Speech By

Stephen Andrew

MEMBER FOR MIRANI

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ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL

Mr ANDREW (Mirani—PHON) (6.39 pm): I rise to speak on the Environmental Protection and Other Legislation Amendment Bill 2022, which amends the Environmental Protection Act 1994 and other legislation. The bill has a number of significant implications for those industries and organisations that hold environmental authorities as well as the general community more broadly.

Proposed amendments include extended investigative powers, expanded executive officer liability, significant changes to transitional environment programs, and changes to the contaminated land and EIS frameworks. The bill also makes changes to the submission process and a new decision point for the administering authority for an environmental impact statement prepared under the EP Act. Along with the draft terms of reference, a proponent for an EIS will now be required to submit a summary of potential negative environmental impacts and the measures undertaken to avoid or minimise these.

The chief executive may determine that the EIS cannot proceed if satisfied that the project would: contravene the law; give rise to an unacceptable risk of serious material or environmental harm; have an unacceptable adverse impact on a matter of state environmental significance or a matter of national environment significance; have an unacceptable adverse impact on an area of cultural heritage significance; or there is a regulatory requirement requiring the chief executive to refuse the draft terms of reference proceeding. This would mean there is a significant onus on the proponent to demonstrate at a very early stage that the project does not fall within these narrow grounds for rejection. Notably, 'cultural heritage significance' is given a broad definition and includes 'an area or place of Indigenous cultural significance or aesthetic, architectural, historical, scientific, social or technological significance to the present generation or past or future generations'. How exactly will the department determine what an area of technological significance actually is or an area of aesthetic significance?

I know that the Eungella range is. I have asked Minister Scanlon to come up to Eungella to have a look at these areas, the Yuwibara and the Iron and the people who live there, to give us some understanding about the Pioneer hydro they have suggested up there.

The extreme ambiguity around the grounds on which an early refusal may be made is a clear breach of section 4(3)(a) of the Legislative Standards Act 1992, which allows parliament to 'make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined'. The power is not sufficiently defined and will leave the door wide open for government to impose additional grounds for early refusal by regulation. The early refusal of projects is not just some minor technical matter that may be delegated to subordinate legislation. These are major amendments with hugely significant consequences for both industry and submitters. The whole bill is riddled with the use of vague and ambiguous terms, including the term 'unacceptable risk' in relation to serious or material environmental harms. The problems of ambiguity and subjectivity in a number of the statutory criteria for what constitutes a major application have been raised in submissions, particularly by the QRC.

The government's consultation process has been strongly criticised in a number of submissions to the bill. The bill was introduced on 12 October 2022 with submissions called by for by 9 am on 26 October 2022—a mere 10 working days later. Such a rushed process is disrespectful to other

stakeholders and does not accord with the principles outlined in the *Queensland Cabinet Handbook*, which states that consultation is an essential element of the legislative and cabinet process. It further states that consultation with persons or organisations external to the government is a routine part of policy development and cabinet submissions, and that when developing legislative proposals the Queensland government is committed to consulting effectively with affected stakeholders at all stages of the regulatory cycle.

The Queensland public deserves a full and transparent explanation as to why the government considered it necessary for stakeholders to execute a confidentiality deed before a copy of the first draft exposure bill was released to them. This is something that is hard to fathom, given that the explanatory notes state that one of the primary objectives of the bill is to improve community input and transparency.

The bill also substantially changes areas of legislation that are currently the subject of an independent review into the adequacy of existing powers and penalties under the Environmental Protection Act 1994. The review into the EP Act was headed by retired judge Richard Jones. Several components of the draft EPOLA Bill propose changes to enforcement provisions of the EP Act and will be considered as part of the ongoing independent review of the EP Act, including: environmental investigations; environmental protection orders; offences related to environmental requirements; and powers of authorised persons for vehicles and places. Changes to enforcement provisions of the EP Act should not be progressed prior to the completion of the independent review.

I have significant concerns around the amendments to executive officer liability in section 493 of the bill. Amended section 493 substantially extends liability to historical acts or omissions without regard to the knowledge a former executive officer may have had at the time of the decision as well as potential intervening events beyond the influence of the former executive officer. Any enforcement regime must be fair and balanced as well as clear and unambiguous in its application. These new executive liability provisions are not consistent with these principles. According to the submission of the Queensland Law Society, if this amendment passes in its current form an executive officer will remain indefinitely liable for historical acts or omissions, and this could render such officers uninsurable. Such a far-reaching liability provision is likely to have a chilling effect on the willingness of qualified and capable people to accept senior positions in corporations affected by these extended liability provisions.

With regard to the amendment of section 326BA—when environmental investigation is required; contamination of land—it would appear that the intent of this proposed legislative change is to empower the department with broader regulatory powers to require environmental evaluations in wide circumstances. However, the proposed broadened power as drafted has the potential for an environment evaluation to be required without proper consideration of the effect on the environmental values having regard to concentration levels of identified and measured contaminants. It would be possible for the department to require an environment evaluation based on mere supposition and speculation, albeit a reasonably held opinion.

At least two submitters, the Australian Prawn Farmers Association and the Australian Barramundi Farmers Association, expressed a certain amount of nervousness about the policy direction the government appears to be taking with this bill. While some of the provisions that were in the first exposure draft of the bill were ultimately removed, specifically the explicit prescription of intensity or yield limits, their original inclusion has raised a red flag for the state's food producers. Even with the changes, their concern is that the bill may still provide opportunities for further on-farm regulation, including the removal of a transparent and fair process of appeal. The concern relates primarily to agriculture producers operating under an environmental authority who may need to report a breach, possibly due to a big rainfall event.

With this bill the department may arbitrarily determine this to be a material change and compel operators to comprehensively modify their EA, introducing new conditions as a result and without any transparent appeals process beyond a court appeal. According to the testimony of Ms Ruscoe of the Australian Barramundi Farmers Association, the first exposure draft was extremely concerning. Ms Ruscoe told the committee that the draft—

> ... talked about control of yields. That is akin to telling a banana farmer how much they can produce as a crop ... We have significant concerns about the direction that this bill takes the policy framework.

Ms Hooper expressed similar concerns, stating—

> The changes that are being looked at here—giving that discretionary power to the department—will ... they can, at their discretion, change the licence conditions, as my colleague Jo has said. For example, if there was a flood event and it was deemed a breach, those licence conditions can then be amended. Then we come down to the ability of the department to put that on yield or intensity. It should not matter what happens on-farm; it is about what comes out of farm. That is where the jurisdiction should be and not on whether we have five ponds or whether we have 500 ponds.

...

If we want to talk about the response from the department that aquaculture is not subject to an environmental impact statement, I point out that for new agricultural projects a very similar, if not identical, process to the EIS is undertaken in order to get the authority environmental authority. As I have mentioned, the bill indicates a policy shift within DES that concerns us with regard the overreach, subjective decision-making and the removal of the minister's review of refusal.

With the opportunity for retrospective changes and no transparent appeals process this bill invokes, business confidence is certainly reduced.

I tend to agree with Ms Ruscoe's comment on the bill. It clearly contains a number of serious and unexpected shifts in policy by the Queensland government. This is a shift that clearly raises concern for the future of the industry and food production of this state.