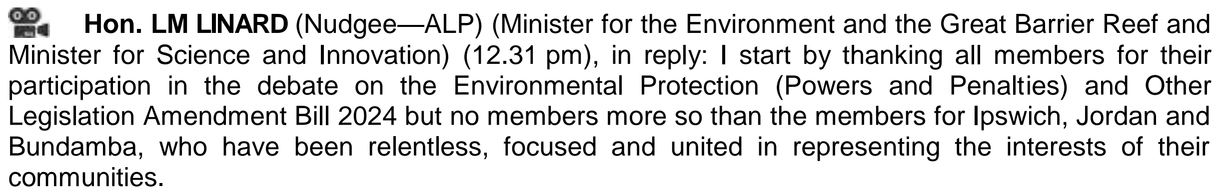
Speech By
Hon. Leanne Linard

MEMBER FOR NUDGEE

Record of Proceedings, 11 June 2024

ENVIRONMENTAL PROTECTION (POWERS AND PENALTIES) AND OTHER LEGISLATION AMENDMENT BILL



Hon. LM LINARD (Nudgee—ALP) (Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation) (12.31 pm), in reply: I start by thanking all members for their participation in the debate on the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024 but no members more so than the members for Ipswich, Jordan and Bundamba, who have been relentless, focused and united in representing the interests of their communities.

This bill will deliver a range of amendments to the Environmental Protection Act to ensure Queensland's environment is better protected through contemporary legislation. The bill implements the government's commitment to support the recommendations of the independent review of the Environmental Protection Act report titled *Independent review into the adequacy of existing powers and penalties*, which was led by retired judge Richard Jones and barrister Susan Hedge. The independent review was initiated in part due to significant odour nuisance issues being experienced by some residential communities, especially in the Swanbank area.

This bill is just one part of a five-point action plan that our government is implementing to address these issues in Ipswich and to respond to the voices of that community and its three local members. Our five-point plan includes increased compliance activities, community engagement, expansion of air monitoring, modernising environmental authority conditions for composting facilities and the review of powers and penalties under the legislation.

Since debate commenced on this bill, I have also released for public consultation proposed changes to strengthen the regulation of compost activities in Queensland, including enabling the regulator to require composting facilities near residential zones receiving highly odorous waste to have in-vessel or enclosed processing. Consultation on the proposed regulation changes are open until 14 June, and I encourage anyone interested to have their say.

We continue to listen to the Ipswich community and are taking every step we can to ensure the community and environment are protected, including by strengthening our laws. They deserve nothing less. The amendments in this bill will have relevance of course to all of Queensland, ensuring environmental protections help to safeguard the environment across our beautiful state and the health and wellbeing of all Queenslanders. These amendments focus on providing the regulator with greater ability to take a proactive approach to environmental risk management and prevent environmental harm wherever possible. They also remove impediments to an efficient response to address environmental harm when it does occur.

In recent years environmental impacts from several industries have presented increasingly complex regulatory challenges. These are often linked to growing communities with changing land uses over time, resulting in increased risks associated with coexistence of industrial and residential land uses. Strong environmental protections are critical to deal with environmental issues of today and those

that may emerge. The member for Cook spoke of some that may emerge and are currently emerging in her community. This is particularly important for minimising and preventing harm to the community and environment from the risks caused by significant dust, odour and noise. Keeping the environmental protection framework effective and efficient is critical to prevent the community from being exposed to harm.

This bill focuses on enhancing and clarifying the powers and penalties available under the act which will enable a more proactive approach and a more efficient response to cases of environmental harm. The bill does not make fundamental policy changes; it instead clarifies and refines existing provisions, ensuring they are contemporary, effective and efficient. The bill gives greater prominence to environmental policy principles that underpin the act. This reinforces their explicit consideration, providing direction to government, industry and communities on the values underpinning the act and its administration. It should be noted that these principles are not new concepts. They are already considered in decision-making under the act and are part of Queensland's existing commitment through the Intergovernmental Agreement on the Environment.

