Speech By

Samuel O'Connor

MEMBER FOR BONNEY

Record of Proceedings, 28 March 2023

ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL

Mr O'CONNOR (Bonney—LNP) (5.36 pm): As shadow environment minister, I will start my contribution by confirming that the Liberal National Party will not be opposing the Environmental Protection and Other Legislation Amendment Bill as a whole, but we will be opposing one particular clause in the consideration in detail stage. Before I get to the substance of the bill, the process that this legislation has gone through must be called out. I do not think the minister could have botched this more if she had tried.

As I have spoken to stakeholders and read their submissions, practically every single one raised how much of a mess the consultation around this bill was. The minister tried to pass this off in her introductory speech as 'ridiculous and fanciful comments that were made in relation to the consultation process around this bill'. We heard a similar continuation of that dismissal there. However, every stakeholder I have spoken to has given the same feedback: the consultation process on this bill was completely mismanaged, the turnaround times were impossible, they were given the wrong expectations of what the legislation covered and they had been left questioning the motives of the minister, the government and the department.

This started in August 2021 when stakeholders were initially told this would be a fairly administrative bill with no major policy changes. Then in April last year they were given a copy of the draft bill a few days before Easter. This was under a strict confidentiality deed so peak bodies could not even share it with any members and they had just days to come up with their response. When they looked at the contents, it was not the bland administrative bill they were promised; it contained much more far-reaching changes. This confidentiality deed was unprecedented to most of these stakeholders, particularly for peak bodies who work hand in hand with their members. They seek feedback from the people on the ground they represent and for them to be restricted in sharing this draft was highly problematic.

Following the quick turnaround it was only after strong lobbying by stakeholders that a second round of consultation was undertaken. At this point some of the more extreme measures were taken out of the bill. However, concerns were still raised. By August we saw media stories appear containing information about the bills contents that were leaked. This happens often with this government, but it should not take something making it into the media for action to be taken. That is a chaotic way to run things.

In the submissions to the committee we saw the repeated feedback about how badly the minister managed the consultation. These are some of the key players in the environmental space, so I want to highlight a few of their comments. The minister, of course, highlighted just one stakeholder, but I think there are a few more we should get on the record of this debate. The Australian Prawn Farmers Association said—

Given the extremely short period of time for industry to digest this information and understand its practical implications, and the amount of detailed commentary on the amendments, there is some real confusion about the nature and extent of some of the changes that are proposed and how they will operate in practice.

...

The APFA is a significant stakeholder in this Bill on behalf of our Queensland members and the adhoc and restrictive nature of consultation taken with the Exposure Draft (which is different to the Bill tabled) by the Department and now the time between the introduction of the Bill on the 12th October 2022 and the closing date for submissions on the 26th October 2022 also being extremely short, the timing does not allow a measured and considered response developed through consultation with our members.

The Waste Recycling Industry Association of Queensland said—

Unfortunately, the short consultation period on such a complex but important piece of proposed legislation has reduced our ability to provide detailed responses or levels of evidence to support those responses; nor have we been able to facilitate detailed feedback from our members.

The Queensland Resources Council said—

It is critical for industry confidence in an open, transparent, consultative government that such arrangements do not become the standard modus operandi for government processes. As a minimum there should be a reasoned explanation of why such a process is occurring, beyond simply stating that it is an exposure bill and thus not finalised government policy. For example, what content is particularly sensitive and why? If the changes are considered so minor that they did not justify a RIS, what is the rationale for the stringent confidentiality requirements?

The Association of Mining and Exploration Companies said—

AMEC also considers the manner in which consultation has been undertaken, combined with consistently short timeframes for responses to various iterations of documents, necessarily means the policy development behind the Bill will suffer from a lower quality and smaller breadth of responses that would otherwise likely be provided.

AMEC would be very concerned if the Department, or indeed the Queensland Government more broadly, were to adopt such practices more broadly moving forward.

I repeat these submissions because for the minister to stand up in this place and use her introductory speech and subsequent contribution to pretend that there were no issues and that this was all drummed up by the LNP or the media is incredibly misleading. The minister should be listening to these stakeholders, not misrepresenting the actions of the department she administers. The behaviour of this government in managing the introduction of this bill has eroded confidence, and it is causing stakeholders to question the sections of the bill before us in terms of their intent and how they will be enacted.

The final bill we have before us is closer to the administrative bill that the government initially discussed. The department's written submission to the committee stated—

Consultation was undertaken across a range of possible amendments to the EP Act. While many amendments to the EP Act are minor, technical or operational in nature, some are more significant and were not supported by industry representatives.

As a result of feedback received during consultation, some of these proposed amendments were amended and some were not included in the final Bill.

The fact that it was so substantially scaled back is why we will not be opposing the bill as a whole, but these comments from stakeholders are telling in terms of the process this bill has gone through over the last couple of years. It is clear there were major issues with what was proposed and the minister had to backtrack on her initial plans.

