Speech by

Liz Cunningham

MEMBER FOR GLADSTONE

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WATER AND OTHER LEGISLATION AMENDMENT BILL AND SOUTH EAST QUEENSLAND WATER (RESTRUCTURING) BILL

Mrs CUNNINGHAM (Gladstone—Ind) (6.01 pm): I rise to speak to the Water and Other Legislation Amendment Bill and the South East Queensland Water (Restructuring) Bill. For centuries it has been acknowledged that water is an important commodity. However, in more recent history it has come into sharp focus, particularly with the vagaries of the weather. In 2003 my electorate was in straits as dire as those currently faced by the south-east corner. Heavy industry was placed on 25 per cent restrictions. They were not told to work towards that target but that they had to reduce water consumption by 25 per cent. They would have faced 50 per cent restrictions except for the relief brought by Cyclone Benny.

At that time a number of major industries implemented water-saving schemes that are still in place including the diversion of Gladstone's treated sewage effluent, which provides part of the processed water for Queensland Alumina Ltd. In fact, the Gladstone and Calliope water board has found that the restrictions the community faced, which are similar to those the south-east corner is dealing with now, have meant a permanent reduction in the amount of water consumed by the community and, as a result, its stream has also decreased. It has to look at innovative ways of ensuring that it can meet its financial commitments.

While the WaterWise rebate scheme was not implemented at home till 2002-03, it was certainly welcomed, especially when it was extended statewide. It provides rebates for things like rainwater tanks and water-saving devices and subsidies for efficient washing machines, et cetera. I notice that the bill proposes to restrict water to serial water user offenders, including the reduction in flow to domestic premises following continued breaches of service provider water restrictions. I note the qualifier that the flow cannot be reduced below the minimum requirement for health and safety. I assume that the safe flow will be for fire-fighting purposes and also for the health of the family living in the home, so that they can properly take care of themselves. However, I wonder whether water flow will be restricted to the point where things such as washing machines and dishwashers could be detrimentally impacted upon. I know that there is a cause and effect argument here. The flow is being restricted because these people have no regard for water restrictions and the dire straits that are being faced by the south-east corner. However, I wonder where liability will start and finish in relation to household equipment that could be detrimentally affected if water flows are too low. I would be interested in the minister's comment on that point.

As other speakers have said, particularly in rural and regional Queensland the ability to pump water from rivers and bores is important. I have concerns in relation to the proposal to limit access to bore water, particularly where an individual or a family has paid for the bore to be sunk. The second reading speech states—

> The first demand management measure addressed in this Bill concerns water use information. Water users, including tenants of residential rental properties, need to be well informed about their water usage, so that they can manage their water consumption wisely.

I would say that the majority of people who have relied on bores for a lot of years, irrespective of their location—unless they reside in the greater Brisbane area—would be well aware of the need to be reasonably careful in the way that they use bores, particularly when we have had no aquifer replenishment of any great moment for quite a number of years.

Having acknowledged the importance of water to any property, I have to raise with the minister several situations occurring in my electorate. I know that other members of this parliament, particularly the member for Fitzroy, have raised with the minister cases relating to properties that have been dewatered because of industrial development in the Bracewell area. One resident, Mr Bill Geaney, has been recognised as being in the area of impact of the mine operated by Cement Australia. It has been documented that he is impacted upon and that the mining company has to replenish his supply. Indeed, 12 or 18 months ago in recognition of his lost water supply the company put a bore down, but it has never been equipped. At arbitration the requirements on Cement Australia were acknowledged. The company was given 60 working days to rectify its noncompliance. I believe that the 60 days are up on 15 November, but not a thing has been done to comply with that direction in relation to Cement Australia's obligations to Bill Geaney.

I have talked to DNRW representatives in my district in Rockhampton. I have also spoken to the EPA. Bill had been told to go to the EPA as it looks after environment. However, when he went to the EPA he was told that it only looks after water quality and not supply. I made the same inquiries and that information was confirmed. The EPA has no involvement in this. The Department of Natural Resources and Water, in concert with the Department of Mines and Energy, needs to require Cement Australia to meet its obligations to Bill Geaney. It is wrong that he should have to go cap in hand, as if he has done something wrong, and say to this company, 'Please, please, please. Will you get my water supply right?' The documentation is there and the arbitration is clear.

