Speech By

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LAND ACCESS OMBUDSMAN BILL; GASFIELDS COMMISSION AND OTHER LEGISLATION AMENDMENT BILL

Mr CRIPPS (Hinchinbrook—LNP) (4.50 pm): I rise to respond on behalf of the LNP opposition to the debate on the Land Access Ombudsman Bill 2017 and the Gasfields Commission and Other Legislation Amendment Bill 2017 being considered by the House in cognate. From the outset I want to indicate to the House that the LNP will not be opposing either of these two bills. Firstly, I will address the Land Access Ombudsman Bill. The explanatory notes accompanying the bill state—

The primary objectives of the Bill are to:

1. establish an independent land access ombudsman with the jurisdiction to provide an independent service that applies to disputes relating to an alleged breach of a:
   a. conduct and compensation agreement ... between an owner or occupier of private land and a resource authority holder; and
   b. make good agreement ... between the owner of an impacted bore and a resource tenure holder;
2. save transitional provisions in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 that would otherwise expire in September 2017 and, as a consequence, amend associated provisions.

The explanatory notes accompanying the bill state that the objective of establishing a Land Access Ombudsman is to provide the owners and occupiers of private land and the holders of a resource authority with an independent body to investigate and make recommendations to resolve a dispute of an alleged breach of a CCA or an MGA and to facilitate the resolution of disputes between the parties to a CCA or an MGA with a view to preserving a cordial relationship between these parties. No-one can really argue with that objective and it is primarily for that reason that the LNP opposition will not oppose this particular bill. However, it is worth noting that, despite this worthy objective, there was a variety of views about the scope and role of the proposed Land Access Ombudsman amongst submitters to the Infrastructure, Planning and Natural Resources Committee during its consideration of the bill, and I will discuss those issues in more detail later in my contribution.

The Infrastructure, Planning and Natural Resources Committee considered this bill and it made one recommendation, and that was that it be passed. The background of this bill, as the minister mentioned earlier, is that in December 2015 the Palaszczuk government commissioned an independent review of the Queensland GasFields Commission. That review was conducted by Robert Scott, a retired member of the Land Court. The terms of reference for the review included a requirement to investigate whether an alternative model such as an independent resources ombudsman was needed to provide a mechanism for dispute resolution between resource companies and landholders. Mr Scott's report contained 18 recommendations and was released on 1 December last year. The report raised concerns that there was currently no avenue available to landholders or resource authority holders to discuss any complaints concerning an alleged breach of a CCA or an MGA once any dispute resolution provisions in the agreements had been exhausted other than going off to court or to arbitration.

Interestingly, recommendation 10 of the report recommended the establishment of something that Mr Scott described as an office of the petroleum and gas moderator, with the moderator's role being to mediate disputes between parties about alleged breaches of CCAs and MGAs. It was also

recommended that the moderator be provided with the ability to provide those parties with non-binding recommendations. Mr Scott did not, however, recommend that the moderator be called an 'ombudsman' on the basis that ombudsmen have traditionally performed a different role in the area of public administration and all members of the House should be aware of that in terms of their consideration of this bill. As I mentioned, Mr Scott, a former Land Court member, did not recommend that an ombudsman be established. It was the Palaszczuk government that has resolved that an ombudsman is the best model for the purpose of establishing an independent body to assist parties with disputes related to alleged breaches of a CCA or an MGA.

Another issue that needs to be brought to the attention of the House is that while the focus of Mr Scott's recommendation 10 was on the petroleum and gas industry the government has also determined that the Land Access Ombudsman will be available to all landholders and resource authorities to which the conduct and compensation agreement and make-good agreement requirements apply. The resource authority holders operating in the coal sector and the minerals sector in Queensland have a legitimate concern to be advanced in this regard, and the minister responded to those concerns which were articulated in the statement of reservation submitted by the LNP members of the committee, the member for Warrego and the member for Gympie.

