AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

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 9.00 am

NICHOLS, Ms Elisa, Director, Environmental Policy and Legislation

WATKINS, Ms Kate, Team Leader, Environmental Policy and Legislation

CHAIR: We might get this underway. Who would like to start?

Ms Nichols: I will be doing most of the presentation today but Kate is here to help. If I say anything wrong she will kick me in the ankle. I thought I would start with an opening summary of the major features of the bill and then open it up to questions, but, of course, ask questions whenever they arise with anything I say. The Greentape Reduction Project started in 2010 with the aim to reform the Environmental Protection Act focusing on the application and assessment processes for environmentally relevant activities. One of the major aims was to reduce the cost for industry and government of those licensing assessment standards without reducing environmental standards. The project rebuilds the assessment process—the whole approval process actually—for environmental licensing. It improves business investment certainty and allows front-line environmental regulation to be delivered more efficiently. It is a coordinated package of legislation, business process and information system reform so the bill actually only forms part of the overall package of the project.

One of the key features of it is the introduction of an integrated approval process for all of our environmentally relevant activities. I will call environmentally relevant activities ERAs for the rest of the presentation this morning. We regulate a wide range of activities from things as small as motor vehicle workshops all the way up to the biggest of coal mines. So it is a really broad range of activities. Basically something becomes an ERA if it is likely to have a contaminant release that needs to be managed. The bill introduces a new approval process which is chapter 5 of the bill. It replaces all of chapters 4, 5 and 5A of the existing Environmental Protection Act. The new approval process in chapter 5 is divided into modular stages, which is quite similar to what you would find under the Sustainable Planning Act, for any of you who are familiar with that. I will go through each of the stages now and talk about some of the key changes and some of the benefits that the stages deliver.

Ms TRAD: It also says chapter 6 is replaced. So it is chapter 6 as well?

Ms Nichols: Yes, it is. Chapter 6 is a little bit different, but it is merged into it, yes. The three approvals processes in the existing act are 4, 5 and 5A and chapter 6 does something different. The application stage is obviously the first stage. It is in chapter 5 part 2 from sections 116 to 136. The application stage contains the details on how an application for an environmental authority is to be made. So the environmental authority is the approval type and one of the features of this bill is there will now only be one type of approval for ERAs which is the environmental authority. The current system has the development approval and the environmental authority and a registration certificate. We are removing three types which will be a nice, clear, neat approval type.

The bill introduces three ways of getting an environmental authority. They are not approval types, they are actually methods of getting an environmental authority. The first one is the standard application. This is a new type of, I guess, approval track for our lower risk businesses. Effectively a business will get an automatic approval if they comply with a set of eligibility criteria. That automatic approval will be subject to standard conditions. Both the eligibility criteria and the standard conditions will be public on our website and developing them will be subject to a public notification stage of 30 days. So, it is a full public process to develop those. An example of eligibility criteria might be that the activity is located more than 100 metres from a watercourse or it is located in an appropriate industrial zone under the planning scheme. It really talks about the nature of the activities and the risks associated with it. A standard condition might say something like you must not discharge to waters. The idea is that we will keep the activities that are in the right place and low impact in a standard approval process so that they can get quick automatic approvals. That will save 68 days of processing time for those types of applications. It will save, on average, 150 pages of an application, but some of those applications can be up to 400 pages we discovered when we were doing the process, and our industry stakeholders tell us it costs them about $20,000 to prepare one of those applications.

Mr KRAUSE: Could you give an example of a low-risk activity?

Ms Nichols: Motor vehicle workshops, like I mentioned earlier, might fall into that category, small fuel storage—the kind that fuel stations have—would fall into that category and wooden product manufacturing. So a lot of our smaller end businesses could fall into that category. Also the smaller scale of something that could be large. So, for example, for quarrying at the moment we have a code of environmental compliance which would be a standard approval under the new methodology for up to 100,000 tonne. If it is over 100,000 tonne it would go through a full assessment process. So we can divide ERAs up based on their scale.

Mr KRAUSE: So a smaller quarry would be subject to an automatic approval process?

Mrs MADDERN: Provided they ticked all the boxes.

Ms Nichols: Yes. So if they wanted to locate right next to the watercourse, and the eligibility criteria says 100 metres from a watercourse then they would not meet those eligibility criteria and they would have to go through an assessment.

Mr KRAUSE: The same with fuel stations?

Ms Nichols: Yes, exactly. The second type of approval track is the variation application. That is for the standard applications where the operator wants to vary some of the conditions. They may want to do something a little bit differently to what the standard conditions say. So they can apply for a variation application that will allow them to vary just those conditions. The benefit of that is that the department will then only assess those particular matters of variation so it is a much truncated approach.

CHAIR: That is new, is it?

Ms Nichols That is new as well.

CHAIR: Whereas before they had to go through the whole process.

Ms Nichols: Yes, everyone had to do the whole thing pretty much. There are some exceptions in the mining sphere. They have had some of these advantages for a while, things like exploration permits, but most of our businesses, no, they have had to go through the full kit and caboodle. The last type, which is the same as we have now, is the site specific application. Our aim is that by the time of full implementation a full half of our applications will go through the standard process and the rest of them, which is our bigger end, will be left. So that is about 400 applications a year the department receives that we would expect to go through the standard process.

Mr KRAUSE: It is fair enough to say that the eligibility criteria are the key to being able to access the standard application.

Ms Nichols: That is exactly right. Our proposal is to develop eligibility criteria on an ERA by ERA basis so that it will not be the same for everybody, it will depend on the particular nature of the activity because the criteria might change depending on the risks that that particular activity demonstrates. Or it could be groups of activities. If there are some similar risks we could say for these types of activities that these are your eligibility criteria.

Mr KRAUSE: Have those groups been identified yet?

Ms Nichols: No, not yet. There is still work under way.

Ms TRAD: But the standard activities would cover all of those categories?

Ms Nichols: Yes.

Ms TRAD: And you still have not standardised those activities. There is a long process.

Ms Nichols: No. The next stage is a consultation process. We have already done some work in working out what activities would be suitable.

Ms TRAD: The standardised conditions, I should say.

Ms Nichols: We will be working to develop those too because the bill introduces a publication process to do that which effectively replaces what would otherwise be a public participation process potentially in the actual activity itself.

Mr KRAUSE: Would the standard conditions apply to every activity which is subject to standard conditions or would there be different standard conditions for different categories?

Ms Nichols: No, there will be different standard conditions for different categories because what we will be doing is a risk assessment of the activity and then setting conditions based on the risks that those activities present.

CHAIR: When would you expect to have that list up and running?

Ms Nichols: We are hoping to release the list in the next month or two. We need to do some additional work. When the minister introduced the bill he announced that he would also like the list of ERAs reviewed to see if any could be deleted for the lower risk activities. We are commencing that work as well and we will be engaging with our stakeholders on that. So that might affect who goes through a standard application process because some of those low risk activities may, in fact, drop off the list.

Mr GIBSON: How old are the current ERAs that we have? When was the last time they were reviewed?

Ms Nichols: In 2008 the reg was remade; they were reviewed prior to that.

Mr GIBSON: We are looking at ERAs that are four years old now. Obviously it will take some time to review ERAs. With these changes that come through on this bill, how do you see, I guess from the department's perspective, dealing with old ERAs, so to speak, potentially up to four years old?

Ms Nichols: Sorry, I don't quite understand.

Mr GIBSON: I guess what I am wondering is what will the impact of this bill have upon those ERAs that are currently in place allowing for the fact some of them are dated.

Ms Nichols: Anything that has a current approval, if we go through the process of deleting those ERAs they will no longer be required to do any of the annual return processes, pay annual fees, any of the ongoing management. Their approvals will still exist because they will be development approvals so the conditions that they operate under will still exist, but the administration associated with annual activities—annual inspections by the department, all of those sorts of things—will disappear.

Mr GIBSON: So they will have a situation where there is an approval in place but they are no longer required to meet any of the reporting requirements or required to make payment on the ERA?

Ms Nichols: That is right.

Mr KRAUSE: Does that DA just continue?

Ms Nichols: Yes, DAs are pretty much permanent and attached to the land.

Mr KRAUSE: Forgive my ignorance, but is that under the EPA?

