Speech By

Hon. Andrew Powell

MEMBER FOR GLASS HOUSE

Record of Proceedings, 28 October 2014

ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. AC POWELL (Glass House—LNP) (Minister for Environment and Heritage Protection) (12.04 pm): I move—

That the bill be now read a second time.

I am very pleased to stand in the House today offering sensible, workable legislation that cuts green tape, cuts cost to government and business while fundamentally strengthening Queensland's environmental law. This is a positive bill aimed at delivering positive outcomes. I trust those opposite support these sensible reforms, support the bill and do not just oppose it because they feel they have to.

This bill puts to bed once and for all the tired, old line from those opposite that we are slashing environmental protections. The bill amends several pieces of legislation to offer clearer and simpler processes to Queensland's businesses and stronger protection for Queensland's environment. The bill amends the Biological Control Act 1987, the Coastal Protection and Management Act 1995, the Environmental Offsets Act 2014, the Environmental Protection Act 1994, the Nature Conservation Act 1992, the Waste Reduction and Recycling Act 2011 and the Wet Tropics World Heritage Protection and Management Act 1993.

The bill introduces enforceable undertakings to strengthen the Queensland environmental regulator's ability to respond to matters of noncompliance. Enforceable undertakings will be used as an alternative compliance tool to improve environmental protection, and I note the committee's support for this new measure. Enforceable undertakings will provide a quicker resolution in some instances without the need for costly and time-consuming court proceedings. Importantly, it is worth noting that this does not represent an easy option. Deliberate offenders will not be able to enter into an undertaking and will feel the full force of the law. For those who are doing the right thing by the environment, we continue to demonstrate our commitment to reduce approval delays and green tape.

However, the bill also increases maximum penalties under the Environmental Protection Act 1994 for those doing the wrong thing in line with similar offences in other jurisdictions. We believe in firm but fair environmental regulation and strong penalties are necessary to emphasise the seriousness of offences and deter environmental wrongdoers.

I thank the Agriculture, Resources and Environment Committee for its constructive comments and recommendations on the bill. The committee tabled its report on 22 October 2014, putting forward 10 recommendations and two requests for clarification. I table the government's response to the committee's report, which addresses each of the recommendations and requests for clarification.

Tabled paper: Agriculture, Resources and Environment Committee: Report No. 49—Environmental Protection and Other Legislation Amendment Bill 2014, government response [6377].

As a result of the committee's report, I will be moving six amendments during consideration in detail of the bill. The amendments to be made are to the Environmental Offsets Act 2014, the Environmental Protection Act 1994 and the Waste Reduction and Recycling Act 2011. In addition, amendments are to be made to the Sustainable Planning Act 2009 to support the offsets framework.

Regarding the streamlining and simplification of environmental offsets requirements under the Environmental Offsets Act 2014, the committee made three recommendations in relation to providing guidance on the operation of the act, defining matters of local environmental significance and allowing local government to charge less than the maximum set by the financial settlement offset calculator. I support the committee's recommendation that my department develop further guidance on how the act operates, especially in relation to the meaning of 'same or substantially the same prescribed environmental matters'. These are difficult concepts which reflect the innovative nature of the legislation and our objective to remove the duplication of offsets between the Commonwealth, the state and local governments. My department will produce easy to understand guides to assist the community to have greater confidence that we will deliver on our commitment that there will not be duplication.

The Environmental Offsets Act 2014 also allows offsets for matters of local environmental significance. A number of submissions to the committee called for greater clarity around what values this might cover. The regulation allows local government to identify locally important values in a local planning instrument in consultation with the community. While I agree with the committee that greater clarity is required, in the interests of minimising duplication, I believe that local planning instruments are still the best place to define those values that are not already listed as matters of state and national environmental significance.

The state will use existing planning powers available under the Sustainable Planning Act 2009 to ensure that duplication does not occur. On the topic of duplication, I am pleased to also announce that, as part of the amendments to be moved during consideration in detail, I will be introducing for the first time a mechanism to remove duplication that may arise between offset conditions imposed by state departments. Again, this is about focusing on outcomes ahead of processes, measuring our success in tangible environmental benefits and not in pages of green tape. As requested by industry, these will legislatively ensure that only one offset requirement for each matter of state environmental significance is imposed.

I support the committee's recommendation to allow local governments to determine a financial settlement offset amount up to the maximum currently required under the offset calculator. This will also be supported by amendments to the Environmental Offsets Act 2014, which allow local governments to top up their offset accounts using other funds in order to ensure conservation outcomes can be delivered for their environmental offsets. Local governments will be in control of this decision, as they should be.

In relation to the amendments to the Environmental Protection Act 1994, during its deliberation the committee suggested that the department develop a guideline on how 'prescribed environmentally relevant activities' should be described and conditioned in an environmental authority. This is a sensible suggestion, and I am pleased to advise that this guideline will supplement the department's regulatory strategy in support of outcome based conditioning.