If the Scott review of the GasFields Commission had intended for Mr Scott to consider an alternative dispute resolution process such as a resource ombudsman that was to apply to sectors other than the gas sector then they should have been given the opportunity to participate fully in that review at the time that Mr Scott was undertaking it. I think it is probably the reason why Mr Scott's recommendation was for a moderator—a petroleum and gas moderator—rather than a resource industry ombudsman because the minister needs to acknowledge that there needs to be a bit more of a substantial justification for taking this step in the House when he responds rather than just saying, 'We took the view that it should apply to the coal sector and the mineral sector,' because the point being made by the member for Warrego and the member for Gympie in their statement of reservation is not that those landholders should be denied access to the resources industry ombudsman; they are just saying that when the terms of reference were issued for Mr Scott's inquiry it was to be subject to the GasFields Commission. That relates to the gas sector. If we were looking to improve land access arrangements for all sectors of the resources sector, then the government should have given terms of reference to Mr Scott to consider the coal and mineral sector at the same time.

I want to make it absolutely clear that I do not necessarily disagree with the course of action that the government has taken and I think that there is logic to a consistent approach to all resource sectors as far as land access arrangements are concerned. Given all resource sectors now have CCAs and access to make-good agreements—and I might point out to the House that all sectors have access to MGAs, make-good agreements, thanks to the reforms implemented by the former LNP government—other aspects of the regulatory framework applying to the resources sector should also be consistent, and that includes land access arguments. However, that does not relieve the Palaszczuk government of the responsibility to undertake meaningful consultation processes with affected stakeholders. As I mentioned a couple of moments ago, coal and mineral resource authority holders are not the only ones who would have got the opportunity to make a submission to the Scott review because they did not know that these reforms would apply to them. Landowners who may be interacting with coal or mineral resource authority holders would have also had the opportunity to make submissions to the Scott review to make Mr Scott aware of issues around land access pertaining to landholders interacting with those sectors.

An additional objective of this bill is to provide the Land Court with jurisdiction to decide disputes between parties to a CCA regarding an alleged breach of contract. The benefit of extending the Land Court jurisdiction is that the Land Court has experience specific to conduct and compensation agreements. Further, providing the Land Court with this jurisdiction will simplify the dispute process by providing a single court with the jurisdiction to hear matters relating to CCAs. The Land Court already has jurisdiction to hear matters relating to a dispute over whether a party to a make-good agreement has complied with the agreement under the Water Act 2000. Obviously it is also necessary to extend the jurisdiction of the Land Court to make decisions regarding disputes involving CCAs and MGAs because the Land Access Ombudsman, which the bill also establishes, is not being furnished with powers to make decisions that legally bind both parties.

I note the LNP members of the Infrastructure, Planning and Natural Resources Committee, the members for Warrego and Gympie, as the minister noted, have submitted a statement of reservation highlighting some concerns about how the government selected certain recommendations from the Scott review into the GasFields Commission and not others to proceed with. The LNP members of the committee also highlighted a number of concerns about the consultation process and the specific provisions raised by some of the stakeholders in their submissions to that committee. I will not discuss those concerns expressed by the members for Warrego and Gympie at great length, because I know

that both will probably make substantial contributions to this debate. They have applied themselves very diligently to their committee work on this bill, because both have strong interests in land access matters.

Quite frankly, the submissions to the committee were a bit all over the place. They wanted various things and advocated for different scopes of responsibility from the creation of a Land Access Ombudsman. Although all of the submitters supported the establishment of a Land Access Ombudsman in principle, there was very little consistency among the environmental, industry and legal organisations that made submissions to the committee.

At this point, it is worth giving consideration to what the traditional role of an ombudsman is. An ombudsman has always been primarily an alternative dispute resolution mechanism for parties to seek a low-cost, less formal solution to a disagreement between two parties. The trade-off for the affordability and the informality has been that the decisions of most ombudsmen are non-binding and less rigorous than judgements handed down in a court of law. The LNP is inclined to support the model proposed in this bill because it most accurately reflects the traditional ombudsman model. In our view, to pursue a more formal model including the use of lawyers with binding decisions would be approaching a quasi-Land Court forum. This would be inconsistent with what was recommended by the Scott review into the GasFields Commission.

