



Speech by

Jann Stuckey

MEMBER FOR CURRUMBIN

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FISHERIES AMENDMENT BILL

Mrs STUCKEY (Currumbin—Lib) (3.23 pm): I rise this afternoon to contribute to this debate on the Fisheries Amendment Bill which was introduced into the Legislative Assembly on 3 June this year. I am pleased to have the opportunity to address the House in a debate for the first time as a member of the Liberal National Party. No longer will members opposite be able to resort to wedge politics as an excuse for their own government's failings. Notably, this is also the first occasion that I rise to speak as shadow minister for Aboriginal and Torres Strait Islander community development, and in doing so let me tell honourable members that I offer a strong commitment to this portfolio.

As is the case with this bill before us today, which can be described as an area of relatively uncharted territory, I too am embarking on a new area with this portfolio and I aspire to embrace it with the respect it so richly deserves. As members have already heard from my learned colleague, the honourable member for Toowoomba South, the LNP will be supporting this bill. This bill as introduced by the Minister for Primary Industries and Fisheries comes as a response to breaches of native title provisions under the Fisheries Act, yet it ensures the protection of the inherent time-honoured customs of this state's Indigenous people which, as we have heard from the honourable member for Cook just recently, do change over a period of time.

Impacting chiefly on the Fisheries Act 1994, the objects of the bill are to be achieved in conjunction with the current government principles of ecologically sustainable development. Since the introduction of this bill in June this year there has been targeted consultation undertaken to inform the government of the views and attitudes of Aboriginal and Torres Strait Islanders to these proposed legislative changes. However, as the House would by this stage already be aware, the Scrutiny of Legislation Committee has asked the minister to release details of the findings of those proposed consultations. The committee appears to be of the view that consultation was not adequate. I ask the minister to further clarify this process.

The six chief objectives of the bill include, but are not limited to, firstly, the clarification that Indigenous customary fishing activities are in accordance with section 14 of the Fisheries Act and will confirm that traditional and customary fishing will exclusively be the province of personal, domestic and non-commercial communal use. The second objective is that the amendment to the act will specify that traditional and customary fishing can only be undertaken while using a recreational fishing apparatus as is to be defined under section 14 of the Fisheries Act and the prescribed legislation as to be legislated. The third objective is that waters as prescribed via regulation provide legislative assurance that customary fishing does not take place in waters that are closed to all fishing activity, subject to a discretion of the chief executive to issue a permit in these waters known as closed waters. There are now 15 of these. The fourth objective of the bill aims to establish a mechanism by which the use of the waters may be regulated. Arguably, whilst this mechanism already exists, it provides a clarification of that mechanism. The fifth objective of the bill removes a burdensome and vexatious requirement for 'the cooperation of all Aborigines and Torres Strait Islanders in Queensland' when developing regulations regarding traditional fishing activity. This will be replaced in favour of the consultation requirements mandated under the Statutory Instruments Act. The proviso concerning people affected by any restriction proposed under

regulation would remain. The final point in these objectives was that section 14 is construed unequivocally as a defence provision where section 14 pertains to the conservation of ecological and piscine systems and stocks.

Almost 15 years ago the Goss government enacted section 14 of the Fisheries Act with the express intention that it was to cement and found the privileges of our Indigenous people to fish in their accustomed manner. Since that time the power has been tested time and time again in both the judicature and also this assembly. Contrary to the intent of this power, in 2006 in *Stevenson v Yasso*, which we have heard about already in this House today, a Queensland Court of Appeal decision upheld the right of a traditional fisher to use commercial fishing nets under section 14 of the Fisheries Act.

We need only look as far as the recent occurrences on the Fitzroy River to ascertain that the legislative rights of Indigenous fishermen have been exploited by a select view opportunists playing havoc with the system, dispensing with traditional custom by using our rivers and estuaries for financial gain. Times have changed and fishing methods have altered and the fact is that Indigenous fishermen do not often use those traditional methods, but the custom of fishing is what is being protected in this bill. There are 226 fishing closures of various shapes and sizes across a multitude of places in Queensland, each encompassing varying levels of restrictions. Of these, there are only 15 completely closed areas of fishing legislated and so consequently the encumbrance on traditional fishers is minimal.

The content of clause 4 gives rise to not ill-founded questions of constitutional validity in its inconsistency with the Commonwealth Native Title Act 1993 and the Racial Discrimination Act 1975. Questions arise as to whether the bill can act concurrently with the Commonwealth acts. If it cannot—and this is not a matter over which it is fit for this Assembly to cast its eye—then we may indeed be legislating in vain. This point is a matter for the Legal, Constitutional and Administrative Review Committee. However, it seems almost a certainty—and this, too, was the finding of the Scrutiny of Legislation Committee—that the constitutional overlays as applied through section 109 of the Commonwealth Constitution may strike out this infringement on the native title rights of our Indigenous.

In essence, though, the core objectives of the bill are to further the recognition of rights in respect of fishing of Aborigines and Torres Strait Islanders, and to ensure ecologically sustainable development. Beyond shadows, smoke and mirrors, the crucial purpose of this legislation is to ensure the primacy of our aquaculture. Depleting fish resources have manifested an urgent need for legislative protection through the correction of this loophole in the system. However, of course this does not excuse poor consultation if that is the case.

At present this protection is offered in clause 4 by attempting to extinguish doubt as to what traditional fishing entails. In the repeal and rewriting of section 14, the stipulation is that Indigenous fishing be for exclusive, personal, domestic and non-commercial communal use, thus guarding against the use of this privilege as an avenue for commercial fishing and the commercial sale of fish. The proposed closed waters addresses the escalating practice of some of the Indigenous people of fishing in areas of particular significance, such as those used as spawning grounds, the preservation of which are essential to the long-term sustainability of fish stocks.

In conjunction with the legislative changes, the government will negotiate an Indigenous land use agreement—an ILUA—with the local Darumbal people of Rockhampton. This will ensure they are actively involved in the decision-making process on traditional fishing in the region. As of the introduction of the bill, the Darumbal people were the only group to have been consulted on the impacts of this legislation.

It must also be said that the effects of clause 4 of this bill and its exclusion of closed waters do not affect in any respect the ability of Indigenous people to apply for a general fisheries permit to engage in a fishing activity that would otherwise be unlawful under the fisheries legislation. As has been the case in other applications, this may include an application for the purpose of ceremonial and cultural events.

Further avenues not affected include the ability of an Indigenous group to make an application for a commercial fishing licence to enable it to engage in trade and commerce within the fishing industry and the application for Indigenous fishing permits outside closed waters. Under the Commonwealth Native Title Act 1993, native title holders are entitled to compensation should the exercise or enjoyment of their native title be in any way affected. It remains to be seen whether this legislation will open up the government to compensation claims. Herein lie the two major criticisms within this legislation which, I might say, were raised in the Scrutiny of Legislation Committee's latest *Alert Digest*. The first is the potential of clause 4 being constitutionally invalid and the second is the fact that compensation claims are forecast to result.

This government has attempted to legislate to strike a balance between two protections: the protection of our fish stocks and the protection of the privileges of our Indigenous. Whilst it is unquestionable that fish stocks and other estuarine resources need the full protection this state can offer in order to maintain a sustainable future, on the other hand we have a need and an obligation to protect the time-honoured traditions of our Aboriginal and Torres Strait Islanders, whose culture is rapidly dwindling in our modern age. As a complication, we have the exploitation of this privilege for commercial gain and therein lies the purpose of this bill. I commend the bill to the House.