HEALTH, ENVIRONMENT AND AGRICULTURE COMMITTEE

Members present:
Mr AD Harper MP—Chair
Mr SSJ Andrew MP (virtual)
Mr CD Crawford MP
Mr JR Martin MP
Mr ST O'Connor MP
Mr TJ Perrett MP

Staff present:
Ms R Duncan—Assistant Committee Secretary
Ms K Tremlett—Committee Support Officer

PUBLIC HEARING—INQUIRY INTO THE ENVIRONMENTAL PROTECTION (POWERS AND PENALTIES) AND OTHER LEGISLATION AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

Monday, 18 March 2024

Brisbane

MONDAY, 18 MARCH 2024

The committee met at 10.18 am.

CHAIR: Good morning everyone, and welcome. I declare open this public hearing for the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024. I am Aaron Harper, the member for Thuringowa and chair of the committee. I would like to start by respectfully acknowledging the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we now all share. With me today are: Sam O'Connor, the member for Bonney; Tony Perrett, the member for Gympie, who is substituting for the member for Southport; Stephen Andrew, the member for Mirani; James Martin, the member for Stretton; and Craig Crawford, the member for Barron River.

On 13 February 2024 the Hon. Leanne Linard, Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation, introduced the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024 into the Queensland parliament and referred it to this committee for detailed consideration and report. The purpose of today's hearing is to assist the committee with its examination of the bill. This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Witnesses are not required to give evidence under oath, but intentionally misleading the committee is a serious offence. The proceedings are being recorded and broadcast live on the parliament's website.

CONNOR, Mr Michael, Chair, Planning and Environment Law Committee, Queensland Law Society

DEVINE, Ms Wendy, Principal Policy Solicitor, Planning and Environment Law Committee, Queensland Law Society

MEIKLEJOHN, Ms Claire, Member, Planning and Environment Law Committee, Queensland Law Society

CHAIR: Welcome. We are in your hands and then we will proceed with questions.

Ms Devine: Thank you for inviting the Queensland Law Society to appear today. I would like to respectfully recognise the traditional owners and custodians of the land on which we meet today. The Queensland Law Society is the peak professional body for the state's legal practitioners. We are an independent, apolitical representative body. As outlined in our written submission, QLS is broadly supportive of the policy intent underpinning the bill but considers that some technical legal drafting issues require additional consideration.

The bill introduces a new offence of contravening the general environmental duty; however, QLS is concerned that the practical effect of some aspects of the offence will be unfair and potentially retrospective. The drafting in the bill means that holders of authorities or approvals might not be able to rely on their existing authority to prove a defence in the bill. We have recommended amendments to clause 13 of the bill to avoid this outcome and provide for a fairer position.

QLS is also concerned that the amendments in the bill to the duty to notify in the Environmental Protection Act are an overreach. The effect of the bill is to extend the existing duty so that third parties who are not responsible for an activity causing harm, but are caught up in incidents or events caused by others, might now be subject to an obligation to actively monitor potentially affected land for observable indicators of environmental harm. We recognise that these third parties are currently subject to the duty to notify, but we are concerned about the way in which the bill extends the scope of this duty.

Finally, QLS has outlined concerns about the powers of entry provisions in the bill. Again, we recognise that the Environmental Protection Act already includes similar powers which authorise a person to enter onto a third party's private property to undertake work to comply with an order; however, given the content of the bill, QLS considers it is timely to reconsider these existing powers and the amendments proposed in the bill to ensure the appropriate balance is struck between responding to environmental damage and protecting private property rights.

I am joined to by Michael Connor, chair of the QLS Planning and Environment Law Committee, and Claire Meiklejohn, who is also a member of our Planning and Environment Law Committee. I would like to invite Michael to make a few additional comments and then we would welcome any questions the committee might have.

Mr Connor: Thank you for the opportunity to make some additional comments. My comments go to the unilateral change that can be made to an environmental authority as a consequence of the changes to the legislation that are proposed.

Just a little bit of history about these matters might help. The QLS made submissions to the independent review of the Environmental Protection Act that was undertaken by former judge Richard Jones and Susan Hedge. One of the primary submissions we made is that there are adequate powers to enforce the law; it is just that the conditions of environmental authorities are not drawn with the precision they should be to establish the regulation framework. That was the fundamental problem. This was a representation that was picked up by Judge Jones and Ms Hedge and they made particular reference to it. Mr Chair, I will give you an example.

Think about this proposition: the vast majority of people who have environmental authorities in Queensland are law-abiding business owners. Many small business owners established their businesses on the basis of approvals, including approvals under the Environmental Protection Act. They were met with conditions like: do not cause an environmental nuisance. What does that mean? Where does that take you? You take advice about those things, presumably, and you are given a series of guidelines about how you could avoid that. When you come to prosecuting those things they are difficult, because how do you prove there is an environmental nuisance happening? It is the same problem the operator has.

What we recommended was that greater care be taken about the identification of conditions. Rather than saying, 'Do not cause an environmental nuisance,' we recommended 'meet this standard in terms of noise, in terms of dust, in terms of blast overpressure'. They were the types of things we recommended. These things were picked up in the report by former Judge Jones and Susan Hedge. What they recommended was not what I had in mind. They suggested that these environmental authorities be changed so these inadequate conditions that have been a feature of environmental regulation in Queensland could be changed themselves. They looked at the solution. That is fair enough as it goes, but what the report recommended was that the minister be given the power to change the conditions. The bill gives the minister or the chief executive the power to change the conditions. There are just a couple of things to think about.

If I have organised myself because of the particular conditions of my environmental authority—I am law-abiding, I have a small business that creates dust, noise and blast overpressure—a change to these conditions could be quite traumatic and impact on my ability to operate my business. That did not make it into our submission. It is a reference to the general environmental duty point, Mr Chair, but it is an important point. When I was re-reading things on the weekend it stood out as something that we need to think carefully about. If the condition is changed and I did not have a power to appeal it to the Planning and Environment Court, I am stuck with it. There are possibilities of review, but it may well be that the impacts on my business and the way I have performed in the past cannot be taken into account.