Turning to the substance of the bill, the objective before us is now to improve administrative efficiency and ensure the regulatory frameworks within the environment portfolio remain contemporary, effective and responsive by amending the Environmental Protection Act, the Waste Reduction and Recycling Act and the Wet Tropics World Heritage Protection and Management Act. The most feedback was received on amendments to the Environmental Protection Act. While I cannot cover all the issues, I will cover some of the elements which have been raised with me.

Changes to the environmental impact statements process generated much discussion, particularly around the early refusal of an EIS for an unacceptable project. The amendment enables the chief executive to decide that the draft terms of reference for an EIS cannot proceed to public notification under section 43. This early refusal is designed to be more efficient for both the department and the proponent. Where it is plain that a project should not proceed, an early refusal will free up the system for others and give clarity to the proponent.

This measure was supported by a number of conservation and environmental stakeholders, with some suggesting additional safeguards are needed around the integrity of information of environmental impacts from the proponent. Concerns were raised by a number of industry bodies that this removes due process and that there was potential for a subjective refusal based on the particular departmental

officer who was undertaking the assessment. This is where the consultation mismanagement really matters, because you can understand some of the concerns raised after what the stakeholders were put through in the process of developing this legislation.

Where it appeared in earlier drafts that the government was trying to get through more radical changes, there is a concern from stakeholders that this watered down version of the original legislation still could contain the intent of original versions. A number of these stakeholders were not opposed to the early refusal; they just wanted to ensure there are clear, reasonable and rational criteria to ensure a fair and objective decision being made by the relevant authority.

The removal of ministerial review of the chief executive's decision to refuse to allow an EIS to proceed was not supported by the LGAQ, AgForce, the Queensland Water Directorate, APPEA, APFA and ABFA, who raised that it removed procedural fairness and they had not seen any evidence of why it should be changed from current legislative processes. While I understand their perspective and I agree that there needs to be oversight of those decisions, I also acknowledge the department's response that the ministerial review powers have never been used.

Similar concerns were raised in respect of the changes to contaminated land and environmental investigations, with the additional power given to the administering authority and concern, once again, that there could be subjective decisions made by particular officers. The amendment to section 230 provides that all amendments to an environmental authority deemed 'major amendments' require public notification. This is a change to the discretion that is allowed in the current form of the act. Healthy Land and Water and the EDO were in favour of this change and the increased transparency it could provide to the community. APPEA, the QRC, AMEC and Cement Concrete & Aggregates were opposed to the change, arguing that the lack of clarity in the act and the associated guidelines between major and minor will lead to an excessive number of applications being deemed major, therefore requiring public notification.

I note as well that the department has committed to undertaking a review of its guideline major and minor amendments to support consistent and transparent assessment level decisions on EA amendment applications. I ask the minister in her reply to detail when this review can be expected to be finalised and released and when stakeholders will see any changes it contains put in place. I question why this was not done prior to the introduction of the bill so that all stakeholders could be well aware of the parameters around minor and major amendments.

There was a really good example given in the submission by the QRC whereby a nine-kilometre extension to a 100-kilometre pipe would be considered minor while a 10-metre extension to a 100-metre pipe would be considered major, with the nine-kilometre pipe not requiring public notification but the 10-metre pipe requiring public notification. That is a clear demonstration of the need for clarity. If we are genuinely trying to ensure that substantial changes which could impact the environment are subject to community notification, there needs to be some common sense when it comes to which amendments are classified as major. I ask the minister again to answer in her reply whether the government has considered delaying the enactment of this provision to allow for the review to take place.

Clause 54 of the bill supports the implementation of the Industrial Chemicals Environmental Management (Register) Act 2021 of the Commonwealth. This bill clarifies that a person does not comply with the general environmental duty if they do not comply with any risk measurement measures for a chemical scheduled on the register, even if any other reasonable and practicable measures may have been undertaken. The waste and recycling industry spoke strongly against this amendment. They understand the need to add chemicals to that register. It is the changes to this legislation that they are fearful of. Section 319 provides that a person is taken not to have complied with the general environmental duty unless the person complies with any risk management measures for the chemical under the Industrial Chemicals Environmental Management (Register) Act 2021.

The government must work with stakeholders like these to support those impacted by these changes to comply with them. There must be reasonable and achievable expectations put forward on businesses with an understanding of the impact of the change, allowing them to have the necessary time to implement the structures that they need. You would not want a landfill to suddenly have to make a massive change to their infrastructure and procedures without an adequate transition period to manage the on-flow of a chemical which is now on the ICAM register.

WRIQ also raised the need to amend new section 316GC to include localised disaster situations for the waste and recycling industry. We heard the CEO of WRIQ detail to the committee how much waste has had to be dealt with through the February 2022 floods, with 125,000 tonnes taken in by their SEQ members and another 111,000 tonnes from northern New South Wales. They are doing the hard work of recovering what they can, but it takes time and we need realistic legislation in place which supports these necessary and important efforts.

