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AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

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Members present:

Mr IP Rickuss (Chair)
Mr JN Costigan MP
Mr SV Cox MP
Mr DF Gibson MP
Mr S Knuth MP
Mr JM Krause MP
Ms MA Maddern MP
Ms J Trad MP

Staff present:

Mr R Hansen (Research Director)
Ms A Jarro (Principal Research Officer)

PUBLIC BRIEFING—ENVIRONMENTAL PROTECTION (GREENTAPE REDUCTION) & OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 6 JUNE 2012

Brisbane

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The committee met at 12.14 pm

NICHOLS, Ms Elisa, Director, Environmental Policy and Legislation, Department of Natural Resources and Mines

WATKINS, Ms Kate, Team Leader, Environmental Policy and Legislation, Department of Natural Resources and Mines

CHAIR: You heard some of the comments that were made?

Ms Nichols: Yes.

CHAIR: I am assuming you have made some extensive notes?

Ms Nichols: I have.

CHAIR: I think we will start with the local government issues. Have they been taken on board?

Ms Nichols: Local government via the LGAQ has raised the issue of commencement dates before in the 2011 bill. Ultimately, the commencement date is a matter for government and we can provide that information to the minister.

CHAIR: 'Variation site specific' I have down as No. 2.

Ms Nichols: Yes. We respectfully disagree with local government's views on that. We think there is a need for flexibility, but we do not believe that varying the standard conditions varies the nature of the risk of the profile of the activity because the eligibility criteria put a barrier around the risk of the profile. The eligibility criteria cannot be varied through a variation activity, only the conditions of operation.

CHAIR: So the one document that they were talking about as compared to two documents?

Ms Nichols: That is a separate issue. That is the EA-DA split. One of the next phases which we will be engaging local governments on is a code of assessment to help define where different types of conditions can sit. Those decisions are not entirely final. Some of the things that local government are characterising as construction issues are things that I would consider to be ongoing operational issues. I think in some of those discussions we may be able to refine some of those concerns. Pollution control technology has to be in place. Arguably it sits in both. It could possibly be construction or it could be an operational issue. I think through the development of that code and deciding where things go we can minimise the potential conflict issues that we are talking about.

CHAIR: No. 3 I have down as changing guidelines.

Ms Nichols: Yes. I wanted to raise that particularly because I believe there has been a misinterpretation about the effect of that provision. The statutory guideline provision in section 548, which is causing concern, is limited to the ability to make statutory guidelines around regulatory requirements. Regulatory requirements are specifically defined in the dictionary of the bill, which you will find on page 248. A regulatory requirement is a requirement under an environmental protection policy or a regulation for the administering authority to approve or refuse, or a stated procedure for evaluation of an environmental authority. It does not extend to things like cleaning up spills or the kinds of examples that were being discussed there. That guideline power does not give the department any powers to direct local government to go outside the business. Those guidelines are really guidelines to help more fully describe how we would assess something. So, for example, we might make a guideline on how to assess air impacts in a particular area. There are guidelines that exist now that might sit under this about how to assess discharges to waters. That is the sort of thing that a regulatory requirement is about.

Mr KRAUSE: To clarify that, the guidelines will only be made about issues which have already been prescribed to be administered by a local government under a regulation?

Ms Nichols: Those regulatory requirements are administered by all administering authorities, so local government and the state. It is really about providing more detail and some of that technical detail about how that very specific regulatory requirement might work in practice.

Ms TRAD: Their issue was the level of consultation. The original amendment had the minister must consult. Now it is the CEO should consult. There is a different onus obviously which I think goes to the heart of their concern. Can I ask why it went from a 'must' to a 'should'.

Ms Watkins: It is still a 'must'.

Ms TRAD: No, it says the chief executive should consult with the persons or the entities.

Ms Nichols: The version I am looking at says 'must'.

Mr GIBSON: The one I am looking at says 'must'. 'Before making a guideline, the chief executive must consult with the persons or entities'—

Ms TRAD: Sorry, I am working on the track changes document that was sent through by the research director.

Ms Nichols: I do not have that in front of me, but the bill that was introduced into parliament says 'must consult'.

CHAIR: We will move on. Application documents—there are four that I have written down. I cannot remember what it was about now.

Mr KRAUSE: I think it was about answers to and from agencies.

Ms Nichols: That was an EDO. There was one further point in the local government submission about benefits to small and medium enterprise that we would like to address. We feel that the response did not recognise the benefits of the standard application. The standard application process is an automatic application, as we discussed, which will mostly be small and medium enterprises that will be suitable for that type of application including those activities regulated by local government. One of the next phases will be consulting further with local governments on what activities should be suitable for those kinds of applications.

CHAIR: So that will be virtually a tick and flick?

Ms Nichols: Yes, so that will benefit those industries and that is where the bulk of the identified \$11.7 million in savings for businesses is coming from. We also feel that is a benefit to local government because that is an assessment and administrative process which they no longer have to carry out either.

Ms TRAD: But they may have to register it in some way and provide for internal processes that reflect that?