Ms Nichols: No, it is under the Sustainable Planning Act.

Ms TRAD: I know you want to go back to the full briefing.

Ms Nichols: No, it is all right, I am happy to answer anything.

Ms TRAD: I did want to ask: are there transitional arrangements obviously to go onto the new ERA structure after this legislation?

Ms Nichols: Yes, there are

Ms TRAD: You are probably covering that in your briefing.

Ms Nichols: I will mention it now. We are effectively deeming all of the, what are called, concurrence agency conditions. For those who do not know SPA very well, and most people do not because it is horribly confusing, when you go through the development process for an ERA, council is usually the assessment manager and the department may be the concurrence agency for the ERA. There are some exceptions because councils are, in fact, devolved responsibility for some of the ERAs, but I will just use the state government process for example. We set conditions for the ERA component. We are deeming the concurrence agency conditions to be the environmental authority in the future. There will be no situation of multiple approval types. Everything will be transitioned to the new environmental authority type upon commencement of the legislation.

Mr GIBSON: Just to pick up on your point, Mr Chair: you were talking about the variation on certain conditions within that.

Ms Nichols: Yes.

Mr GIBSON: Currently, there is an ERA that sits over one area and it can be fairly broad. An activity can occur at the lowest risk end of that, but because they fit under that ERA they are required to adhere to everything up to the highest risk end in that. Is that an example of where they will be able to seek a variation, rather than what currently happens now where they are trotting off to the P&E court or trying to get it resolved in that way? They would be able to say, 'Look, under that particular ERA, yes we are recycling, but we are actually only packaging up what has already been sorted. We are at the lowest risk end of that and we are seeking a variation, just to ensure that we do not need to comply with all the other options.'

Ms Nichols: Yes, that is a perfect example. Section 125 in the bill contains the information that needs to be included in an application. It is more extensive than currently appears under the EP Act. The reason for that is, despite the limited number of things in the current section of the EP Act, we still require all of that information because of the matters that the department needs to consider in making a decision. To make it clear for operators, we have actually articulated what we need a lot better in this act. In addition, we are hoping that that will reduce the need for information requests, which will reduce the overall assessment time frame because we are clear upfront what we actually need from our applicants.

Section 126 contains some additional requirements for coal seam gas operators, which replicate the information that is already required in the act. We carried that across. That relates to the produced water requirements about dams and how they manage their water and things like that. There is no real change to that. That is just carried across.

Mr GIBSON: Just to be clear on what you were saying, section 126 replicates what was already in the act; section 125 is additional material that is there.

Ms Nichols: Yes.

Mr GIBSON: What is the purpose of that additional material?

Ms Nichols: Under the act, at the moment it says you need certain things for an application, but in the decision-making stage it says the department needs to consider a whole bunch of things that are not reflected back into the application materials. What happens at the moment is that the department gets an application that meets the requirements, but then they need to put out an information request saying, 'We need all this other information because we need to decide on this basis.' To make it a lot clearer and much more transparent, we are saying, 'Actually, this is what we need in an application so that we can make the decision under the act.'

Mr GIBSON: So the expectation is then, as a result of what is included in section 125, there be would less requests for information from the department.

Ms Nichols: That is right, that is the intention.

Mr KRAUSE: And it will be provided up-front.

Ms Nichols: Yes, so we will get it all up-front and there will be less need for us to go back for further information.

Ms TRAD: That is less requests, but the same information?

Ms Nichols: Yes, exactly.

CHAIR: If I remember rightly, the Ipswich City Council wanted more information in section 125. They said that in relation to the non-standard approvals it is recognised that the regulator should be able to amend conditions and identify the application. You have said that the regulator can amend any conditions to the extent it relates to this and if the conditions being changed are noise conditions they can change the noise conditions but could not unilaterally change the water conditions.

Ms Nichols: That relates to a variation application. If an application comes in, for example, to vary the noise conditions, say the standard conditions say you can only operate between eight and six and they want to operate between eight and seven, you could only assess the noise impacts. You could not start assessing their air impacts or something like that. That is actually more on the condition stage. It is open.

The second stage of the application process is the information stage. This is actually a new stage for our resources activities. Under the current act, effectively the department can ask for information at any time. One of the complaints of industry is that sometimes it leads to a situation where there is this really extended process where they are constantly having to provide further information back. We are formalising the information stage for the purposes of those activities to mimic the information stage in the Sustainable Planning Act. That has been very supported by our resources stakeholders, the Queensland Resources Council and APPEA. It is exactly what it says. As I have already mentioned, we are hoping to reduce the instances where that stage is, in fact, used by improving the application material and also improving the guidance material to support the applicants in making an application and being very clear on what is required, so that we can reduce the use of that stage.

Mr GIBSON: Could we have a situation where an applicant is doubling up because of the information that they are providing under the Sustainable Planning Act and this particular bill?

Ms Nichols: No. One of the features here is that we are maintaining the integrity of the integrated development assessment process, where a planning approval is also required for an ERA. An applicant will still go through the SPA and apply for the ERA, and we will assess it is as the concurrence agency so that the information will all be the same. The difference is that we will issue conditions for the environmental authority rather than for the development approval. We are kind of getting the best of both worlds. We are keeping the integration of the system together so that we do not get piecemeal applications and there is not conflict between the application type, but in the end we will have the environmental authority, which is a much more flexible tool. I will talk about the flexibility later.

Mr COX: So the information section is a new section?

Ms Nichols: Yes, it is a new section in the Environmental Protection Act, replacing the ability at the moment to go backwards and forwards or put information.

Mr COX: So it is relaying that ability and it is making it a one-off, unless there is a variation or something, maybe?

Ms Nichols: Yes. If an applicant changes their application, they would have to go back.

Mr COX: And obviously they have the right to do that if something happens.

Ms Nichols: Yes. The public notification stage in chapter 5, part 4, sections 149 to 164: this effectively applies to resources activities only. Public notification for activities that are linked into the Sustainable Planning Act, like I was just talking about, is dealt with under that act. This section is only for resources activities. Effectively, the activities that are required to go through public notification are applications associated with a mining lease or a petroleum lease, a site-specific mining petroleum lease, so the big end of things—or not even that big necessarily, but lease type activities.

Mr GIBSON: A quarry?

Ms Nichols: Would go under the Sustainable Planning Act.

Mr GIBSON: An extraction of resource is not, but mining is?

Ms Nichols: Yes. When I talk about 'resources activities', I mean things managed under the Minister for Mines' jurisdiction.

Mr GIBSON: Thank you, I just wanted to clarify.

CHAIR: Just for clarification, quarries come under council regulations. They are not classed as mining, unless you have sandstone blocks, and then they are mining.

Ms Nichols: It depends on what you have taken out of the ground as to whether you are a mine or a quarry.

Ms TRAD: Does that mean CSG as well, gas?

Ms Nichols: Yes. Mining, petroleum, gas, greenhouse gas activities, geothermal activities—all of those types of activities.

Mr KRAUSE: And does it apply to exploration permits?

Ms Nichols: No, public notification does not. Those sort of activities tend to be subject—

Mr COX: Unless it is CSG.

Ms Nichols: No, it does not. When public notification happens is being changed in this process. As it currently stands, and this is particularly for mining, we assess the application, issue a draft environmental authority and then it goes out for public notification. That is actually contrary to every other type of public notification, which is done on the application documents. It gives the submitters the opportunity to have a look at the application documents, make submissions and then for the department to take those into account in making the draft environmental authority. We are moving it forward in the process so the notification actually happens on the submissions.

CHAIR: It will be more like the redevelopment site where the public notification will be put up saying, 'This is being put forward.'

Ms Nichols: Exactly. That means it will be able to happen while the assessment is going on, which can potentially reduce time frames by months by bringing it into a concurrent stage. At the moment, it happens one thing after the other. Instead, we can do it concurrently and then issue a draft environment authority, taking into account the community's concerns.

CHAIR: This morning we had some discussion about the 10 business days after the end of the information stage, and that has been changed to 20, hasn't it?

Ms Nichols: This bill actually increases it back to 20 again. The original 2011 bill had 10 days and this bill changed that to 20 days in response to submissions.

