Speech By

Hon. Meaghan Scanlon

MEMBER FOR GAVEN

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ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL

Hon. MAJ SCANLON (Gaven—ALP) (Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs) (2.10 pm), in reply: I thank all members for their participation in the debate on the Environmental Protection and Other Legislation Amendment Bill. There were many useful contributions from members and also contributions from members who clearly have not properly engaged with the content of the bill currently before the House.

First, I would like to address the issue raised during debate about the consultation process leading up to the introduction of the bill to the House. As predicted, speaker after speaker from the LNP stood up and spent the bulk of their speaking time on the process of consultation rather than the substance of the bill. I guess it is not surprising that, when you have no real desire to be constructive or, for that matter, to protect our environment, the process is all you have to talk about.

I would like to reflect on the contributions of those opposite in defence of transparency and consultation on the proposed legislation.

Honourable members interjected.

Mr DEPUTY SPEAKER (Mr Lister): Order! The members for Pumicestone and Mudgeeraba will cease their quarrelling.

Ms SCANLON: Let us be clear: when it comes to transparency, the former Newman government, of which 50 per cent of the current LNP front bench were senior members, had an appalling track record, often rushing legislation through with no community consultation and regularly bypassing the parliamentary committee process. In fact, in just one sitting week in October 2013 the LNP forced through three pieces of controversial legislation without community consultation and without a committee process. This included new bikie laws, limiting court powers and changing workers compensation laws. Yet members opposite have the nerve to come in here and complain about—

Opposition members interjected.

Mr DEPUTY SPEAKER: Order! Members to my left, there will be no further warnings. The warnings will be formal from now on.

Ms SCANLON:—a process that was undertaken for this bill where extensive consultation took place over a period of 14 months before the bill was introduced into this House. Consultation commenced in August 2021. There was a discussion paper in October 2021. An exposure draft of the bill was released in early 2022, with changes made to the bill in response to stakeholder feedback. On top of this, there was the standard parliamentary committee process that gave everyone in the community the chance to have a say on the bill. It is in that context that I take issue with the member for Bonney's statement that the process was somehow mismanaged and that I somehow pretended there were no issues and misrepresented my department's approach to consultation in my introductory

speech. I say to the member for Bonney: just because industry stakeholders do not like all of the proposed changes to environmental laws does not mean that the consultation process was flawed. There were multiple opportunities for stakeholders to influence and shape the outcome of the bill, confirmed by the fact that changes were in fact made to the bill before introduction, directly in response to stakeholder feedback.

It was also clear during the debate that many opposition members simply relied on reading out statements provided as feedback by others during the consultation process. This feedback was often provided regarding previous consultation documents for drafts and in submissions to the committee, further highlighting the extensive engagement these amendments have gone through. Opposition members were often referring to documents from last year that were a part of developing the legislation rather than the legislation this House is actually considering, discussing items that are simply not in the legislation that is in front of the House. The very discussion that was generated through extensive consultation is what has moulded this very bill. For members opposite to continue to oppose items from that fruitful and robust discussion that were not further pursued is disingenuous and demonstrates a lack of understanding regarding public participation in policymaking. Of course, not all opposition members are created equal. We had a rare moment of reflection from the member for Southport earlier today—

Ms Bates interjected.

Mr DEPUTY SPEAKER: The member for Mudgeeraba is warned under the standing orders.

Ms SCANLON:—when he admitted that he did not understand the bill. He did not understand the bill despite being part of the parliamentary committee process on the bill. He did not understand the bill despite having listened to all of the stakeholders and, presumably, having read their submissions. He did not understand the bill yet felt it appropriate to put in a statement of reservation to the committee's report. Having listened to the debate, I have to say that the member for Southport is not alone on the benches opposite but he gets credit for at least being honest about it.

By focusing on the facts of what is in the bill before the House today—its actual content rather than feedback on old proposals—I am sure that we have been able to allay many stakeholder concerns. I can further assure members that I remain committed to the process of seeking feedback and continuing to work with stakeholders to address outstanding problems, because that is what best practice consultation looks like.

I turn to the contribution of members in relation to executive officer liability. Many members referenced the submission of the Queensland Law Society. I advise the House that the QLS's position was given serious consideration. Indeed, my office and the department met with representatives from the society in recent months to hear their point of view directly and to better understand their concerns. The suggestion from the member for Toowoomba South and others that the Queensland Law Society was ignored is not accurate. It is extraordinary but not surprising that the LNP intend to oppose the changes to executive officer liability.

While those opposite made statements about how important protecting the environment is, it does not take long for the LNP's mask to slip. It was very instructive, in fact, to hear the member for Toowoomba South reminisce about the good old days of the Newman-Crisafulli LNP government which introduced a special law to 'streamline a bunch of directors' obligations'. We all know what that means in LNP speak: cutting obligations for their mates in big business. They do not believe in the value of our environment and so do not believe that our environment is worth protecting. It is probably why the Liberal National Party sacked 33 per cent of the environment department staff, including staff in the environment regulator, and why they scrapped environmental laws including strong tree-clearing legislation.

