the core of the certainty that landholders were offered was that clear distinction that remnant vegetation would be protected to fulfil the expectations and the needs of the community and that the regrowth areas would be available for landholders to use as their productive land base. That was the line in the sand. It was the line in the sand that landholders accepted reluctantly because there was an enormous number of flaws in the defining regulations that identified remnant vegetation and defined regrowth. But landholders gritted their teeth, accepted that at least they would have some certainty following the passage of the 2006 legislation and, to their credit, they got on with it and they sought to work within that legislation. That was in 2006.

Then the government found itself in political trouble in early 2009. All of the promises that were made in 2006 were thrown out the window for cheap political advantage. That clear line between remnant vegetation and regrowth vegetation suddenly was rubbed out. The assurances that were given to

landholders that should have been the basis for them proceeding on a secure decision-making process were taken away for pure political advantage.

That is one of the great shames about this legislation. It is one of the great tragedies of the approach that this government has taken. I do not believe the confidence that landholders should have in making those decisions can ever be re-established. It can never be re-established. The example has been set. How can anyone expect landholders not to be fearful of another political deal at the next election? How can landholders ever be sure that the regulations will not continue to be changed? Of course they cannot be sure of that. They have to assume that the next time the Labor government finds itself in trouble there will be another political deal. They have to assume that the regulations will continue to change just as they have changed eight times in less than 10 years. Faced with that reality of a constantly changing regulatory system that continues to erode their management rights, landholders, unfortunately, I believe are forced to take decisions that they would not otherwise take. That is what the government does not understand. That is what backbenchers who come in here as some sort of a cheer squad do not understand. The meaningless rhetoric that they sprout in here actually produces outcomes that are the opposite of what they seek to achieve because they do not understand what they are doing, they do not understand what they are talking about and they do not listen and they do not respect the people who do understand these things.

I have spoken at length about other vegetation management bills in this House and the extent to which they impinge on the basic concepts of civil liberties and the basic legal rights that we all take for granted in a whole range of other areas—legal protections that every Queensland citizen has. The vegetation management legislation since 1999 has been unique in the way that it has taken away the civil liberties and the legal protections from landholders. It has taken away the civil liberties and the legal protections that every other Queenslander takes for granted.

This piece of legislation is no different. Honourable members do not have to take my word for that. I would direct every member to the report that was tabled in this parliament this morning by the Scrutiny of Legislation Committee. I have read a lot of these reports over the years. I actually served on the Scrutiny of Legislation Committee. I understand how they read through the muted language that the committee is forced to adopt when it reports to the parliament. The report that was tabled this morning by the Scrutiny of Legislation Committee is scathing about this legislation. It is scathing not about what the legislation does in relation to the regulations about clearing but about how it meets basic legislative standards, how it complies with the Legislative Standards Act and what it does to civil liberties, legal rights and legal protections in a whole range of areas. Anybody with a passing interest in civil liberties or a passing interest in the legal protections that we all take for granted should read that report and be horrified.

I want to direct members' attention to the report in some detail. It looks at how this particular bill addresses fundamental legislative principles with regard to the rights and liberties of individuals. The *Legislation Alert* states—

The committee notes that new sections ... of the Vegetation Management Act must be read with a number of other legislative provisions:

- section 4.3.1(1) of the Integrated Planning Act (Carrying out assessable development without permit)—maximum penalty of 1665 penalty units ($166 500);
- schedule 8 (Assessable development and self-assessable development), part 1, table 4 (Operational works), item 1A (For clearing native vegetation on freehold land and indigenous land) or item 1B (For clearing native vegetation on leasehold land used for agriculture and grazing) ...

The committee goes on to make what I believe is an enormous understatement. It states—

Accordingly, liability for an offence is established by reference to quite a number of provisions contained within two Acts. This arrangement would make it difficult for an individual to establish the requirements of the law and/or liability for an offence.

That is an enormous understatement, but the message that the committee has communicated to the parliament is a very real one. The whole process of vegetation management has now become so convoluted, complex and confused that landholders face the very real threat of inadvertently falling foul of the legislation. However, members who have watched the development of this legislation know that that is no excuse. Under this legislation it is no excuse to inadvertently commit an offence. It is a defence that can be argued everywhere else in our legal system, but not with regard to this legislation. The degree of confusion and detail is now such that the Scrutiny of Legislation Committee has raised very real concerns that I and other people have also raised when considering previous vegetation management legislation.

The committee has raises concerns about the administrative power that the legislation provides. It makes the point—

... *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether ... the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Once again, in relation to the Vegetation Management Act that is a gross understatement. None of the administrative powers set out in the Vegetation Management Act and reinforced and added to by the

bill before the House is sufficiently defined and none of them is subject to appropriate review. Uniquely, this bill rules out that appropriate review. This bill is breathtaking in its lack of definition of those administrative powers. All of those powers are subjective.