Ms TRAD: Elisa, I raised this yesterday, but I am just still trying to grapple with how the public can make informed decisions around applications. I know that the public information stage, after an assessment stage, does not actually include public information in that. It is an appeal process rather than a collaborative process of scrutiny of the application. How does the public measure an application against particular guidelines that the department might have? In terms of the concurrent nature of public information and the departmental assessment, how does the public get to understand how the department will be measuring this assessment?

Ms Nichols: The legislation and the guidance material will all be available for the public. Everything will be on our website. They can have a look at that. Usually the public is looking at the application based on their local community and the desires of their local community and the environmental impacts in their local area. When it comes to the end of it and we issue the draft environmental authority, that goes out to every submitter and the submitter has an opportunity then to have a look at the draft environmental authority and see whether or not the department has taken into account their concerns sufficiently and whether they want to, in fact, take that further review through a court. That is the process. That is the same process that happens under any other type of public submission legislation.

Mr COX: Excuse my ignorance, but is there any different consideration to whether it is a local public inquiry or whether it is a group from somewhere else that is inquiring about what is happening?

Ms Nichols: No, anyone can make a submission.

Ms TRAD: I do appreciate that and I think it is good practice. Having worked with communities that are grappling with installations or infrastructures in their local neighbourhoods, communities are not very well organised in terms of responding and they do not necessarily understand complex legislation. I would flag that it would be good for the department to put in place some sort of easy steps or guidelines for communities to follow when they are themselves members of the public or groups within communities assessing applications that are put before the department. I think it is reasonable.

CHAIR: As we discussed as well, I have seen these sorts of applications go out on 15 December or 17 December and the 20 working days, in theory, still applies. I have actually even got one of the previous ministers to extend the period because of the fact that there was no-one there. You couldn't get onto departments and all that sort of thing. Is that still allowed under the act?

Ms Nichols: Yes, the discretion is still there for the submission period to be extended.

CHAIR: I think that is quite important. Even with the variation of 10 business days, by the time someone in the committee has picked it up and got around to a meeting, the 10 days is virtually gone.

Ms Nichols: The discretion is there. Often times, for large-scale projects, a larger submission period is granted immediately without an extension, so it goes out for 30 days or something, but the standard is no less than 20.

Mrs MADDERN: But can be significantly more?

Ms Nichols: Yes, it can be. Sometimes companies puts things out for longer as well. One of the other changes that will help the community here is that there is a requirement for the company to keep all of the application documents on their website and a requirement for the department to either copy that or to link to that website, so everything will be online. That is actually a big change. Currently, community groups have to scramble around to try to find hard copies of things and it may not be as easy to get and take some time to get those applications. That will enable the groups to get involved much earlier, because they are required to keep it online for the entirety of the submission.

Ms TRAD: Just to be clear, is the only notification requirement in a newspaper—

CHAIR: Website.

Ms TRAD:—or a website?

Ms Nichols: It is website, newspaper or a way prescribed by regulation, but I do not think there is anything prescribed at the moment.

Ms TRAD: Were there any submissions relating to maybe making the notifications a bit more direct? For property developments, for example, a sign has to be erected outside the actual—

Ms Nichols: They do have to put signs on. Those requirements are actually under the Mineral Resources Act. The notification in relation to the environmental authority for resources activities happens simultaneously in most cases with the tenure notifications. So they actually have to give notice to all the affected landholders under that act. It sort of works in tandem with the resources.

The next stage is the decision stage, which is exactly what it sounds like. It is a process for deciding the applications. That is chapter 5, part 5, sections 165 to 210. As I mentioned earlier, for ERAs that also require a planning approval, the decisions will be made via that process and issued to the assessment manager and it will go out together. The development approval and environmental authority will be linked. There is a clause in the bill that requires the link between the two so we are not losing that holistic view of the project in creating the environmental authority. Also, to make it very clear on how we deal with the relationship between the development approval and the environmental authority, we will be developing an assessment code for officers to look at which types of conditions go where. Basically, the land use and construction aspects of the activity will continue to be conditioned by a development permit, but the ongoing operational aspects of the ERA will be conditioned by the environmental authority. There is an exception, which is for resources activities that do not require approval under the Sustainable Planning Act, and every single environmental impact is dealt with under the environmental authority there.

Ms TRAD: Can you give me an example?

Ms Nichols: When somebody is building a dam, for example a regulated dam on a mine site, we will have all the construction requirements in their environmental authority. So they will have to line it and do various things.

The decision stage also builds in Land Court steps which only apply to mining. Mining is a funny situation where the appeal process actually happens before the decision rather than after the decision. So the Land Court stage happens before a final decision on the environmental authority and the mining tenure. It can go through the Land Court either via the applicant going to the Land Court and saying, 'I'm not happy with whatever is proposed,' or a submitter taking it to the Land Court. There is a Land Court hearing and the Land Court makes a recommendation as to the decision and then the department makes the final decision in the case of the environmental authority after taking into account the Land Court's recommendation. We have built that into the decision stage there. For other types of resources activities, it is a normal appeal process after the decision is made. So coal seam gas would be subject to an appeal rather than this pre-appeal process.

The decision stage also determines when the environmental authority takes effect. At the moment the EA effectively commences on the date of decision. That means that things like fee liability can kick in before the actual activity has taken place. An example of that is where the environmental authority for a mine is approved but the tenure has not yet been approved. Maybe it is held up for native title reasons or something like that. Technically, the fee liabilities kicked in well before they are actually even allowed to mine. We fixed that via some provisions in the regulation, but we are making it really clear in this bill that in most cases for an environmental authority associated with a resources activity it will commence on the date the tenure commences, or if a development approval is also needed it will commence on the date the development approval is granted. There is also a flexibility in there for the operator to state the date they want to commence it, which is really useful for staged applications. They might be building bits and pieces of their development but the ERA component might not commence till five years down the track. They can actually stage that and get all their approvals at once but not have fee liability when there is no actual activity going on.

Mr COX: That can be extended or moved if some circumstances arise as in land tenure perhaps?

Ms Nichols: Exactly.

Mr COX: Or climate issues, weather issues?

Ms Nichols: Yes.

Mr KRAUSE: Are those commencement date provisions different to what is presently in the act?

Ms Nichols: Yes. At the moment they just commence on the date of—

Mr KRAUSE:—the decision.

Ms Nichols: Yes, or the day after I think it is, when they receive the notice. It is pretty much immediately. It is a funny situation. We are fixing that. Industry is very happy with us fixing that as well.

Ms TRAD: Was that after appeals by the industry to rethink that?

Ms Nichols: It had not been raised particularly until small miners were charged fees for the first time when the 2008 regulations were made. That is when it became really obvious that there was a really big gap. I think that some of the larger clients were not affected so much because they can absorb that into their business costs, but for the smaller clients it made a really big difference. So they lobbied and we changed that, as I said, via the regulation, but it was an awkward change. The problem was actually in the act. So we are changing it in this process.

Ms TRAD: Was that in the 2011 version of this bill?

Ms Nichols: Yes. We drafted it a little bit differently in this version to make it clearer. We realised the drafting was a bit awkward in the 2011 version.

Mr KRAUSE: Effectively they were paying for authorities when there was nothing happening?

Ms Nichols: Yes. A number of processes were done to resolve that.

Post decision dealings—the chapter is actually not called that. When I talk about post decision dealings, I am basically talking about all the different administrative processes that may apply after an environmental authority is approved. So it is annual returns, transfers, amendments—that sort of thing. So there are some changes within those. That is chapter 5, parts 6 to 12, sections 211 to 316. I will not talk about all of them because some of them are just lifted straight from the EP act, but I will talk about the main ones where there are changes.

Mr KNUTH: Excuse me, can I just interrupt? I just want to clarify something. I might have missed what you were saying before about the environmental authority. So if there is no operation taking place, they would then have to pay that environmental authority?

Ms TRAD: That is right—fee.

Ms Nichols: That is right. They pay the fee once they start operating.

Mr KNUTH: What is it at this present moment? I am led to believe they had to pay it or something was changed so that they had to pay it every year? I speak, for example, about a small-time miner.