This week we have learned that they do not want to hold environmental offenders to account. The changes being proposed in this bill go no further than meeting the original intent of the act: to ensure that company directors could be held liable for their acts or omissions which result in their company committing environmental harm. This change will make sure that even if a director or officer leaves a company they can still be held accountable for their acts or omissions which resulted in their company committing an environmental offence.

Section 493 requires executive officers of a corporation to ensure that their company complies with the act. If the corporation fails to comply with the act, each of the executive officers is also deemed to have committed the offence of failing to ensure the company complies with the act. Clause 105 of this bill amends section 493 to make it clear that executive officers can be held liable if they were in office at the time an act or omission occurs, even when environmental harm results from the act or omission at a later time.

The catalyst for the amendment was the Court of Appeal decision regarding the prosecution of former Linc Energy executives. That decision was to the effect that, in order to be liable under the current section 493, a person must be an executive officer of a company at the time the harm materialised. This decision was not in keeping with the original intent of the act, and this bill clarifies the law to make that intent clear. The act is typically reactive to harm, with offences applying only after harm occurs. As such, the proposed amendments to section 493 are intended to ensure that liability for the offence is not limited to executive officers in office at the time the harm eventuates.

There is a compelling public policy reason for these amendments as, in their absence, former executive officers who are responsible for acts or omissions that eventuated in environmental harm, including serious environmental harm, after they left office cannot be held accountable for their actions. This is exactly what the LNP wants by not supporting these amendments. The bill's amendments ensure that the provisions operate as has always been intended and that executive officers cannot avoid liability merely because they left a job before the harm eventuated. This means executive officers can be held responsible when the causative event of the harm was in their control or ought to have been within their knowledge. The current defences in section 493(4) will remain and will be available to all executive officers.

Importantly, the amendments proposed in the bill are consistent with the Council of Australian Governments principles on directors' liability which set out when it is appropriate and in the public interest to hold directors and other corporate officers liable for offences committed by a company. The changes also comply with fundamental legislative principles—contrary to the claims of many speakers during the debate.

Section 493(4)(b) explicitly makes it a defence to prove that the executive officer was not in a position to influence the conduct of the corporation. If the executive officer took all reasonable steps to comply with the act, the defence provisions in section 493(4)(a) would apply. The existing defences are available to executive officers if the causative act occurs before the person takes office, after the person leaves office or if the person took reasonable measures to ensure compliance while in office. The culpability of the executive officer is also to be considered in deciding on the appropriate enforcement action under the Department of Environment and Science's enforcement guidelines and requires consideration of these matters and, as the member for Lytton pointed out, the executive officer liability provisions will continue to be used reasonably and only in appropriate cases such as in the Linc case.

A hypothetical example was provided last night by the member for Toowoomba South whereby if an executive officer is involved in a project at the approval stage and resigns before a causative action occurs that eventually results in environmental harm that the executive officer could be held liable. In this example, the executive officer would clearly not be able to influence the conduct of the corporation in relation to the harm where the causative action occurred after they left and the existing defence is available to them. However, it would be highly unlikely any prosecution would result on the example given under the prosecution guidelines.

It was also incorrectly suggested last night that these amendments will open up liability for historical acts. This is simply untrue. New section 807 in the bill makes it explicitly clear that the provisions will not apply retrospectively and apply only where the act or omission that caused the harm happens after commencement. There is a vital public policy imperative to these changes. The advice I have received is that these changes do not create unlimited liability and, in any event, the current defences provide adequate protection to any officer who may find themselves defending a charge under the relevant section of the act.

I now turn to the removal of ministerial review and the unbelievable statement from the member for Bonney that he 'understands the perspective and agrees with the need for ministerial oversight' that was raised by stakeholders who did not support this change. To be clear, this power has never been used by a minister.

Mr O'Connor interjected.

Mr DEPUTY SPEAKER (Mr Lister): The member for Bonney is warned under the standing orders.

Ms SCANLON: I do not agree with the member for Bonney that this change will remove procedural fairness. In fact, this change does the opposite because it removes the potential arbitrary whims of politicians and instead opens the door for internal review conducted in accordance with the act by the independent regulator.

Finally, I will briefly address the issue raised by some speakers that there has been a lack of clarity in the major/minor guideline for mandatory public notification for resource projects. I am pleased to advise the House that my department has been working with industry on this guideline since last year, and the guideline will be released in a matter of weeks.

To conclude, we heard a lot during this debate from those opposite about things they have an issue with. The shadow minister for environment did not provide a single quote from any environmental or conservation group. All we heard was whingeing and whining, with no actual solutions or amendments.

In stark contrast, we take our responsibility to protect the environment seriously. This bill will give the regulator power to give an early no to clearly unacceptable projects. It will provide greater transparency to the community on major amendments to resource projects. It will make clear that mining is prohibited in the Wet Tropics management area and it will hold directors to account for the serious environmental harm of their companies.

This bill is the result of significant contributions from many people both within and outside of government. I would like to extend my thanks to all those who met with and made submissions to the Department of Environment and Science throughout the development of this bill, including members from industry bodies, legal representative bodies and conservation and community groups. Lastly, I would like to acknowledge the teams in the Department of Environment and Science and my ministerial office for their hard work and persistence in bringing this bill together. I commend the bill to the House.

Question put—That the bill be now read a second time.

Motion agreed to.

Bill read a second time.