HEALTH, ENVIRONMENT AND AGRICULTURE COMMITTEE

Members present:
Mr AD Harper MP—Chair
Mr SSJ Andrew MP
Mr CD Crawford MP
Mr AJ Perrett MP
Mr ST O'Connor MP

Staff present:
Ms R Duncan—Assistant Committee Secretary
Ms L Nardo—Committee Support Officer

PUBLIC BRIEFING—INQUIRY INTO THE ENVIRONMENTAL PROTECTION (POWERS AND PENALTIES) AND OTHER LEGISLATION AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

Friday, 22 March 2024

Brisbane

FRIDAY, 22 MARCH 2024

The committee met at 10.59 am.

CHAIR: Good morning. I declare open this public briefing for the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024. I am Aaron Harper, chair of the committee and member for Thuringowa. I would like to start by respectfully acknowledging the traditional custodians of the land on which we meet today and pay our respects to elders, past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all now share. With me today is Mr Sam O'Connor, acting deputy chair and member for Bonney; Craig Crawford, member for Barron River; Stephen Andrew, member for Mirani; and Tony Perrett, member for Gympie.

On 13 February 2024, the Hon. Leanne Linard, Minister for Environment and the Great Barrier Reef and Minister for Science and Innovation introduced the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024 into the Queensland parliament and referred it to the committee for detailed consideration and report. The briefing today by representatives from the Department of Environment, Science and Innovation is to respond to issues raised in submissions and at the public hearing earlier this week.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Witnesses are not required to give evidence under oath, but intentionally misleading the committee is a serious offence. The proceedings are being recorded and broadcast live on the parliament's website.

I remind all committee members that officers are here to provide factual or technical information. Questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

ANDERSEN, Ms Claire, Acting Deputy Director-General, Environmental Services and Regulation, Department of Environment, Science and Innovation

KARLE, Ms Louise, Manager, Regional and Regulation Support, Operational Support, Environmental Services and Regulation, Department of Environment, Science and Innovation

POTTS, Mr Stephen, Acting Executive Director, Environmental Policy and Legislation, Environment and Conservation Policy and Legislation Branch, Environment and Heritage Policy and Programs, Department of Environment, Science and Innovation

VERRILLS, Mr Theo, Manager, Environmental Policy and Legislation, Environment and Conservation Policy and Legislation Branch, Environment and Heritage Policy and Programs, Department of Environment, Science and Innovation

WADE, Mr Lawrie, Director, Environmental Policy and Legislation, Environment and Conservation Policy and Legislation Branch, Environment and Heritage Policy and Programs, Department of Environment, Science and Innovation

CHAIR: I now welcome officers from the Department of Environment, Science and Innovation. I invite you to make an opening statement and then we will move to questions.

Ms Andersen: Thank you for the opportunity to appear again before this committee. On behalf of the department, I would like to thank all stakeholders who have participated in this process, including the public consultation process last year and the recent hearings earlier this week. I would like to take the opportunity today to address a few of the key concerns that were raised by stakeholder submissions and witness testimony at the public hearing on the bill.

It was clear that stakeholders are seeking new and updated guidance material to support the amendments in the bill. The department is currently drafting new and updated guidance material to ensure information about key reforms is available and that people and businesses understand their

obligations. Priority is being given to developing guidance material that addresses proposed new and modified obligations, and we expect that that initial guidance will be available at commencement of legislation. The department will continue to review and refine that guidance material as necessary to ensure it is fit for purpose and meets stakeholder needs over time.

Some stakeholders raised concerns about the principles to be considered in the administration of the Environmental Protection Act, particularly the polluter pays principle. It is important to note that these are broad principles that underpin our environmental legislation, but any actions taken must still be grounded and assessed against other provisions of the act—for example, specific events provisions. It is also important to note that the polluter pays principle reflects Queensland's existing commitment through the Intergovernmental Agreement on the Environment.

I acknowledge the concerns from the waste industry and local governments in relation to challenges dealing with upstream wastes that are difficult to control such as PFAS in sewage treatment plants. The general environmental duty defence that already exists still applies, and the department would consider what steps are reasonably practicable for an operator to be able to do in relation to managing those sources. I also note that there are other mechanisms available to deal with these types of issues—for example, through end-of-waste codes for things like biosolids which provide for a low level of PFAS in biosolids whilst still protecting the community and agricultural producers who are using those final products. The polluter pays principle would not affect these existing mechanisms. I also want to assure the committee that the department is working with the Australian government to progressively phase out the import, manufacturing and use of these emerging contaminants in products to ensure we are stopping contamination at the source.