The company has an obligation to comply by 15 November. No activity has been undertaken by the company. Nor does it remotely look like it will comply with that direction. It appears that all that will happen is that the company will be given another 60 days to comply. That means that in relation to these sorts of circumstances the legislation is a nonsense. It means that even in such clear-cut cases governments do not choose to use the authority that they have to obligate a company to do what it needs to do. The government can do that simply by saying, 'Unless you replenish this supply, unless you equip the bore and ensure that he has a water supply, you will be issued with a notice to cease mining as of 15 November.' That appears to be the only stick that the company will respond to. Having given Cement Australia a flogging around the ears, let me say that there are a lot of nice people who work there. They have great families and they contribute well.

Mr Lawlor interjected.

Mrs CUNNINGHAM: They would be particularly nicer. They live up my way. They do a great job. They work honestly and conscientiously. It is above their heads the fact that this company is refusing to act appropriately and fairly towards Bill Geaney and to others in the affected area. There has been longstanding disagreement between Cement Australia and not only people at Bracewell but also people outside of Bracewell, outside of the recognised diminishing water supply area, who have a grievance with Cement Australia and indeed have a grievance with a number of government departments. This case is documented. It has been to arbitration. The arbitration decision is clear. It is in black and white and the company does not have a leg to stand on. Neither will the government if it does not enforce its own rules, and at this point that is not happening.

Another family bought a significant property in my electorate—it was actually a property owned by the Gladstone Area Water Board—called Fairview. The family purchased it several years ago with a view to establishing a grazing and ancillary industry on the property. They came in from out west. They have been devastated by proposals by Queensland Rail for a corridor to go through the property. There are some acceptable corridors and some less acceptable corridors in relation to the layout of Fairview. They contacted me today to say that they have just found out that Gladstone Pacific Nickel is proposing to construct a residue storage facility, or a red mud dam, on Farmer and Six Mile creeks. There is a huge amount of land that has been set aside for industry. I am sure that there would be suitable places to locate the dam on the Aldoga industrial estate that would not affect these watercourses. Both Farmer and Six Mile creeks flow through Fairview, and Fairview accesses irrigation, stock and domestic water from those two creeks.

Gladstone Pacific Nickel did not contact the Cowards at all in relation to the impact the facility would have on their farming business. It is only after the Cowards contacted GPN on 26 November that it got their attention. It is proposed in the EIS that there will be a water loss of 47 per cent in those creeks, and that is a significant amount of water in terms of farmers being able to access that water, particularly for stock and domestic purposes. There is also the issue of potential contamination if the dam overflows. So these are the issues. In the south-east corner we are dealing with issues of water, availability of water and how critical it is for the community to have access to the water, and here we have a situation where in both instances the issues could be addressed by applying legislation and applying it appropriately. Yet the government appears unwilling or unable to respond to those individuals' very, very real issues.

One of the benefits of the water restrictions that have come in in the south-east corner—and I am not being ungracious in saying that—is that people have had to look at innovative ways of using water, including greywater. It has been a great learning process for young people and kids at school, where they

have studied modules of how best to re-use water without there being negative impacts in terms of the environment.

This bill also devolves more responsibility to local government in response to its need to be able to monitor compliance with water restrictions to ensure their continued effective implementation. The second reading speech says—

Currently they can do so through an Approved Inspection Program by passing a council resolution and publishing a notice. This gives authorised council officers the power to enter properties (but not inside premises) at any reasonable time of the day or night without agreement from the occupier or a warrant, to gather information and evidence, and to ask persons on the property for reasonable help in exercising such powers.

I seek clarification from the minister in relation to this continuing devolution whether there have been any resourcing issues raised by local councils and, if so, how the state government has responded.

The Scrutiny of Legislation Committee also made a number of comments that I wish to raise. In relation to the South East Queensland Water (Restructuring) Bill, the committee, under the heading 'Is the legislation consistent with the principles of natural justice?', states—

Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the rights and liberties of individuals and section 4(3)(b) provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.

