Speech By

Patrick Weir

MEMBER FOR CONDAMINE

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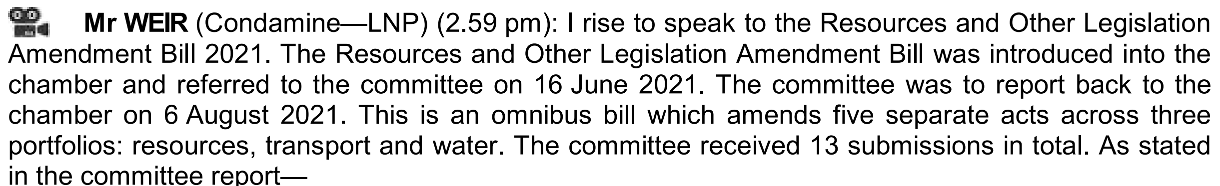
RESOURCES AND OTHER LEGISLATION AMENDMENT BILL



Mr WEIR (Condamine—LNP) (2.59 pm): I rise to speak to the Resources and Other Legislation Amendment Bill 2021. The Resources and Other Legislation Amendment Bill was introduced into the chamber and referred to the committee on 16 June 2021. The committee was to report back to the chamber on 6 August 2021. This is an omnibus bill which amends five separate acts across three portfolios: resources, transport and water. The committee received 13 submissions in total. As stated in the committee report—

The purpose of the Bill is:

- to clarify the legal standing of certain historically granted tenures, activities and entitlements under the *Mineral Resources Act 1989* and *Petroleum Act 1923*
- to repeal the Personalised Transport Ombudsman Act 2019 and make minor consequential amendments to the Transport Operations (Passenger Transport) Act 1994—

As has been mooted by the minister, those have been removed from this bill and we have been denied the chance to speak to that. That was a motion to remove an ombudsman that was never an ombudsman and an office that was set up for an ombudsman who was never appointed at a cost of about $470,000. It was seriously like something out of *Utopia* or *Clarke and Dawe*—

- to ensure water restrictions can be equitability investigated and enforced across the South East Queensland region by amending the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* to align with the powers local government water service providers have under the *Local Government Act 2009*
- to exclude cyber security measures, reported to the Water Supply Regulator, from being made publicly available to mitigate the risk of malicious attacks on water service providers and water supply schemes by amending the *Water Supply (Safety and Reliability) Act 2008*.

I intend to speak predominantly to the section that amends the Mineral Resources Act 1989 and the Petroleum Act 1923, which relates directly to the shadow ministerial portfolio of natural resources and mines. The first section of the report handed down by the committee relates to the consultation process in the drafting of these amendments.

As with many pieces of legislation introduced into this House by the Palaszczuk government, there has been very little consultation with affected stakeholders. In fact, a number of stakeholders were critical of the Department of Resources' consultation process with regard to the proposed amendments. The Environmental Defenders Office expressed their disappointment, stating that to their knowledge no representatives of the conservation sector or the environmental law sector were involved with the bill prior to the day it was introduced into the Queensland parliament. The EDO stated at the public hearing—

We would really implore the Department of Resources to improve their consultation process. We were quite surprised by this bill.

The Queensland Resources Council advised—

The QRC is regularly considered a major stakeholder to bills related to the resources regulation. On this occasion we were informed of the bill only one day before it was introduced, although we did know it was being planned through a discussion with the minister. We are disappointed that the Department of Resources did not consult us through the development of the bill when we could have provided valuable input and any issues such as concerns with language could have been rectified prior to the bill's introduction.

The QRC stated that they do not oppose the bill; however, some of the wording is of concern. They stated—

It has left some issues that are a little bit grey. Some of the language is not clear. Because obviously this is not the first-time bills have proceeded without adequate consultation, we are using this instance to highlight the importance of due process. In future, we would like to see a proper 12-week consultation between the industry, the department, the minister and other relevant departments and ministers to ensure that when this legislation comes to the House there are no grey areas in it and that the language is not ambiguous.

It is not an unfair request, I would suggest, and I may come back to that point later in my contribution.

The purpose of the proposed amendments to the Mineral Resources Act 1989 are to validate the number of mining leases that were granted between the commencement of the Mineral Resources Act 1989 and 2010 which may have administrative deficiencies insofar as: the minister did not comply with the requirement under former section 271(1)(a) to recommend to the Governor in Council that an instrument of lease be issued to the applicant for the lease with respect to the whole or part of the land the subject of the application for the lease; or an instrument of lease was not issued to the holder of the lease.