I think that is an important aspect of the bill that needs to be carefully considered, remembering that most regulatory legislation assumes there is a wrongdoer and they need to be punished. The vast majority of Queenslanders who have environmental authorities will be doing the right thing. They have a business, they set themselves up in terms of where plant and equipment is placed and where other thing are put in place to ensure they comply with their environmental duty, and imagine that now this can be changed. They are the additional comments I wanted to make which are not included in our submission.

CHAIR: Thank you, Mr Connor. I am dealing with a matter in my electorate at the moment that goes to the heart of what you have just said. The regulators are looking into that. It is due to noise and dust and a number of things to a nearby area, so you make an interesting observation. Thank you for unpacking that.

Mr O'CONNOR: Thanks for your submission and thanks for being here. In terms of the recommendations you were just talking about, I will start where you finished. That recommendation in the Judge Jones review was about the chief executive or the minister being able to amend conditions where the minister or chief executive considers the environmental impact is not being appropriately avoided, mitigated or managed. Is it your view that the minister should be the ultimate authority in that sense?

Mr Connor: If you are asking for my view as an individual, I say that the change should not happen. There are a couple of things. The first thing is: imagine an environmental authority is causing significant problems to sensitive receptors that are close by. There is a clear warrant for a change; however, if I am a law-abiding operator who has had no problems but the department decides that if we change it for the bad person then we have to change it for everyone then these things could be quite dramatic. I think the power is necessary only in the most extreme circumstances. The second thing is: if the power is to be exercised then it should be, I would say, exercised in accordance with the recommendation of the judge and Ms Hedge. There should be an entitlement for a merits review—so the Planning and Environment Court, the Land Court, depending upon the circumstances.

Mr O'CONNOR: So ministerial but with the ability for a review?

Mr Connor: Yes.

Mr O'CONNOR: Touching on your submission, one of the main points you raised was the retrospectivity. You recommended the removal of the reasonably practical measures, clause 13. Would that resolve the retrospectivity issues in their entirety?

Ms Meiklejohn: It would go a long way to alleviating the difficulty in proving the defence for operators who have historic approvals that have not contemplated this specific requirement. It would go a long way to remedying that if that part of the clause is amended, yes.

Mr O'CONNOR: You also noted concerns that third parties, people other than EA holders, might be caught by the proposal to include a duty to notify when a person ought reasonably to have become aware of environmental harm. Do you have any further suggestions of how you can mitigate the potential impacts of these changes to the law around third parties?

Ms Meiklejohn: The duties to notify already exist for all relevant parties in the legislation, and we acknowledge that. There is a duty to notify of events, incidents or harm that individuals or organisations are aware of and there is a specific duty for landowners or occupiers and a separate specific duty for local governments. Those are separate from the duties that apply to people who are carrying out activities under an authority that may cause the harm. These are subsidiary duties to notify the people who are not carrying out the primary activity that leads to the concern or the contamination.

Extending that to be a duty to notify of circumstances of which they ought to be aware and making it an offence effectively means that local governments and landowners are being required to actively monitor the activities of other parties who may not even be speaking to them or routinely engaging with them. It seems quite burdensome, particularly in the case of a local government, for authorities that they are not involved in issuing or policing otherwise, that they need to be actively monitoring corporate activities to the extent that they are subject to a criminal penalty for not notifying something that they ought to have been aware of, not that they are aware of.

Mr O'CONNOR: Are there drafting suggestions that would fix that?

Ms Meiklejohn: I think we would suggest that those two amendments at least ought not to proceed.

Mr MARTIN: Following on from Mr O'Connor's question in relation to third parties and notifying, you mentioned that you thought the duty to notify could be an overreach. Aren't there other examples in law and legislation where someone, because of the position they hold, ought to be aware of something as opposed to only notifying when they are aware of something? Isn't that something that already exists?

Mr Connor: There will be examples in the law about a chief executive officer of a corporation or something like that having these duties already, where they are part of the organisation et cetera. To pick up on Ms Meiklejohn's example, take a local authority whose resources are already stretched, fulfilling their duties under relevant legislation. Here, as Ms Meiklejohn suggested, there may be an obligation upon them to investigate environmental authorities in their area. You may not think that is an overreach, but to make it an offence seems to be the element of the overreach.

Ms Meiklejohn: I would add briefly that the independent review did note, in relation to landholders and occupiers in particular, reference to a specific series of provisions in Tasmanian legislation and it suggested its recommendation was an adoption of a similar concept. It is much more detailed. There are five or six clauses that explain the process of how a landowner or occupier ought to become aware of something. There is a lot more explanation and clarity around the 'ought to be aware' requirement for a landholder or occupier where they are not carrying out the primary activity than appears in the drafting of this bill.

Mr O'CONNOR: On access to property, was your view that there should be no changes to the existing requirements and that this just goes further? In your submission you talked about the framework to authorise land entry with environmental requirements. Is your view that that is okay; it is just that this goes further?

Ms Devine: With the existing powers in the legislation there are a couple of different time frames, in particular depending on the type of order which is proposed. The bill proposes to collate all of those existing orders into one type of environmental enforcement order. They have picked the lowest number of days, if you like, in the bill and selected two business days as the period of notice to be given. When we read through those provisions, we were concerned that two business days is an incredibly short period. It may well be that in urgent circumstances two business days is what is needed in order to catch the damage and repair it as quickly as possible. However, not every situation will be like that. What we are looking at with these provisions is a statutory authority authorising a private entity to enter onto another third party's property. We are not speaking about a police officer executing a warrant and we are not speaking about a government official exercising a statutory power. The issuing of the authority actually permits the person carrying out an activity that has caused harm to enter onto a third party's property to fix that harm.