It goes on to talk about the appointment of members to the board of a water entity or as the chairperson or deputy chairperson of a board, and the manner in which those appointments can be suspended, cancelled or rescinded. The committee refers to the traditional element of natural justice in regard to the 'prior hearing rule'. I would be interested in the minister's response to that concern raised by the committee. The committee also raised what I believe to be a more important issue and that is the issue of Henry VIII clauses. When I first got into parliament I was a member of the Scrutiny of Legislation Committee.

Mr Lawlor interjected.

Mrs CUNNINGHAM: Henry VIII? No, and he is not well according to the Scrutiny of Legislation Committee under this piece of legislation either, let me tell you. The committee at that time, back in 1995, found Henry VIII clauses abhorrent, and I do not believe its position has changed at all. The Scrutiny of Legislation Committee report states—

Section 4(2)(b) of the *Legislative Standards Act* requires legislation to have sufficient regard to the institution of Parliament and section 4(4)(c) provides that whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the bill authorises the amendment of an Act only by another Act.

It goes on to say—

A 'Henry VIII' clause is defined by the committee as a clause in an Act of Parliament which enables an Act to be amended by subordinate or delegated legislation. Henry VIII clauses are considered to offend against the institution of Parliament by offending against the principle that amendment of an Act of Parliament should be by Parliament itself, by way of amendment of the Act. Amendment should not be via executive action.

The committee points out that there are Henry VIII clauses in this piece of legislation. The committee recognises that the use of these clauses may be justifiable in some circumstances. However, it questions whether clauses 67(6) and 85 have sufficient regard to the institution of parliament. I would be interested in the minister's comment on why the Henry VIII clauses were necessary and why other more acceptable processes in terms of legislative amendment could not have been implemented.

I acknowledge that the minister has just handed me a letter in reply to my letter to him in relation to Bill Geaney. With his approval, I will put it on the record. The letter states—

The responsibility for managing the effects of the mining and complying with the terms of the mining lease falls within the responsibility of the Department of Mines and Energy. The Department of Natural Resources and Water's role is to provide advice to the Department of Mines and Energy and to provide a determination to that department when an unresolved dispute arises over whether a water supply on a property is affected by the mining operations. It is the Department of Mines and Energy that formally delivers the determination and pursues any enforcement of that determination in relation to the requirements of the mining lease terms that relate to the provision of alternative water supplies.

The letter goes on to say—

I am advised that the Department of Mines and Energy has written to Cement Australia reminding the company of its obligations to comply with the determination recently made by my department and asking for information on how the company intends to comply with the determination.

While I appreciate the minister's letter, the only problem is that it does not give Bill Geaney any water and it does not obligate in any way the Department of Mines and Energy to do its job.

Irrespective of the fact that we can discuss it here and the minister has written this letter and given it to me, which I do appreciate, Bill has been going backwards and forwards—'It is EPA', 'It is DNRW', 'It is Mines and Energy'—and he cannot get any response out of anybody. In the meantime, he is sitting on a

property that used to have good water. Albeit recognising that we have been in drought for a long time and we have not had recharge, it is documented that the dewatering is in the major part because of the mining activities of Cement Australia.

If I were Bill Geaney I would not care which department was supposed to flick the whip; I would just want one of them to do it rather than pass the buck all the time. If it is Mines and Energy, then I urge it to do something for these people because they do not deserve the treatment they are getting. The Cement Australia operation is a good operation in terms of its productivity, but the by-product of that operation is that many families have been pushed off their farms because they have had little choice but to sell to Cement Australia. Bill is one farmer who does not want to sell at this point in time for a variety of reasons, all of which he is entitled to hold, but he wants the obligations of Cement Australia—well documented by DNRW and, as the minister's letter now points out, enforceable by Mines and Energy—to actually be enforced so that he has some opportunity to survive as a farmer. I implore whichever department is responsible—and according to this letter it is Mines and Energy—to get out and get something done and stop just talking about it.