A number of stakeholders also raised concerns about the inclusion of public health and safety in the definition of 'environmental value'. These amendments seek to clarify that the role of the act is only to the extent that human health and safety is affected by the quality or characteristic of the environment, such as the impact of excessive noise or odour and the impact that that can have on the health and wellbeing of the community by affecting, for example, the ability of someone to be able to go to sleep. The intent is definitely not to duplicate or overlap other Queensland statutes such as health or workplace health and safety legislation.

Concerns were also raised about the general environmental duty offence and whether the bill would apply retrospectively. The act has always contained a general environmental duty to take all reasonable and practicable measures to prevent or minimise environmental harm. It is a broad duty that is always applied to everyone, including environmental authority holders, and has been enforceable through statutory notices under the act. The bill does not propose to change this duty.

To promote proactive action by operators to prevent environmental harm from occurring, the bill does seek to introduce an offence for not complying with the duty. The bill importantly, though, includes two exclusions from that offence to provide fairness to environmental authority holder and persons complying with the code of practice under the act. In particular, the exclusion applies when the environmental authority provides for reasonably practicable measures as stated in the duty. However, the mere existence of an instrument that is not related to the relevant duty would not be an appropriate exclusion to the offence. The offence provision of the bill does not apply retrospectively. It will only apply prospectively—that is, to a contravention of the duty that occurs on the date the amendment to the act comes into effect.

A number of concerns were raised about amendments to environmental authority conditions, and I want to make it clear that the bill does not implement recommendation 12 in the form suggested by the independent review. There has been concern by some stakeholders that the bill will provide the minister with an ability to amend the conditions urgently, as recommended by the bill. This is not the case. The power to amend environmental authority conditions has been present in the act since commencement and the bill does not amend these existing powers. What the bill does do is provide clarity on those existing powers under the act to make it clear that an environmental authority is not a barrier to issuing an order on notice when responding to an environmental harm incident. By providing clarity, the intention is to prevent any delays to responding to environmental harm due only to legal processes, only on the basis of the existence of an environmental authority.

The act currently does not include any limitation on issuing relevant orders or notice. In practice, securing compliance with the GED is already used as a ground for issuing enforcement notices and can be issued to environmental authority holders despite conditions of their authority. The bill provides clarifications and confirms this existing approach.

Prior to issuing an order on notice, there is still a requirement under the act for specific grounds to be met. To be clear, we cannot issue a notice simply because we want to change the conditions. The conditions that are proposed to be changed must be related to the enforcement matter, not a

broad-scale review of all of the conditions on an authority. I want to assure the committee that if the regulator does propose changes to a condition of an authority following an enforcement action, the act provides for a full process that must be followed to ensure the holder has a right to make a submission on the proposed changes and has review and appeal rights.

Several stakeholders spoke about the amendments to the duty to notify provisions, particularly the amendments to insert the wording 'ought reasonably to have become aware of the event'. This amendment delivers on the recommendation from the independent review which raised issue with the duty being based on the knowledge alone, rather than becoming aware of potential consequences. The amended wording includes the term 'reasonably' which is important when considering some of the concerns raised by stakeholders on what would be required in practice. The intent of the amendment is to ensure an early heads-up of any contamination or environmental harm. These changes are not intended to require additional monitoring or oversight by someone without any role in the activity.

Finally, some stakeholders raised concerns about the time frames for notifying landholders to come onto their land as part of the new combined environmental enforcement order. I would expect that most landholders who have had a contamination event on their property would want to ensure it is cleaned up as soon as possible by those responsible. The current time frame for a clean-up notice is five business days, and for an environmental protection order two business days. These time frames are a minimum and obviously subject to discussion with the landholder. Thank you for the opportunity to address some of the concerns raised by stakeholders. We are happy to take any questions you may have.

CHAIR: Thank you very much, Ms Andersen. I am glad you were in the room the other day, and you have answered most, if not all, of the concerns raised. I want to go a little bit deeper with the themes that Logan council and Gold Coast council raised about the water treatment plants and contaminants coming from the community, basically; that they were concerned mainly about the impacts of that. Can you just go a little bit deeper—I know you touched on it—to give some reassurance that there is some rigour around the councils?

