HEALTH AND ENVIRONMENT COMMITTEE

Members present:
Mr AD Harper MP—Chair
Mr R Molhoek MP
Mr SSJ Andrew MP
Ms AB King MP
Ms JE Pease MP

Staff present:
Ms R Easten—Committee Secretary
Ms R Duncan—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 7 NOVEMBER 2022

Brisbane

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The committee met at 12.36 pm.

CHAIR: Good afternoon. I declare open this public briefing of the Health and Environment Committee's inquiry into the Environmental Protection and Other Legislation Amendment Bill 2022. I am Aaron Harper, the member for Thuringowa and chair of the committee. I 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 people whose lands, winds and waters we all now share. With me today are: Mr Rob Molhoek, the member for Southport and deputy chair; Mr Steven Andrews, the member for Mirani; Ms Joan Pease, the member for Lytton; and Ms Ali King, the member for Pumicestone.

On 12 October 2022, the Hon. Meaghan Scanlon, Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs, introduced the Environment Protection and Other Legislation Amendment Bill 2022 into the Queensland parliament. The bill was referred to the Health and Environment Committee for detailed consideration. The committee has this morning held a public hearing into the bill. The purpose of this afternoon's briefing with officials is to address any questions which have arisen from the evidence heard at today's public hearing. I welcome the representatives from the Department of Environment and Science.

These proceedings are subject to the parliament's standing rules and orders. I remind committee members that officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate in the House. The proceedings are being recorded and broadcast live on the parliament's website.

ANDERSEN, Mr Claire, Executive Director, Operational Support, Environmental Services and Regulation, Department of Environment and Science

KARLE, Ms Louise, Principal Environmental Officer, Operational Support, Environmental Services and Regulation, Department of Environment and Science

ROBSON, Mr Geoff, Executive Director, Environment and Conservation Policy and Legislation, Environmental and Heritage Policy and Programs, Department of Environment and Science

STEPHAN, Ms Scarlett, Principal Policy and Legislation Officer, Environment and Conservation Policy and Legislation, Environment and Heritage Policy and Programs, Department of Environment and Science

CHAIR: Welcome. I invite you to respond to anything raised in today's public hearing that you would like to address. We will then move to questions.

Mr Robson: The team has been making a few notes as we have gone through the course of the hearings this morning. There are a couple of items that, if you are happy to, we would be happy to address.

The first one I wanted to speak to was in relation to the amendments regarding the Wet Tropics management area. the Wet Tropics Management Authority are based in Cairns, but they have sent us some information, which I would like to share. The first point is that the provisions do not apply to neighbouring properties, they only apply to properties in the World Heritage area—just making that clarification. The other matter is that the amendments do not change the ability to subdivide in the World Heritage area. That change occurred back in September 2020 through changes to the Wet Tropics Management Plan. Those changes were consulted on with the public from 2017 to 2020. For the EPOLA Bill, the proposed change to the Land Title Act is essentially a related amendment tidying up the interaction between the management plan and the Land Title Act to ensure there is a step for the Wet Tropics Management Authority to be sure that the appropriate approvals have been obtained under the Wet Tropics Management Plan before anything is recorded under the Land Title Act process. In that sense, it is not a change in policy; it is just about implementing the existing policy.

I thought that the committee might also find it help for me to make a few comments about the consultation process. We have, of course, given some information on that in our submissions to the committee, noting the different stages of consultation including stages around multiple exposure drafts of the legislation in an earlier consultation paper.

In terms of the discussion around the confidentiality deed, I thought it would be interesting to note that with the original confidentiality deed, individual companies were able to sign that deed and obtain a copy of the bill and make comments on the bill. We acknowledge the feedback that was received from peak groups that that made it difficult for them to liaise with their members. Member companies could, if they wished, sign the confidentiality deed and obtain a copy of the exposure draft. Nonetheless, we recognise the feedback we received from peak groups which said that that made it difficult to facilitate conversations with their members. For that reason, the deed was revised when a subsequent version of the exposure draft bill was provided. As people have said this morning, those revisions were designed to facilitate providing the bill on a confidential basis from a peak group to their members and then getting that feedback through to the peak group.