Clause 105 of the bill amends section 493 of the Environmental Protection Act to make clear that executive officers can be held liable if they were in office at the time an act or omission happened that resulted, even at a later time, in the commission of an offence. All Queenslanders can appreciate the need to hold executives liable where they have been negligent or have acted deliberately and reasonably knew the harm that would come to the environment, but this is not the right framework to achieve a deterrent to that environmental harm. Many stakeholders did not support this clause, with the Queensland Law Society in particular raising issues with the current defences and the extension of this liability going too far without also amending those defences further. The proposed amendment does not require a former executive to have known that the act or omission would result in the corporation being liable.

If an executive officer made the decision on the best available evidence at the time, they could also be liable. The department itself acknowledged this and said that under the current provision there is no explicit requirement for the executive officer to have known or ought reasonably to have known that the act or omission would result in the corporation failing to comply with the EP Act. Given the extension of the liability for an indefinite time, I believe it is necessary for these defences to be better clarified to get the balance right and to make sure that those who do the wrong thing are punished.

This is an attempt to address the issues related to the prosecution of executives around the Linc Energy site and their disgraceful conduct there, but we need to get the framework to hold executives accountable right. We need to ensure it gets the right balance and does not capture the wrong people. For those who have acted or failed to act when they should have and whose actions have clearly led to environmental harm, they should be held accountable. However, we cannot have a case where an executive at any time of a company which caused harm is liable indefinitely. It does not achieve any environmental outcomes and it deters good people from taking on these roles. That is why the committee included the good recommendation for further clarification, but ultimately we do not believe those concerns have been adequately addressed and so the LNP will be voting against this clause in its current form.

I want to finish my contribution by sharing my experience with some of the submitters to this bill from the aquaculture industry—that is, some prawn farmers. I had the pleasure of visiting Australian Prawn Farms in Ilbilbie south of Mackay last month and I was shown around by Matt, who is a marine biologist with 22 years experience working on that farm. He leads a team of about 60 people and he wants to do everything he can to expand that operation and provide more jobs in that region. I should disclose for the full awareness of this House that I am not a fan of prawns. You will not see me at seafood night on a Wednesday.

Honourable members interjected.

Mr O'CONNOR: No, that is all right; it does not disqualify me from speaking. I checked the Constitution. I am not a fan of prawns, but despite not eating them I can appreciate the opportunity that our state has to embrace and grow this industry, and the operation that I saw there was seriously impressive. Australian Prawn Farms was originally set up because of the environmental benefits of farming in this way of aquaculture—of taking less wild catch out of the ocean—and the work it does treating the water and its commitment to ensure it does not have an impact on its surroundings is backed by clear evidence. It monitors the chemicals continuously and it actually releases less chemicals than what comes in from its inlet. There are no pesticides or herbicides released and the microalgae that flows out helps other organisms by providing a source of food. There is always going to be some nitrogen released and business would like that to be what is assessed, not the settlement levels in its ponds. It even uses the canefarming by-product bagasse as a probiotic for the prawns.

That farm produces 750 tonnes of prawns a year or around 30 million prawns—again, 30 million prawns not taken out of the wild. Each pond is about a hectare and it produces 10 tonnes a year. This type of farming has the highest yield of protein per hectare of any type and it produces all of that from a few hundred prawns that it takes out of the wild as the breeding stock. It does have the ability to expand, but it found the department's processes limiting and it even found that the department seems to have a negative view of the industry. That is the view that it has had from its experience. It says that the regulations it has to comply with are outdated and not based on evidence and it is concerned that it will continue to be disadvantaged. Again the message it had is that some nitrogen is environmentally acceptable if it is organic and it wants its regulation to be based on discharge, not on the current settlement system it has to comply with.

I would like the minister to do something really simple—that is, just go and visit that business or another aquaculture farm to meet with this industry that her department regulates. That particular business is south of Mackay, so she could even go to the Pioneer-Burdekin pumped hydro scheme and meet with those residents while she is there—that is what I did as well on that trip—to hear their

environmental concerns about that massive project and turn it into one big Mackay trip. If the minister really does care about the environment, she should give that business time and see how the industry could add to the future of aquaculture in Queensland. It told me that it might even have a bucket of prawns to share with her if she enjoys eating them more than I do. These prawn farmers are prime examples of exactly what we want to see: they are providing a sustainable food source—again, it is the highest yield protein per hectare of any farming; they are drought resistant; they are flood resistant; and they are looking further at renewable energy to see how they can be even more sustainable. They just want fair and evidence-based regulation based on science and the ability to expand the sustainable operation they have. We have a massive opportunity to support aquaculture in our state and legislation such as this should be aiding that goal.

To wrap up, for what it has ended up achieving, this bill has created an enormous amount of angst among so many stakeholders. Whilst the legislative changes it includes are relatively minor and administrative, the damage done to relationships with some of these stakeholders is major. We need a government that is open and transparent. We need a government that explains its reasoning and works to build stakeholder confidence, not treat them with contempt. We need a government that can look at the evidence and take genuine action based on that evidence to protect and enhance our environment. This third-term Labor government is failing on those measures.