Speech by

Andrew Cripps

MEMBER FOR HINCHINBROOK

Hansard Thursday, 17 November 2011

WATER AND OTHER LEGISLATION AMENDMENT BILL

Mr CRIPPS (Hinchinbrook—LNP) (12.44 pm): I rise to make a contribution to the debate on the Water and Other Legislation Amendment Bill. I intend to concentrate on the proposed amendments to the Water Act. The bill proposes, amongst other amendments to the Water Act, to establish a single process framework for the concurrent development of a water resource plan and resource operation plan; remove the requirement for the establishment of community reference panels and provide discretion to employ a shortened process in certain circumstances—for example, if a replacement plan is not materially different to the existing plan; and provide an exemption from the requirement to hold a riverine protection permit if works that take or interfere with water are made self-assessable under a water resource plan or regulation and the works are being undertaken in accordance with a self-assessable code listed in the regulations associated with the Water Act.

As the shadow minister, the member for Bundaberg, indicated, the LNP will not be opposing the bill. In respect of the Environment, Agriculture, Resources and Energy Committee report, the LNP members of that committee certainly support recommendation No. 1 and do not necessarily oppose recommendation No. 2. However, there are a few legitimate issues about the committee's report and the bill that do need to be addressed during the second reading debate, and that is why we have this stage in the parliament's consideration of bills before the House.

The bill proposes to amend the Water Act to establish a single process framework for the concurrent development of a water resource plan, or WRP, and a resource operations plan, a ROP. We have no reservations at all about this aspect of the proposed amendment. Indeed, we welcome it and we consider it somewhat overdue. For some time there has been dissatisfaction and confusion about why these two processes occurred separately, one after another. It is undoubtedly true that the complexity of managing water resources varies between catchments. Queensland is a massive state. Rivers, creeks, aquifers and water tables are different across Queensland. The features distinguishing some catchments and rivers from others do not just depend on whether they are in North or Central or Southern Queensland. Significantly, it depends on whether they are east or west of the Great Dividing Range, if they have small or large catchments or how far it is from the source of the watercourse to where it terminates.

However, in terms of the process for allocating the water resources within those catchments between various uses, there does need to be a consistent approach for the purposes of establishing a legislative framework to govern that process. The LNP agrees that the processes of allocating this water via a two-stage process contained many duplicated steps that have resulted in unnecessarily long time frames for the development and implementation of some WRPs and corresponding ROPs. This has disadvantaged water entitlement holders within the catchments in question as their water entitlements remain uncertain and unsecured for the duration of the development of both the WRP and the ROP.

The impact on water entitlement holders and their businesses, particularly working farms and businesses that service industries dependent on water such as drilling contractors and rural supply businesses, is always significant when the moratorium is implemented at the commencement of the development of a WRP or a ROP. The consultation process with community reference panels and stakeholder groups is currently also carried out during the development of both WRPs and ROPs, often revisiting issues that were previously considered. This process has rightly been identified as both

ineffective and inefficient within the existing act. Participants in these community reference panels have been frustrated and concerned by the duplication of this process and have called for it to be addressed.

However, the bill, in addition to proposing to establish a single process—an amendment that we support—also proposes to remove the requirement for the establishment of a community reference panel during the development of a concurrent WRP and ROP in certain circumstances. The bill proposes to vest in the responsible minister the discretion to determine if this will occur. Clause 13 of the bill proposes that the minister be required to consider the following in determining if the shortened process will be used or if a community reference panel will be established—

(a) the proposed draft water resource plan is likely to significantly change arrangements for the allocation, and sustainable management, of water in the proposed plan area; or

(b) the terms of the proposed draft water resource plan are likely to be significantly different from the terms of water resource plans applying to other parts of Queensland; or

(c) the Minister needs further information about community views and expectations about water allocation and sustainable management issues in the proposed plan area.

This issue attracted a lot of attention from public submissions to the committee during the public hearing on this bill on Wednesday, 12 October 2011. A number of witnesses expressed concern about this aspect of the proposed amendment. Most notably, Mr Steven Burgess of the Mary River Catchment Coordination Committee and Ms Nerida Airs from the Stanwell Corporation provided some very clear and strong endorsements about the value of community reference panels during the development of WRPs and ROPs.

The shadow minister, the member for Bundaberg, has already highlighted in detail the evidence from Mr Burgess. It was very clear and unequivocal, not only in terms of the value Mr Burgess placed on the contribution of community reference panels but in particular the scathing criticism he heaped on this government for its failure to be open and transparent about the development of the WRP for the Mary River when the planning process for the Traveston Dam was being undertaken. Needless to say, Mr Burgess's evidence to the committee was a highlight of the public hearing on that day.

