Speech By

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MEMBER FOR BONNEY

Record of Proceedings, 2 May 2024

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

Mr O'CONNOR (Bonney—LNP) (5.08 pm): I rise to make to a contribution as not only the shadow environment minister but also the acting deputy chair of the committee, alongside the chair, the member for Thuringowa. I will get rolled from that position when the member for Southport comes back. I will very happily see him back in his rightful place. I am sure all members will be happy to know that he is recovering well from the stroke he suffered a couple of months ago. He was very lively at Anzac Day commemorations last week, going to two services in Southport. We wish him all the best, and hopefully soon we will see him back on the committee which he loves so much. I thank my fellow committee members, including the vast array of members who have served as substitutes to cover the member for Southport, and our hardworking committee secretariat staff as well.

From the outset, I will confirm that the Liberal National Party will not be opposing this legislation. The bill includes a lot of administrative changes to Queensland's environmental protection laws. I pay particular tribute to the people of Ipswich for their advocacy that, in great part, has led us here today. Tens of thousands of residents from across Goodna, Riverview, Raceview, Flinders View, Springfield, Ripley and other suburbs in that region shared stories about what they suffer through every day.

Ipswich is a proud city. Many of the foundations of our state were laid there. It is now home to some of Queensland's fastest growing communities. It is clear that Labor takes Ipswich for granted. The amount of time it has taken to see these changes to our environmental laws come before the House is the greatest indicator of that. There is a better way, and that better way started at the Ipswich West by-election two months ago when the newest member for Ipswich West was elected. He will do a great job. He is already doing a great job of holding Labor members to account and fighting for his city.

The stop-the-stink scandal, presided over by the government, is one of the greatest failures that the people of Ipswich have suffered through. Ipswich receives around half of Queensland's waste and around three-quarters of the waste produced by South-East Queensland. Those numbers alone mean a targeted approach with the right legislative framework is needed for the city. Overwhelmingly, the waste and recycling industry do the right thing. They are conscious of the environment and they are conscious of their neighbours in the communities they operate next to. However, the department has long needed a better and more proactive regulatory framework to help them do their job to protect people and our environment.

One would think that would have made it a priority for the government—that is, it would be a priority to have the best environmental regulatory systems in place. One would think it would have led to the most stringent possible monitoring of the operators to ensure the community is not impacted by the waste industry. Instead, the government has taken far too long. They have left the Ipswich community to deal with the stench over many years, denying the seriousness of the issue and the experiences that people live with every day. At the introduction of the bill, five years after the issues were raised, it was almost as if the minister had finally come to realise the issue, saying, 'The odour issues being experienced by residents in Swanbank, New Chum and nearby suburbs are completely

unacceptable.' It should not have taken nearly 30,000 complaints from the community for the minister to reach that conclusion. It should not have taken public meetings, rallies and countless media articles for this action to be taken.

I acknowledge the tireless work of Stop The Stink and IRATE. It has not been an easy road for everyone involved in those organisations. They often felt frustrated because of the seemingly fruitless amount of work they were embarking on. On numerous occasions the LNP raised their issues and asked for the government to investigate the impacts on the health and welfare of the community, but to no avail. Despite getting to the point of handing out canisters to schools and local residents to measure the potential pollution in the air, the government did not act quickly enough. The unsurprising result from that is fear spreading throughout the community. That is why transparency is so important. When you keep refusing to look into something, people will assume that you are hiding something. That is how it has often appeared in Ipswich. The Ipswich community deserves better. While there are some concerns with the bill, we hope that in not opposing it we will be supporting action to protect the environment and communities across our state.

The bill follows the *Independent review of the Environmental Protection Act 1994 (Qld) report* by Richard Jones and Susan Hedge, which was in part initiated due to the significant odours in Ipswich. The report was handed to the government, I believe, in September 2022. Again, it should not have taken years for the review to be launched and progress since then has been slow. The bill implements all of the outstanding recommendations from the review excluding the proposed ministerial powers, which would rightly require a RIS to be undertaken. It is a substantial piece of work.

It is worth noting that the review found the existing act does contain adequate powers and penalties to, in most instances, enforce environmental obligations and reduce the risk of environmental harm. They found two fundamental issues. They were that the concepts of human health, wellbeing and safety were only vaguely referenced in respect of fundamental concepts in the EPA, such as the definitions of 'environment' and 'environmental value', and the confining of 'material and serious environmental harm' to exclude nuisance. It is clear that those two issues restrict the department from taking the action they need to in areas such as Ipswich.

The case studies in the review found departmental enforcement was impacted by a number of factors, including: indecisiveness from the current definition of 'environmental nuisance' and 'material and serious environmental harm', and whether the types of contaminants listed in the definition of 'nuisance' could ever constitute material or serious harm; situations where there may be several potential sources of airborne contaminants when it comes to both issuing notices and prosecutions; delays in achieving resolutions due to internal reviews, stays and court appeals, particularly where the operator continues to operate without the issue being resolved; difficulties in deciding an appropriate course of action to deal with emerging contaminants like PFAS, both in enforcements and prosecutions; and difficulties in identifying unlicensed operators and illegal dumpers. Again, that explains a lot of what has happened in Ipswich.