Earlier this morning there was some discussion around amendments in the bill in respect of certain enforcement provisions that could then go on to see changes in environmental authorities. I want to make a couple of comments in respect to this. First of all, there is not a proposal in the bill around limiting scale for activities. In respect to those matters where, with certain compliance instruments, changes could subsequently be made to an environmental authority, they can only be made when there is a contravention of the act and they can only be made in respect of the compliance matters that are raised in those notices that relate to the contravention of the act. In this way, the amendments are consistent with existing provisions in section 215 of the act, which sets out a number of different processes where changes can be made to environmental authorities.

The amendments in this particular bill only relate to some specific compliance notices and essentially they provide the same consistency, where they can then lead to a change in environmental authority conditions where there has been a contravention of the act. In relation to the executive officer liability provisions that are contained in the bill, we acknowledge the submitters that have made comments on this and, again, we thank all submitters for the comments that they have made. I clarify that the existing defence provisions that are in the act apply to the proposed amendments. These include defence provisions where, for example, if an executive officer in circumstances where they are either not in a position to influence the conduct of the corporation in relation to the offence or if they were they took all reasonable steps then those defence provisions are available. In relation to those proposed amendments, there is also a transitional provision to confirm that they do not apply retrospectively.

When it comes to the EIS amendments and the discussion around the proposed amendments that would allow the chief executive to make a decision early in the process to refuse the EIS from proceeding to later processes, I will make comment in relation to the mention around cultural heritage significance. We acknowledge that this has been a concern raised by submitters and again mentioned today, so I will make a couple of brief comments on that. It is included just as an example of how the provisions would proceed in respect of whether the EIS would be unlikely to proceed under some law, so that reference to cultural reference is just an example of one of those and the definition of cultural heritage significance that is provided in the legislation is taken from existing legislation and it is taken from the Transport Infrastructure Act.

In respect of temporary environmental authorities—these are the provisions in relation to emergencies—there are a couple of points I thought I might add which may be helpful for the committee. One is in respect of disasters which may include something that has happened in a localised area. There are provisions in the proposed amendments and how they would relate to existing provisions in legislation around the declaration of emergencies that would allow for their application to something that has occurred in a localised area. For example, there are emergency direction provisions in the Environmental Protection Act itself which could potentially be applied in some of those localised situations—if there is a contamination spill or something like that.

The other issue in relation to the time frames for temporary environmental authorities and some questions raised around that four-month time frame, it is possible to apply for a subsequent, temporary environmental authority under the provisions as they are drafted.

Ms KING: An extension, did you say?

Mr Robson: You can apply for additional EA—not an extension, but another one. In respect of the industrial chemicals framework and the reference to the amendments in the bill that would require adherence to standards under the national industrial chemicals management standards framework, there are a couple of points to note there. The amendments are proposing to ensure that Queensland

is able to implement the national framework and be consistent with the application of those standards throughout the states and territories. The way the framework operates is essentially it is a national framework. The Commonwealth leads the process around the scheduling of chemicals that need to be considered under the framework, and then they lead the process around developing the standards, but it is a consultative process. They engage with states and territories as well as non-government stakeholders in that process.

One of the concerns raised was the time frame to implement the standards if, for example, you are an existing operator with environmental authority conditions that might already set out some requirements for how you manage chemicals. Under the national framework, it is possible for the standards to be implemented where they would only come into effect at a later date. We acknowledge the concerns that were raised. It is something that may need to be considered through that national process of scheduling chemicals and then making the management standards. The department would of course be open to consultation with Queensland stakeholders if they have concerns around how the development of those national standards is being undertaken in order to consider things like an appropriate start date for when those standards would come into effect. I should also mention in relation to the industrial chemicals framework that it relates to the storage, handling, treatment and disposal of chemicals; in other words, the use, storage and then disposal. It does not relate to dealing with contamination where, for example, there might be problems that pre-exist in relation to contamination within the environment.

One final matter I wanted to raise was in respect of the executive officer liability provisions. In the development of those provisions, one of the considerations that has been undertaken is their consistency with COAG principles that aim to deliver a nationally consistent and principles-based approach to liability for directors and company officers. I note the deputy chair, the member for Southport, had a number of questions in respect of consistency with ASIC as an example. I think the questions related to consistency with national approaches. We would be happy to provide further information if that was desired around the consideration of the COAG principles if that would be helpful.