Although this bill seeks to implement some of the land access recommendations included in the review of the GasFields Commission, this is not the first time in recent years that there have been changes in terms of the regulatory framework around land access. Important and ground-breaking reforms to land access arrangements were implemented by the former LNP government in 2014. As the minister for natural resources and mines in the previous government, I oversaw the delivery of a number of progressive recommendations put forward by the Land Access Implementation Committee. This included expanding the Land Court's jurisdiction to hear conduct matters when considering conduct and compensation agreements, requiring the conduct and compensation agreements to be noted on the relevant property title, and allowing two parties to opt out of entering a formal conduct and compensation agreement. These were initiatives that delivered to landholders in Queensland land access property protection that they had never had before. The Land Access Implementation Committee's recommendations were the result of extensive consultation in 2012 through a submission process and individual meetings with stakeholders who had direct experience with or expressed strong interest in land access arrangements.

The reforms to the land access framework delivered by the former LNP government helped to create a better balance between the needs of the state's agriculture and resources sectors and improved the way in which land access negotiations occurred. For example, many landholders indicated that generally they were more concerned about the conduct of resource companies on their property than just the issue of compensation being paid to the landholder as a result of that access. As such, concerns were subsequently raised by submitters to the Land Access Implementation Committee about the Land Court's inability to examine the behaviour of parties during the conduct and compensation agreement negotiation process. The former LNP government acknowledged those concerns. We expanded the jurisdiction of the Land Court to hear matters concerning conduct in addition to compensation and to enable it to make determinations on matters relating to conduct issues that should form part of a conduct and compensation agreement, as well as examining the behaviours of all parties during that negotiation process.

Stakeholders at the time also expressed concern about the lack of discoverability of a conduct and compensation agreement during a title search and the potential for a property to change hands without adequate knowledge that an agreement existed on that property. The former LNP government acted on that issue as well. Our reforms required a resource authority holder to notify the Registrar of Titles of an executed conduct and compensation agreement which then noted the existence on that particular title. Having a CCA noted on the relevant property title enabled the prospective purchaser to make genuine inquiries as to its content.

The Land Access Implementation Committee also heard feedback at the time about the statutory process for negotiating a conduct and compensation agreement, particularly relating to time frames and costs. Both landholders and resource companies expressed concern that there was no option in the legislation to opt out of entering into a formal conduct and compensation agreement where both parties were in agreement about the terms on which access to the land would occur. During the consultation process, cases were examined in which the formal conduct and compensation agreement process was unnecessary. There were numerous examples of where resource companies and landholders had developed good working relationships prior to the land access framework being introduced, and the conduct and compensation agreement process was considered unnecessary where there was already a history of positive cooperation and coexistence.

The former LNP government therefore introduced reforms to allow two willing parties to opt out of the formal requirement to enter into a CCA. However, there were a number of safeguards put in place to protect the legal rights and interests of landholders who opted out of a former CCA, including that the land access code would continue to apply and that a formal opt-out agreement would need to be completed by both parties. These opt-out agreements were also required to be noted on the relevant property title. As I said earlier, these reforms delivered by the former LNP government provided land access protection rights that Queensland landholders had never had before, a fact of which we are proud.

Briefly, this bill also contains provisions to extend transitional provisions contained in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 due to expire on 27 September this year. These transitional provisions relate to the application of the land access framework; the overlapping tenure framework for coal and coal seam gas tenures relating to where land is released straight to a petroleum lease through a competitive tender process under the Petroleum and Gas (Production and Safety) Act 2004; overlapping production applications where the minister has approved a coordination arrangement before commencement of the Mineral and Energy Resources (Common Provisions) Act 2014; and overlapping coal and petroleum parties where a safety dispute has been referred to arbitration under the Mineral and Energy Resources (Common Provisions) Act 2014 and the arbitration process has not been concluded by 27 September this year. The LNP has no concerns about these transitional provisions.

In relation to the Land Access Ombudsman Bill, while the LNP will not oppose this bill, we do reserve the right to monitor the performance of the Land Access Ombudsman going forward to ensure that it is delivering efficient and effective outcomes for landholders and the resources sector in Queensland. I think this reservation is fair enough, given the disjointed and uncoordinated way in which these reforms have come to the House, the bits and pieces that have been agreed to and not agreed to by the Palaszczuk government in terms of the recommendations in the Scott report, and the failure of this review of the GasFields Commission to indicate that the subsequent Land Access Ombudsman would apply not just to the gas sector but also to the coal and minerals sector.