Ms Andersen: The important point to note is that the polluter pays principle will not impose any additional requirements on sewage treatment plants or councils. It is, as I said, a broad principle that is designed to underpin the legislation and has been something that, as a regulator, we have signed up to at a national level generally. The councils and Water Directorate raised a number of concerns obviously about PFAS, which is an emerging contaminant that we are dealing with across a number of sites in Queensland. When we are dealing with historical contamination—for example, from firefighting foam—our approach is certainly that the people who caused that contamination should be responsible for undertaking the remediation associated with it. We have a broad contaminated land framework that helps address that and ensures there are land investigations and remediation plans that are put in place. The polluter pays principle does not change any of those existing mechanisms; it just reinforces that.

When it comes to things like sewage treatment plants and waste facilities, we certainly acknowledge that there are challenges around upstream—waste streams—and managing that. If you think about PFAS, for example, every time you do a load of washing, if you wear high-vis clothes, there is PFAS often in a lot of material, exercise clothes, make-up and in a range of different products. A lot of cookware and things like that contain PFAS. We recognise that there is a transition process that we need to go through, particularly at the Commonwealth, around phasing out use in products, and we did introduce through the EPOLA Bill last year, you might recall, some amendments to give effect to the IChEMS framework, which is the industrial chemicals framework that the Commonwealth is implementing. Part of that is actually phasing out PFAS use and manufacturing and import, which will come into effect in 2025. We are really pleased to see that progressing.

That said, the polluter pays principle will not affect any of the licence arrangements that we already have with councils around their sewage treatment activities. As I mentioned, we have things like end-of-waste codes that provide for reuse of materials coming out of sewage treatment plants. We do put in place things like PFAS limits as part of those codes to make sure what is going onto agricultural properties, for example, is not going to lead to contamination. We do not want to see that end up in livestock and create other challenges as well. We are striking a balance between managing those waste streams while also protecting the community and other landholders.

CHAIR: Thank you very much.

Mr O'CONNOR: To follow up on the point about the councils, there seemed to be a lack of clarity from Logan and the Gold Coast about where their responsibility starts and where it finishes, and they also raised concerns about their ability to recoup some of the payments for the significant

clean-up costs that they have to endure. Did you have any further response to that? I have their submission up. They talked about the lack of a legislative mechanism to recover the costs that they have to go through and the fact that they asked for consideration of being able to issue environmental enforcement orders for clean-up and reparation. Do you have any response to the concerns that they raised there?

Ms Andersen: Councils are interesting because they are playing multiple roles. One of our licence holders for things like landfills and sewage treatment plants, we regulate their activities, but they are also a co-regulator. They are responsible for regulating a number of devolved environmental activities—generally smaller scale things like boat maintenance activities, for example. There is a mechanism under the legislation for councils where they cannot identify a polluter to request the state to fund that. If the cost of the clean-up is over $5,000, they can recover that through the state. It is called 'orphaned incidents'. We do have an existing framework around that which not all councils may be aware of, but it is public knowledge in terms of the guidance material that we have. They do have some of that capacity. Where they are regulating an environmentally relevant activity, they will have access to the same provisions under the legislation that we do.

Mr O'CONNOR: The other thing is—and the chair touched on it with the councils operating sewage treatment plants and things like that—we had significant feedback, as you would have heard the other day, from the resource recovery and the waste sector about their role as a sorter of some of these polluters and the definition of 'polluter'. Did you have any response to their concerns around that lack of definition from their perspective?

Ms Andersen: As I said, it is designed to be a broad principle and it links to the intergovernmental agreement. We rely on that definition. It is not really specifically pulled out in the bill here. Again, the intent is not to replace any of the existing requirements they have as a regulated entity. They will continue to apply, regardless of that principle.

Mr CRAWFORD: Staying on that same theme of the last one, in relation to the waste recycling entities—I am interested to get it on the record—running with the assumption that this bill passes and one of those recycling entities gets something from upstream that comes into their facility and the department says, 'We are going to do this and this and this and this,' what are their rights as operators around appeals challenging that, either in this legislation or in other bits and pieces that are around? I want to get that on the record so that they can understand that there are opportunities for them to challenge or appeal any decision from the department?

