Speech By

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MEMBER FOR MIRANI

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

Mr ANDREW (Mirani—PHON) (11.35 am): I rise to speak on the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024. The bill has been introduced in response to the 2022 review of the Environmental Protection Act 1994. The review was prompted by the significant odour nuisance issues in the Swanbank industrial area and surrounds caused by new housing being built too close to existing waste management activities. The bill's changes, however, are likely to have broad and far-reaching impacts far beyond Swanbank's odour issues. The government agreed, or agreed in principle, to all of the 18 recommendations made by the reviewers. Several recommendations were implemented in last year's Environmental Protection and Other Legislation Amendment Act. This bill implements most of the review's remaining recommendations.

This bill will give the government regulator a much greater range of enforcement tools and stronger penalties than it had previously. The bill seeks to enact the polluter pays principle and the precautionary principle, with a focus on the proactive prevention of environmental harms before they have even occurred. Like all other forms of predictive policing, this proactive prevention approach carries a number of potential risks for those industries regulated by the EP Act.

Major changes introduced by the bill include: (1) a new general environmental duty offence for the failure by someone to take reasonably practicable action to prevent or minimise serious environmental harm; (2) a new environmental enforcement order, EEO, which may require operators to improve their onsite processes, including equipment, which will, or may in the future, cause unacceptable environmental harm; and (3) a duty to restore environmental harm, which requires operators to restore an environment to the condition it was in prior to an incident involving contamination. My concerns with the bill relate specifically to the introduction of a new environmental enforcement order and new general environmental duty offence.

New section 359 establishes the enforcement grounds for issuing an EEO as where it is deemed necessary to secure compliance with an environmental protection policy or achieve a general environmental duty. Under the bill's changes, an EA holder could be issued with an investigation order or an EEO compelling the operator to undertake actions over and above conditions set out by their EA. This could mean requiring an operator to change their onsite practices if the regulator decides they are, or may cause, an unacceptable environmental harm such as an offensive sound or odour, or it might mean an EA holder being required to change its equipment, such as its water management system, in order to meet more rigorous water release limits than those stipulated in their EA. An EEO may also require an operator to cease an activity indefinitely or change its operating hours. Again, it is important to stress that these requirements could be imposed whether or not an operator is operating in full compliance with the conditions of his EA.

Clause 13 of the bill amends section 319 of the act to incorporate offences in relation to a general environmental duty, GED. The clause does not attempt to protect operators from being in breach of the new offence by offering a defence for where an operator is deemed to have taken all reasonable practicable measures to prevent the offence. This provision is broadly drafted and no definition of the term 'reasonably practicable' is included in the bill. Presumably, it would be up to the regulator to decide its meaning and how it should be quantified and measured in practice. Where the regulator decides an operator's actions do not constitute reasonably practicable measures, the operator will be found to be in contravention of the GED and to have therefore committed an offence under the act whether or not they were operating in full compliance with the conditions set out in their EA.

As a number of industry stakeholders pointed out at the public hearing, this could represent an unacceptable sovereign risk for the industry and for businesses in Queensland. This is something that would make investing in a Queensland operation extremely risky. As the Queensland Resources Council submitted, such a change could effectively put people out of business simply because they are unable to comply with new amended conditions such as reduced limits. Operators may also face substantial and unforeseen costs in complying with an EEO, or amended EA, particularly if the new conditions involve major changes to infrastructure or the installation of costly new equipment. All this leads to considerable uncertainty and a significant sovereign risk for businesses that are operating under the EA in Queensland.

Under the current act, a person must report potential actual environmental harm within 24 hours of when the person becomes aware of that harm. The bill changes this wording to when the person 'becomes aware, or ought reasonably to have become aware' of potential or actual environmental harm. How exactly would the regulator identify or measure the exact moment someone 'ought reasonably to have become aware' of something? The bill does not say. This use of vague, ill-defined terminology is likely to cause even more confusion and uncertainty for operators and the third parties that are associated with them.

The bill's strengthened powers for amending the existing conditions of an EA may result in significant additional costs for operators. It is therefore disappointing to find that, yet again, no regulatory impact assessment has been carried out on the impact of the bill's changes. A number of stakeholders expressed similar disappointment at the absence of an RIS. Many also expressed, yet again, their frustration with the consultation process as a whole, saying that the time frames for consideration and responding to the bill were inadequate. We are seeing this across the board. According to the testimony at the public hearing, no formal stakeholder engagement was undertaken by the department beyond that set out in its consultation paper. Stakeholders were not consulted on any exposure drafts of the bill. Had this happened, the government might have produced a better drafted bill and allayed many stakeholders' concerns around the bill's potential impact.

Overall, there is a troubling lack of detail and clarity in the bill and its associated documentation. The bill itself is filled with highly subjective and ambiguous wording such as 'human health', 'mental health', 'safety' and 'wellbeing'. The bill's amended definitions for 'environmental nuisance' and 'material and serious environmental harm' are similarly unclear. None of these terms are objectively identifiable or measurable and their meaning should have been promptly clarified and defined in the bill. The government continues to produce these broadly drafted framework bills—known as umbrella bills—which contain no specific detail on how the bill's changes will operate in practice or how it will be administered. The parliament is then being asked to consider, debate and pass these bills without any real understanding as to what its true parameters or likely impacts may be.

As the QRC said in their submission, to remain internationally competitive and to continue to attract investment to the state, Queensland's regulatory environment needs to be clear and consistent 'especially for those parties that have complex obligations around safety'. QRC further stated that such a broadly drafted piece of legislation is 'reckless and potentially will cause greater litigation and conflict as opposed to creating better environmental outcomes'. It was not alone in this summation. AMEC, the Association of Mining and Exploration Companies, went further in their submission describing it as—

> … rigid, legalistic, cumbersome, inflexible, and reactive. It is not cost-efficient, and this proposed advancement will not encourage regulated companies to develop innovative technology or to go beyond compliance.

AMEC also points out something I have noticed myself: that the Queensland government appears to be moving towards an increasing criminalisation of environmental offences and a much stricter approach to enforcement and penalties. AMEC warned that such an approach is taking Queensland further down the path towards a 'command-and-control style of regulation' which could ultimately see entire sectors such as waste and recycling wiped out.

As a number of submitters have pointed out, Queensland already has a highly developed regulatory framework around environmental protection and the rate of environmental offences here in Queensland is statistically low. Overall, I believe the bill's tougher and more punitive approach is both unnecessary and inappropriate, particularly when the potential cost to businesses and individuals is likely be substantial. Piling more costs and regulatory pressures on businesses is incredibly unwise, especially during one of the worst cost-of-living crises this state has experienced. As was pointed out during the public hearings, most operators are small family-run businesses that are located in regional areas. We must ensure that these businesses are able to flourish in the future.