Ms Nichols: That happened in 2008. It was an unintended consequence of that legislation. They were then paying but they had not paid any fees before. So until they started paying fees nobody realised the consequence of the tenure. That got fixed; the regulation was fixed. So they now pay when the tenure commences. It is operating okay. It is just not done in the best legislative way. So we are fixing it here to make it abundantly clear that in no circumstances will they be paying before their tenure is issued.

Mr KNUTH: Under those changes back then, did the small-time miner have to pay that authority every year?

Ms Nichols: Yes.

Mr KNUTH: But now it is just once?

CHAIR: No, only up until 2008. They changed it in 2008. It was done by regulation, but now they have actually put it in the legislation.

Ms Nichols: But the annual fee still applies every year.

Mrs MADDERN: But it only kicks in once the activity starts?

Ms Nichols: Exactly.

CHAIR: Once they are actually mining.

Ms Nichols: So the fee is an annual fee liability.

Mr KNUTH: So if it is just sitting there, they do not have to pay until it starts?

Ms Nichols: Exactly.

Mr KRAUSE: I am just looking at division 3, sections 180 and 181. Those provisions deal with the Land Court process for mining leases. Does that relate to what you mentioned before about coal seam gas licences not being subject to the Land Court process before the decision is made?

Ms Nichols: This particular division is for mining leases, not coal seam gas. It is an appeal.

Mr KRAUSE: It is dealt with in the standard process?

Ms Nichols: Yes, the standard appeal processes. It is subject to an internal review and appeal to the court if someone is dissatisfied with the decision on a coal seam gas licence.

Mr KRAUSE: Which court is it?

Ms Nichols: Land Court. The amendment process for the environmental authority has been changed significantly in this.

Ms TRAD: Sorry, is this section 211?

Mr COX: Section 211, page 77.

Ms Nichols: The one I am about to talk about is actually sections 222 to 242, the amendment process. We have designed separate processes for dealing with major and minor amendments so that minor amendments do not need to go through a full whack of assessment as a major amendment would. A major amendment can be as large as adding a tenure to a mining environmental authority. So it can be really quite extensive. Otherwise any operational changes will be dealt with via the amendment process in the act with the two separate processes. This is different for the activities that currently have development permits, which triggers an amendment to the development permit and sometimes triggers a whole review of their process or the time. It was a big complaint of industry that they were constantly triggering the Sustainable Planning Act when they wanted to grow, change and develop their business. This was considered to be a barrier to them having the flexibility to move with the times. That is one of the reasons for going to the environmental authorities: to provide that flexibility for them to grow and change over time.

Mr COX: To determine what was a minor change or not, was the industry involved in that process to help set guidelines?

Ms Nichols: We have some requirements in the act. The industry was certainly involved in having a look at these sorts of matters. One of the other major changes—it starts in section 243—is the ability to amalgamate environmental authorities. At the moment you can amalgamate your approval if it is an integrated operation. It is really one activity with multiple approvals together. This new process of amalgamations and administrative process allows operators of multiple sites to amalgamate all of their environmental authorities together. What will end up happening then is that there will be a single document. The front end of the document will contain all of the common conditions including one annual return date and all of the administrative type conditions, and the back of the document might contain schedules with site specific requirements for the different sites. Potentially, an operator who operates over the whole of Queensland could, in fact, have a single licence for all of their sites, which will streamline their administration quite significantly. Some businesses, for example, have a single environmental officer who does all of the annual return requirements out of head office. So actually managing it in that way will really assist them. It will also assist the department because we will have a lot fewer licences to manage.

Another benefit of that process is that our resources clients have never been able to merge together their tenure related activities with activities off tenure. An example is if a coalmine is operating a power station. They might be right next to each other and they might actually be sharing conditions, but one is on a development approval and one is on an environmental authority and never the twain shall meet. They will now be able to merge that together as a single integrated operation and be able to carry that on in a much more efficient fashion.

Mr KRAUSE: Is there an ability to deamalgamate?

Ms Nichols: Yes.

Mr GIBSON: Just so I am clear, I understand the benefits that you are trying to achieve by enabling the amalgamation to occur. So a company would make an application to have their existing ERAs amalgamated into one situation. They are not required to provide additional information; it is simply an application that says 'take ERA 1, 2, 3 and bring them together into one document'?

Ms Nichols: Yes.

Mr GIBSON: They are currently making a payment for those ERAs?

Ms Nichols: Yes.

Mr GIBSON: Is it simply A plus B plus C is the new fee?

Ms Nichols: Yes.

Mr GIBSON: There is no recalculation?

Ms Nichols: No, there is no recalculation because all of those sites are still going to have to be individually managed if they are not actually part of an integrated operation. If they are part of an integrated operation under the current act, they get a fee discount there; they only pay for the highest of the activities. But these are not genuine integrated operations; it is an administrative amalgamation only. So there is no fee discount.

Mr GIBSON: Just to clarify, it is really an administrative process?

Ms Nichols: Yes.

Mr GIBSON: So they are simply saying, 'Please merge these together or amalgamate these together.' They do not need to reapply any new information?

Ms Nichols: No.

Mr GIBSON: They do not need to go through a new public consultation period?

Ms Nichols: No.

Mr GIBSON: It is just an administrative process—take A, B and C and bring them into one document?

Ms Nichols: It is entirely administrative. The only work we have to do is if there are, say, some conflicting conditions. Sometimes things are written differently in different parts of the state, which we are trying to—

CHAIR: That is what I was going to ask. Who actually rewrites the documentation?

Ms Nichols: The department will rewrite that in consultation with the industry. There may be three conditions about cleaning up of spills on sites on three different approvals and they may each be written a little bit differently. One of the administrative things we are doing as part of the green tape project is developing a library of standard conditions which can be lifted straight into approvals to improve our consistency of conditioning across the state. So having a library of standard conditions will assist in this process. There will be a standard condition about cleaning up of spills that will lift straight in. That will make it a lot quicker and easier to do that kind of amalgamation.

Mr COX: Again, as David was saying, I appreciate what you are trying to achieve. I want to return to the minor and major amendments—and this might be being a bit picky. For example, a minor amendment—and obviously everything that is not minor is a major—has been determined as one that involves an addition to the surface area of no more than 10 per cent, or a new pipeline that does not exceed 150 kilometres, or an extension of a pipeline that does not exceed 10 per cent. Have those figures been arrived at through a lot of industry involvement where it has been decided that exceeding those figures takes it to a new level? If someone extended a pipeline by 12 per cent or a new pipeline was going to be 160 kilometres—I know a line has to be drawn in the sand—is there an ability for people to work within those guidelines?

Ms Nichols: Not really. This is fairly static and they are in the act already. The addition to the surface area of no more than 10 per cent was already in the act. So we did not actually change those figures or consult specifically.

Mr COX: So those figures are already in the act and industry are obviously happy with them.

Ms Nichols: Yes.

Mr GIBSON: Just looking at section 247, deciding on the amalgamation process, it says that the administering authority must, within 20 business days, decide to either approve the application or refuse the application. If the administering authority has not acted within the 20 business days, what occurs? If they have not communicated back that they have either approved or otherwise, what happens?

Ms Nichols: Nothing. It would be subject to internal review and the normal processes where a department fails. I have to say that the department is 99 per cent on time with its approval processes.

Mr GIBSON: I am sure they are.

Ms Nichols: Whenever something fails like that, that is where the review processes kick in—internal review and things like that.

Mr GIBSON: So where is that shown in the bill?

Ms Nichols: You will not see it in the bill because it exists in the act as it currently stands.

Mr GIBSON: We have a situation here in the bill that says within 20 days an administering authority is required to do either (a) or (b). If they have not done that within that 20-day period, the bill is silent as to what then should happen.

Ms TRAD: But there are provisions in the act.

Ms Nichols: In the act as it currently stands.

Mr GIBSON: But that is not referred to in this bill at all. Are we seamless in that connection between what the requirement is in the bill and what happens when that requirement is not met?

Ms Nichols: We will check that and get back to you on that. I think that it is called up as an original decision.

Mr GIBSON: Thank you.

Ms TRAD: I would assume that in the application process and in correspondence you would make it clear to applicants that they had review rights.

Ms Nichols: Yes, all of our standard forms in going back to clients have all of those details about review.

