




Speech By
Hon. Meaghan Scanlon

MEMBER FOR GAVEN

Record of Proceedings, 28 March 2023

**ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT
BILL**

Second Reading

 **Hon. MAJ SCANLON** (Gaven—ALP) (Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs) (5.23 pm): I move—

That the bill be now read a second time.

I would like to thank the Health and Environment Committee for its report tabled regarding the Environmental Protection and Other Legislation Amendment Bill 2022. I would also like to thank those who made submissions to the committee about the bill and those who appeared as witnesses as part of the committee's inquiry.

The committee report for the bill was tabled on 25 November 2022 with a recommendation that the bill be passed. I thank the committee for that recommendation. The report also included a second recommendation that I respond to concerns raised about the executive officer liability and the adequacy of defences in section 493 of the Environmental Protection Act 1994. I will address this recommendation shortly. I was pleased to table the government's response to the committee's report on 13 February 2023, which accepted the committee's recommendations.

This bill will support improved environmental protections while also streamlining and clarifying processes to assist interpretation of the legislation, and to improve understanding of obligations owed under the act. This bill ensures the independent environmental regulator has the tools it needs to do its job effectively and also to protect the safety of our environmental officers as they go about their important work. By doing so, this allows for strong timely action against illegal activities, to make sure Queensland's unique environment is protected for future generations.

The bill amends the Environmental Protection Act while also making minor amendments to the Waste Reduction and Recycling Act 2011 and the Wet Tropics World Heritage Protection and Management Act 1993. These amendments will benefit all Queenslanders by modernising the legislation under the environment portfolio.

In response to recommendation 2 of the committee's report, I note that the committee supports the policy intent of ensuring corporate executive officers are held accountable for serious environmental harm. The bill amends the executive officer liability provisions of the Environmental Protection Act to ensure executive officers of a corporation can be held liable if they were in office at the time of an act or omission that eventually results in the commission of an offence against the Environmental Protection Act.

It is worth remembering why we are making this important change to the law. This amendment was brought about as a result of the Linc Energy case. Linc Energy, the company, was successfully prosecuted and found guilty of wilfully causing serious environmental harm. However, executive

officers, who were alleged to be responsible, were unable to be held accountable because of the way the legislation was interpreted by the courts. This was Queensland's largest and most complex investigation and greatest ever occurrence of environmental harm, which continues to cause serious and ongoing concern for the community at large, concern that we are still responding to. Yet despite this, no individual was ever able to be brought to justice for their acts or omissions. This amendment clarifies the existing legislative provision to ensure that individuals who, through their acts or omissions, are actually responsible for an offence can be held liable and cannot leave office to avoid liability. The existing provisions were never intended to be limited only to executive officers in office at the time an offence occurs. This amendment will give effect to the original intent by ensuring that the relevant provision recognises both when an offence occurs and when an act leading to the offence happened.

Existing defences for executive officers will continue to apply to former executive officers in addition to executive officers in office at the time of the commission of the offence. This provides former executive officers with a defence against liability if they were not in a position to influence the acts or omissions that led to the commission of the offence, or where the officer was in a position to influence but took all reasonable steps to ensure the corporation complied with the Environmental Protection Act. In circumstances where the former executive officer can successfully demonstrate that they did not know or could not have known that acts or omissions would lead to an offence against the legislation, then this existing defence would apply.

It is important to note that section 493 of the Environmental Protection Act, which requires executive officers to ensure their corporation complies with the act, was always intended to capture the scenario we are addressing through these amendments. Therefore, the existing defences are considered reasonable and, I am advised, do not need to be amended. This change is about reflecting very clear community expectations that those ultimately responsible for environmental harm, and who have failed to take all reasonable steps to ensure a corporation complies with the Environmental Protection Act, can be held accountable. We do not want to see company directors avoid liability for environmental offences simply because they leave office. By addressing the current loopholes in the legislation, we will ensure the original intent of these provisions is met.

The bill also includes amendments to the Environmental Protection Act to mandate public notification for all major amendment applications to environmental authorities for resource activities. This will enhance transparency and community input in decision-making processes. This is particularly important because of the potential for significant changes to resource activities to impact on the community, either directly or indirectly, so we are making sure the community is notified of such changes and has the opportunity to take part in the process.

Industry has previously stated that the existing legislation is uncertain. They tell us they do not know when they need to notify and when they do not. The amendment will make it very clear about when they need to notify, and I would say to all proponents that they ought to always err on the side of transparency and should welcome the involvement of the community in any approvals processes.