As I said, we recognise that in some circumstances harm needs to be corrected quickly, but in our submission we suggested that there needs to be more of a balance and more of a spectrum, if you like. If it is not an urgent situation, two business days is incredibly short and we would suggest up to 10 business days being the period and the period of notice that should be given if consent cannot be obtained. We have also recommended that these powers should be exercised by a government agency and not by the individual authority holder. If that authority holder is being asked to repair damage that their activity has caused, that authority holder should be working with a government agency or officer to negotiate that access and that authority to enter should not rest with the private sector.

Mr O'CONNOR: Do you have any comment about how this conflicts with fundamental legislative principles? There is obviously an explanation from the department in the explanatory notes of the bill, but do you have anything further to add? I think your suggestion was 10 business days?

Ms Devine: Ten business days. We would suggest 10 business days should be the norm unless there is a demonstrated urgency that it needs to be a shorter period. If it is an urgent situation, that should be an assessment determined by the government agency and not by the holder of the authority.

In terms of fundamental legislative principles, any power of entry provision cuts across private property rights so it is something that really needs to be carefully balanced and carefully thought through. There are powers of entry provisions in a wide range of legislation—we recognise that—across the Queensland statute book. I think whenever a bill purports to authorise entry onto private property there needs to be a fresh look at how that provision is drafted and what the balance is that you are trying to achieve. There is almost always more than one set of rights that you are trying to protect and so you do need to go through that balancing act. It should not be a cookie-cutter approach.

CHAIR: We are nearly out of time but did you want to add something?

Mr Connor: During the opening comments we mentioned something that was the unilateral change to an EA but that is not in our written representations. Is it worthwhile us adding that in writing?

CHAIR: As an addendum? Yes, we can do that.

Mr Connor: Can we have some time to do that?

CHAIR: That would be due back by 25 March.

Mr Connor: Yes.

CHAIR: Thank you very much for your contribution this morning.

ESBENSEN, Mr Brett, Manager, Health, Climate and Conservation, Logan City Council (via videoconference)

PARKYN, Ms Cherie, Environmental Health and Immunisation Program Leader, Logan City Council (via videoconference)

PURANDARE, Dr Jemma, Coordinator, Environmental Assessments and Approvals, City of Gold Coast

Dr Purandare: Good morning, everybody. Thank you for the invitation to attend today and represent the City of Gold Coast. I would like to start by paying my respects to the traditional owners of the land on which I work and the City of Gold Coast as a council operates, the Yugambeh people. We recognise their traditional ownership of the land and their elders past and present.

The City of Gold Coast is a relatively unique local government in Queensland in that we have our entire operation combined. We are a water utility. We own and operate numerous sewage treatment plants. We own our landfills and our waste and recycling processes. We also hold numerous environmental authorities for all of those relevant activities, amongst others. In many cases, the City of Gold Coast is also the regulator. We are also the regulatory authority at a local government level for local law and, therefore, we are responsible for ensuring that environmental authorities of private entities and other organisations in the city are compliant with environmental legislation.

I would like to support the comments made by the Queensland Law Society, particularly as they relate to local government authorities. I would also like to be clear that we strongly support in principle most of the changes presented in the bill. We strongly believe that the protection and conservation of the environment, particularly given that the City of Gold Coast is dependent on our environment for our economy, are incredibly important.

The few things that I would like to cover off this morning would be a focus on the polluter-pays principle and the impact that has as a water utility and a landfill owner and, obviously, the concerns that have been expressed through numerous submissions around the lack of control that we have as an end-of-waste receiver of contaminants that enter our systems. We would like to make sure that the changes to the bill do not unfairly limit the city's ability to operate a critical community infrastructure by way of wastewater treatment through ensuring we are still able to do the processes with due consideration. That needs to be particularly with regard to emerging contaminants that are a significant issue across Australia at the moment.

The main recommendations that we have had, and we have made in our submission, are around the prescription of the bill and prescription of how a lot of the changes are going to be made. For us, we need to have a lot of detail in terms of what defines nuisance. We have a number of environmental authorities that are quite old and may be required to be changed by ourselves in order to continue operating our plant and facilities, so we would prefer to have some better clarification on how changes would be made, if they are expected to be made, especially around the provision of nuisance, to ensure we are able to continue to comply and do not present in a situation where compliance suddenly becomes an issue and we need to make significant change to our business to ensure we continue to comply with our licences.

Finally, with regard to the city as a regulator, the bill is quite quiet on how these changes will impact local government powers. We have outlined some of these concerns in our submission around how we are then able to execute certain powers to make sure we are across what is going on in our city, particularly with respect to small businesses and private organisations who are environmental authority holders. In many cases the city is responsible ultimately for reparations on their behalf if they cannot meet statutory time frames. That may well be something that becomes an issue if the powers are not made clear in the bill. Thank you.

CHAIR: Thank you very much, Doctor. I can see some nodding from the representatives from Logan so I am going to go over to you, Brett.

Mr Esbensen: Thank you for the opportunity to present at the hearing today. I just wanted to point out that ordinarily our mayor would be invited to attend, but obviously we do not have a mayor declared yet after the election on Saturday. The written submission and my statements here today are provided from an officer level only. They have not been endorsed by council due to the caretaker period and consultation times.

Similar to the Gold Coast, the bill is of considerable interest to us given the potential impacts on our operations and our shared responsibilities with the state in the administration and enforcement of the act. We are broadly supportive of the bill as well. I will take a few minutes to bring to the attention of the committee a summary of our submission. I am concerned with cost creep generally, which is seeing local government become increasingly responsible for delivering services that are the responsibility of other levels of government without receiving any adequate funding. Local governments are more frequently finding themselves in a position where they are required to take on an expanding number of issues as well as keep on providing their own core services to the community.

Specifically on the amendments in relation to environment and environmental value definitions, I am concerned with some unintended consequences that may arise from the proposal to include human health, wellbeing and safety in the definition of environment and to include public health as part of an environmental value. I understand that the intention is to clearly incorporate human health as an environmental value, and this also broadens the scope of what is captured as an environmental nuisance. This has the potential to increase regulatory responsibilities for local governments. I acknowledge that the amendment provides that the act only protects human health to the extent that it is directly affected by the environment, as detailed in the explanatory notes; however, this needs to be clarified with some examples, limitations and exclusions provided through interpretative guides.