CHAIR: I think it might be helpful to share that with the committee.

Mr Robson: That is something I can provide some further written information to as well, but I will go over it very quickly. The principles are, as I said, to deliver a nationally consistent approach around liability for directors and other company corporate officers. We have reviewed the proposed amendments to section 493 against the COAG principles as a checklist. There are a number of considerations as you go through that checklist. First of all is whether there is a risk of potential significant public harm resulting from the offence. The COAG principles state damage to the environment and serious damage to the environment as an example of public harm that is potentially a reason for justifying a director's liability provisions. Then consideration has to be given to the size and nature of the penalty and whether it is a serious offence. Then consideration is given to whether the offence is a core element of the relevant regulatory regime. That is just giving you an example of some of the principles that apply with this COAG principles process where there is a checklist. As I mentioned, I would be more than happy to provide some further written information about that for the committee.

CHAIR: We will move to questions.

Mr ANDREW: With a bill with such wideranging implications to try to fit into this national framework, why was there such an issue with confidentiality? Why do we have to go in-confidence with something that pertains to a national interest as well as a state interest?

Mr Robson: In terms of the breadth of the bill—taking that part of your question first—we are dealing with the existing legislative framework and making enhancements and amendments to that. By its very nature a bill like this will be quite broad because we are dealing with a breadth and a range of issues under the Environmental Protection Act as it currently is. In respect of confidentiality, I would refer to the comments that the minister made in her introductory speech where she noted that when we were consulting on exposure drafts the proposals had not been through the full cabinet process so there was an expectation of confidentiality. That is a requirement that the department is to undertake when dealing with cabinet material.

Mr ANDREW: In dealing with councils' Crown land, clean-up of Crown land or council land that they are making available for subdivisions, sometimes we have had some very chemically toxic areas. Maybe the department was involved in helping with that clean-up. Have we captured within that framework the people responsible? Has that captured the situations that may have unfolded over

time where councils have been involved in moving toxic areas, say, for instance, timber treatment plants and all the rest of it? Has the bill captured that? Will it affect people who have been in those situations?

Mr Robson: The bill does make some enhancements to the contaminated land auditor framework. I think your question covers both aspects that are within the bill as well as operational matters that have gone on in the past. Yes, the bill does contain some enhancements to the contaminated land framework, mainly in respect of the role that auditors play. I might turn to my colleague Claire Andersen to see if there is anything further to add around the intent of the amendments that we have. In respect of operational matters where there have been contamination incidents, as I say, that is an operational matter. That is separate to the bill, but I appreciate your question.

Mr ANDREW: Something has occurred because the actual area was there. They have actually got them to a standard where they can put new infrastructure and new dwellings there. Does this capture that? There could be unforeseen issues in that.

Ms Andersen: Thank you for the question. It is really important to note that as a regulator we often focus on ensuring polluter pays. Part of the regulatory framework is about identifying sources of contamination and where they originated from. We already have a number of tools available to us under the existing legislative framework such as clean-up notices that really require people to undertake that work. The contaminated land provisions provide for us to be able to register land on either the environmental management register or the contaminated land register as well so that people who are purchasing properties can do a search of those registers to see if there has been previous contamination that they should be aware of. Some of the provisions in this bill, as Geoff mentioned, are designed to enhance that regulatory framework and ensure that, where we have reasonable grounds for suspecting contamination, we have the opportunity to put that either on the register or undertake an investigation. There were some comments from other submitters earlier around one of those provisions which is removing the requirement around concentrations of contaminants. If you take asbestos, for example, any level of contamination from asbestos is something that people should be doing investigations around and making sure that that is cleaned up.

Mr MOLHOEK: Thank you for your responses so far. The member for Mirani touched on the issue around confidentiality and you explained that by stating that some of the matters were still being discussed by cabinet so there was a need for the consultation to be kept secret or confidential. Why such a rush? A number of the proponents have suggested that this has been very rushed and that there has not been enough time for consultation. In that rush, do you think we have given respondents the best possible opportunity to respond in a meaningful manner and come back to us with reasonable responses? Has there been enough consultation on this before we rush into these amendments?