The next process I wanted to touch on was the transfer of environmental authorities. That relates to sections 251 to 256. We have made the process very simple so that they can just change hands when businesses change hands. It is even more simple for resources activities because we are attaching the environmental authority to the tenure which means that only the tenure has to transfer. We actually work closely with our colleagues in the Department of Natural Resources and Mines and we have the information of who is holding a tenure. So it is exactly the same: who holds the tenure holds the environmental authority. So we have removed the necessity for an additional transfer process for the environmental authority there. That is about 250 applications a year that we will not have to process and a lot of those applications are because mining companies change names very frequently as they merge in and out and do all sorts of things like that.

Ms TRAD: The explanatory notes talk about suitable operators.

Ms Nichols: Yes.

Ms TRAD: So how does a transfer guarantee that it goes to a suitable operator?

Ms Nichols: The suitable operator provisions, which are a little bit later in chapter 5A—I was going to talk about them later but we can talk about them now.

Ms TRAD: No. Go at your leisure.

CHAIR: I see that the Logan City Council have made some comments where they are concerned that there is no information with regard to what action will be taken if a transfer of a surrender application does not comply with sections 253 or 262.

Ms Nichols: If it does not comply with section 253, then it is not a valid application. So they would have to provide that information to be a valid application. So we would not have to process it. We would refuse it.

CHAIR: You would reject it.

Ms Nichols: Yes. Normally we tend not to just reject. We tend to actually go back to an applicant and say, 'You are missing a statement of whether you are a registered suitable operator or something. It is the same thing under section 262, where it says 'a surrender application must'. So if that information is not there, they may not be able to have their surrender application approved. That is actually very common, pursuing information. We need to go backwards and forwards to get the detail because we need to make sure that something is not being left in a bad state by the operator who is trying to surrender and that they have done all their rehab requirements and things like that.

Mr KNUTH: I have a question about the transfer of environmental authority. If the person or the company has already paid for that authority and three weeks later they look to transfer it to a new operator, what is the cost of the transfer to the new operator?

Ms Nichols: That is actually a commercial arrangement between the two people who are selling and buying a business to each other as to who carries those fees. It is the same when you sell a house and you work out who is liable for the rates when they are partly paid already. It is the same thing. They would have to work it out between themselves. The department would not levy a new fee on the new operator if annual fees have already been paid.

Mr COX: When there is a transfer between mining companies and they have to comply with environmental regulations and make sure that things are done to the required standards, whether it be rehabilitation or whatever, is there an audit of that transfer before it is transferred or is it the liability of the new company that they hand over to? I do not know how the industry works—there could be monthly checks or reports they have to send in. Is it the responsibility of the new company to whom it is being transferred? So if they are behind, the new company takes the wrap?

Ms Nichols: Yes, exactly. If you buy a business, you take it on with its liabilities and benefits.

Mr COX: Just the same as any other—

Ms Nichols: It is exactly the same.

Mr COX: So if someone has lagged and a new person takes it on, it is now their responsibility.

Ms Nichols: Exactly. So they would want to be doing their own due diligence to make sure they are not being landed with that.

Mr KRAUSE: So we have not got to the part about certifiers yet?

Ms Nichols: No. I have one more thing to talk about before I get to that. In part 12, sections 285 to 291, we have made some changes to the plan of operations requirements. The plan of operations is a document that is required at the moment only for mining leases every five years to tell us what they are planning to do on their site over the next five years and what rehabilitation they have done. Sometimes they are updated more frequently if a business is changing or moving. But basically they are used because mining leases are long and they move to different areas on their site and so we need to know where they are going.

We are removing the plan of operations requirements for the little miners like small gemstone miners and opal miners because it is not really providing an additional benefit to them. We had already streamlined to the point of having a standard form for them, which is a 15-page form. Now we are removing that requirement entirely. Instead we will have some requirements in their annual returns that will let us know where they are mining this year. Those sites are less than 10 hectares, so they are really quite contained. It is not a necessary requirement.

The other major change is that we are putting into legislation for the first time the requirement for petroleum and gas operators to do plans of operations the same way as other mining leases. We have been doing that via conditions of their environmental authority to date. But we are making it consistent with the mines in recognition of the fact that these are again long leases that move all over the place. The wells can go all over the place at different times, so we need to know what they are planning to do and what they have done to clean up the areas where they have already been.

Mr COX: And the time frames that they have in their plans are the same as the mines?

Ms Nichols: Yes. It is five years or if there is a major change to the submitted plan of operations. So if they say they are going to go west and sink 10 wells over the next three years and they change their mind and decide to go east and sink 10 wells, they will have to submit a new plan of operations.

In relation to the suitable operator register, at the moment every time we do an assessment for an application we need to assess whether or not an operator is a suitable operator, and that includes whether it is an operator who already happens to have 20 licences across the state—they are already approved and already considered suitable. So we are removing that process and with that the registration certificate process—which is the process whereby we do that assessment—and creating a single register for suitable operators.

That register will be a public register. It will be on the internet, and an operator will only need to apply once to be on it. So everyone who is a current licence holder, whether it is a development approval or an environmental authority, will automatically go on to the register, and that includes for activities that local governments regulate. There will be a bit of administrative work behind the scenes to make sure that there is only one entry—that there is only a single entry for Boral or something like that. But then we will have a single list and everybody will know who is suitable.

The bill allows operators to apply to go on the register before they apply for an environmental authority which means that part of the assessment does not have to happen. Similarly for a transfer, they can apply to go on the register first which makes the transfer quicker. If they are not a suitable operator when they apply to have an EA transferred to them, then the 10 days for assessing whether they are a suitable operator will have to apply to them.

Ms TRAD: What happens to the transfer in those 10 days?

Ms Nichols: It will just sit there because it is a separate process that has to be decided and then the transfer will be able to happen after that. If they want the transfer to go ahead overnight, they will need to register to be a suitable operator first.

Ms TRAD: They have to as a condition of the transfer.

Ms Nichols: They have to be a suitable operator.

Ms TRAD: You cannot transfer to someone who is not a suitable operator.

Mrs MADDERN: You cannot hold an environmental authority if you are not a suitable operator.

Mrs MADDERN: You have to be a suitable operator listed on the register.

Ms Nichols: Yes, that is exactly right.

Ms TRAD: So you are not aware of transfers as they occur. When we spoke yesterday you talked about land data dumped from the Land and Environment Court around changes to tenure. So how would one person who is holding an EA know that they cannot transfer unless it is to a suitable operator?

Ms Nichols: We work, as I said, closely with our colleagues at Natural Resources and Mines, and the mining registrars out in the regions actually manage the application processes and send them into us. So, if somebody was to come to them to transfer their tenure, they would actually do the check and we will manage that administratively. There is no need for our department specifically to check that list. We can get our colleagues at NRM to do that.

Ms TRAD: So there is no online process in terms of transfer.

Ms Nichols: Not yet, but we are hoping that there will be.

Ms TRAD: So through the online process how do you envisage that happening?

Ms Nichols: There would actually be a flag. They would have to declare that they were in fact a suitable operator on the suitable operator list. One of the requirements of the transfer application is that they are on the suitable operator list.

CHAIR: This is a fairly regular occurrence?

Ms Nichols: Yes.

CHAIR: Are there a couple of hundred a year or something like that?

Ms Nichols: For mines, it is 250 a year. It is not measurable for other types of ERAs because they have been going through the DA process, so we do not actually have a measured register for that. Under the current process, we require people to resign their registration certificate and the new person to apply for one rather than transferring it, so we do not have a register of how many there are. But you would expect that there are hundreds.

Mr GIBSON: You talk about the fact that people can register to be a suitable operator before undertaking any activity. Does this permit Dave Gibson to register to become a suitable operator, do nothing for 12 months or five years and then seek to do something? Is there a time frame

Mr COX: Do you have to be re-evaluated?

Mr COSTIGAN: For their status as a suitable operator.

Ms Nichols: No. We do not have a re-evaluation.

CHAIR: Say, in the meantime David has gone broke.

Mr GIBSON: Yes, that is what I mean. Let me draw a comparison. By the time I get my driver's licence I have learned, I have focused on the rules, I have driven my parents mad—

Mr COSTIGAN: Excellent example.

