**PASTORAL LAND MANAGEMENT AND CONSERVATION (INDIGENOUS LAND USE AGREEMENTS) AMENDMENT BILL 2004**

**Legislative Council, 17 February 2004, pages 1213-4**

Second reading

**The Hon. M.J. ATKINSON (Attorney-General)** obtained leave and introduced a bill for an act to amend the Pastoral Land Management and Conservation Act 1989. Read a first time.

The Hon. M.J. ATKINSON: I move: That this bill be now read a second time. The state government supports negotiations to deal with Native Title claims in South Australia. Indigenous Land Use Agreements are voluntary agreements provided for in the Native Title Act 1993 of the commonwealth. The negotiation of an ILUA is one way of clarifying uncertainties that arise from Native Title claims and potentially conflicting rights about land affected by such claims. The government is pleased to continue working on the ILUA negotiations started under the previous government and we acknowledge the groundwork upon which the current negotiations are based.

Negotiations have involved pastoral lessees, the South Australian Farmers’ Federation, Native Title claim groups, the Aboriginal Legal Rights Movement, and others, and have been occurring for years. The bill builds on the experience of those negotiations, and I would like to recognise the assistance from these and other groups in contributing to the proposed law. In South Australia, apart from land owned through Aboriginal community freehold, the great majority of land that has the potential for native title rights is land subject to pastoral lease.

A series of court cases, including the South Australian De Rose Hill decisions, have confirmed that native title rights may coexist with other land interests under pastoral lease. Since 1851, before self-government, Aboriginal people have had rights set out in pastoral leases and legislation to travel across, stay on and conduct traditional pursuits on pastoral land.

An ILUA on pastoral land can deal with the ways in which such rights or possible rights are exercised. An ILUA cannot determine native title rights or interests; only the courts can do that. An ILUA can, however, deal with practical matters in the coexistence of potential native title rights and other interests in the same land. An ILUA is a voluntary agreement that can, for example, provide a framework that might assist in better protection for Aboriginal heritage or diversification of land use, or deal with a range of non-native title matters. An ILUA has the potential to contribute to reconciliation between Aboriginal people, pastoral lessees and the public, and to build stronger Aboriginal communities. There are many areas, tourism and conservation being perhaps the most obvious, where cooperative ventures between native title groups and pastoral lessees could be mutually beneficial.

The bill makes changes to smooth the path of applying ILUAs to pastoral land. In particular, it deals with the interaction of state and commonwealth laws, allows for the recognition of the priority interests of traditional Aboriginal owners in undertaking traditional ceremonies in an area, and deals with the consequences of a new contractual relationship between ILUA parties. I am also pleased to report that I expect shortly to be signing on behalf of the state an ILUA for the Yankunyjatjara Antakirinja native title claim group and the lessees of the Todmorden pastoral lease near Oodnadatta. Agreement was reached some weeks ago and a ceremony on Todmorden is planned for next March.

I seek leave to have the balance of the second reading explanation incorporated in Hansard without my reading it. Leave granted.

While this Bill facilitates ILUAs over pastoral land, it does not need to set out any requirements of an ILUA because these are dealt with in the Native Title Act 1993 of the Commonwealth or are left to the parties involved to agree.

The Bill allows the terms of an ILUA to modify or limit access (and other) rights on pastoral land under section 47 of the Pastoral Land Management and Conservation Act. Historically, pastoral leases and the principal Act allowed all Aboriginal people the same rights to access any pastoral land. This may have been inconsistent with traditional Aboriginal law and custom which was at times based on very strict territorial rights and restrictions. These access rights, however, did recognise the impacts of European colonisation, which resulted in displacement of Aboriginal people from land used for agriculture and other intensive uses. Traditional law and custom could still operate to limit the practical effect of such rights. It is generally expected that, in accordance with traditional law and custom, an ILUA will recognise priority rights for the native title groups over the relevant pastoral land, compared with Aboriginal people from other communities. Unless section 47 of the principal Act is modified, it is not possible to have an ILUA registered under the Native Title Act 1993 of the Commonwealth where any such priority is proposed because of the inconsistent rights which would exist.

For example, most ILUA are likely to manage Aboriginal access on pastoral land in some way. This may involve a process of notification through representatives of the native title group and a pastoral lessee. Such a process cannot work if section 47 continues to allow effectively unrestricted access. A system of access rights managed through ILUA parties will provide a level of comfort and certainty which does not exist at present for any of the parties. Notice of activities can assist both parties in maintaining a level of privacy. An ILUA can also introduce some flexibility in covering non-Aboriginal spouses, for example.

It is recognised that the ability to modify section 47 in an ILUA might result in a reduction of rights for Aboriginal people who are not included as a party to the ILUA. There are, however, significant protections:

any proposed ILUA is subject to objection during an extensive period of public consultation;

a native title party can negotiate access for Aboriginal persons outside the group as part of an ILUA;

the general rights of the public under section 48 of the Act will be available to Aboriginal people;

and the State must be a party to any such ILUA and can respond to any concerns.