When introducing the bill, the minister stated—

The bill amends the Mineral Resources Act 1989 to validate certain mining leases which may have administrative deficiencies. Prior to 2012 mining leases in Queensland were granted by the Governor in Council based on a recommendation by the minister. Up until 2010 the minister was also required to recommend to the Governor in Council that an instrument of lease be issued.

The Department of Resources identified that there were 86 mining leases for coal and 847 mining leases for other minerals that have one of the following or both administrative deficiencies: firstly, the minister did not recommend the issuing of the lease; secondly, the instrument of the lease was not issued to the holder. The explanatory notes identify that the amendments are necessary to ensure certainty for the holder of these mining leases and, whilst having retrospective effect, do not confer any new rights or obligations on any stakeholders. The proposed amendment allows that—

... any mining lease granted with either or both of these administrative deficiencies is taken to be, and always to have been, as valid as they would have been if both requirements had been met.

The department has recently become aware that prior to 2010 a number of mining leases were granted by the Governor in Council where one or both of the following occurred: either the minister did not recommend the issuing of the instrument of lease to the Governor in Council; or the instrument of lease itself was not issued to the holder. The department acknowledged that, while the department believes that these mining leases are valid, these deficiencies do create some uncertainty for their holders and could give rise to potential legal challenges about the validity of individual leases. The identified minor administrative deficiencies relate only to the issuing of a hard copy instrument of lease and have no impact upon the assessment or the validity of the approval of the leases. They occurred at the end of the assessment process in place at the time after the responsible minister had formed a view about the mining lease application.

The Department of Resources notes that there has been no requirement to issue an instrument of mining lease since 2010. This historical oversight only recently became apparent to the Department of Resources, and the government is acting to ensure that there is certainty for those who hold mining leases that are impacted. This was identified during investigations relating to a recent Land Court proceeding concerning the New Acland stage 3 expansion project. For that proceeding the Department of Resources reviewed the documentation held concerning the stage 1 and stage 2 approvals. During this process the Department of Resources identified that a number of mining leases granted at that time were subject to these administrative deficiencies. The department stated that this issue will not occur again, as there is no longer a requirement to issue an instrument of mining lease. This requirement was removed in 2010.

The proposed amendment of the Mineral Resources Act 1989 was supported by mining industry stakeholders. The QRC stated—

The retrospective application of this amendment rectifies this administrative deficiency and provides certainty to the holders of the affected mining leases.

Not surprisingly, this was not the view held by the Environmental Defenders Office, the Queensland Conservation Council or the Lock the Gate Alliance. The Lock the Gate Alliance expressed its concern regarding the management of mining regulation in Queensland. It provided a number of examples where there has been ‘a history of successive breaches and noncompliance with environmental conditions’. The Department of Resources advised—

It is important to note that this amendment will only validate these grants to the extent that they are impacted by one or both of the identified administrative issues. It does not address or validate any other issues that may exist in relation to individual leases, including any noncompliance or unlawful activities.

We will not be opposing these amendments, as they in no way compromise the approval process. In the current form they do provide an opportunity for those determined to oppose mining projects another avenue of appeal. All mining proposals do go through a rigorous approval process which includes environmental and social impacts, and if they meet all necessary regulatory requirements a mining lease will be granted.

Regrettably, we are increasingly seeing environmental lobby groups that have been unsuccessful in preventing a project challenging the approval on whatever legal technicality they can come up with. There is no greater example of this than in the approval process surrounding the New Acland stage 3 proposal. This project is now in its 13th year after being subjected to objection after objection, despite receiving all the necessary federal and state approvals. The most shameful thing about the process is that this Palaszczuk government have been complicit. They have publicly stated many times that, whilst there is a legal challenge pending, they will not grant Acland a mining licence. Therefore, the objectors know that they do not even need to oppose the expansion on environmental grounds. All they need to do is keep challenging on whatever obscure legal grounds they can come up with and they will drive another nail into the heart of the Oakey community. This is how weak this government have been on this issue.

If the minister wishes to see the impact this indecision is having, he should go for a drive to the town of Oakey. Two of the town's hotels are now closed. Of the remaining two, one is not serving counter meals and is for sale and has been for some time. There are empty shops and businesses in a time when we need small business to be thriving. The minister has the power to step in and issue the necessary approval and reinstate hundreds of jobs for the region. If the minister truly wants to show the industry some leadership and give a degree of confidence about the approval process, then this is the opportunity. Approve Acland stage 3 and save the jobs of hundreds of Queenslanders and the Oakey community.