Speaking of the GasFields Commission, I turn now to the provisions of the Gasfields Commission and Other Legislation Amendment Bill. The explanatory notes accompanying the bill claim that the objective of the bill is to improve the operational structure of the GasFields Commission by clearly distinguishing between the roles of the commission board and its staff. As we already know, a review of the GasFields Commission was undertaken by Robert Scott who was a retired member of the Land Court. The review into the commission made a range of recommendations in relation to the Gasfields Commission Act 2013 as well as recommendations relating to the administrative, strategic and operational changes to the commission.

The amendments propose to give effect to a new structure that separates the strategic and operational aspects of the commission, allow the chair to be part-time and redesignate the role of the current general manager to a chief executive officer. The bill also expands the contractual framework for biodiscovery under the Biodiscovery Act 2004. Currently the Biodiscovery Act provides for agreements between the state and entities carrying out biodiscovery known as benefit-sharing agreements under which entities agree to provide benefits of biodiscovery to the state. This reform will expand the contractual arrangements available to allow other entities to enter into subsequent use agreements with a party to a benefit-sharing agreement. The LNP has no concerns with these proposed amendments.

The bill also seeks to amend the Sustainable Ports Development Act 2015 to ensure that port overlay provisions are applied consistently to development assessed against a local government planning scheme under the Sustainable Planning Act or the Planning Act or a land use plan of the Transport Infrastructure Act in priority port master planned areas. The amendment will clarify that development within a state development or priority development area that is not assessed against the development scheme but regulated under the local government planning scheme or land use plan must consider the port overlay. The LNP has no particular concerns in relation to these proposed amendments.

The Infrastructure, Planning and Natural Resources Committee recommended that this bill be passed. There was a statement of reservation once again from the members for Gympie and Warrego which outlined some concerns, as the minister alluded to earlier, that the head office of the GasFields Commission will be based in Brisbane rather than in Toowoomba, a matter that was uncovered during the course of the public hearings, and that only 23 per cent of the total staff of the commission would be regional engagement officers. Once again I am confident that the members for Gympie and Warrego will be making some detailed contributions to the debate in relation to these matters and so I do not

want to canvass those issues at length, save to say that the minister does really need to explain how these proposals can be reconciled sensibly with the obvious focus and association of the GasFields Commission with the Surat Basin and areas further west.

With respect to the administrative and operational changes to the GasFields Commission, the most significant one is the dramatic shift in executive leadership of the commission from the chair to the CEO. The bill amends the chair's role from a full-time position to a part-time position. The new level of part-time remuneration provided for the chair will be $6,000 in comparison to the previous full-time chair remuneration package of $222,000. I do hope that the effectiveness of the GasFields Commission does not decline for want of a full-time chair to give the time, dedicate the attention and provide the commitment that that position deserves. I am strongly of the belief that the success the GasFields Commission has enjoyed so far has been a result of the very hands-on approach undertaken by the previous chair, Mr John Cotter.

The review resulted in a range of recommendations, including altering the commission's functions to exclude convening landholders, regional communities and the onshore gas industry for the purposes of resolving issues. However, new functions for facilitating the provision of information and community participation in health and wellbeing matters relating to onshore gas activities have been included in the bill.

In view of the fact that the government is progressing the establishment of the Land Access Ombudsman at the same time as it scales back the capacity of the GasFields Commission to convene parties and stakeholders for the purposes of resolving disputes, I suppose this is less of a concern than it might otherwise be. It would, however, be worth the minister giving consideration to the potential for there to be some jurisdictional confusion and uncertainty in the community between what is now the role of the GasFields Commission, the new role of the Land Access Ombudsman and, indeed, the fact that there is another bill having been introduced by the minister on the *Notice Paper* that removes the role of the Department of Natural Resources and Mines in alternative dispute resolution processes and enhances the role of the Land Court in this regard for both CCAs and MGAs. I do not really want to touch on those issues too much at this time because they are before the House in another bill, but the point that I want to make is that this space is very busy at the moment and the significant amount of change in these three bills at the moment dealing with four different entities means that all the stakeholders interacting with the land access framework could be forgiven for being a bit confused and overwhelmed. In that regard, I ask the minister what is being done to ensure that all parties are aware of these changes, and proposed changes in terms of the bill that is on the *Notice Paper*, and what do they mean for people in both the resources sector, landholders and local communities in relation to how the land access framework will apply in the future.