The bill supports operators of non-resource activities to trial new and innovative approaches by relaxing the application requirement for short-term environmental authorities for these activities. The relaxation in application requirements does not result in reduced environmental regulation for trial activities. The amendment will support the undertaking of trial activities with the potential that the trial could lead to better environmental standards that can be adopted throughout a particular industry. The department will use existing powers to appropriately condition the trial activities, which could include things such as increased monitoring requirements to limit risks of environmental harm.

Building further on the importance of public transparency in making some of the most important environmental decisions, this bill introduces measures to further enhance the effectiveness of the environmental impact statement process. This process is critical to informing the development of appropriate authorities for projects in order to strike the right balance between protecting our unique environment and enabling the sustainable environment that creates the jobs of the future in Queensland.

This bill includes amendments so that an environmental impact statement assessment report lapses three years after it is given to the project proponent, ensuring that outdated information is not relied upon in assessing environmental authority applications for significant resource projects. Three years provides a significant amount of time to prepare an environmental authority application. Where there is a valid reason why an environmental authority application would not be made in three years, the bill provides discretion for the chief executive to extend the time frame. The intent here is to ensure that the environmental impact statement assessment report is current and reflects contemporary environmental legislation, policies and standards.

This bill also includes amendments that allow the chief executive additional powers to stop a project from continuing to proceed in the environmental impact statement process. It is important to note that there is an existing power in the Environmental Protection Act that enables the chief executive to decide whether to approve or refuse the environmental impact statement from progressing. This bill amends these existing provisions rather than introducing an entirely new power. One of the amendments enables a refusal to be made earlier in the environmental impact statement process where the proposed project is clearly unacceptable. The amendment provides additional certainty for industry earlier in the process and creates efficiencies by not expending unnecessary resources continuing a process for a project that is clearly unacceptable.

Other amendments provide additional clarity by stating circumstances where the chief executive will refuse an environmental impact statement. These circumstances are where it is unlikely the project could proceed under another law and where a regulatory requirement requires refusal, creating additional transparency. This bill will also remove powers currently in the Environmental Protection Act that allow for a minister to review decisions of the chief executive where an environmental impact statement has been refused to proceed to the notification stage or has been refused to proceed to an assessment report. Proponents in community will be afforded greater transparency because now the existing review and appeal rights already in legislation will be utilised at these points.

I am proposing to move three amendments during the consideration in detail stage of the bill. Two amendments will address minor drafting issues in the bill and the third amendment to one provision of the bill—clause 2, which modifies the commencement section to provide that sections 102, 121 and 125 (2) to the extent it inserts a definition of a body worn camera—will commence on a day to be fixed by proclamation. This is to allow sufficient time for any unintended consequences of these sections to be resolved prior to their commencement.

I acknowledge that several stakeholders have expressed views about the consultation process undertaken for the bill, particularly regarding time frames and confidentiality. Provisions contained in this bill have been consulted on over a very long period, with the department initiating conversations in August 2021 followed by a consultation paper circulated to targeted stakeholders in October 2021. The department also responded to feedback on the initial process for consultation on the exposure draft of the bill, providing a subsequent round of consultation that made it easier for peak groups to share the bill with their members. All targeted stakeholders have been provided the opportunity to comment on the bill at various stages in its development through targeted briefings and presentations, the release of the consultation paper, the rounds of consultation on drafts of the bill and the Health and Environment Committee's inquiry into the bill. The Palaszczuk government is committed to comprehensive and meaningful consultation with all stakeholders. As I noted in my explanatory speech, the government appreciates the feedback that was provided on the drafts of the bill and a number of changes were, in fact, made as a result prior to the bill's introduction.

I do not accept the criticism that has been levelled about the consultation process leading up to the introduction of this bill. I want to acknowledge in particular AgForce Chief Executive, Mike Guerin, who said that the department's approach was appropriate because 'the whole area is one of the most sensitive but also most important to have in a rational and calm way'. Moreover, I think it is a convenient excuse for those who would rather not put their real position on the substance of the bill forward—that they do not support stronger, more transparent environmental regulation—to criticise the process and not the policy. I look forward keenly to the contributions of those opposite on the important substantive amendments contained in this legislation, but I suspect I will be left waiting.

In conclusion, this bill will support the Palaszczuk government's commitment to protect and enhance the environment enjoyed by Queenslanders through a range of amendments. This includes amendments to strengthen end-of-life provisions for resource projects, enhanced investigation powers for authorised officers and the streamlining of statutory processes. I commend the bill to the House.