The purpose of the proposed amendments to the Petroleum Act 1923 is to address two issues in relation to authorities to prospect and production leases granted under the Petroleum Act 1923. The explanatory notes identify that the first issue refers to an ambiguity in the provision relating to the renewals of existing production leases granted under the Petroleum Act 1923 which was identified as part of a matter that is currently before the Land Court of Queensland. The ambiguity relates to whether a PL continues to be enforced where a validly made application to renew the production lease has been made, but not decided upon, prior to the expiry of the production lease. Whilst this is allowed for an authority to prospect in the Petroleum Act 1923 and similar provisions in the Petroleum and Gas (Production and Safety) Act 2004, it is not expressly provided for in relation to a PL. The explanatory notes state that the amendments are proposed to operate both retrospectively and prospectively to provide certainty to all stakeholders and ensure the ongoing integrity and consistency of the tenure management framework.

The second issue refers to ATPs that are subject to undecided applications for PLs under the Petroleum Act 1923 immediately before 1 November 2021. The intention was that from 1 November 2021 all ATPs and new PLs would be administered under the Petroleum and Gas (Production and Safety) Act 2004 and therefore all authorities to prospect would expire on that date. There are no transitional provisions provided for authorities to prospect which are subject to applications for a production lease but which remain undecided on 1 November 2021. Under the existing provisions, ATPs with associated PL applications will expire and the associated production lease applications will lapse if they remain undecided before that date.

The amendments propose to amend the Petroleum Act 1923 to provide that these ATPs will continue to be enforced if their application for a PL remains undecided on 1 November 2021 and also to clarify that the associated PL applications may be decided after 1 November 2021 if required. Any ATP that is not subject to application for a PL will expire on 1 November 2021. The Department of Resources advised the committee that they are aware of six remaining ATPs on which PL applications have been made. The department advised—

No further authorities to prospect can be issued under the Petroleum Act 1923, so these proposed provisions will only apply to the six remaining authorities and any production lease applications made over them.

The department said—

At this point in time there is sufficient uncertainty as to whether the applications will be decided in time for the 1 November 2021 deadline. This is due to a range of factors that may impact the timeline for deciding individual applications including:

- the quality of the application materials received;
- the complexity of the issues presented; and
- whether the Department of Resources needs to seek further information to assist its assessment.

The QRC supported the intention of the amendments, stating—

... it is right that the government has stepped in to provide a legislative amendment to prevent those applications from expiring on 1 November. In the absence of any transitional provisions, this amendment was necessary to prevent the affected tenures from being returned to the state despite having been validly granted and through no fault of the proponent.

Once again the environmental advocacy groups were not supportive. The EDO stated—

For example, there are ATPs in the Channel Country Strategic Environmental Area under the Regional Planning Interests Act 2014 (Queensland) which are inappropriately over areas of vulnerable floodplain area, including one of the last free-flowing desert rivers in the world in Cooper Creek, and which should not be extended.

There has been and remains some concern over any future resource activity in the Channel Country and other areas of the state such as prime agricultural areas, but this bill is not the vehicle to address these concerns. This amendment is to address a technical oversight.

A number of stakeholders raised concerns regarding the fact that no time limit has been included in the bill on the ATPs with a submitted PL application. The Wilderness Society have suggested a maximum time frame of two years, or until 1 November 2023, would be reasonable. This was an area they and QRC were in somewhat of agreement, with QRC stating—

... something that we have consistently advocated for is clear time frames on approvals for the assessment process. We have time frames in place under the Environmental Protection Act, but they are not extended to the resources side.

QRC has a point. I have already spoken about the drawn-out approval process regarding the stage 3 expansion at New Acland. Yes, the approval process needs to be rigorous. However, it also needs to be specific to the issues regarding the project. In this context, the environmental lobby groups have an important role to play in highlighting areas of concern which may need to be addressed. However, when these objections just descend into legal warfare it undermines business confidence and credibility. Industry stakeholders expressed some concern with the wording of the amendment in clause 6. The QRC advised that it seeks—

... further clarity around the intention of the amendment to s 52B. Under section 40(2) of the Petroleum Act 1923, the holders of an Authority to Prospect are entitled to the grant of a production lease, provided they satisfy certain requirements. Although the production lease is considered an 'entitlement,' s 52B (2) states:

"the Minister may grant the lease or leases under former section 40;"

The language used here in this new section is inconsistent with the remainder of the Act as it suggests the Minister will have some discretion in granting an application. This would constitute a change in the policy approach taken by the Department of Resources, but this is not reflected in the explanatory notes.