Since our submission was made, the Department of Environment, Science and Innovation has published a response to the submissions, and I acknowledge the department's response that there are no changes to the matters devolved to local government for the administration of the act. However, a change to the definition to include public health and crossover with the Public Health Act needs to be explored further to ensure there are no unintended consequences for local government.

For environmental nuisance causing serious or material harm, the proposal to not preclude environmental nuisance as serious or material environmental harm lacks detail, particularly on thresholds of responsibility. Proposed amendments to the regulation provide that the administration and enforcement of environmental nuisance is not devolved to local government; it relates to a matter of serious or material harm as decided by the chief executive. This amendment provides clarity but in practice may cause delays. When a local government investigates a matter it considers is material or environmental harm, waiting for written approval from the chief executive to hand the matter over to the department will cause delays, and delay could result in further environmental harm occurring. The accepted practice that local governments are responsible for making the determination as to where the level of harm sits and for making the recommendation as to which agency is responsible under the act means that council is incurring unrecoverable costs to investigate matters that may ultimately be the state's responsibility. This issue is also relevant regarding powers exercised by the state that are not available to local government.

The primary objective of the bill is to ensure powers and penalties of the act are contemporary and fit for purpose; however, the bill does not resolve local government's longstanding concerns about our inability to use certain regulatory tools. The bill continues to restrict the ability for local governments to issue certain notices, and the department has noted that this matter is out of scope of the review; however, I would specifically like to raise that the ability to recoup clean-up costs, use the offence provisions for noncompliance with the general environmental duty and use the offence provision for failing to meet the duty to restore the environment would facilitate effective enforcement of the act by local government for the matters we are currently responsible for. Once again, thank you for the opportunity to present today. I am happy to be part of any questions.

CHAIR: Thank you. I can see there is some agreement between you and Jemma. Before I go to questions from the deputy chair, you mentioned emerging contaminants. You have said that this may be related to contamination where a source cannot be fully understood or confirmed. Can you unpack that very briefly?

Dr Purandare: The city's sewage treatment plants receive trade wastes. Trade wastes come from industrial processes and private sector entities and often include chemicals and compounds that are not fully understood, for example PFAS. When those contaminants enter our treatment plant systems, we do not always have the ability in our treatment processes to remove those contaminants. In the case of contaminants such as PFAS, we are considered the polluter when that contaminant enters the environment, regardless of the fact that we were not the original source.

Mr O'CONNOR: Thank you for being here, in particular you, Dr Purandare, from the Gold Coast, which is, of course, the greatest local government area in the state. You are both on a unity ticket about the ability for councils to issue environmental enforcement areas. Can you unpack that a little

further? Is that because, as local governments, you see some of the damage firsthand; you have to deal with some of these businesses? Is this a long-running thing that you have consistently raised with the department to try to get this change in? I just want to get a bit more detail on this.

Dr Purandare: We are often the first responder when it comes to environmental harm at a local scale. We are responsible, ultimately, for the city's waterways and stormwater network, for example. Where there is an incident that involves industry or a private sector entity, it is often the city's law enforcement or enforcement officers who respond and collect information on the incident. That may occur prior to or at the same time it is reported to the Department of Environment, Science and Innovation. In those cases it is often the case that we will have, as a city, a team that are investigating from our own end, because of the extent of environmental harm and the impact it has on our local waterways and our duty of care for our local waterways. It may be that we then work in close partnership with the department to ensure clean-up and reparation is made. However, in many cases it is the city that also pays for reparation, particularly where there are downstream impacts on environmental health.

Mr O'CONNOR: Does Logan have anything to add to that?

Mr Esbensen: I fully support the comments from the Gold Coast there. We have exactly the same situation here. We have teams that will respond and then costs are incurred for those downstream activities as well, so we fully support what was said by the Gold Coast.

Mr O'CONNOR: Are there any figures you can provide us on what you believe those costs to be to your councils for some of these operations you have to undertake?

Dr Purandare: I would not be able to give you a figure immediately, but certainly we could provide that should that be of value.

Mr O'CONNOR: If you can take it on notice, we can give a time frame for you to give it back to us.

CHAIR: It will be 25 March.

Mr O'CONNOR: Basically just what it is costing you to have to deal with the underlying reason for this change you are looking for. That is what I am looking to quantify a bit better.

CHAIR: Perhaps with an example of clean-up or reparation.

Mr O'CONNOR: That would be good, yes.

Mr CRAWFORD: I have a question for the representatives from Logan. Can you elaborate on your concerns about the inclusion of safety in the bill's proposed definition of environment and environmental value?

Mr Esbensen: The concern is just that overlap between now the Environmental Protection Act, the Public Health Act and potentially the Work Health and Safety Act and where the delineation exists when we are dealing with issues that affect the health of the public. Currently the Work Health and Safety Act says that emissions of contaminants that do not extend beyond the workplace are the responsibility of that act. Our issue is what happens when those impacts extend beyond the workplace. Is it something to be dealt with under the Environmental Protection Act or potentially the Public Health Act? It is just that delineation of responsibility and where responsibility starts and stops.

Mr ANDREW: My question is directed to representatives of the Gold Coast council. You say in your submission on the bill that you strongly support the inclusion of the duty to notify of serious environmental harm. As councils themselves engage in environmentally relevant activities as well as being administrative authorities, do you have any concerns that the bill proposed changes could have a significant impact on your own activities and operations?

Dr Purandare: We do have some concerns, but we do not believe that they are concerns that need to be addressed by the bill. We believe that they would be adequately addressed through detailed guidelines and information that the department could provide to ensure the definitions of serious harm and the duty to notify are quite clear.

Mr O'CONNOR: You also touched on the nuisance provisions and how they would relate to the EAs that the city has. Is that facilities like the Molendinar tip, the Helensvale tip and the Coombabah water treatment plant?