Mr GIBSON: I sit a test and I am now deemed to be a safe driver. Here I am a few years down the track and perhaps I am not as good a driver as I thought I was but I still have a licence because I pay the prescribed fee every 12 months. Potentially, could we have a situation where people are registering to become a suitable operator, events are changing in that period of time from when they became a suitable operator to when they undertake an activity and the department would not know about it?

Ms Nichols: I guess there is a potential for that. The sort of things that might trigger us to have a look is if there has been an environmental offence by that person. That is mostly what suitable operators are about for the EP Act. Whether or not they are a commercially viable activity is not really an assessment. It is actually about the behaviour of the operator. So if there has been an environmental offence, we would know about it. But having an environmental offence against you does not prevent you from being an operator into the future.

Mr GIBSON: Obviously in Queensland we have companies that are both national and multinational which can apply to be registered as a suitable operator but may find that their operations in another country or their operations in another state have been in breach of that particular jurisdiction's environmental guidelines. Will that impact on their criteria as a suitable operator in Queensland?

Ms Nichols: Things in another country, no. As to matters in another state, if that company is committing a major incident it may well.

Mr GIBSON: 'May well' or 'will'?

Ms Nichols: May well. It is all discretionary. We would have to have a look and make a decision.

CHAIR: If you are not actually looking for that in another state, it is not going to be triggered.

Ms Nichols: We would as part of the suitable operator—

Mr GIBSON: When they apply.

Ms Nichols: When they apply, yes. So there may be—

CHAIR: So Dave has come back five years later—

Ms Nichols: No, I take your point. That is not addressed in the bill, so we can have a look and come back with a more detailed response if you would like.

CHAIR: Especially with something like a five-year lapse.

Mr GIBSON: I just think there may be a flurry of activity, with people thinking, 'We now have this requirement. I have to rush out and become a suitable operator.' If someone intends to have but does not yet have any activities in Queensland and then some time elapses and they subsequently undertake those activities, what check have we got that the person who now is deemed to be a suitable operator is in fact one, allowing for the fact that five years ago they became one?

Ms Nichols: Okay. So the bill does not address that at the moment.

Mr COX: That company could be operating in another state and suddenly the conditions change in that state and what they have been doing is then in breach, so they say, 'Let's go to Queensland because it is a better place to be. It is easier there.'

Mr GIBSON: And it could show a culture within one company that does not adhere to the regulations.

Mr COX: Financial viability does not come into account. During production they have environmental conditions that they must abide by such as revegetation or whatever it is. If that company is not doing so well—in other words, they are losing the ability to follow up on that—does that get flagged anywhere?

Ms Nichols: It does for resources activities via the tenure process. They actually have to demonstrate that they have the financial muscle behind them and they almost always have a financial assurance for back-up as well. Financial assurances are also common for extractive activities—quarrying type activities as well—but for other things less so. But, as I said, we are not assessing whether or not that person should be allowed to run a business; we are assessing whether or not they can manage environmental requirements.

Mr COX: So if a big company goes bust, there is nothing extra you can do to extract money—if they are bust, they are bust—to make sure they clear that site?

Ms Nichols: We actually have a a lot of tools under the Environmental Protection Act to chase directors and various other things, and we have used those in the past where a company has gone bust and is unable to meet its requirements. But basically if somebody goes bust we fall into the same category as any other—

Mr COX: In relation to whole mine sites out there that have not been looked after properly, I am wondering whether some of that is due to the inability to make them—

Ms Nichols: They are more historical things. It is not really about the current legislative environment. They tend to all be from when things were not managed the same way.

Mr KRAUSE: In the assessment of a suitable operator, is there a look at the skills and expertise that the company has in their employees or the directors or at their ability to comply with regulations?

Ms Nichols: No, we do not really look at that. We look more at their history—

Mr KRAUSE: Whether they have any strikes?

Ms Nichols: Yes.

Mr KRAUSE: Secondly, if there is a merger or a takeover of one suitable operator by another, do they automatically merge as a new suitable operator?

Ms Nichols: They would have to apply if it becomes a different company. I guess it depends. If a company takes over another one, if that company is already on the register it would already be a suitable operator. But if a company merged and changed its name from A&B to AB Inc. then they would have to apply.

Mr GIBSON: But if an existing company registered as a suitable operator—

Mr KRAUSE: Or two.

Mr GIBSON: Well, I am thinking of one example. An existing company registered as a suitable operator is bought out by another company and there is no name change but it is under totally new management. Is it required to re-register to become a suitable operator?

Ms Nichols: No, because the issue is still whether the company has been the subject of that. To be clear, the requirements of the Environmental Protection Act are about putting onus on the operator to comply with the law. We have really strong tools to deal with anyone who is lying to us, who is breaching the law and who is dealing with that. It is really about putting the onus on those people rather than trying to baby everybody through the system.

CHAIR: I have one question going back to what Sam was asking about before with regard to a bankrupt or an undisclosed bankrupt. Could you highlight that to your department as to whether that should be looked at? Some of these blokes are very clever and they become suitable operators even though they are a bankrupt or an undisclosed bankrupt and they almost sell that on as part of a process: 'Look, I am okay. I am a suitable operator.' Just be aware of that, because I have had a situation of that recently.

Ms Nichols: We are taking notes.

Mr COX: I want to return to 309. When I was looking at it earlier I forgot to ask whether it is new. It mentions CSG, underground water and monitoring. A commission has just been handed down recently—

Ms Nichols: No, that is not new. That is all part of the produced water requirements that were introduced in, I think, 2009.

Mr COX: Okay, that is all I need to know.

Mrs MADDERN: I would like to go back one step. Is it the company or the directors of the company that you look at to make sure they are suitable? It would come up under a company name. Who ultimately takes the rap for being the person that is suitable?

Ms Nichols: Well, it depends on how the company chooses to operate. Sometimes it will sit with the company; sometimes it will sit with a particular officer in the company. But we are preferring it to sit with the company and linking it via the Australian company registration number.

Mrs MADDERN: So it is the directors of the company?

Ms Nichols: Yes. The EP Act, as it currently stands, has directors liability for all of the offences under that, so they are ultimately responsible.

CHAIR: We had better keep moving along.

Ms Nichols: The last area I want to flag is the third-party framework, which is in chapter 12, parts 3 and 3A, which are sections 564 to 574M. The current EP Act has various legislative and administrative provisions about reports and documents that have to be prepared by suitably qualified persons and auditors, and they are not all exactly the same. They all mean something a little different. What we are doing is formalising and consolidating all of those provisions into this single framework, and that will make it a lot clearer as to how a task can be undertaken by a suitably qualified person or an auditor.

A suitably qualified person is a person who has qualifications and experience relevant to the function being performed. The bill includes a provision to develop administrative guidelines that outline what those qualifications and experience have to be. Our intention is that the guidelines will be for particular functions. For example, if we are asking for a suitably qualified person in a contaminated land matter, the guidelines will talk about their expertise in that particular matter. If you are looking at a regulated dam, you would have engineering experience relevant to that type of activity. A report submitted by a suitably qualified person is assessed by the department. It is just about making sure the quality of information and the expertise of the people who are providing that information to us are sufficient for us to rely on.

An audit is different. It is a higher level. Effectively, they are appointed by the chief executive of the department to perform a particular function under the legislation. The big example that we use at the moment is contaminated land. We are doing this administratively, and we use what they call third-party reviewers who do an assessment of a site when it is being assessed for contaminated land purposes, and they effectively make a decision on behalf of the department. We are formalising the provisions here and we will be developing administrative codes of conduct, appointment processes and all of those sorts of things. The bill also includes ways for people to get off the list if they are not performing. They will have to update their requirements every few years and we have to make sure that they are of the highest standard.

In the short term it will be for the functions we have been using them for, but we are expecting that it will roll out to areas where there is extreme need of technical expertise that we do not maintain within the department. An example that has come up is ecotoxicology. We do not have a big bank of ecotoxicologists in the department, but we have a need for those people from time to time. So, if we could have a register of auditors who could do that work for us, what it means is that we will not make the decision on that particular aspect. That will have been made by the department and it can be subject to audit in the future and, again, the enforcement provisions.