While many of the amendments to the bill are minor, we hope that they will make a substantial difference to the health and welfare of Queenslanders and our environment. The amendments to the EP Act before us will give prominence to the principles of the polluter pays, proportionality, the primacy of prevention and the precautionary principle—all of the Ps—to be applied in the administration of the EP Act. The bill clarifies that a failure to comply with a general environmental duty is an offence where the failure of the duty is likely to cause serious or material environmental harm. It ensures that, despite a matter having prescribed characteristics of environmental nuisance, it may constitute serious or material environmental harm. The bill introduces a new compliance tool, the environmental enforcement order, by combining existing powers and provisions under environmental protection orders, direction notices and clean-up notices, which will be removed and replaced by the environmental enforcement order. It clarifies that an environmental enforcement order can be issued to the holder of an environmental authority regardless of whether the environmental authority authorises or purportedly authorises the activity causing the harm. The bill clarifies that the administering authority may require a person to conduct or commission an environmental investigation about an activity or event causing harm regardless of whether that activity is authorised by the EA holder. The bill also introduces a standalone duty to restore the environment and other relatively administrative changes.

A number of concerns with the bill were raised by stakeholders that, I think, speak to the broader sentiment of mistrust with the state government and the way they engage with many holders of environmental authorities. The committee saw that across a number of provisions in the bill and in the concerns that submitters raised. Importantly, again particularly for the people of Ipswich, clauses 9 and 10 clarify that environmental harm that may constitute a nuisance at low levels may also constitute material and serious environmental harm if it meets the definitions of those terms. Environmental

nuisance is currently included in the definition of environmental harm, so it is present, but the issue is that it is excluded from the meaning of what constitutes material and serious environmental harm, which again has led to some of the difficulties in taking action in Ipswich.

The bill introduces environmental enforcement orders that will be used if the department believes an enforcement ground exists. The EEOs combine three existing notices. This is all about streamlining those notices into one. They are the environmental protection orders, the direction notices and the clean-up notices. The aim of this is to reduce the administrative burden and the indecisiveness that was found in some case studies. The explanatory notes clarify that an EEO may be issued to the holder of an EA in relation to activity, even if the person is a holder of the environmental authority that authorises the activity. They state—

> The intent of this provision is to clarify that an environmental authority is not a barrier to issuing an EEO to address environmental harm or the risk of environmental harm where such harm is not clearly authorised or regulated by the environmental authority.

This provision raised more concerns, specifically that this would mean approved activities would be overridden. Some submitters said that this would create a sovereign risk. This was where the distrust from stakeholders was clear. The department did clarify that where an operator is carrying out their activity lawfully in compliance with an EA, the administering authority would not issue an EEO. However, there were still clearly concerns about how this would be applied practically. The Queensland Law Society said to the committee—

> I am law-abiding, I have a small business that creates dust, noise and blast overpressure—a change to these conditions could be quite traumatic and impact on my ability to operate my business.
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> ...
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> If the condition is changed and I did not have a power to appeal it to the Planning and Environment Court, I am stuck with it. There are possibilities of review, but it may well be that the impacts on my business and the way I have performed in the past cannot be taken into account.
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> I think that is an important aspect of the bill that needs to be carefully considered, remembering that most regulatory legislation assumes there is a wrongdoer and they need to be punished. The vast majority of Queenslanders who have environmental authorities will be doing the right thing. They have a business, they set themselves up in terms of where plant and equipment is placed and where other thing are put in place to ensure they comply with their environmental duty, and imagine that now this can be changed.

The benefit of this provision is to allow the department to take action where there is an activity that needs to be remedied. However, it does need to be carefully monitored to ensure EA holders are not penalised for the actions they have always been approved to do with no warning or without proper engagement and collaboration from the department.

I note as well the government has not chosen to implement recommendation 12 of the Jones and Hedge review at this stage that is proposed to give power to amend environmental authority conditions to the chief executive or to the minister to amend conditions where they consider the environmental impact of the activity is not being appropriately avoided, mitigated or managed, stating that it could have significant impacts and would rightly need to be part of a more fulsome process, including a RIS. I wholeheartedly agree with that. They would be extraordinary powers that must be properly assessed. A number of stakeholders have said the department essentially achieves this by stealth already and that it would be more appropriate for the RIS to be completed. The departmental briefing to the committee provided that following further consideration the bill includes alternative, low-impact proposals to address the intent of the recommendation in the review. Essentially, there are smaller amendments made which allow for environmental investigations or an EEO to be issued in particular situations which, under existing legislation, allows for the administering authority to impose compulsory changes to existing conditions. It does mean that environmental authorities can be changed, but that is currently the case on various grounds. The Queensland Resources Council did raise concerns with this, submitting—

> The way the bill achieves this is by a two-step process rather than one step as in the previous version. The first step is that at three points in the bill—clauses 23, 24 and 28—the department can impose an order or investigation notice even if the person is the holder of an environmental authority that authorises or purportedly authorises the activity. The second step is that, once the notice or order has been issued, there are already existing powers available under section 215(2)(i) of the act for the department to change conditions, just because of the fact that there has been an investigation notice. If the department wants to change the wording of a condition because it is thought it is not modern enough then, even if the company is complying with conditions and is not causing unacceptable environmental harm, all the department has to do is issue an environmental investigation notice,