The bill before the House is code dependent, but we have not even seen the code. The bill before the House requires landholders to comply with a code that is assessed by the officer who gets out of the Toyota at the front gate. That is the sort of administrative power that is given to junior departmental officers who have had five minutes experience, and that administrative power is given over landholders who have over 100 years of accumulated intergenerational knowledge. This bill takes the administrative and regulatory power from those landholders and gives it to junior departmental officers acting in the name of the state. However, the power is not defined. Under this bill the officer assesses whether or not the code has been complied with, but we have not even seen the code. We do not know how prescriptive the code is. I know with certainty that the code will be able to be interpreted by a particular person's individual philosophy.

The committee goes on to talk about clause 32 of the bill. It states—

Clause 32 would confer the chief executive or administrative officer with significant administrative powers. New section 54A to 54C would replace existing section 55 of the *Vegetation Management Act r*egarding compliance notices. The new sections would confer powers to:

- give a person a stop work notice if the official holds a reasonable belief that a person is committing a vegetation clearing offence (new section 54A);
- give a person a restoration notice if the official holds a reasonable belief that, before or after the commencement of the legislation, a person has committed a vegetation clearing offence and the matter is capable of being rectified (new section 54B)...

The officer decides what needs to be done to rectify the offence that he or she decided had been committed. That is the sort of ill-defined power that this bill gives to individual officers. It allows them to make decisions that cannot be appealed or reviewed. It is a regulatory system that specifically rules out or takes away the right of appeal and review. The bill states that decisions cannot be appealed or reviewed under any act whatsoever. It takes away any check or balance in the system. Is it any wonder that the committee has expressed such concern?

The committee states that the new sections would also confer powers to 'use reasonable force and take any other reasonable action to stop a contravention' that the officer feels is necessary. Once again, there is no check or balance; there is no right of appeal. The committee's report states—

The terms 'reasonable force' and 'other reasonable action' used in new section 54C are not defined in the Act and there may be scope for the powers to be conferred to have significant impact upon rights and liberties of individuals.

The committee's report goes on to outline a whole range of other issues. It states—

New section 68CB of the *Vegetation Management Act* would prevent a person exercising a right of review under the *Judicial Review Act 1991* in relation to a decision regarding:

- an application for a property map of assessable vegetation...; or
- certification or amendment of the regional ecosystem, remnant and regrowth vegetation maps by the chief executive.

Section 26 of the report states—

Where legislation purports to oust the inherent and statutory jurisdiction of the Supreme Court to review the legality of decisions and actions, the committee considers carefully whether the legislation has sufficient regard to individual rights and liberties or obligations. Generally, the committee adopts the view that privative clauses should rarely be contemplated and even more rarely enacted. They represent a parliamentary attempt to deny the courts a central function of their judicial role, preventing courts pronouncing on the lawfulness of administrative action.

That is what this bill does. It prevents the courts from pronouncing on the lawfulness of an administrative action, in most cases decided by a junior-level bureaucrat in a regulatory system that is open to interpretation, depending on the particular philosophy of that junior-level officer. It takes away completely the rights of landholders to appeal or challenge that decision. It takes away completely the rights of landholders to manage their own land. It gives those rights and that power to the state. In this case, those rights and powers are exercised by very junior officers of the state.

The committee goes on to talk about the dangers of a situation where a person cannot appeal. It states—

New section 68CC would provide that a person cannot appeal under any Act or other law about:

- a delay in agreeing to make a property map of assessable vegetation ...; or
- certification or amendment of a regional ecosystem, remnant and regrowth vegetation map by the chief executive.

The committee expresses concern about the bill giving to individual officers the power to enter premises. It refers to the Legislative Standards Act and states—

For example, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The report states—

Clause 30 would amend section 30 of the *Vegetation Management Act*. Existing section 30 confers authorised officers with powers to enter premises only with consent or with a warrant.

The bill extends the power to enter premises. The taking away of the protection from self-incrimination—

Madam DEPUTY SPEAKER (Ms van Litsenburg): Order! The House will resume at 2.30.

Sitting suspended from 1.00 pm to 2.30 pm.

Mr SEENEY: Before the lunch break I was referring to the report of the Scrutiny of Legislation Committee and the scathing comments that the Scrutiny of Legislation Committee has made about the legislation before the House. Those comments relate to the gross failure of this legislation to meet any of the fundamental legislative principles, particularly in terms of preserving the rights and liberties of individuals, the subjective administrative power that the legislation grants without checks or balances, the powers to enter premises, the failure to protect people against self-incrimination and the retrospective operation of the legislation. The report goes on to talk about the provisions of the bill that allow for the compulsory acquisition of property without compensation. It also makes a very clear point about the bill not having sufficient regard to the institution of parliament insofar as when the bill becomes an act it can be amended other than by way of another act—that is, it can be amended by the minister.