Dr Purandare: Yes. We hold a number of environmental authorities. We have a harmonised environmental authority for our sewage treatment plants for example, whereas other environmental authorities are individual. They vary greatly in age, in the detail, in the provisions, in the conditions. Any changes to those licences are usually made by the city through an amendment process when

we need to change licences to meet a change to our operations. The duty-to-notify provisions around environmental harm are not particularly clear in some of those older licences where the conditions have not been changed for a period of time, and that is where our concern lies: the powers to change conditions may not necessarily reflect some of the operational standards that have been put in place to meet the existing conditions in those licences.

Mr O'CONNOR: Can you give us some examples of licences that this would apply to?

Dr Purandare: Yes. Noise and odour, particular concerns around landfill sites—for example, Molendinar landfill and Reedy Creek landfill, which are relatively close to community.

Mr O'CONNOR: I live in the next suburb over from Molendinar.

Dr Purandare: So then you would know. The conditions that are in the licences for those facilities are not necessarily very prescriptive because they are quite old. Having more prescriptive noise requirements, for example, or better guidelines to know when certain activities trigger certain conditions or certain requirements would be beneficial.

Mr O'CONNOR: I guess it is relevant because in our city at least you are the largest operator of those facilities and probably of EAs in general, so thank you.

CHAIR: We are right out of time, but I want to thank the representatives from Logan and the Gold Coast for being here today. Thank you for your contributions.

REEVES, Dr Louise, Major Program Lead, Queensland Water Directorate (qldwater)

WISKAR, Mr David, Program Director, Queensland Water Directorate (qldwater)

CHAIR: Thank you both for being here today. I will hand over to you for an opening statement and then we will move to some questions.

Dr Reeves: Thank you very much for inviting us to present to this committee. First of all, I want to acknowledge the traditional owners of the lands on which we meet and also the traditional owners around Queensland that encompass a number of Indigenous councils that are our members as well. The Queensland Water Directorate is the peak body for the urban water sector in Queensland. Our members are the water and sewerage service providers of Queensland that provide an essential service on behalf of the community. Our membership includes all council owned water and sewerage service providers in Queensland.

Our members are deeply concerned about some of the unintended consequences of the proposed legislation which can be broken down into three main areas. The first is the definition of 'polluter'. We support the notion of polluter pays for environmental harm. However, we are concerned that water and sewerage service providers may be targeted by this legislation as polluters in the future because of their role in collecting, managing and treating wastewater on behalf of the community. Wastewater treatment plants are indeed a point source of release of contaminants into the environment; however, they are not the polluters. Contaminants are discharged into wastewater as a result of normal domestic activity, which for some contaminants is actually the dominant source of those contaminants. The polluters in this case are the importers of products that contain contaminants of concern which are essentially invisible to the public.

We called for two things—a specific exemption for water and sewerage service providers from the definition of 'polluter' in this particular context. We would extend this to the duty of restoring the environment, which is a secondary concern. As it stands, the urban water sector is apprehensive about making investments in areas that have the potential to result in future identification as polluted such as recycled water. Recycled water is an important cornerstone of water security for many Queensland communities. There is a precedent for such an exemption. Last year in the United States Senator Lummis submitted the Water Systems PFAS Liability Protection Act to the Senate. This protects the urban water sector from liability under the Comprehensive Environmental Response, Compensation, and Liability Act, otherwise known as CERCLA, which will see PFAS manufacturers—the polluters—pay for clean-up of contaminated land. We also called for the state government to increase pressure on the federal government to improve the control of importation of products that contain contaminants of concern.

The federal government has introduced the Industrial Chemicals Environmental Management Standard, which is being rolled out nationally. However, this covers industrial chemicals only and does not address important issues such as the labelling of chemicals in everyday household products. The community is not provided with the information they need to make informed decisions about their own choices. The urban water sector is in a difficult position of being regulated against contaminants over which they have absolutely no control. This is also an evolving area in that there are likely to be contaminants that have yet to be identified that will be regulated in the future. Local councils will bear the cost of that regulation. With regard to the third area of concern, I will hand over to my colleague David Wiskar.

Mr Wiskar: As per earlier submissions to the committee, we have concerns about the amendment of environmental authorities. Our industry makes long-term investments on behalf of the community to deal with environmental issues through the investment in wastewater treatment systems. The current arrangement exists that environmental authorities stay consistent unless there is a major upgrade at a wastewater treatment plant. The proposals in this bill offer powers to the department to alter those environmental authorities. That is likely to trigger, if it was to be enacted, significant investments on behalf of communities and lead to costs.

I note a number of the submissions you have received indicate that if that is the intent then this bill should have been the subject of a regulatory impact statement and it has not. That power offers to either the chief executive of the department or the minister the opportunity to alter environmental approvals. If that was to happen then our members would have to upgrade their treatment plants. That leads to a significant cost. It also seems to be counter to work that is going on in government which is assessing at the moment through Minister Butcher's department the risks that exist in our sector and what is likely to be a significant underinvestment already in infrastructure. Harsher regulation will trigger even more investment requirements, and this bill offers the potential for that to be the case.

I will offer a practical example which might make this material for you. We have a group of councils out in our South West QROC region, which is out in the Quilpie area. It is a group of eight councils. They have just recently done assessments of all of their asset categories, and I will give you a couple of quick examples of what they have identified through those asset categories. Fifteen per cent of the sewers are at critical failure and they have 26 water supplies where the water comes through a bore. The asset life of those bores is 70 years. Eleven per cent of the bores are currently 110 years or older and 21 per cent of the bores are over 80 years old.

The reason I offer this is that as a community we need to put more investment into that—and Minister Butcher is looking at that—but the issue here is that our members also feel the creep of regulation, which also drives costs into local government water businesses. This bill in the way that it is written at the moment offers that power without having gone through an appropriate regulatory impact statement. We already have an asset risk that exists and, as I say, there is work afoot to try and improve that, but giving more power to alter environmental regulation potentially puts that further at risk.

