Speech By

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ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL

Mr JANETZKI (Toowoomba South—LNP) (6.27 pm): I want to make a contribution on one particular aspect of the bill—that is, the amendments to section 493 relating to the director liability provisions. We have heard a lot from the other side of the House in relation to the AgForce submission and other submissions, but there is one glaring omission from the submissions they are referring to—that is, the Queensland Law Society. Although it is only four or five lines of this bill, it is an important provision that we need to analyse with a forensic eye, because it is not as straightforward as those opposite would have us believe.

We want to throw the book at anyone who is responsible for environmental damage. That is without doubt. The laws that were there could have addressed the Linc disaster. Let's never forget: that the Linc disaster was all about Peter Beattie and Bond. They went to America, took an unknown technology and created untold damage. The Labor government was responsible and was in government during the prosecution. Now we have this provision in the bill. I will go through certain aspects of the amendments to section 493. Basically, it now proposes that if a person was an executive officer at the time of an act or omission that eventually caused an offence but has left the company before the offence arises they may still be liable. That raises the possibility of liability for a project that was approved while an executive officer was at a company but no longer is. Let us say the project was proposed and that person then leaves the company. The project is then constructed and after a time damage is done. They may still have liability attracted to them.

That is something that I want to explore, because the Queensland Law Society has spoken at length about this. This House ought to be a house of considered contemplation of the laws we are seeking to introduce into this state. I do not believe this debate and the review by the committee of this particular law went as deeply into the issues as it ought to have. Let us look at what the Queensland Law Society said. It stated—

The difficulty with that approach—

that is the one adopted by the government in this bill—

is that there is no requirement that the former executive officer, knew or ought reasonably to have known that the act or omission would result in the corporation failing to comply with the Act.

It bells the cat a little in the explanatory notes because it refers to executive officers who leave office to avoid liability. In the explanatory notes it appears that it is a deliberate act to leave, but that is not in fact how the legislation was drafted. The Queensland Law Society goes on to say—

If despite these efforts, environmental harm results, liability would be imposed in circumstances where the executive officer could not reasonably have known that the acts or omissions following that decision would cause an offence to be committed.

That is an extraordinary extension of the law. We have seen the provisions that are there. This is an extension of the law that we are speaking about that the Queensland Law Society has said has just not been addressed appropriately.

I want to reflect a little on directors' obligations. My experience of advising directors, executive officers and officers of companies is that they take their obligations extraordinarily seriously. There are normally three kinds of director obligations—direct, accessorial or deemed liability. There are various means by which liability may be attracted to directors. My reading of the Queensland Law Society's submission on this bill is that they think this goes further. This is an extension beyond what has been seen previously, certainly in these acts but also generally speaking.

I think it is worth talking about directors' obligations and liabilities generally. I look back to the last Liberal National Party government. That government introduced the Directors' Liability Reform Amendment Act. It sought to undertake an audit of 80 different acts and over 3,800 obligations which related to directors and officers within those acts. That act in 2013 streamlined a whole bunch of directors' obligations. In that same term of government, the Liberal National Party government went through and undertook a review of all obligations contained in Queensland law. At the time there were about 265,000 obligations and requirements contained in Queensland law that companies and individuals were obliged to comply with. There is a heavy compliance obligation across the board. I do not think we can ever take that for granted.

We often get lectured to by the Labor government. Let us have a look at their record when it comes to fundamental legislative principles and what they have done again here in ignoring the advice of the Queensland Law Society. Let us not forget that back in 2016 they wanted to introduce reverse onus of proof. They wanted to do away with mistake of fact as a defence. They wanted to go to retrospectivity in legislation. We get lectures from those opposite, but the truth is that they offend fundamental legislative principles regularly and with impunity. We have seen over time piece after piece of legislation that has had this leaning from this Labor government.

I will go back briefly to the Queensland Law Society submission. They say with these amendments—

- there may be a significant time gap between the act or omission happening and the offence being committed;
- during this time gap, intervening events might have occurred to exacerbate the situation, over which the former executive officer could have no influence;

This provision is extending the law to issues that the executive may have had no bearing on or influence over. There is no proximate cause defence. The defence that the Queensland Law Society has spoken about has not been expanded. There is no approximate cause defence. There is no thinking through the particular issues that may face executive officers.

It is worth remembering the executive officer definition has been expanded widely. The Queensland Law Society says the definition of executive officer—

... includes a large number of potential employees, including those employees who may have no decision making power, but are responsible for implementing the management decisions of the corporation.

My takeaway on this from the Queensland Law Society—and we have heard the Linc comment again—is that they may not have even caught Linc with these provisions because they are so unworkable. The Queensland Law Society raises the prospect of what would happen if a whistleblower wanted to blow the whistle on poor environmental conduct and then sought to resign. What would happen to them under this law? What would it mean for insurance for these companies that are trying to undertake lawful activities in the state of Queensland? It is the practical operation of these provisions that needs consideration. Will a potential whistleblower who wants to resign from a company to draw attention to environmental harm that is being done be able to get insurance?

I believe that Australia has some of the toughest and heaviest—it has been proven—corporate regulations for directors and officers and the liability that they may attract. We have seen it again with the ASIC prosecutions that have been launched against Star that there is no tolerance of poor corporate misconduct. That must always be the way. The Queensland Law Society has said that these provisions are unworkable. In many instances they may not even lead to potential prosecutions. The minister said tonight that she had been advised on this. I would love to see the content of the minister's legal advice. Clearly, the government has not taken any notice of the submission from the Queensland Law Society, and corporate Australia needs more certainty than that.