The committee generally supported amendments to the Waste Reduction and Recycling Act 2011 which introduce a new end-of-waste framework; however, the committee recommended that the government consider amendments to the bill that would clarify the point at which waste ceases to be waste and becomes a resource. The government does not support this recommendation because the point when waste becomes a resource will be different for different types of waste and therefore cannot be made clearer in the bill. Consequently, each end-of-waste code will define the point at which that particular waste ceases to be waste and becomes a resource for that particular waste.

This government is committed to removing market impediments associated with the management of waste. End-of-waste codes will minimise ambiguity and provide certainty to industry about the delineation between waste and resource. To assist with this I support the committee's recommendation to amend the bill to differentiate between an end-of-waste user and a resource user and I will move amendments during consideration of the bill in detail to make these changes.

The committee also made recommendations in relation to the drafting of provisions that establish a chain-of-responsibility principle for persons acting under end-of-waste approvals. While the government does not support the amendments recommended by the committee, the government does support the policy intent of the recommendation. I agree that there should be a chain-of-responsibility principle reflected in the end-of-waste framework so that there is sufficient incentive for end-of-waste approval holders to manage waste appropriately through to the final point

where the waste meets the standard required for it to be considered a resource. To ensure the legislation appropriately reflects this policy intent, I will move amendments during consideration in detail to clarify that conditions of an end-of-waste approval can only impose obligations on the holder of the approval and that those people who are acting under the approval, for example, an employee or subcontractor, must also comply with the conditions of the approval.

The committee made a recommendation that the bill be amended to preserve the general principle that the legal onus or burden of proof lies with the party which brings an action and the approved holder is innocent until proven guilty. This government is committed to ensuring that sufficient regard is had to the rights and liberties of individuals and will address the committee's recommendation by deleting the sections referred to in the committee's report.

Other issues raised by the committee did not require legislative amendment but are important points to clarify. For instance, the committee sought clarification regarding the amendments to the Waste Reduction and Recycling Act 2011 and when the regulations and end-of-waste guidelines to support these amendments will be finalised and made available for industry stakeholders. I can advise that my department is aiming to make the regulation and guidelines in the first half of 2015. During that period my department will engage with stakeholders to allow an opportunity for interested parties to contribute to the development of the draft documents.

As part of implementation planning, the committee also invited my department to consider support tools that would enable the effective monitoring, auditing and evaluation of the implementation of enforceable undertakings. I am pleased to advise that my department already has a process in place to review and improve its approach and business system requirements to facilitate the effective monitoring, auditing and evaluation of the full range of approvals under the Environmental Protection Act 1994.

Another important point for clarification is with regard to the duty to notify in relation to contaminated land. During its consideration of the bill the committee requested that I write to the Local Government Association of Queensland on the changes to the duty-to-notify requirements. I can confirm that, since the general environmental duty and the specific duty to notify for contaminated land could apply in the same circumstances, they have been amalgamated to ensure that there is no overlap or duplication of requirements. I will be clarifying this in writing to the Local Government Association of Queensland.

Before I conclude, I would like to note that last week I visited farmers in Cairns and graziers west of Bowen at Mount Aberdeen to see for myself what a huge effort they are making to help protect the Great Barrier Reef. I visited the Norman Reef off Port Douglas and took part in the Reef Blitz activities in Airlie Beach, and I know that the people of Bowen, Townsville, Cairns, Airlie Beach and graziers as far inland as Charters Towers are passionate about looking after our reef today and for future generations. There are already significant amounts of time, money, effort and resources dedicated to the protection of the Great Barrier Reef. Together with our federal colleagues we contribute almost $180 million each and every year to improve the health of the reef. This government alone has committed $35 million per year to water quality initiatives. It is for this reason we take equally seriously any wilful or deliberate attempt to undo that great work or cause wilful harm to the reef.

Consistent with the consideration in this bill of penalties and sentences pertaining to environmental harm, I propose to move amendments to the bill which support the enhanced protection of one of our greatest natural wonders. These amendments recognise the Great Barrier Reef World Heritage area as an area of special significance and define environmental harm to the Great Barrier Reef World Heritage area to be serious environmental harm under the Environmental Protection Act 1994. The amendments also ensure that a court considers the damage to the Great Barrier Reef when imposing a penalty for an offence against the act. The maximum penalty for the offence of unlawfully causing serious environmental harm will be a serious deterrent to potential offenders. After amendments included in this bill, these penalties will be unapologetically some of the toughest in environmental regulation. For an individual committing a wilful offence the penalty will be $711,562—or 6,250 penalties units—or five years imprisonment. For a corporation the maximum financial penalty is five times that of an individual and is currently $3.56 million for each offence or contravention.

This bill retains strong environmental protections while also encouraging economic growth in Queensland. These amendments are further proof that this government takes our role as protectors of the reef and the broader Queensland environment seriously and should give every Queenslander confidence that the Great Barrier Reef World Heritage area is being effectively managed and protected. In summary, this government remains committed to balancing environmental protection

with economic development, and I believe this bill delivers both in equal measure. We are simplifying processes and strengthening protections. We are delivering innovative solutions to complex problems, and we are working with Queenslanders to transform today's challenges into future opportunities. I commend the bill to the House.