In the department's response to submissions, which we received last week, they repeated the same line throughout the document: where an operator is carrying out their activity lawfully and in compliance with an EA which clearly provides for the management of the levels and type of environmental harm occurring, the administering authority would not issue a notice in response to such harm, but what they say there they would do is roughly the opposite of what the bill itself says, for

example, at clause 23. Again, I would emphasise trust is clearly an issue with these stakeholders. The operations of this government in dealing with environmental authority holders has given them no faith that the state government will act fairly and in a collaborative way.

The department did submit to the committee that the power to amend EA conditions has been present in the act since commencement and the bill does not amend these existing powers, but it does clarify those existing powers under the act to make it clear that an environmental authority is not a barrier to issuing an order or notice when responding to an environmental harm incident. They further clarified through the committee process, which did give me some comfort but clearly not other stakeholders, that in the last five years under these existing powers they have only amended 17 environmental authorities of the more than 9,000 currently in place, and 12 of those were by agreement with the operator. Nonetheless, the minister must give assurances that the department will work in good faith as there are clearly concerns from across various sectors.

The bill also establishes an offence for contravening the general environmental duty which is aimed at preventing harm through deterrence. The new GED offence is compared to the duty which has long existed. There was also concern this provision may have unintended consequences of retrospectively impacting the development entitlements of existing approval holders, but again the department clarified that the amendments will not be applicable retrospectively to a contravention of the duty which has already occurred, rather prospectively to a contravention that occurs after the bill's commencement.

The polluter pays principle is welcome. What will matter is how it works practically. It is actually called the principle of improved valuation, pricing and incentive mechanisms. It is not retrospective. The general principle has been there for a long time and this is again more about clarifying how it is applied practically. The department responded to a number of stakeholders on this issue stating—

Increasing the prominence of these principles is not an introduction of new concepts considered in decision-making under the EP Act. Rather, the Bill presents a clarification, reinforcement and elevation of the proactive approach to the prevention of environmental harm which is the core objective of the department.

One of the key questions that came out of the committee process was around the definition of polluter. It was clear from the issues raised that there are ongoing concerns in industry surrounding this. Waste Recycling Industry Queensland and the Queensland Water Directorate raised issue with who the real polluter is and how the department will be able to identify that polluter when the polluted material could end up in another property or system. I have had many discussions with WRIQ about how they have no control over what is put into their system. They are already left with the difficulty of managing that polluted material. Once the waste is picked up from the kerbside or a commercial property they cannot turn it away and it is very difficult to track where a particular pollutant is coming from. Whatever is put into the system upstream leads to their system downstream and they will inevitably get the blame. That is how they feel.

I have also heard for some time now the department's unrealistic expectations on some of these operators when it comes to particular pollutants. The one that I constantly get feedback on is PFAS. Until you can remove PFAS from all products upstream it is going to find its way into waste products. There is simply no way around that for waste operators. They need support to get the best possible environmental outcomes and to practically process this waste in a realistic way. It cannot be the case that they are further penalised for receiving material they have no ability to refuse. That is the premise underlying a lot of their concerns. While it is nice to make this a principle, colloquially known as polluter pays, more clarity is needed as to what exactly this will mean on the ground and to ensure the right people are penalised for their unacceptable behaviour.

I note the concerns raised around the powers of entry that the bill provides. This mirrors section 363AF and actions over environmental protection orders. It is important to remember that this is about accessing third-party land. For example, if someone pollutes their neighbour's property, it allows access to that land to clean up the pollution. The department provided the example of truck rollovers, which often impact road and rail corridors. Often in those situations the pollution is cleaned up sooner by agreement, and it makes sense that the landholder would want their land to be cleaned up. This will replace the original clean-up notices that stipulated five days notice. Environmental protection orders stipulated two days notice. Given the urgent circumstances this change seeks to address, it makes sense to go for the lower time period of two days. I emphasise that overwhelmingly matters should be agreed to rather than through the use of these powers.

To conclude, the communication of these laws and engagement with key sectors across our state will be important to ensure people know what these changes will require of them well ahead of time. Guidance materials will be essential. I am pleased to hear that these are being put together already,

particularly when it comes to the duty to restore. Our hope is that this bill will provide better tools around nuisance issues. Through the extension of environmental value to include health and wellbeing, the bill will help ensure residents are heard, which for far too long is exactly what the people of Ipswich have been calling out for. It is imperative that the government works with businesses and EA holders.

As I have said, it is telling from the submissions how little trust there is, although certainly this has not been as controversial as the previous EPOLA bill where we saw the disgraceful process from the government of basically forcing people to sign NDAs in order to provide feedback. It has not been anything like that, but it still shows how little trust there is in this government acting appropriately and collaboratively with the people who know their sectors best. That comes down to the minister. That trust has been eroding for many years now under successive ministers of this decade-old Labor government.