Ms Andersen: Correct. I make the point that all of those activities have a licence associated with them and a set of conditions. That is what we would be relying on in relation to any enforcement action that we would take, not a polluter pays principle. We would obviously also rely on the general environmental duty offence and any environmental harm associated with the activity that they were doing and whether they were complying with their authority. If you think about a landfill facility, for example, they will have a range of conditions around how they operate their site, what waste can be accepted, and the type of landfill infrastructure that needs to be put in place. They will have release limits as well around any releases to water, any releases to air, and they will need to meet those in terms of variance contaminants. If you saw a release, for example, from a landfill, we would be taking enforcement action against either not complying with a condition of their authority or causing environmental harm which we would have to prove with evidence, and they would have the ability to appeal that through the relevant court process that we would go through.

Mr ANDREW: I did request that regulatory impact statement and you sent it through to me. I read it. It basically says in there that it does not require a regulatory impact statement. How does the government come to the decision that these bills do not require a regulatory impact statement?

Ms Andersen: We did do an IAS which was looking at the regulatory impacts of the proposals before us. Given that a lot of the changes in the bill are clarifying existing powers and not necessarily introducing new powers, the view was that we did not need to do a regulatory impact assessment. I would come back to the comment that we are not proposing to be able to open up licences broadly or introduce a new review mechanism to contemporise licence conditions. That is not the proposal. I think there was quite a bit of confusion from stakeholders, both in the hearing and in the submissions that we received. We are certainly not going down that track of opening up every licence. I know you asked about aquaculture facilities.

Mr ANDREW: That is right.

Ms Andersen: The intent is not to be able to open up every aquaculture licence and change those conditions, and on that basis, that would be the more significant impact that we would have to consider a regulatory impact assessment around. We may consider that in the future, but as the government response to the independent review said, we would expect there would need to be further consultation on regulatory impact assessment on that proposal before we took something forward.

Mr PERRETT: You mentioned PFAS and some work being done by the Commonwealth government. You mentioned 2025. That presumably will ease the burden around some of the impact it is having, particularly on local authorities, through these sewage treatment plants and others. Where is the Commonwealth government with respect to that and your interaction directly with that that may ease that pressure?

Ms Andersen: There are two key pieces of work that the Commonwealth government is doing currently. One is around the IChEMS scheduling. They take a whole range of chemicals and schedule them which effectively phases out their import or use in Australia, and that effectively gives effect to things like the Stockholm Convention at an international level. They have already scheduled PFAS and a number of different types of PFAS with it to be phased out by, correct me if I am wrong, but I think it is June 2025. It has already been scheduled and that will come into effect next year.

The second piece of work that the Australian government is doing is around food packaging. One of the things that we see through particularly the organics rollout and things like food and organic collection and diverting that from landfills, a number of states are dealing with contamination from compostable food packaging, and that food packaging has PFAS on it; it is a waterproofer to make sure your plate does not go soggy. However, the Commonwealth has agreed to implement packaging reforms, so that is something Minister Plibersek has publicly committed to doing, and that is probably a piece of work that is still to be implemented. Certainly some of the packaging organisations—APCO, for example—have also committed to phasing out PFAS in the use of food packaging over time.

Mr O'CONNOR: Some stakeholders raise that the lack of a complete RIS contradicts the government's better regulation policy. Is that correct?

Ms Andersen: I might refer to my colleague, Theo, for that one.

Mr Verrills: The impact assessment statement that was released publicly—it has been published—was done consistent with the government's better regulation policy. When we assess the level of regulation that is required, we do it consistent with that policy. Where there is potential for significant impacts, that is, generally speaking, the trigger to do a more fulsome RIS—what used to be called a full RIS process. When the impacts are limited or we are just making minor machinery changes, that is when the policy requires a summary IAS to be published. As the changes in this bill are not fundamental policy changes, we assess each of those changes under that policy, and they were assessed as minor or machinery in nature and not having significant impacts. Therefore consistent with the policy, it was a summary AIS that was published.

Mr O'CONNOR: It would have been the significant extra resourcing as well that a full traditional RIS would have taken and the extra time; that is a factor as well?

Mr Verrills: The consideration to do a RIS or not is about the impacts that the regulatory change would have. When we are considering whether there is a need to do a full regulatory impact analysis, it is about the impacts on stakeholders. As we said earlier, recommendation 12 is not in this bill. That is something that had been flagged which could have significant impacts, and if it had been included that may have been then a trigger to do a more fulsome process. We do not make those decisions based on the capacity of the staff. It is about the impacts on our stakeholders that triggers the need for a more fulsome analysis under the policy.

