Speech By

Stephen Andrew

MEMBER FOR MIRANI

Record of Proceedings, 18 October 2018

MINERAL, WATER AND OTHER LEGISLATION AMENDMENT BILL

Mr ANDREW (Mirani—PHON) (5.06 pm): I rise to speak of my concerns with the Mineral, Water and Other Legislation Amendment Bill 2018. I would like to thank the committee and the secretariat for their work on this. As the member for the seat of Mirani, I represent a substantial number of agriculture based businesses that are absolutely dependent on the availability of cost effective and reliable water. Any increase in the price of water or disruption in the availability of quality supplies, especially during periods of low rainfall, can easily lead to the permanent destruction of agriculture based ventures and cause great harm to the welfare and personal lives of families with generations of farm experience as well as the local communities they have previously supported for many decades.

In turn, seeing farmers walk away from agriculture and being unable to use their land, irrigate crops or water stock then compounds into a vastly wider impact across the entire state economy inclusive of being left with water assets that become underutilised and impose an increasingly costly burden on those who remain. We have an issue in Mirani at the moment with stranded assets. Some of the dams are not being used. We also have a reduction in the amount of molasses that is being produced because these water resources are not being used and that is affecting us as a state.

As such, whilst I recognise some of the amendments to the Water Act are needed and aspects are well meaning in their intent, I am concerned that adding additional complexity will present a range of new opportunities that are open to abuse of process. One must consider who the parties involved are likely to be and question whose best interests the outcome will serve when this proposed new legislation is applied. Most notably, the legal, technical and financial resources available to the typical small farmer are often insignificant compared to those available to the larger corporate operators and multinational resource proponents with the intent of avoiding responsibility for causing adverse water outcomes.

In a practical sense, the existing Water Act does provide an established legal framework to facilitate the creation of conduct and compensation agreements, CCAs, and make-good agreements, MGAs. If an acceptable outcome cannot be negotiated in good faith or the future operation of these agreements is deemed unsatisfactory to either party then proceedings can be advanced through to the final binding decision in the Land Court. Amongst a number of flaws within the amendment bill there is not enough support to fully relieve the pressure exerted on the smaller party to sign a CCA or an MGA.

Doing proper due diligence by way of seeking independent legal and technical advice is often highly specialised and very costly. Whilst the amendment bill introduces some measures for costs to be transferred, the impost of carrying such debt for any length of time may still be too much. As legislators, it would be foolish to think that a sizeable resource tenure proponent would not seek every opportunity to exert influence to secure itself a most favourable outcome over a smaller party. In many cases, the significant power imbalance is obvious, for example, when a primary producer is seeking to resolve a make-good agreement on a bore that has been adversely affected by a neighbouring mineral development lease.

I believe the inclusion of new section 433A through to 433F, prescribing a new arbitration mechanism, diminishes the significant importance of participating in and, more importantly, showing good faith during the conference-style negotiations. A reasonable person would recognise that a large resource company would be infinitely better positioned to favour legal proceedings being elevated to a higher level, which the average primary producer simply could not afford the time or cost to pursue. Worse still, by having entered into the conference-style negotiation, there exists a very real opportunity to invoke new section 433E and impose on a smaller party a significant financial penalty by way of having to bear their own costs related to participating in a privately convened arbitration. There is certainly no up-front surety in leaving the decision on alternate financial agreements to the private arbiter, especially once significant expenses have been incurred. Clearly there need to be better thought through and improved safeguards to ensure equality in representation.

However, in saying all that, the amendment bill, via the application of new section 433F, effectively circumvents section 434 in the existing Water Act by removing the right to appeal the matter in a Land Court once the private arbitration mechanism has presented a binding outcome. That being the case, it is an extraordinary legal precedent that denies a person the right to pursue a bona fide matter inside a regular court of law, especially involving such a significant matter as water supply. On those grounds, I believe that the Mineral, Water and Other Legislation Bill 2018 is not worthy of my support.