Speech By
Dale Last

MEMBER FOR BURDEKIN

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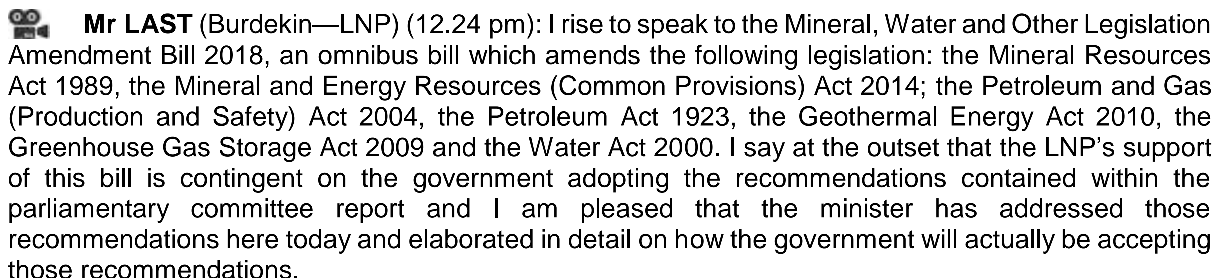
MINERAL, WATER AND OTHER LEGISLATION AMENDMENT BILL



Mr LAST (Burdekin—LNP) (12.24 pm): I rise to speak to the Mineral, Water and Other Legislation Amendment Bill 2018, an omnibus bill which amends the following legislation: the Mineral Resources Act 1989, the Mineral and Energy Resources (Common Provisions) Act 2014; the Petroleum and Gas (Production and Safety) Act 2004, the Petroleum Act 1923, the Geothermal Energy Act 2010, the Greenhouse Gas Storage Act 2009 and the Water Act 2000. I say at the outset that the LNP's support of this bill is contingent on the government adopting the recommendations contained within the parliamentary committee report and I am pleased that the minister has addressed those recommendations here today and elaborated in detail on how the government will actually be accepting those recommendations.

This bill looks to implement recommendations 4, 7, 8 and 9 from the 2015 independent review of the GasFields Commission Queensland which was released on 1 December 2016. I think it is important that we understand the content of those recommendations and the potential impact the implementation of these recommendations will have. It states—

Recommendation 4:

That for negotiations for a conduct and compensation agreement, the *Petroleum and Gas (Production and Safety) Act* should be amended to remove the option of a conference with an authorised officer to satisfy the ADR requirement prior to a party being able to apply to the Land Court.

This recommendation does not apply to make good agreements.

…

Recommendation 7:

That the *Petroleum and Gas (Production and Safety) Act* and the *Water Act* be amended to provide that if the parties cannot agree on an ADR process or practitioner, the President of the Queensland Law Society or similar office can decide on the ADR process to be undertaken (apart from arbitration) by the parties (depending on the nature of the dispute) and select an appropriate practitioner from the ADR panel.

Recommendation 8:

That the *Petroleum and Gas (Production and Safety) Act* and the *Water Act* be amended to provide for a distinct arbitration process, as an alternative to making an application to the Land Court if a conduct and compensation agreement or make good agreement has not been agreed following the statutory negotiation or alternative dispute resolution process.

Consideration be given to the following rules being applied to an arbitration of this type:

- the arbitration option can be agreed to by the parties following statutory negotiation or alternative dispute resolution; or can be elected by the landholder within a statutory time period following ADR; or by the petroleum authority holder following the expiry of the statutory time period
- if either party elects to proceed to arbitration, then neither party can elect to take the matter to the Land Court