CHAIR: The Australian Contaminated Land Consultants Association has asked for some clarification—

Ms Nichols: Yes. They put in a submission on the 2011 bill, and we have met with them on two or three occasions now and have gone through the bill in a lot of detail. They are feeling a lot more comfortable about what is going on there and participating in that process.

Mr GIBSON: I noticed in other sections that penalties have been included for failure to perform in various types of things.

Ms Nichols: Yes.

Mr GIBSON: With regard to the suitably qualified person, where they make a declaration and that declaration is found to be false, there is no penalty associated with that. Was there any consideration—

Ms Nichols: There is already a penalty in the act for providing false and misleading information, so those penalties will apply.

Mr GIBSON: So those penalties will apply to a declaration made—

Ms Nichols: Yes, anybody providing the department with information that is false could be subject to those penalties.

Mr GIBSON: That is good.

Ms Nichols: That was the last matter that I particularly wanted to highlight. There are some other areas in the bill that have been mostly transferred straight from the Environmental Protection Act so I have not really gone into those. I will open it for any further questions from the committee.

CHAIR: I have a question from the ACLCA, which asks whether the current 10 per cent change of material use is still considered a trigger for material change of use and if the operating policy will be published on the DERM website.

Ms Nichols: When we met with them, we clarified that that 10 per cent was removed quite a number of years ago and does not apply anymore, but all of our policies will be on the website. One of the things we are doing as part of the overall green-tape package is developing guidance material in a manual concept. So every single piece of guidance material will have a home and link clearly into one of the processes, which will make it at lot easier to find things for our clients. Anything that is not an existing policy will exist via that. We will not have separate things hanging off elsewhere, which will make it a lot easier to find that information.

CHAIR: I think I have seen some court cases where material change of use is triggered in local government planning at 20 per cent—

Ms Nichols: It is all rule of thumb. There used to be 10 per cent in the legislation but it was removed. I cannot remember the exact date but it was quite a number of years ago.

Mr GIBSON: I have a general point. Could you inform the committee what consultation you had with local government? There is always a concern about cost shifting when the state starts to make decisions about activities that local governments are required to undertake and they do not have the capacity to raise the revenue to deal with that. Can you advise the committee, firstly, what consultation has taken place and, secondly, whether you have looked into the cost-shifting issue and whether we are moving a cost burden onto local governments?

Ms Nichols: Local governments were involved the whole way through the process via a local government working group which included the Local Government Association of Queensland. They met on numerous occasions and had the opportunity via e-mail to input into things. So we certainly have gone along the way with them and they will be involved as the next stage of the project rolls out as well.

We do not believe the bill as it currently stands involves any cost shifting. There will be some short-term implementation pain for local governments as there will be for us in changing systems, but the department intends on supporting that as much as possible by producing as much guidance material, template documents and training for local government officers as we are for our own officers. So we are trying to minimise that as much as possible for local governments.

Mr COSTIGAN: Through you, Mr Chair: Elisa, we talked about training for local government officers. Who is going to pay for that training?

Ms Nichols: The state will pay for that training.

CHAIR: Just as a general comment to that, if you notice we have comments here from the Logan City Council and the Brisbane City Council. None of them are actually big mining type councils.

Ms Nichols: No.

CHAIR: South Southern Downs or even Gympie—

Mr GIBSON: Ipswich had its day

CHAIR: Ipswich had a bit.

Ms TRAD: It is residual recollection.

Mr GIBSON: Exactly.

CHAIR: I suppose it highlights the fact that unfortunately a lot of the councils do not have the resources to even make submissions on a very basic level for some of this stuff.

Ms Nichols: A lot of the time, councils put their submission via the LGAQ and the LGAQ issues a submission on behalf of the councils. That is actually very common. Some councils choose to do their own submissions and they tend to be the big councils which have those resources to do so.

CHAIR: Did I see a figure of $800,000 floating around somewhere in the explanatory notes or the minister's speech or something?

Ms TRAD: For the implementation?

CHAIR: Yes, or implementation saving or something.

Ms Nichols: I am not sure what figure.

CHAIR: I have read a lot of stuff.

Ms Nichols: Yes, there are a lot of pages.

CHAIR: That is okay.

Ms TRAD: Through you, Mr Chair, if could I ask a couple of questions. Elisa, in your opening remarks, you said that the legislation amendment bill was only part of the overall initiative. What other initiatives are party to the green tape reduction?

Ms Nichols: I have touched on some of them throughout the day. The Environmental Protection Regulation will be reviewed in response to the bill. As I noted, Minister Powell announced in his introductory speech that we have been asked to look at whether or not some of the lowest risk small-business ERAs can be removed. That will, as I said, remove significant administrative burden from those particular businesses. That will go on and that regulation will be made before the end of the year. Additionally, there is the significant—

Ms TRAD: So a further amendment to the bill?

Ms Nichols: No, it is the regulations. It will not come to parliament except to be tabled after the Governor-in-Council approves it.

The guidance package is very extensive and a lot of work is already underway in that space. As I talked about before, we are developing a manual that will deal with the entire approval process for ERAs, and all of our guidance documents will hang off that in a really integrated and clear fashion. That is in contrast to our very difficult website at the moment, where it is very hard to find documents without using Google sometimes. We are hoping to get that up as soon as we can to have a better way of presenting our information to the public.

I also mentioned earlier that we are developing a bank of conditions, a library of conditions, that will help improve the consistency of conditions for environmentally relevant activities, but we will also try to shift the focus from very prescriptive type conditions to really focusing on the outcomes we want those operators to achieve. So that bank of standard conditions will detail that kind of work.

Additionally, we are looking at our administrative processes internally—so how we actually manage administratively our business from go to woe. We are looking at our ICT systems, our IT needs, and we have the overall intention of moving more things to online processing over time. That will take some time obviously because there are costs associated with that but we are looking to modernise our business through IT changes as well. So it is quite an extensive package.

Ms TRAD: Thank you. Also through you, Mr Chairman: this process obviously started some time ago. Some 15 pieces of legislation are being amended through this process. You said it commenced in 2010. Is that right?

Ms Nichols: Yes.

Ms TRAD: What initiated the green tape reduction bill in the first place? It was not a COAG decision.

Ms Nichols: No.

Ms TRAD: Was it a Queensland state government decision at the time?

Ms Nichols: It was under the former government. The ClimateQ project had an initiative called Reducing Green Tape For Business, and that initially kicked off the project.

Ms TRAD: In the minister's explanatory speech, he talked about the process having stalled. What is the nature of the stalling?

Ms Nichols: I think the minister was referring to the process having been in committee and the bill lapsing when the election was called.

Ms TRAD: So the process started in 2010 and the bill was finally presented in October 2011. Is that right?

Ms Nichols: That is right.

Ms TRAD: So after extensive consultation, over 16 pieces of legislation, and it was really the election that stalled it.

Ms Nichols: In terms of the passage of the bill, yes.

Ms TRAD: Are you aware of any other states in Australia where this level of green tape reduction has actually occurred? I think we talked about some other states where a dual process of environmental application was quite unique to Queensland.

Ms Nichols: Most states are undertaking these kinds of regulatory reform activities. This is actually one of the most extensive ones that I am aware of, although Western Australia actually has had some big process changes in recent times as well.

Ms TRAD: Have they finalised their process?

Ms Nichols: In relation to mining in particular, I actually have not looked in recent days so I am not aware of where they are at at the moment.

Ms TRAD: So really Queensland is ahead of the pack on this?

Ms Nichols: I would like to think so.

Ms TRAD: That is good credit to you.

Mr COX: I want to go back to the rehabilitation and moneys. I do not know whether they were brought in originally back in 2010. I was talking to you before from a financial point of view of a company going broke or bankrupt and then not being able to finish the rehabilitation. I see in here 318ZK. Is that going forward? So if they think there is a risk with this application, they are asking for money upfront. If that was brought in back in 2010, why was it not done to also have money put forward so that if a mine does go broke they have a certain amount set aside to do a rehabilitation? Does that make sense?