In the Scrutiny of Legislation Committee's report I think there is reason for every member of this House to oppose this legislation. Irrespective of what the legislation deals with, it offends so many of the basic fundamental legislative principles that it should be opposed by every member of the House. It should certainly be opposed by any member of the House who has the smallest understanding of the legal principles involved. It certainly should be opposed by every member of the House who has even a passing interest in fairness, justice and civil liberties. I look forward to some of the members on the opposite side of the House who have spoken at length about those things opposing this legislation on the basis of the Scrutiny of Legislation Committee's report that was tabled in the House this morning.

I think that report should concern every member of the parliament. It is unfortunately though a continuation of an approach that has been taken to vegetation management legislation since 1999. The command and control and the regulate and prosecute approach has now become so convoluted and so complex that the only way the government can see it working is to strip away the legal rights and the normal administrative checks and balances in an attempt to make work a piece of legislation that as long ago as 1999 those of us who understood the situation were warning would never work. We knew that it certainly would never produce the outcomes that we all wanted to see.

We should be introducing legislation that is based on science. This legislation is based on politics. We should be introducing legislation that respects landowners' property rights and respects landowners' knowledge of the land that they own. This legislation quite clearly—not on my say-so but on the say-so of the Scrutiny of Legislation Committee, a bipartisan committee of this parliament—does not do that. We should be introducing legislation that conforms with the basic legislative standards. This legislation does not do that.

Ms Grace interjected.

Mr SEENEY: I invite the member for Brisbane Central, who seems to have an opinion on it, to read the report of the Scrutiny of Legislation Committee and to stand in this place and explain how anyone can vote in favour of this legislation given the report of the Scrutiny of Legislation Committee that has been tabled for the benefit of all members. We should be introducing legislation into this place that engages stakeholders in a positive way, that provides safeguards against extreme cases and that recognises the complexity of the landscapes and the ecosystems that it seeks to regulate. This legislation does none of that. It continues with the flawed approach to vegetation management that the government has pursued for political purposes since 1999.

In terms of what the legislation itself does, it seeks to regulate the control of regrowth in an increasingly complex way. It provides for 50-metre buffers around watercourses in the so-called reef catchments. But how it seeks to regulate regrowth we still do not know because, as I said a moment ago, it is code dependent and the code has not been made available to us and the code has not been made available to stakeholders. The code itself is at the discretion of the minister and could involve anything. We wait with bated breath to see just what the code involves—the degree to which it is subject to interpretation and the degree to which it is restrictive. Until that code is available, the impact that this legislation may or may not have on the management of those areas in reality is something that we could only guess at.

The issue that we have before the House is that this legislation is so open to interpretation, combined with an administrative system that has been deliberately stripped bare of all the normal legal checks and balances, that no member of the House should support it. It is bad legislation. It is the result of a government that has failed in terms of administration. There is no doubt that we will be opposing it.

I reiterate the point that I made at the beginning of the consideration of this legislation. In opposing this legislation, we want to see a system of vegetation management introduced into Queensland that

recognises the landholders' property rights, that recognises the great store of knowledge and ability that landholders have accumulated, and that ensures that we strike the right balance between protecting areas that need to be protected and achieving sustainable production from the areas that are available to be a productive base. But, most of all, what we have to achieve is a system in which landholders can have confidence—indeed all stakeholders can have confidence—and which provides security for those long-term decisions that are part and parcel of land management. Until those decisions can be made in a regulatory system that is secure and that people can have confidence in, we will not achieve the sustainable outcomes that everybody wants to see.

There is no way that landholders can feel that confidence at the moment as they consider the implications of the eighth piece of legislation to pass through this House in less than 10 years. For the eighth time, the rules are being changed in response to a political need of the government. I think that the management of Queensland's ecosystems and landscapes is much too important to be traded away in political deals. It is inexcusable for legislation to be generated by that sort of base politics at any time. It is even more inexcusable when the decisions that are involved have such far-reaching intergenerational consequences for the people who are affected by them. We will deal with some of the detail of the legislation in the consideration in detail stage. No doubt we will seek from the minister some explanations about how the particular codes will work and how the government sees this legislation providing any sort of positive outcome.

Unfortunately, I do not believe it will. It is simply all about politics. We will certainly be opposing that legislation for that reason as well. In conclusion, I would urge all members to once again read in some detail the report of the Scrutiny of Legislation Committee. Read the comments that have been made by the Scrutiny of Legislation Committee. Understand the extent to which this legislation fails all of the basic fundamental legislative principles. Even if members do not take the time to understand the more complex issues of landscape management and regional ecosystem management, on the basis of that report alone there should not be a member in this House who has any qualms in opposing this legislation. We on this side of the House will certainly be doing that.