CHAIR: I will allow a bit of latitude for the department, but that is a good question for the minister during the debate.

Mr Robson: Thank you for the question and thank you, Chair, for the context in terms of the department's role in that respect as well. The consultation process commenced in 2021 and there was an initial discussion with stakeholders in August that then led to a consultation paper in October 2021.

Mr MOLHOEK: Was that in confidence as well or was that part of an open process?

Mr Robson: It was sent to targeted stakeholders. It was marked confidential. It was not the subject of the confidentiality deeds. They applied to the exposure drafts of the bill themselves. That was obviously followed by the process where we sought feedback on the exposure draft bills as well. Throughout that process, you can see that there have been a couple of separate steps. The department certainly appreciates the feedback—and in many cases quite detailed and considered feedback—that submitters have provided us throughout the course of that process. As submitters were saying this morning, there was acknowledgement around changes that had been made to the legislation. I also acknowledge that submitters still have comments on the legislation itself.

Getting back to the process of the exposure draft itself, as I mentioned in my initial remarks, we did take on board the feedback—the fact that there were concerns raised around the ability to circulate or not circulate the exposure draft to members of peak bodies. As I mentioned earlier, individual companies could obtain the exposure draft if they wanted to go through that process through the confidentiality deed, but, in respect of the feedback that was received, we ensured that the subsequent version of the exposure draft was circulated in a way that was designed to facilitate more that feedback coming through peak groups. As a department we have certainly analysed the

feedback. As I said before, we have certainly received very detailed and helpful feedback. Changes were made to the bill through that process. We acknowledge that submitters do need to make an investment of their time to review of legislation like this and it is certainly appreciated.

Ms KING: Thank you for your responses to the issues that have been raised through this morning's hearing. I wanted to unpack further the chain of responsibility issues in regard to the decisions of former executives. Can you note for the benefit of the committee in the drafting of those provisions what sorts of situations could happen or have previously happened that have led to environmental harm?

Mr Robson: There has been consideration in the development of the amendments to specific circumstances that could give rise to a situation where there has been an act that causes harm and then potentially an executive officer may try and avoid liability by resigning. There have been legal proceedings in relation to alleged offences under the act, specifically with the underground coal gasification industry and some experiences through the courts there that the department has considered. The amendments have been developed with some consideration around that as an example.

I should emphasise that we expect the use of these provisions would be quite rare. They are, however, designed to be there to deal with serious harm to the environment where acts have been undertaken—or it may be an act of omission—that caused serious harm to the environment that does relate to an offence under the act. It is designed essentially to close a loophole—I am not using the term in a technical way—that might provide an avenue for people to avoid liability for actions they have undertaken.

Ms PEASE: I have a couple of questions arising from the witnesses who gave evidence this morning. One of the issues that came up relates to offences for persistent offenders, and I just want to hear about that. The witnesses from AgForce talked about their members, the types of people they are, the impost on them and what that might look like for them into the future.

Mr Robson: We acknowledge the questions and concerns raised by AgForce this morning. With respect to the provisions, what we are describing here is essentially the need to get a court order for a persistent offender. In circumstances where, for example, an unlicensed operator is consistently or persistently operating without a licence, the department would need to get a court order. It is not something that is arbitrary. It is obviously there to deal with, as we say, potentially serious situations such as an unlicensed operator. There was some discussion and questions around the penalties that apply and how some penalties may appear to be out of proportion for offences that might relate to administrative matters versus pollution.

One of the things to be aware of is that penalties can escalate in the sense that, depending on the nature of the act and the nature of the process that is being followed in response to the act, the scale of the penalty can escalate. There was the example given of the potential for a $13,000 fine for direct pollution into the river. If you are looking at a penalty infringement notice, they can start at those sorts of penalty levels, but depending on the nature of each individual circumstance the penalties can actually be much higher. What we need to be clear about here is that you are looking at what potential penalties could be, so you might say for a particular offence that, if it is just the lower penalty that is applied, it might be at that sort of lower level. I think the figure mentioned was $13,000, but whatever the figure might be. That could be at the lower end depending on the nature of the offence, so you have to be careful when making a direct comparison to another offence saying, 'They might get fined a much larger amount of money.' It reflects the nature of the penalties and how they can escalate in terms of the nature of the individual action or harm that has been created.