Mr O'CONNOR: That pretty much answered my question around any examples you had of where you think that cost will go up.

Mr MARTIN: Thank you for your submissions. I noticed that one of your recommendations was that critical public infrastructure operators should not be liable for the new breach of GED. I was wondering if you could expand on that for the committee.

Dr Reeves: A water treatment plant produces effluent which is cleaned up to an extent that is determined by its environmental authority, no matter how old or new that might be, and equally it produces a material called biosolids. There is a concern that the effluent and the biosolids may be distributed to land and any contaminants that may be in them will ultimately be captured by that land. There is a very strong concern particularly in the case of biosolids, which have been distributed on agricultural land across Queensland for many years and indeed does have a real benefit to that agricultural land in terms of productivity in that it provides important nutrients such as potassium and nitrogen to the soils. However, there is also the concern that along with those biosolids there are contaminants that are essentially unregulated such as microplastics. We know that biosolids do contain microplastics, but there is a concern that in the future the source of those contaminants, which is essentially the community, will be passed back on to the water and sewerage service provider as being the polluter as the entity that put the contamination out there on the land, so there is a real concern that ultimately they will be required to go and clean up that land. I think it was alluded to by one of the previous witnesses that if these general environmental duty provisions become retrospective then we have a really big problem, because no community will be able to afford to clean up.

Mr Wiskar: In terms of where the pollutants or contaminants of concern come from, we have done a fair bit of work on that. Probably post the meeting, we might table some of that technical work that Louise has led. In terms of big sources of PFAS—my son is very fond of microwave popcorn, and microwave popcorn is a big source of PFAS. For those ladies or males who use foundation every day, a big source of PFAS is foundation and lipstick. I guess the position our industry holds is that if we have concerns about microplastics or PFAS we cannot make a wastewater treatment plant operator responsible for that. What we have to do is say, 'We're worried about putting foundation on our face with microplastics. Let's get that out of our waste stream rather than having local governments and water service providers be the panacea,' because we do not solve it; all we are able to do is treat it. Urban Utilities has done a piece of work on the massive upgrade costs that would be necessary for us to deal with that. We would be happy to table that piece of work for the committee.

CHAIR: That would be helpful. Otherwise everyone stops sharing.

Mr O'CONNOR: You raised issues with the definition of 'polluter' being inadequate. Do you have a suggestion for what that should be?

Dr Reeves: It is not so much the definition of 'polluter'. We do have an issue here, and I do understand that because it is a point source. Sewage treatment plants are a point source, so they would naturally fall into some sort of definition. However, we need to basically acknowledge that in the case of the urban water industry we are not the polluter because we are not the source. It is coming to us. We are a handler, if you like, or a manager but not the polluter. The polluters, in my view, are the manufacturers who put PFAS in their face creams and do not label it as such.

That is what I alluded to in my opening statement. I believe the federal government needs to take stronger action on this to improve labelling so the community can then at least look at the products they buy and decide, 'Yes, it contains PFAS. That is not something I want to put on my face.'

Galaxolide is in everything. It is an emerging contaminant. It has been identified in New South Wales, and biosolids have been regulated potentially for the first time. It is in everything you use that smells nice. Should the operators of sewage treatment plants be responsible for cleaning up and managing that galaxolide? They really should not. I do not know if that answers the question.

Mr Wiskar: I think the main thing we are saying is: cut it off at the source. If we are genuine about making polluters pay, then really it goes back to a custody responsibility. If I am a lipstick maker or whatever then I should be paying for those downstream costs. The problem, of course, is that the downstream costs are a long way from where the lipstick gets made, so how do we make that happen? That probably requires some real thought. As per the example that Louise talked about in the US, they have really recognised that we cannot make local government and wastewater treatment facilities be the answer to that.

Mr O'CONNOR: The government was reviewing the one part per billion, I think. Were you part of that review with UQ and RPS for PFAS? Did you contribute to that?

Mr Wiskar: The federal government has been reviewing what is called the NEMP 3, which is essentially an underlying document which then gets called into legislation as a technical document. We have made submissions in relation to that, including the costs that I indicated I would provide to the committee. We are concerned about emerging contaminants. I do not want this to be a message that we should not act on emerging contaminants. The industry is strongly supportive of improved environmental controls of PFAS, but let's fix the problem, not treat the problem.

CHAIR: We are out of time. I want to thank you both for being here. Your contributions have been welcome and we look forward to that additional information. If we can have that by 25 March, it would be appreciated.

PRICE, Ms Alison, Chief Executive Officer, Waste Recycling Industry Association Queensland

TOUMBOUROU, Ms Suzanne, Chief Executive Officer, Australian Council of Recycling (via videoconference)

CHAIR: I will ask for an opening statement from you both and then we will go to questions.

Ms Price: Thank you for the invitation to appear before the committee. We represent more than 90 businesses that take care of 97 per cent of Queensland's waste collections, disposals and recycling. None of the feedback we provided during the consultation period has been incorporated, so today I would like to focus solely on two critical issues: an independent, low-cost review process; and the definition of polluter as it applies to waste.

It is a challenging time to be part of the waste recycling industry. Businesses are facing an unprecedented level of consultation, changes to industry standards and changing community expectations. Unfortunately, many parts of the community have the attitude that once it is in the bin it is someone else's problem. There are no penalties enforced for households or businesses disposing of the wrong thing in the wrong bin. Despite a lack of regulation to prevent things like PFAS being imported into Australia, the waste recycling industry ends up with the community's waste and the community's contamination and is penalised for it, even though it was not caused by them.

In an environment with a continual drive to get the lowest price, a need for large capital investment and community encroachment around waste facilities due to the failures of our planning scheme, some businesses have quietly downsized their operations and others have taken their fights to the court system. Imagine being a legitimate operator who invested millions in a facility with all of the appropriate environmental licences and, despite operating in compliance with those licences, you now have houses just metres from your boundary fence and cannot help but cause environmental nuisance. WRIQ accepts that new, stronger powers are very necessary but requests that an independent tribunal be established to provide a fast, fair, low-cost review process for regulator decisions to avoid costly and time-consuming court action.