Ms Nichols: I think I know what you are getting at. This is actually where an environmental authority is being surrendered and we are looking at the rehabilitation. That is what 318ZK applies to. It is payment of residual risk for rehabilitation. The financial assurance would still be there. The residual risk payment is basically that the department will decide because of the risks associated with that particular site that we will keep hold of a certain portion of their financial assurance that we are already holding to deal with any residual risk and allow them to step away from their environmental authority. An example might be a metalliferous mine where there is a potential for acid leaching into the future. Because that is actually a very hard thing to rehabilitate, we might keep a partial amount of their financial assurance in case the capping that they have done on that mine comes undone and acid leaching occurs.

Mr COX: How is it determined how much money will be kept? How long is a piece of string? You do not know when the problem will occur or what the problem is going to be. Is there a scale?

Ms Nichols: There is no direct scale but there are administrative processes to make those decisions. Those processes are under review at the moment, particularly in relation to coal seam gas because that is a new area of potential residual risk. We will look at that and we will have to assess them on a case-by-case basis for that particular mine, looking at the rehabilitation expertise of people and what is being done on that particular site.

Mr COX: Is that a new one that was brought in?

Ms Nichols: No.

Mr COX: Did it come about because of coal seam gas?

Ms Nichols: No. Residual risk was already there for mining but it did not extend to petroleum and gas. That is my recollection. Because of the development of that industry, obviously there was a need to treat them in a similar fashion to our large mining operations.

Mr COX: Finally, this money is put forward for a future problem that may occur. Is money being kept in the current bill for rehabilitation when they start?

Ms Nichols: Yes. That is the financial assurance and they have to pay that before they start operating.

Mr KRAUSE: Can I ask about a couple of submissions that the Queensland Law Society made. In particular, there is one in relation to the reintroduction of environmental authorities for prescribed ERAs. Do you have those submissions there?

Ms Nichols: Yes, I will just get them now.

Ms Watkins: What is the page?

Mr KRAUSE: Page 8 of the report from the committee last year. Their comment basically was that they think the proposal in this bill would actually increase regulation. I am not exactly sure I understand what they are saying here, but I thought you might be able to shed some light on that.

Ms Nichols: They are concerned because in the old world prior to the Integrated Planning Act there were development permits and environmental authorities and they were assessed separately. So you looked at two separate documents at different times. When we rolled into the Integrated Planning Act, we rolled all of our assessment processes together and we came out with a development approval.

Mr KRAUSE: And that included EAs?

Ms Nichols: Yes. The EA did not exist any more. We got rid of that terminology and we did everything via development approval. One of the constant complaints from the industry since we did that is the lack of flexibility of the development approval as a tool because it attaches to the land; it does not allow you to merge things together, there are a lot of things you cannot do with it.

Mr KRAUSE: Is that the present scenario?

Ms Nichols: Yes, that is how it works at the moment. We are proposing to go back to the environmental authority thing, but we are not going back to the old way it was done where it was not done as an integrated process. For those we were talking about earlier, we will still go through the integrated development assessment process under the Sustainable Planning Act. So it will all be done together, holistically. It is just that there will be a separate document that will apply for the ongoing operation.

In most cases, the development application talks about what you are allowed to do on the land. It might say that you are allowed to run a medium-intensity industry or something like that and it will say that you have to do certain things in construction and you might have some noise provisions on it, like hours of operation, but it will not deal with the ongoing operation. That is not the normal way. We do not believe that it will increase regulation. We think it will introduce the flexibility for industry. Our industry stakeholders support the reintroduction of the environmental authority and we think we have kept the best of both worlds in managing the integrated system with the flexible approval at the back end.

Mr KRAUSE: The other one I want to refer to is section 110 which changes the definition of a mining activity.

Mrs MADDERN: What page?

Mr KRAUSE: That is page 10.

Ms Nichols: We did not think that was a correct assessment of the effect of that. Because the mining activity still requires to be an authorised activity for a mining tenure and the mining tenure is defined in the dictionary as any approval under the Mineral Resources Act which grants right over land, we think that ancillary land access issue they are talking about is actually still covered and it will not actually affect the rights. I would also point out that the Queensland Resources Council had no problems with that definition and nor did their lawyers.

Mr GIBSON: On mining activity, is the definition anything different to what the federal government views it as?

Ms Nichols: Kate tells me yes but I do not know the detail. Kate, can you answer that?

Ms Watkins: The federal definition often includes what is extraction in our legislation. It covers a section of—

CHAIR: Quarries.

Ms Watkins: Yes, construction sand, that kind of stuff.

Mr GIBSON: Earlier in response to questioning, you identified the extensive period of time that has been taken in developing this bill. Was there any consultation with the federal government's various environmental departments to see what their views were with regard to this bill?

Ms Nichols: No, we did not contact them directly.

Mr GIBSON: Since the bill has been tabled, have they expressed any concerns to you about this bill?

Ms Nichols: No, no interest at all.

Mr GIBSON: They have no interest at all?

Ms Nichols: No.

Ms TRAD: Is that because the state-Commonwealth bilateral arrangement actually goes to the issue of green tape reduction and streamlining approval processes?

Ms Nichols: I could not really talk about what the Commonwealth's views are on those things, but the bilateral is not affected by this bill.

Ms TRAD: No, but I think the intent of the bilateral mirrors somewhat the intent of this legislation, which is about streamlining environmental protection authorities for activities.

Mr KRAUSE: I have one more question on the QLS submission and then I will be finished. The final question is in relation to the requirement for a single application to be made for relevant activities.

Ms Nichols: Yes.

Mr KRAUSE: I assume you have seen the submission.

Ms Nichols: Yes.

Mr KRAUSE: Their view seems to be that there are reasons why you might want to make separate applications for different activities and in one project. I gather that is not dealt with in the bill. Do you have a view on why that has not been dealt with?

Ms Nichols: We actually carried that directly across from the existing act, and the main reason for that is to make sure that the environmental assessment of the full activity is being done at once so that we are not getting piecemeal applications where something can sneak through minor processes to get little chunks of it done when really it is a major project. Let us say, for example, a mine operator wanted to get three different tenures and each one was 10 hectares. That would put it through a streamlined process, but they are all actually joined together and really it is a 30-hectare mine. That prevents that from happening, so they have to apply for their 30-hectare mine. There may be business advantages, but from an environmental perspective we believe it is better to have that.

CHAIR: We are starting to run out of time.

Ms TRAD: I am conscious that we are at the end of our session. I am happy to put questions on notice.

CHAIR: We will do one round of the table.

Ms TRAD: Okay. In relation to the environmental management plans and the new streamlined process, which is the requirements on the application, are there any issues that fall through the cracks? What is the difference between an environmental management plan and meeting the conditions on the application? I am conscious that it might be a long answer and I am happy to defer it to a later session.

Ms Nichols: I will try to make it a quick answer. The environmental management plan is an historical document that used to be a living document that lived with the mine. Over time and since the rolling of mining environmental approvals into the Environmental Protection Act it has become an application document. So effectively it is a list of requirements for application and it is not a living document.

Ms TRAD: So you do it once and you do not have to go through the process again and again?

Ms Nichols: Yes. As a result, we are removing the whole concept of an environmental management plan and just calling it an application. We have rolled all of the relevant requirements from the environmental management plan into that list of application requirements in sections 125 and 126. There are a couple we did not carry across. In particular, there was a requirement that the operator stated the conditions under which they should operate and we do not believe that that is a matter for them. We think that that is a matter for the department.

Mr COSTIGAN: You mentioned earlier short-term implementation pain. Can you briefly expand on that and the steps that you have taken to try to minimise that?

Ms Nichols: The sorts of things which you will no doubt have read in some of the submissions include things like updating systems and changing forms and templates. We have a lot of forms and templates guidance material to support the changes and those sorts of matters. The department is producing all of those things. We cannot deal with local government systems updates—they will have to do their own systems updates—but we will be producing as much material as possible to make that as easy as possible so that they can adapt their own forms to our forms that we have done. They can use the guidance material that has been prepared for them and, as I said, we will be rolling out training for all officers around the state.

CHAIR: I do agree with the Queensland Law Society on section 113 with regard to one or more. I have the comments back about it from the department, but it need not be there. It is as simple as that.

Ms Nichols: Okay.

CHAIR: I think that is it then. Thank you very much, Elisa and Kate. That was very comprehensive and you were well up on your brief.

Ms Nichols: Thank you.

The committee adjourned at 10.33 am