In view of the evidence from Mr Burgess and Ms Airs and the fact that both the bill's explanatory notes and the committee's briefing on the bill's fundamental legislative principles raised the potential for rights and liberties to be made dependent on administrative power not subject to appropriate review, the committee sought further advice from DERM during the development of our report. The fundamental legislative principles issue relates to the proposal to vest in the responsible minister the power to decide if a long form process or the shortened concurrent process for the development of a WRP and an ROP and the decision about whether or not to appoint a community reference panel without the opportunity for these decisions to be reviewed could be seen as depriving individuals, especially water entitlement holders, of certain rights.

In response to the committee's request for further information on this matter, the Director-General of the Department of Environment and Resource Management, Mr Jim Reeves, stated—

Alternative models/arrangements for public consultation are a matter of policy and as such, I cannot expand on this matter.

As a result, the LNP members of the committee determined that they could not simply overlook the fact that, despite the evidence of a number of witnesses raising concerns about these issues and despite DERM confirming the potential breach of fundamental legislative principles was a matter of policy, the committee report merely notes the public submissions and DERM's response and describes the amendments as acceptable and reasonable. LNP members raised concerns about this matter simply because DERM's response to our inquiry just did not offer any satisfactory explanation. As this issue is a policy matter, the proper administration of the discretionary power to be vested in the responsible minister will be dependent on the capacity of that minister to make a value judgement about whether a community reference panel ought to be established or if a shortened process is appropriate, notwithstanding the requirements of clause 13.

I would note that there are many unfortunate and, in some cases, ongoing examples of where the development of WRPs and ROPs in Queensland has been prolonged due to disagreements between DERM and its predecessor departments and various stakeholders engaged in that process, including community reference panels and entitlement holders. I have previously spoken in this House about the extraordinarily long process that was required to finalise the Condamine-Balonne WRP. The Condamine-Balonne WRP took more than a decade to develop and finalise. In part, that was due to the complex nature of water entitlements in that catchment but also because of the actions of the then department of natural resources and water and its failure to acknowledge the expertise of local landowners and its refusal to be practical about negotiating a fair and reasonable outcome.

The story has been similar in respect of the development of the Barron WRP. The Barron WRP commenced in 2002 and was only finalised last year after eight years of confrontation between the department, the community reference panels and the various stakeholders in the local community, including water entitlement holders. Both the Condamine-Balonne WRP and the Barron WRP have been

the subject of legal challenges such is the dissatisfaction that can be encountered with the WRP and the ROP process.

Most recently, in Far North Queensland we have had a very unsatisfactory experience with the commencement of the Wet Tropics WRP. The Wet Tropics WRP covers about two-thirds of my own electorate of Hinchinbrook. There have already been concerns expressed about the lack of transparency and accountability on the part of DERM, which has refused to provide the data that it has relied upon to claim that the reliability of ground and surface water sources in the Wet Tropics region has declined.

The bill proposes to vest in the responsible minister the discretion to determine if a community reference panel ought to be established or if a shortened process for the development of a WRP and an ROP should be used. It is our view that no information in the bill's explanatory notes or any of the information provided by DERM establishes this as a desirable amendment.

To clarify, the LNP is not necessarily saying that it is opposed to the amendment. What we are most certainly saying through our statement of reservation attached to the committee report is that we do not feel it has been clearly demonstrated by the minister or by DERM, as claimed in the committee report, that the provisions in clause 13 are justified. As such, the committee ought not to state, as it does, that it is satisfied that the amendments proposed in clause 13 are acceptable and reasonable.

The second matter that I want to address is the amendment that proposes to provide an exemption from the requirement to hold a riverine protection permit if works that take or interfere with water are made self-assessable under a WRP or regulation and if those works are being undertaken in accordance with a self-assessable code listed in the regulations associated with the Water Act. This is also a matter that attracted considerable attention during the public hearing on this bill. A concern about this amendment was expressed by the Queensland Murray-Darling Committee and by Mr Steven Burgess from the Mary River Catchment Coordination Committee during our committee's public hearing on this bill. Once again, I turn to the contribution from Mr Burgess, whose time in front of our committee was well spent.

Mr Burgess outlined very reasonable concerns about the amendment. Mr Burgess stated that, where landowners undertake self-assessable works—which, if the amendment is passed, will be exempt from the requirement to hold a riverine protection permit—if they do not have a good understanding of the potential impact of those works either at the site where the work is being done or upstream or downstream from that site, they could have very serious, albeit unintentional, ramifications on that land or on land owned by adjacent landowners. It is true that some landowners do not have the expertise to make those judgements in all circumstances; others certainly do. Mr Burgess stated that ordinarily the requirement to secure a riverine protection permit would, without exception, see landowners put in contact with a DERM officer who did have some expertise. There is a lot of truth in what Mr Burgess said, and I do not disagree with him in that regard.

I did, however, put it to Mr Burgess that, while taking a certain course of action without a riverine protection permit in a watercourse could have very significant adverse ramifications, in other circumstances not taking a certain course of action in the absence of a riverine protection permit can also have very significant adverse ramifications. In many areas of Queensland where flash flooding after severe storms is an issue or where seasonal riverine flooding is a common event, not undertaking emergency works without a riverine protection permit can result in disastrous outcomes.