- the holder cannot undertake advanced activities on the land without the agreement of the landholder until the arbitration is decided and the 'appeal' period has expired. At this point, the holder can give an entry notice and after 10 business days undertake advanced activities under the *Petroleum and Gas (Production and Safety) Act* on the land
- evidence and submissions can be presented in person or in writing as determined by the arbitrator
- both parties are able to be legally represented if agreed or with the consent of the arbitrator
- the cost of the arbitrator is shared between the landholder and the holder (unless the parties have not been through an ADR process for which the holder paid the costs of the ADR practitioner, in which event the holder pays the costs of the arbitrator)
- each party pays its own costs of appearing in the arbitration, unless the arbitrator orders otherwise. This will act as an incentive to landholders to try to resolve the matter at ADR
- the arbitrator will make their decision according to the provisions of the relevant resources legislation, unless the parties agree that the arbitrator decide the matter on another basis (such as commercial terms)
- there is no right of appeal on the merits from an arbitration, but either party may seek a review of the arbitrator's reasoning because of a claimed error of law or some similar fundamental error
- the arbitrator should have statutory immunity for anything done or omitted to be done in good faith in his or her capacity as arbitrator.

The commission's recommendation No. 9 states that—

a) the *Petroleum and Gas (Production and Safety) Act* be amended to provide that the costs of the ADR facilitator are paid by the petroleum authority holder, not by the person who gives the election notice as is currently the case

b) the *Petroleum and Gas (Production and Safety) Act* (and the *Water Act*) be amended to provide that a landholder's necessary and reasonable professional fees incurred in the ... negotiation of a conduct and compensation agreement (or a make good agreement) be paid by the holder, even in the event of a conduct and compensation agreement (or a make good agreement) not being concluded between the parties. The liability for costs would commence from the giving of a negotiation notice by the holder (or the day that a bore assessment is undertaken in the case of a make good agreement)

c) the class of professional fees that are the subject of compensation under the *Petroleum and Gas (Production and Safety) Act* and the *Water Act* be expanded to allow a landholder to retain an agronomist or other such technical expert to assist in evaluating the impact of the proposed CSG activities on the subject land

d) jurisdiction be given to the Land Court to determine the appropriate level of professional fees claimed by a landholder in the negotiation of a conduct and compensation agreement or make good agreement.

Most notably the bill looks to implement changes to the statutory negotiation process for the negotiation of a conduct and compensation agreement and a make-good agreement between resource companies and landholders. The LNP understands that the future success of both the resource and agricultural sectors relies on their ability to harmoniously coexist. Mining and agriculture are the economic mainstays of rural and regional Queensland, and it is essential that both are able to prosper with minimal disruption to their respective operations.

While from time to time there have been well publicised examples of the sectors having coexistence issues, for the vast majority of the time the two industries continue to operate harmoniously side by side. In fact, recently the member for Warrego and I toured the Santos and Senex gas fields at Roma where we saw some great examples of gas companies working collaboratively with landholders, where water is being used to irrigate cropping land and pasture and provide much needed water for graziers, particularly during the current drought. In fact, many resource companies have gone to great lengths to be good neighbours by working with landholders to address issues of compensation. That has resulted in many landholders establishing positive and mutually beneficial relationships with resource companies.

As I said, the LNP's support for this bill is contingent on the adoption of the recommendations of the committee. I pay tribute to committee members, particularly those from this side of the House, for their consideration of the bill and the recommendations contained in their report. These include provisions that ensure that farmers have the right to legal representation during arbitration through the removal of proposed section 91, and I note the minister will be adopting that recommendation through an amendment; ensuring that professional—including accounting, legal, valuation and agronomy—and legal fees incurred by landholders during the negotiations and preparation of a CCA are paid by the resource company, even if a CCA cannot be reached; and having regard to recommendation No. 5 of the committee, I am pleased that the minister has outlined the methodology to determine reasonable landholder time related costs and how this could be included in the legislation.

Having regard to recommendation No. 6, many small family farms are impacted by resource development and it is imperative that those landholders receive the appropriate advice, support and representation in their dealings with mining and gas companies. As one would appreciate, the costs involved in engaging professionals such as agronomists and lawyers can be considerable and it is vital that this provision is incorporated in the legislation. I note further that the committee recommended that the department collaborate with stakeholders to investigate developing a methodology to determine reasonable landholder time related costs. I note with great interest that the minister has just addressed

that particular recommendation and how it will be rolled out. I point out that the Queensland Farmers' Federation noted that there should be potential for landholders to include the time taken to negotiate and prepare the CCA in their recovered costs.