While the provisions in the bill implement changes to its structure and the role of the GasFields Commission as a result of the Scott review, the establishment of the GasFields Commission itself was a very important achievement for the former LNP government. That landmark reform was delivered principally by the member for Callide in 2013 when, as the former minister for state development, he oversaw the formal establishment of the GasFields Commission as an independent statutory authority. I would like to take this opportunity to congratulate the member for Callide for having a profound and enduring influence on the process undertaken by the former government to improve the relationship between the resources sector, particularly the coal seam gas industry, and landholders across the state. If it was not for the efforts of the member for Callide over many years, including when he was the relevant shadow minister and the leader of the opposition, it is not an exaggeration to say that Queensland may not enjoy the benefits of the gas industry and the resources sector more generally as we know them today. There is no doubt that when the former LNP government came to office in 2012 there were some extremely serious tensions between landholders and the resources sector in Queensland. The disquiet and confrontation was no more serious than in the coal seam gas industry, particularly on the Darling Downs and in relation to certain coal projects in Central Queensland. However, it was the member for Callide and the former LNP government that were committed to getting the policy settings right to resolve that tension and promote sustainable coexistence in Queensland.

The establishment of the GasFields Commission in 2013, amongst other initiatives undertaken by the LNP, was a key plank of that commitment and it has proven to be a successful one. The CSG industry is a vitally important contributor to the economic development of our state, particularly in regional areas, but the LNP has always been focused on the paramount importance of striking the right balance between CSG production and agricultural production. The GasFields Commission has played a key role in pursuing that goal. The GasFields Commission has served a vital role in the oversight of the CSG industry, primarily its interaction with landholders but also its interaction with the wider community, something that the previous Labor governments failed completely to do with almost disastrous consequences. This point needs to be made during this debate very clearly: although they

sometimes claim to have been responsible for establishing the CSG industry in Queensland, all they did was go around handing out exploration tenures and production tenures like they were going out of fashion without ensuring that there was a modern regulatory framework in place to appropriately manage the interaction between the resources sector and landholders.

Labor left the conflict to fester and inflame with an attitude that can only be described as indifference. In 2017 it might not seem possible, but in 2011 and 2012 the fact was that the gas industry in Queensland was very much at a crossroads. In one direction, you had the unmitigated disaster that has now unfolded in the onshore gas industry in New South Wales and Victoria, because relationships, confidence and trust had completely broken down. Believe it or not, that was a real possibility in Queensland because of the indifference of the Labor governments that preceded the former LNP government. They did not do anything to modernise the regulatory framework as a result of the escalation and intensification of the coal seam gas industry, particularly in Queensland. In the other direction there was the comprehensive policy framework proposed and implemented by the LNP, including the GasFields Commission, the Regional Planning Interests Act, the expansion of strategic cropping land mapping, the enhanced activity of the CSG Compliance Unit and the land access reforms that I outlined earlier.

The member for Callide has made a huge contribution to ensuring that the CSG industry in Queensland has a strong and sustainable future, where all parties are respected. In this House, no other member has a more committed track record of advocacy for private property rights than the member for Callide and for the past 19 years the *Hansard* has recorded that fact. He has advocated relentlessly for private property rights for landholders, but at the same time has understood the importance of an orderly development of Queensland's natural resources for the benefit of the people of Queensland and the communities, particularly in regional areas of the state.

In the same way that the LNP reserves the right to monitor the establishment of the Land Access Ombudsman, we also reserve the right to monitor these reforms to the GasFields Commission. In particular, it remains to be seen how the newly established Land Access Ombudsman interacts with the activities of the GasFields Commission and, indeed, how both of those entities are impacted by the reforms to the jurisdiction of the Land Court, which is currently contained in another bill before the House.