I acknowledge the concerns from stakeholders in relation to the polluter pays principle and specifically who is and who is not a polluter, along with the challenges dealing with upstream waste that are difficult to control such as PFAS in sewage treatment plants. I would stress that the general environmental duty defence still applies. The Department of Environment, Science and Innovation would consider what steps are reasonably practicable for an operator to be able to do in relation to managing those sources. There are also other mechanisms to be able to deal with those issues—for example, through the End of Waste Code for biosolids. These existing mechanisms will not be affected by the polluter pays principle. First and foremost, it is important we have the appropriate tools to protect the community and the environment.

In response to a number of speakers who have talked about PFAS, I wish to advise the House that I have been actively working with Commonwealth, state and territory environment ministers to support the phase-out of PFAS in food packaging and other materials to reduce the risk of contamination and stop PFAS at the source. Last year we also passed legislation that will help give effect to national laws to ban manufacturing and use of these chemicals through the general environmental duty.

This bill introduces an offence for not complying with the existing general environmental duty to promote proactive action by operators to prevent environmental harm. General environmental duty is a broad duty that has always applied to everyone, including environmental authority holders, and has been enforceable through statutory notices under the act. The bill does not propose to change the duty.

To provide fairness to environmental authority holders and persons complying with a code of practice under the act, two exclusions from the offence have been included in the bill. In particular, the exclusion applies when the environmental authority provides for the reasonably practicable measures as stated in the duty. The mere existence of an instrument that is not related to the relevant duty would not be an appropriate exclusion to the offence, and the bill therefore clarifies that the instrument must provide for reasonably practicable measures relevant to the act that give rise to the contravention of the duty. This is consistent with the duty itself and provides an appropriate defence.

This bill introduces a new duty to restore the environment where a person permits or causes environmental harm through contamination. This promotes prompt action to restore the environment if harm occurs rather than requiring a compliance notice to direct the action. This bill will update environmental harm definitions so that cases of significant environmental nuisance are not precluded from being serious or material environmental harm. This enables a greater range of enforcement tools and stronger penalties for persistent issues such as odour that are proportionate to the impact on the community.

This bill introduces a new statutory notice called an environmental enforcement order. This will rationalise statutory notice powers, combining three existing notices into a single notice. This will streamline compliance tools, reducing regulatory complexity. An environmental enforcement order requires a timeframe of two business days notice to enter third-party land. This may be perceived as short, but it is subject to discussion with the landholder and I would expect that most people who have had a contamination incident on their property would want it cleaned up as soon as possible by those responsible. Sufficient safeguards already exist in the act to balance the rights of landholders with protecting the environment from harm. The bill will make it clear that an environmental authority is not a barrier to issuing an order or notice when responding to an environmental harm incident where the harm is not clearly authorised or conditioned for under an environmental authority.

This amendment provides clarity on existing provisions. The bill does not give the minister or the environmental regulator a new power allowing them to amend environmental authority conditions. The power to amend environmental authority conditions has been present in the act since its inception. The

bill provides clarity on these existing powers. As the member for Bonney pointed out, this power is already used but not widely. In the last five years, out of 9,000 current licences only five have been amended following compliance action, with a further 12 amended by agreement of the licence holder. It is also important to note that the conditions that can be changed must only relate to the compliance issue, not a broad review of all conditions.

I want to acknowledge the member for Noosa's comments in relation to concerns from the community about older licences and the need to keep conditions contemporary to deal with community expectations. While this bill does not fully implement recommendation 12 of the independent review, we will consider what further changes may be needed to ensure licence conditions remain contemporary and fit for purpose. This would necessarily need to involve further consultation and regulatory impact assessment. Amendments are also made to clarify the procedure under which the administering authority is able to initiate and decide amendments to transitional environmental programs. Improvements to evidentiary provisions relating to court proceedings are included that expand provisions currently limited to criminal proceedings to be available in civil proceedings.