Furthermore, the committee has recommended that the minister clarify the time frame proposed for an official to report on a direction given to a relevant entity to take action on a water quality issue. Once again, I note that the minister has indicated a time frame of 30 days. I will talk more on that particular issue later in my contribution. Obviously in the interests of transparency and good governance, officials given a direction should be reporting in a timely manner and not dragging out the time frame, as we have seen in recent years, to the point where it becomes farcical. If there is to be an inquiry or even an inquest, the provision of timely information and actions taken in response to a direction are imperative.

It is important to note that some non-mining groups did bring up the delicate and sometimes sensitive issues around resource companies continuing to have access to private land for advanced activities without a CCA. Again, I note the minister's response having regard to that particular point.

Under the Mineral Resources Act 1989, the Land Court has conferred jurisdiction to determine compensation for landowners with mining claims and mining leases over their properties when the applicant and the landowner are unable to reach agreement. The vast majority of those matters are automatically referred by the department, as required by the Mineral Resources Act 1989, if the parties do not reach agreement by the end of the statutory negotiation period. I note the policy objective of the amendments is to prevent compensation matters being automatically referred to the Land Court by the department. That would provide substantial time and cost savings that would no doubt be appreciated by both the resource company and landholders.

I profess to having some concerns with the provision relating to the consideration of the water related effects of climate change on water resources. As we all know, a substantial body of literature, some of it very questionable, currently exists around climate change and the impact it is having on our environment and resources such as water. I ask: where will the minister be sourcing this information from and how can the community have confidence that the information or data relied upon by the minister is accurate, can be verified and is based on fact?

I concur with the provisions relating to the protection of cultural values of water resources, having regard to the importance of water resources to Aboriginal peoples and Torres Strait Islanders. There is no question that Aboriginal and Torres Strait Islander peoples have a wealth of knowledge about water and water-dependent ecosystems and should have input into the preparation of water plans. Often in this place I have spoken about the strategic importance of water. In fact, I titled my maiden speech 'Just add water' in an acknowledgement of the importance of water in driving jobs growth and economic prosperity in this state. Water is a precious commodity. To me, it is more precious than gold. Without water, you have nothing.

Around this state there are plenty of examples where communities and farmers have run out of water with devastating impacts. Many of our dams hold reserves of unallocated water and it makes perfect sense to allow temporary access to those reserves for other water users until the reserve is required for its intended purpose. Of course, strict parameters and guidelines, primarily around security and environmental flow objectives, will need to be built into the process, but it does not make sense to have water sitting unutilised in a dam when it could be used to grow crops or sustain a resource industry. Recently I have highlighted the situation that currently exists with our dams and the under-utilisation of water during one of the worst droughts in Queensland's history. Of course, access to water is one thing; the price of water and pumping costs are a completely separate issue.

The final provision relating to urgent actions for dealing with water quality issues is potentially the most important issue to be incorporated in the bill. We all know what happened when water that was released from Wivenhoe Dam during the 2011 floods caused widespread flooding throughout Brisbane. As a former police officer, deputy of a local disaster management group and Emergency Management Queensland area director, I can say that during times of emergency unbelievable pressure is brought to bear around important decisions such as releasing water. As we have seen, the ramifications of those decisions can have devastating consequence and it is imperative that decision-makers have the tools, information and expertise available to make informed decisions that will withstand scrutiny in a court of law.

I would certainly like to see strict protocols in place to ensure that the minister or chief executive, in satisfying themselves that urgent action is required, are following agreed protocols and procedures that have been developed in consultation with all stakeholders and rely on sound technical and scientific evidence. In short, these decisions need to be made objectively by qualified people and not subjectively.

I note the bill provides for a report to be prepared about the direction to outline the details of the water quality issue, the circumstances under which the urgent action was required and any actions carried out or not carried out as a result of the direction. This report will be made publicly available to ensure transparency, as it should, surrounding the need for and outcomes of the minister or chief executive using the direction power in those circumstances.

Whilst policy uncertainty has always been an issue for the resource sector—and this bill is very broad—I am pleased to hear the minister today address the recommendations and adopt the recommendations of the committee. As a consequence, the LNP will not be opposing this bill.