Mr O'CONNOR: The other concern that was raised particularly by the resources sector was sovereign risk—was how they framed it up—and the ability for EEOs to impact on the EAs with the existing conditions. Did you have any further commentary to add around why you do not believe this will add to sovereign risk?

Ms Andersen: I would say that we are already in practice taking that approach at the moment. To give you a couple of examples—and I think I mentioned this at the initial briefing—where we have had, for example, a waste facility with an environmental authority allowing stockpiling, for example, it has a range of conditions. We have had a number of fires break out at those facilities, one in particular. We issued an environmental protection order to take certain steps and gave them a direction to do certain stockpile management and to be able to put that fire out and work with Queensland Fire and Emergency Services around that. That was then a trigger for us to be able to open up their licence, but only to the extent that it related to fire management on stockpiles. So, it does not give us the

capacity to open up the entire licence in every condition; it is quite targeted. If you have a compliance issue with a site, you can then go and update on the back of that their one licence condition that talks about fire management. I might throw to Louise who has another good example in a different, non-waste-related space.

Ms Karle: The second example that we were going to mention relates to a facility within South-East Queensland that holds an environmental authority and that includes the activity of chemical manufacturing. In this particular case, the operator notified us of releases of contaminated stormwater from the site which had elevated levels of ammonia and zinc. In this case, the environmental authority did permit releases, or had identified release points for stormwater, but did not include any limits for those particular contaminants or contaminants in that stormwater. The levels that were observed were at concentrations that could cause environmental harm. Therefore, in this case, we were able to use our existing tools to require an environmental investigation and then using an environmental protection order to secure compliance with general environmental duty and, as a result, also amend the environmental authority conditions relating to that particular release to ensure environmental harm does not continue to occur from that site.

Mr O'CONNOR: The powers with regards to retrospectivity happen already, or actions in that space happen already, but they are very limited and specific based on the individual circumstances, and this clarifies and formalises that?

Ms Andersen: We will often use the existing general environmental duty as a grounds for taking enforcement action, even against environmental authority holders. Then that will allow us to amend specific conditions where we have a particular compliance issue with that site. There is a whole process around sending them a notice of proposed amendment. They have internal review and appeal rights around that. If they are dissatisfied or want to appeal the environmental protection order or one of the compliance notices, there are provisions around that as well. It is fair to say that we already have the ability to do that; the bill merely clarifies and confirms that approach. I do not think it creates any further investment uncertainty. If anything, it provides greater certainty by saying, 'You still have a GED that you need to comply with and we have existing provisions to amend your licence if you are not meeting those requirements,' so we can specifically call out what is reasonably practical steps that need to be taken to manage that risk of harm.

Mr O'CONNOR: Are you able to provide the committee with some data around how often this happens? It is a substantial thing to amend an EA retrospectively. Are you able to provide us with some data, even on notice, about how often this happens and under which circumstances this happens?

Ms Andersen: I am happy to maybe provide something out of session afterwards with some specific statistics, but I would say that we have 9,000 licence holders currently; we certainly do not do this on a weekly basis, if you will. I would be saying that it is a handful of times, and it is on the back of a compliance action. We are not opening up every licence. It really is quite targeted to where we have compliance issues.

Mr O'CONNOR: Even the numbers would help to raise how rare this is, as you were saying?

Ms Andersen: We do have a public register portal where any member of the public can find all of our licences and any enforcement actions that have been taken and any updates to licence conditions as well. That is all transparent, both to licence holders and the community.

Mr Wade: If I could add, I would like to clarify that the amendments that we make to environmental authorities are not retrospective. They are applied prospectively.

Mr O'CONNOR: Yes, but it is changing something that was in the authority going forward?

Mr Wade: We use an example for comparison with driver's licences. When I got a licence, we did not have a rule that said you cannot use your mobile phone while you are driving, mostly because we used telephone boxes.

Mr O'CONNOR: I am sure it was not that long ago.

Mr Wade: When it became a requirement that that was necessary, that we should not be using it—a law was passed to say you cannot use a mobile phone—that law was not retrospective because my licence was issued a number of years ago. That is just an example in another type of legislative framework.

CHAIR: Thank you very much. If we can have that response back by 28 March, it would be appreciated. There being no further questions, we will close the briefing. Thank you very much for your contribution and responses today; it is most appreciated. I declare this public briefing closed.

The committee adjourned at 11.31 am.