Speech by

Jon Krause

MEMBER FOR BEAUDESERT

Hansard Wednesday, 13 February 2013

ABORIGINAL AND TORRES STRAIT ISLANDER LAND HOLDING BILL

Mr KRAUSE (Beaudesert—LNP) (5.53 pm): I was a member of the Agriculture, Resources and Environment Committee that considered this bill through the committee process and was also privileged to travel to Cairns in North Queensland where we held public consultation with members of the community who had an interest in it. This bill addresses a number of longstanding issues arising from the operation of the Aborigines and Torres Strait Islander (Land Holding) Act 1985, which I will refer to as the landholding act. There are complicated anomalies that have developed through the passage of time and despite the passage of superseding legislation in the form of the Aboriginal Land Act 1991. The landholding act was intended to allow the state's Aboriginal and Torres Strait Islanders to obtain perpetual leases for residential purposes and leases for other purposes over land in Queensland's Indigenous communities. As the minister has previously said in this place, many people applied for these leases and while 223 were granted, many people who applied for and who were, in fact, eligible to receive those leases never, in fact, had their leases registered.

During the committee's review of this amending act it was brought to our attention that in the Torres Strait Island Regional Council area 178 lease entitlements were known to exist—that is, 178 applications had been validly made for the granting of a lease under the landholding act, but those leases had never, in fact, been granted to the applicants. In several other Aboriginal council areas there were 44 lease entitlements known to exist. I make the point that these are entitlements to leases that are known to exist and there could be other entitlements which also exist but have not been brought to the attention of the department or simply have been forgotten about or lost in the passage of time. These entitlements still exist today, some 21 years after the Aboriginal Land Act came into effect. The provisions of the landholding act ceased to operate in 1991 so as to enable no more entitlements to be created under that act.

As the minister has stated, the bill at hand seeks to sort out these issues of entitlements which have not had underlying leases granted, enabling residents who have built homes on a parcel of land, in the right circumstances—that is, where there is an entitlement to a lease and where homes have been constructed within the confines of the lease area and where there are no encroachments on that area—to be recognised as a lessee of that land. This bill enables those entitlements to be cleaned up, for want of a better term, and that is a key function of this bill. In some cases individuals who applied for a lease did so in a way which was not in compliance with the landholding act. Notwithstanding this noncompliance, houses have been built and improvements have been made to property in some cases on the assumption that the occupiers of the land were, in fact, the holders of lease entitlements. That is, in the words of the committee's report, there was, in fact, a mistaken belief that the application was approved lawfully.

To deal with scenarios like this, the bill before us contains provisions in clause 26 for the provision of a hardship certificate by the minister which would enable the applicant to be granted a lease under the landholding act. This was expanded upon by the department at the hearing conducted by the committee at Thursday Island to which, unfortunately, only three members of the committee could attend: Mr Rickuss, Mr Gibson and Ms Trad. The committee's report highlights the issue of whether these leases granted under hardship certificates would be subject to native title or not, given that the leases granted pursuant to the landholding act prior to 1991 were not subject to native title prior to the High Court's decision in the

Mabo case in 1992. This is no doubt an issue that requires clarification and may, in any event, end up being tested in judicial proceedings given the interplay between Commonwealth native title law and Queensland property legislation.

One of the issues the committee seeks the minister's clarification about is the cost of surveying property affected by the landholding act, land which is deed of grant in trust land or, as it is commonly known, DOGIT land. Leases have been granted under the landholding act without any requirement for surveys to have been conducted. In some cases land was merely described by location or features. Descriptions were of varying quality. As a result, people have built properties where they thought their lease tenure existed but when a survey is undertaken it has been discovered that construction has occurred on a different parcel of land.This is a significant issue for the legislation and the committee looks forward to the minister's clarification on it, if that clarification has not already been given.

The bill also makes amendments to the Land Act 1994 to allow for the subdivision of DOGIT land by the trustee of the DOGIT, which in most cases is the local council. In addition, the bill provides encouragements for pastoralists and native title holders or native title claimants to enter into Indigenous land use agreements. It will enable the removal of some of the barriers that have impeded access to pastoral leases by traditional owners, such as public liability issues, through providing a 25 per cent discount on rent for those pastoralists, for a period of five years following withdrawal from native title claims in the federal court, in exchange for pastoralists assuming responsibility for public liability insurance. A rental concession can be given to those pastoral lease holders. That is an important incentive for those ILUAs to be entered into. It is not an open-ended rental concession; it is a concession that must be applied for before 30 June 2018.

As I have mentioned, there are key conditions under which the concession will be granted: the lessee must withdraw from native title claims, current or future; the lessee must accept responsibility for payment of any public liability insurance under the access and use agreement; and the agreement must become a registered Indigenous cultural interest in the leased land. This is an important way to hasten the tidying up of issues surrounding pastoral lease claims with Indigenous access rights.

I refer to recommendation No. 3 in the committee's report, in relation to communication with the affected communities. It states—

The committee recommends that the Minister liaise with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs to produce and disseminate information in relation to the Bill in languages familiar to Aboriginal and Torres Strait Islander communities, such as, but not limited to, Creole.

Before coming to this place, I worked as a solicitor.

Mr Bleijie: Hear, hear!

Mr KRAUSE: I take the interjection from the Attorney-General. I have to say that some of the concepts contained in the landholding act are difficult for me understand and I have worked in property law. I would estimate that in North Queensland and Far North Queensland the average person would have zero chance of understanding some of the concepts involved in this bill. I will not take the interjection from the minister. The people of Beaudesert are very intelligent, but probably even they would not understand some of the concepts in this bill. It is a very complicated bill. The concepts involved are alien to many aspects of Queensland property law. It is a unique system that was set up for a unique purpose. This bill goes some way towards simplifying the system under which people are living in those communities and under which their land tenure operates. It may even go some way towards enabling a better understanding of their rights to improve the land and their rights to sell the land. It may even provide some rights to sell and mortgage the land in the future. It is a step in the right direction to enable that to occur.

At the committee hearing in Cairns at which I was present, the overwhelming consensus of the people who made submissions was that this bill does not go far enough. At that hearing the submitters wanted to know when the government was going to bring in legislation to enable freehold title to exist in the communities affected by this bill. I understand there are a number of issues interwoven when it comes to Indigenous title and native title in those communities, and there are issues with the interplay of freehold title with native title or community title.

At the hearing we heard from one submitter who occupies—I cannot say he owns, because he does not own—several hundred acres of land around Hope Vale. The community owns the freehold for that land, but he occupies it. His family has occupied that land for many years and they have made considerable improvements to it, but he does not own it and he cannot mortgage it. The family cannot grow a business there or use the land, which they have put their own money into, to start their own business or expand their business because of the difficulties in title and the difficult issues that arise when there is native title intersecting with private ownership.

We need to address those issues. I am pleased to see that the member for Cook is very keen to address these issues and has pushed forward a discussion paper on freehold title coming into Indigenous

and, in particular, Torres Strait Islander communities. This bill is a step in the right direction towards giving the freedom and opportunity to own land in Indigenous communities.

This is a good bill that cleans up a messy act. It is a step in the right direction for Aboriginal and Torres Strait Islander people in this state who, as the submitters to the committee indicated, are very keen to see freehold title be more prevalent in their own communities. I commend the minister and the department for bringing this bill to this place. Certainly, I will be voting for the bill and I commend it to the House.