An ILUA can not affect matters such as persons undertaking work for a pastoral lessee or access for government officers as this does not relate to section 47 access.

The Bill also provides that future lessees of the land will be bound by an ILUA, in the same way that an ILUA binds all future native title holders or claimants under the Native Title Act 1993 of the Commonwealth.

The Bill also provides some flexibility regarding boundaries of an ILUA. In many cases the fences of a pastoral lease do not correspond to lease boundaries.

The Bill allows an ILUA to cover the fenced area where this extends beyond the lease boundary and provides appropriate protection for the adjoining lessees involved.

The Bill provides in the proposed new section 46B some protection for the parties in terms of civil liability. Under section 47 it is clear that pastoral lessees and Aboriginal people exercise independent rights. Depending on the wording of an ILUA, it might result in Aboriginal people being seen at law as invitees of a lessee. This could result in additional obligations on a lessee to manage the potential risks associated with traditional pursuits.

The Bill covers this by providing that a party to an ILUA cannot be liable for harm caused to third parties by another party to the ILUA. Overall, an ILUA can be expected to generally reduce risks of harm because of the increased information flow between the parties about their activities and the development of co-operative arrangements. The Bill also allows ILUA parties to negotiate their own arrangements relating to liability between themselves.

The Bill also offers protection to ILUA parties relating to trespassers on pastoral land. The difficulties of knowing who is allowed on pastoral land and of regulating access, combined with increasing numbers of visitors to outback areas causes potential liability risks. With the better management of access expected under an ILUA, the Government considers that it is appropriate to provide increased protection for ILUA parties by generally making trespassers responsible for their own safety on land under an ILUA.

The Bill also addresses issues related to general public access. These measures aim to remove inconsistencies between matters agreed in an ILUA and current public access rights. For example, an ILUA might result in a pastoral lessee agreeing to restrictions to areas of special cultural significance to the native title group.

The Bill provides for similar restrictions to be applied to other members of the public entering the lease under section 48 of the principal Act. The Bill provides for a public register to ensure that the effects of an ILUA on access to a pastoral lease can be readily discovered. This will include basic ILUA information plus material relevant to members of the claim group (need to give notice, for example), other Aboriginal people (need for approval from native title group or other access options, for example) and general public (any limits on current rights and the liability changes affecting trespassers, for example).

The Bill incorporates the provisions of section 17A of the Summary Offences Act 1953 relating to trespassers on pastoral land. These provisions are currently available to pastoral lessees but are extended so a native title group that is party to an ILUA has the same opportunity as the lessee to prevent trespassers interfering with their activities. The Bill demonstrates the Government’s commitment to assisting pastoral lessees and native title groups negotiate agreements related to their respective activities on pastoral lands. I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clause are formal.

Part 2—Amendment of Pastoral Land Management and Conservation Act 1989

4—Amendment of section

3—Interpretation This clause inserts a number of definitions into section 3 of the principal Act.

5—Amendment of section

4—Objects of this Act This clause makes a minor technical amendment.

6—Amendment of section 5—Duty of the Minister and the Board This clause inserts a new paragraph (c) into section 5 of the principal Act requiring the Minister and the Board to have regard to the relevant terms of an ILUA when administering the principal Act, or exercising a power or discharging a function under that Act.

7—Insertion of Part 6 Division 2A This clause inserts a new Division 2A into Part 6 of the principal Act. This Division inserts new sections 46A and 46B. New section 46A provides that an ILUA is binding on the current lessee of pastoral land, whether or not that was the person with whom the ILUA was made. The new section 46A also enables an ILUA to be made in relation to certain land contiguous to a pastoral lease. New section 46B confers certain immunities from civil liability in relation to parties to an ILUA, and provides that an ILUA can modify the duty or standard of care required of a party to an ILUA, and may also limit one party’s liability as against another party.

8—Amendment of section 47—Rights of Aboriginal persons This clause amends section 47 of the principal Act to allow an ILUA to confer or modify certain rights relating to Aboriginal access under the section.

9—Amendment of section 48—Right to travel across and camp on pastoral land This clause amends section 48 of the principal Act to allow an ILUA to confer or modify certain rights relating to public access under the section, and also requires action taken under the section to be consistent with relevant terms of an ILUA in force in relation to pastoral land.

10—Insertion of sections 48A and 48B This clause inserts new section 48A, which requires the Minister keep a public register in relation to certain matters. The clause also inserts new section 48B, which confers on an authorised person similar powers to those contained in section 17A of the Summary Offences Act 1953 relating to trespassers. The definition of authorised persons includes the lessee, the native title group and certain other persons.

Mr BROKENSHIRE secured the adjournment of the debate.