I welcome the opposition's support of this bill, but I would like to correct the record regarding the member for Bonney's contribution. The member accused the government of taking too long to address the issues being experienced by the residents of Ipswich and not making this a priority. It was this government that ordered the Jones and Hedge review; it was this government that brought back the waste levy after those opposite abolished it and allowed Ipswich to become a dumping ground for interstate waste; and it is this government listening to the people of Ipswich and the strong advocacy of the members for Bundamba, Ipswich and Jordan that led to the introduction of these legislative amendments. These actions are in stark contrast to what those opposite contributed, which is writing a few insipid letters.

During his contribution the member called on me to give assurances that the regulator will work in good faith with industry. I can give an assurance to the member for Bonney that the regulator is already working in good faith with industry. I do not think that industry, or indeed any person, necessarily loves regulation and the regulator—particularly when the regulator is currently pursuing significant legal action against some in industry—but this legislation is about protecting the community and balancing competing priorities, and that is the job of government.

The member for Surfers Paradise said that we should have taken decisive action sooner and cited the Swanbank issue. He then quoted industry, which said we should take less action. He then criticised inaction on the part of the government. You have to balance the competing interests of industry and community. That is the great challenge and difficult task of being in government but also the great and challenging task of the independent regulator. I want to acknowledge the significant contribution that the independent regulator makes in this state.

I would like to again refer to the consultation and regulatory impact assessment that were undertaken for this bill. While some members, such as the member for Gympie, suggested there was not adequate consultation on the proposed amendments, I want to point out there was considerable public consultation undertaken by the department. Consultation on the proposals that are reflected in the bill commenced in May 2023, with the government publishing the independent review and its summary response.

This was followed in September 2023 by a detailed consultation paper on proposed amendments to be included in the bill. Stakeholders had an eight-week period during which consultation on the paper was open. During the consultation paper the department of environment hosted six stakeholder information sessions. The consultation resulted in 48 written submissions being received by the department. These were from a number of organisations, including the resources sector, environment groups, local government and other industry groups. All of this feedback was considered in the finalisation of the bill, with care taken through the final drafting to clarify the intent and purpose of the amendments. The department also published a consultation report addressing the feedback raised throughout the written submissions. The department undertook an assessment of the regulatory impacts of the proposals in the bill consistent with the Queensland government's Better Regulation policy. The regulatory proposals were assessed as either minor or machinery of government in nature or having no significant impacts. Consistent with the Better Regulation policy, a summary impact analysis statement was prepared and has been published on the department's website.

The member for Mirani's dissenting report on the bill stated that the general environmental duty offence contained in clause 13 of the bill would introduce an element of retrospectivity that is not in accordance with Queensland's fundamental legislative principles. There is no part of this bill which applies retrospectively. The Health, Environment and Agriculture Committee considered issues of fundamental legislative principles in the bill and made no adverse findings.

This bill will deliver a range of important benefits to community and industry. It implements our government's commitment to support the recommendations of the independent review led by retired judge Richard Jones and barrister Susan Hedge, and this bill will support our government's commitment to protect Queensland's environment. I would like to acknowledge the work done by retired judge Richard Jones and barrister Susan Hedge, who led this review into the adequacy of existing powers and penalties under the act. I would also like to extend my thanks to all those who met with and made submissions to my department, including members from industry bodies, legal representative bodies and conservation and community groups.

Finally, I would like to thank all of the hardworking staff in my department who worked on this bill and whose important work as Queensland's regulator continues, in particular Rob Lawrence, Claire Andersen, Brad Wirth, Theo Verrills, Lawrie Wade and Kahil Lloyd. Your job is challenging, but your contribution is seen and acknowledged in the service of Queensland not only by me as your responsible minister but by all in the Miles government. I commend the bill to the House.