WRIQ is also very supportive of the concept of polluter pays but we believe, like others who have come before me, that the definition is just not broad enough. The waste recycling industry is end of pipe—the receiver of contamination that often cannot be seen, smelled or observed in any way. Test results take three to five days. Leaving waste sitting on our streets is not an option. If the waste recycling industry is to be solely responsible for all contamination disposed of by the community, we will not have any operators willing to undertake this essential service in Queensland.

We are very supportive of the Queensland Law Society's concerns about the retrospective effect of general environmental duty changes on existing environmental licences. We are also very supportive of qldwater's submission and the concerns raised by the Queensland Resources Council. We very much appreciate the need to have stronger regulatory powers, but businesses must have confidence to invest if we are to fix Queensland's poor recycling rates. We call on the committee to review regulatory impacts. We would also welcome an opportunity to organise a site tour to a local waste recycling facility so the committee can see this issue firsthand.

CHAIR: Thank you very much. We appreciate that and we will take that onboard. Suzanne, would you like to make an opening statement? Then we will go to questions.

Ms Toumbourou: I represent the Australian Council of Recycling, whose membership covers the resource recovery, recycling and remanufacture value chain. I should say up-front that I could not agree more with what Alison has put forward in terms of the challenges the industry faces and the priorities we need to address.

I would like to draw a distinction between waste management and recycling. Waste management, I would argue, is an essential service. It is a necessary function to support a civilised society. Effectively, it is the logistics that take material that is unwanted from one place to another and also may store it in an appropriate way. Recycling, on the other hand, is production. It is manufacturing. It takes what was once identified as waste and remakes it into something that must go back into the supply chain. If you think of recycling, the three elements to recycling must be: collection or aggregation—and that is where the waste management sector is fundamental; processing—and that is where recycling and remaking infrastructure, whether it be one type of facility or a supply chain of facilities, comes into play; and markets for the material that is made out of that recycling process, because without markets recycling cannot happen. One of the challenges in our sector is that, unlike any other type of manufacturing, there are limits on what can be stored at any

particular facility because it does sit under the context of waste. On the other hand, we cannot control the quality or the volume of the material that comes through, so we must keep it moving and we must ensure markets.

In terms of volume and quality, as Alison identified there is another part of the supply chain that is in play here that often flies under the radar: let's call it the polluter-pays principle. As end of pipe for processes often we sit in the lens and in the focus of what might be considered a polluter. On the other hand, there is a lot of material that comes through that supply chain, whether it be the PFAS that is manufactured into so many products, or batteries that continue to contaminate and destroy our plant and facilities. We have little to no control over the volume or the quantity that comes in. Ideally, that focus of responsibility would go beyond our facilities and beyond our operations and reach back into the supply chain that delivers them, I guess not heeding the rules and requirements that apply to the process that delivers them into our facilities. We would very much—going to Alison's point—be interested in a review. We would like to make sure there is a better focus across the supply chain and a better spreading of responsibility across the supply chain.

The other thing to keep in mind is: often when you are remaking for the supply chain and putting materials back into the manufacturing process, what we find is that recycled materials sit on a very uneven playing field with virgin materials. Virgin materials are put under no type of the same scrutiny that recovered materials are. For example, you can produce virgin materials saturated with chemicals like PFAS. On the other hand, when you recover those materials our environmental regulations require that they be entirely devoid of those products. Rather than taking a precautionary principle—which often means that remaking can be impossible—achieving the resource recovery targets we have committed to, not just in Queensland but around the country, is going to be all the harder.

To create a more level playing field, we are proposing what we call a risk framework—as low as possible risk framework—rather than a precautionary principle to better manage and better balance those risks and put our approach on a more level playing field with the production of virgin materials. There are two ways you can go about it: you can ensure there is no risk in terms of the products that come into the supply chain and therefore reach end of pipe; or you can better balance that risk at end of pipe and manage that level of risk in the same way we manage virgin. Either way, a big priority is maximising recycling—driving towards our recycling targets in Queensland and across the country. The current approach moves in the other direction.

CHAIR: Thank you very much. That is a lot to take in very quickly but I see some emerging themes, particularly if I go back to you, Alison, with the definition of polluter. We have heard that now a number of times. Would you unpack that a little bit? Then we will get Suzanne's viewpoint as well.

Ms Price: I think qldwater covered it absolutely perfectly. The waste recycling industry is receiving contaminants from others they have no control of and no visibility over. We very much agree with the concept of polluter pays, but the definition in this bill just is not broad enough to cover those scenarios where the waste recycling industry is unknowingly receiving contamination from the community.

Ms Toumbourou: There is not much more to add to what Alison identified except maybe that the risks then borne by our sector can, to an extent, be existential. In the current situation, for example, with batteries, and the volume of batteries and the invisibility of that kind of product, not only then is our plant at risk but also our insurance is at risk and our social licence is at risk, because these things ultimately cause fires, which does create harm to the environment. Currently that liability sits squarely with our sector, but the ability to deal with it is actually way further up the supply chain.

CHAIR: The health committee heard in our vaping inquiry about the damage that batteries and vapes cause going into the environment. It is very interesting. I am imagining all of those bins lined up on bin day and what is going into the environment. Thanks for giving me that view.

Mr O'CONNOR: Alison, your submission very strongly talked about the responsibility this is putting on waste receivers for issues outside of their control. Can you run me through some of the contamination the industry is receiving and what steps the industry is taking to prevent that contamination?