Ms PEASE: I also want to comment on some of the questions that came from APPEA regarding the minor and major projects and the requirement for notification. You would have no doubt heard what was being said around that. Something might be a minor amendment, but because of the size it has to be publicised. Can you provide any commentary around that?

Mr Robson: There are a few things I could note around that. Public notification applies now in certain instances. For clarification, it is an amendment that would require public notification for all major amendments. Under the current process you essentially have a two-step process. The first part of the process is what we refer to as is an assessment level decision; that is, assessing whether it is a minor amendment or a major amendment. If it is assessed as a major amendment, under the legislation as it currently stands there is further consideration and a further decision that would need to be made as to whether it goes out for public notification. The proposals here are to apply consistent processes whereby all major amendments would go out to public notification. It is consistent with the approach taken for the progressive rehabilitation of closure plans where major amendments to those

go out for public notification. That gives you a sense of the context of this amendment and the notions of consistency that underline it as well as, obviously, consistent with the government's overarching policy around transparency for these processes and community engagement.

Ms PEASE: At that point who determines whether it is a minor or major amendment?

Mr Robson: That assessment level decision is undertaken by the department.

Mr ANDREW: I just want to ask about the establishment of these areas for prawn farms and barramundi farms. You have run-off there that is full of nutrients. I live around my electorate as far as those areas are concerned. No-one finds they are great fishing spots or places where all the fish hang out for nutrient run-off or that they are enriched areas of run-off. How do we come to that conclusion? Why is it such an important thing to regulate that situation at the moment? How are fishers able to have X amount of fish or X amount of prawns within their grasp if they have heaps of room for redundancy built into their farms?

Mr Robson: The reason those activities are licensed relates to the discharge that can come from the activities. Part of the framework that is considered are regulations or requirements that apply in Great Barrier Reef catchments as well. That is unrelated to this particular bill, but some of the concerns raised by submitters this morning do speak to requirements that come under the framework around Great Barrier Reef regulations. These things are considered through the licensing process. Oftentimes it would be a site-specific assessment so that you see what the particular implications on the surrounding receiving waters would be from the process. These are not the only activities that are required to meet those kinds of standards—for example, sewage treatment plants when it comes to run-off. I know it is a very different activity, but when it comes to requirements for licensing and dealing with run-off it is about the potential for emissions to the receiving waters to cause environmental problems, environmental harm. That is why it is licensed. We recognise, as the submitters said this morning, that operators are active in order to manage their emissions. That is what the regulatory requirements stipulate.

Mr ANDREW: Currently we are not allowed to import prawns infected with white spot into Queensland.

Mr Robson: Questions relating to imports are a biosecurity matter.

Mr ANDREW: Yes. I am just wondering because white spot was mentioned.

Mr Robson: Where the bill does relate to these things we go back to the trial environmental authorities. In that case we are supporting innovation by making the requirements for an environmental authority for these sort of activities more streamlined in the sense of enhancing the ability to submit an application that does support trial research and innovation. That relates to the information requirements to the environmental authority. We do have provisions there to deal with potential environmental harm by the ability to impose conditions.

CHAIR: One final question for today. I know that we have gone over time. We appreciate you being here.

Ms PEASE: I am sorry to be going over time. During this morning's presentations we heard people talk about the retrospectivity of the bill. Can you elaborate on that and put their minds at ease? I know your comment clearly indicates that that is not the case. Could you perhaps elaborate on that for me, please?

Mr Robson: Certainly. In terms of the process of analysing the bill against fundamental legislative principles, there has not been the identification of provisions that are retrospective against those principles. There is, as I mentioned before, a transitional provision in relation to the executive officer liability provisions to confirm they do not apply retrospectively. In respect of the amendments to the environmental impact statement process, those amendments only apply prospectively as well. In short, there are not retrospective amendments in this bill.

CHAIR: Thank you for your clarification. Thank you, Mr Robson and departmental officials, for being here today. That concludes our questions. Thank you to our Hansard reporters and our secretariat. A transcript of today's briefing will be on the committee's webpage in due course. I now declare this public briefing closed.

The committee adjourned at 1.11 pm.