Ms Nichols: But it will be an automatic process so they will not have to go through the full assessment process. So, even if they have to register it, it will still cost a lot less than doing a full assessment.

Mr KRAUSE: I raise an ancillary question which may have been touched on before. There was some concern that changing an EA may trigger a DA change in local government.

Ms Nichols: Yes.

Mr KRAUSE: I think you touched on this before?

Ms Nichols: Yes.

Mr KRAUSE: Can you clarify how the bill works?

Ms Nichols: The nuances that were being discussed in that point are not articulated in the bill and will be more subject to the code of assessment that I was talking about. The example that Frank gave was where a noise barrier is put onto the development permit and that may change. I think that is the kind of issue we can resolve through the code to see where the appropriate location for that condition is. Is the development permit actually the appropriate location for a condition about ongoing operation of noise? I think we can work through some of those issues and we will be engaging very closely with local governments to help us get that right.

Ms TRAD: What is the time frame around the development of the code?

Ms Nichols: All of this will have to happen by the end of the year to meet the announced March time frame. I have a meeting with Christine Blanchard of LGAQ next week to talk about how to engage local government in the next stage of the process.

Mr KRAUSE: Would it be necessary to clarify in some way that a change to an EA does not require any action on the development approval front?

Ms Nichols: We will not have to clarify that through the legislation as long as we get it right about where the conditions sit. We do not want a situation where there is unnecessary triggering of a development permit. That is part of this whole design process.

CHAIR: Is there anything else on the local government side?

Ms Nichols: No.

CHAIR: On application documents?

Ms Nichols: Yes. The way it is currently defined, the information request and response are not included in the definition of application documents. That is a matter that potentially could be considered, at least in terms of those documents being available for the public.

CHAIR: 'All documents' I have written down for the next one.

Ms Nichols: That referred to the public register. There is a public register which has quite a lot of things that have to be included. The EDO submitted that matters like audit reports and plans that are required to be submitted as part of the EA should be in that public register. That is a matter we have not really considered and the impacts of that. We could take that on notice and provide a further response for the committee.

Ms TRAD: I think Mr Gibson alluded to this before. This bill is largely unchanged from the one introduced late last year.

Ms Nichols: That is right.

Ms TRAD: So it is mainly administrative changes; is that right?

Ms Nichols: Yes, and there were a few errors that were noticed in between the drafting which we corrected.

Ms TRAD: I just wanted to get that on the record. Obviously there will be some time before the bill, if passed, will come into effect. In the period between the passage of the bill to its assent, or to when it is operational, what happens to those people who come in for environmental authorities?

Ms Nichols: They have to operate under the existing system.

Ms TRAD: Okay.

Mr COX: I want to go back to the payment for residual risks of rehabilitation, which is covered in clauses 318ZK through to 318ZN. Can you give an example of some of those payments and how they are calculated?

Ms Nichols: Sure.

Mr COX: In regard to 318ZN, could I get some examples of those? I think you said how the payments are decided is under review—not the payments, the risk—

Ms Nichols: The guidelines supporting it?

Mr COX: Yes. I asked how has this had come about and I thought you said it was more to do with petroleum and gas. If that is the case, is that due to the hydrology issues that have come up with coal seam gas? You mentioned before there could be an acid spill and water getting in. Is this aiming towards foreseeable things that could go wrong in coal seam gas maybe within water or hydrology?

CHAIR: It is very hypothetical.

Ms Nichols: Yes, it is. It is about foreseeable risk of any kind.

Mr COX: If you could give some examples of how it is calculated, I would appreciate that. Under subclause (4) it explains what likely rehabilitations costs are, and I thought it would be simply that.

Ms Nichols: We will take that on notice.

Mr KRAUSE: I have one other question on the local government front. I believe there was a suggestion that local councils and other administering authorities could play a role in the suitable operator vigilance or monitoring.

CHAIR: I think some of that is with freedom of information, isn't it?

Ms Nichols: Not really. It will be will the administrative processes we set up about how the suitable operator register works. So, as I said, it will be a public register and councils will see that. We envisage that, when an operator makes an application directly to council, the suitable operator application might come to them and they can forward that to us to process. But we can also set up processes where we get information about where somebody has been committing offences that council is aware of. We can look at how we can do that.

Mr KRAUSE: Is there flexibility there to do that?

Ms Nichols: Absolutely. That is really about setting up the correct administrative processes so we get the best benefit for it.

CHAIR: Sam asked me about this, and I would like to acknowledge that my son works as a compliance officer for AgForce advising farmers on clients about land access for coal seam gas.

Mr COX: And I have a brother who works in the coal seam gas industry, too. So I want to put that on the record. I have spoken to the Clerk about it and he said that it should be fine. If something comes up—

CHAIR: There is no actual requirement but it is just so that committee members are aware.

Mr GIBSON: Your transparency is noted.

CHAIR: Thank you very much. I am glad to see that the LGAQ stayed here as well. I am sure you can have some discussions over a cup of coffee.

Ms Nichols: No doubt.

Committee adjourned at 12.28 pm