The QRC suggested—

… the Department considers using this alternate wording, which is consistent with the language of the 1923 Act:

"the Minister will continue to be bound by the requirements under former section 40 to grant the lease or leases"

APPEA suggested the following alternative wording—

... the applicant is entitled to have a lease granted under former section 40(2) ...

The department advised that applications will still fall back to section 40 with the proposed amendment. We will not be opposing these amendments as they do not undermine the approval process and objectors still have the right to object on fair and reasonable grounds.

The amendments to the South East Queensland Water (Distribution and Retail Restructuring) Act 2009 insert a new section 53E which provides for compliance powers of entry for water restriction officers to provide investigation and enforcement powers for water restriction distributer-retailers. These powers will align with the powers local government water services providers have under the Local Government Act.

Water restrictions will be imposed by the South-East Queensland water service providers when the combined level of the South-East Queensland water grid declines to 50 per cent. Under the existing legislative framework, local government water service providers Logan, Gold Coast and Redland city councils have existing powers to investigate and enforce water restriction offences under the Local government Act 2009. Due to an historic anomaly, equivalent investigative powers are not available to Urban Utilities and Unitywater.

The other amendment is in response to recommendations from the 2017 Audit Office report which identified that there was significant risk to urban water security as a result of these documents containing highly sensitive cybersecurity information being required to be made publicly available under sections 575 and 575A. The proposed amendments remove the current requirement to make available highly sensitive cybersecurity information and reporting metrics. There is no change to the requirement for cybersecurity information to be reported to the water supply regulator. I was a member of the committee to which that Audit Office report was referred and I support this amendment.

This is not a controversial bill and we will not be opposing it. Before I close, the minister has pre-empted an amendment that he is going to move during consideration in detail and I hope I have the opportunity to speak to that at that time. However, given that sometimes these debates meet a very hurried end, I will make some comments about it now. This relates to the industrial manslaughter legislation that went through this House last year when the member for Burdekin was the shadow minister and I was the deputy chair of that committee. During debate on that bill it was recommended that statutory regulatory officers, whether they be OCEs, ventilation officers or mine managers, come under the direct employment of the mine owner and not a labour hire provider. That part of the bill was never included in the original discussion of that bill. It was never put out for public consultation with industry. They knew nothing about it until the bill was introduced in the House. It took industry by surprise and, as we have found out, it came with heavy support from the AWU and CFMMEU.

During the committee hearings—and I note the former chairman is in the chamber, so he knows this as well as I do—that was raised as an issue. The complexities around the mine ownership of many mines throughout this state are so complicated that it was put to the committee that this would not be workable; this would not be feasible. That was why the time frame came in. Even with that time frame, it has been proven that those words ring very true. I spoke against it when this bill came into this House. I spoke against it strongly. The member for Buderim was also on the committee, and it has come true. I accept that the minister is trying to tidy up an error from a previous minister, but this goes back to what was said in here; it was about that lack of consultation, and it has been raised again in this bill. The reason we are trying to tidy this up today is because of a lack of consultation.

We support mineworker safety. The minister and I went a long way from anywhere, to Mount Mulligan, to go to a memorial service for 75 miners who were killed in a mine explosion 100 years previously to the day we were there. It was probably one of the most moving services I have ever been to. It was good to see a turnout from across the industry to support that. Over the last two years we have seen nine mineworkers killed in this state and we need to do everything we can to ensure that every miner who goes to work comes home safely. However, the legislation has to be workable. That is what the committee process is there for. It is so we go through it and ensure we do not have to do what we are now doing. I will not be opposing the bill. I will be interested to hear how the minister intends that correction to take place because I still have concerns that it is unworkable.

While on that subject, those nine deaths are all subject to investigation. I would appreciate if the minister could update this House on where they are at because there are families of the miners who died, their colleagues and the statutory officers; their whole life is in limbo until these investigations are finalised. If the minister could inform the House of that in his concluding remarks that would be much appreciated because that provides confidence in the process.

We will not be opposing this bill. I hope I get a chance to speak to that a little further during the consideration in detail. If not, I hope the minister takes that on board.