Ms Price: Let's use something that appeared in the news recently: asbestos in compost. Obviously, New South Wales has had a much bigger issue that Queensland. In Queensland, one operator recently had a couple of tiny fragments of asbestos found in a finished compost product. We had a workplace health and safety team out at one of our recycling facilities last week to look at what is coming in and start providing us with guidelines around the management of asbestos in the waste recycling industry. Imagine, they are viewing these trucks coming in. There is one truck every two or three minutes—300 to 500 truckloads a day. That truck is video inspected as it comes over the

weighbridge, but you can only see what is on the top of the truckload. There might be 20 cubic metres of material hidden underneath that you have no visibility over. That load gets tipped out at the tip face and there is a load inspector there who is responsible for inspecting every load. They have three to five minutes to inspect that load, that 20 cubic metres. You cannot fish through 20 cubic metres to find tiny little fragments of asbestos.

Then that material might go through a recycling facility where there is a picking station. In that picking station there might be 10 people lined up along the picking line, pulling different pieces of contamination out. Again, they are looking for little fragments of asbestos or any other contamination that might be visible to the naked eye. They are pulling that out if they can, but they cannot catch it all. There might be a fibre left behind a nail which contaminates a load of recycling. If our tolerance level is zero—either presence or absence, which is what it currently is in our legislation—those waste recycling facilities, no matter how good they are or how amazing their processes are, cannot pick that up. It is very challenging.

Mr MARTIN: In your submission you referenced planning and some of the difficulties that was causing for your members. Could you elaborate on that? Do you have some examples of your members who have had houses built next to their facilities and what has happened?

Ms Price: There are huge issues with the industry in the Swanbank area currently. After the council election is over and done with, my goal is to get local government, state government, federal government and industry all together to come up with a plan to solve those issues. These powers are needed for the changes that have happened in the industry for best practice. The definition of best practice has changed since some of those licences were put in place.

We do have facilities in that area who have residents very close and it is causing major issues. If we go to the definition of environmental nuisance in this act, there are many facilities across Queensland—it does not matter how good their operation is, but houses are encroaching on areas that were originally, when those waste recycling facilities were set up, thought to be appropriate locations—that are going to be causing environmental nuisance, and that is not something these operators want.

Mr MARTIN: Correct me if I am wrong, but my understanding is that the planning and approvals for the houses to be built near a waste or recycling facility is a council level decision but the regulation for waste management is at the state level.

Ms Price: It is. It is causing a lot of blame between different levels of government. I think it is time we all sat down together and stopped pointing fingers at members and at other levels of government who have historically made decisions and solve some of these problems together, because the waste recycling industry does not want these problems either.

Mr O'CONNOR: Is education a big part of it in terms of the community level aspect? You have told me an extraordinary figure before around the number of fires in garbage trucks. How many fires a week happen at the moment?

Ms Price: In Queensland—and these are statistics from industry and councils—we calculate three to five lithium battery related fires per week.

Mr O'CONNOR: That means they have to tip the entire load onto the street, put the fire out and then clean it all up. Is education a big part of this—making the community more aware of what they should and should not be doing?

Ms Price: We have been educating for a long time now. If we want to take another generation to make these changes then we can keep educating. I do not think educating is fixing contamination levels. We saw Ipswich recently release a tender where they said there would be 12 per cent contamination in recyclable materials by volume. That is extraordinary in terms of contamination. We cannot make good quality recycled products out of that. I am not sure education alone is solving the issue, unfortunately.

Ms Toumbourou: On the point of education, I totally agree with Alison. On the other hand, we do not have the necessary collection infrastructure to address education either. We can tell everybody, for example, not to put their batteries in the bin, but they do not have access to correct and safe disposal options. Thankfully, one of the good things the Queensland government has done is map what the disposal options are for hazardous items around the state. That is the first step before you then start to fill in the gaps. What is as clear as day is that there is in no way the required safe disposal options available across the state. We can tell people what they should not do, but unless we give them a viable option for disposal that in no way addresses the scale of the program.

CHAIR: Everyone should get a battery bin, by the sounds of it.

Mr O'CONNOR: Suzanne, could you elaborate on the point you made in your submission around this bill contradicting legislation passed last year—the Waste Reduction and Recycling and Other Legislation Amendment Bill—which inserted the circular economy principle? Could you elaborate on why you believe this contradicts that?

Ms Toumbourou: The circular economy would require, for materials that are identified as waste, whatever is recoverable to go back into production and back into the supply chain. If we do not enable a finite definition of waste and therefore end of waste, we are not enabling the circular economy that was identified as a priority in last year's bill and agreed to. We need to draw a line between waste and end of waste. We need to be able to give industry the confidence to invest in processes that produce products out of that material stream. When we have the types of regulations that allow for zero risk, in effect we are not enabling that outcome.

Mr ANDREW: You have touched on lithium batteries. With new technology such as solar panels and wind turbines, where do you think we stand with that? What is the future? It is not far away when we are going to see some of this come onto the scene. Are we ready?

Ms Price: No. I have some members who are starting to do some recycling in that space. I know that Suzanne does as well. There are a lot of government programs out there. Are we ready to prevent all of that ending up in Queensland's waste streams, landfill and community bins? No, not at all. Suzanne, what are your thoughts?

Ms Toumbourou: Not right now, but we are scaling and there are moves in the right direction. The live consideration, for example, in Queensland of rules to ban e-waste from landfill is a good step which would enable the confidence to invest in recycling activities in those areas. We are seeing at a glacial pace at a federal level moves for product stewardship in relation to e-waste and solar panels. They are not moving at the pace that is needed, but that investment is there and it is growing. The regulatory moves are coming. It is a matter of pace. We could be ready if we need to, but at the moment the pace is not sufficient.

CHAIR: Thank you both very much for being here. We have gone over time but we appreciate your contributions. Thank you very much.

ANDRAE, Ms Margo, Chief Executive Officer, Australian Pork Ltd (via videoconference)

KERN, Mr Michael, Chief Strategy Officer, Queensland Cane Agriculture and Renewables (via teleconference)

PITTARD, Ms Tanya, General Manager, Policy and Industry Relations, Australian Pork Ltd (via videoconference)

SPYROU, Mr Panikos, Chief Executive Officer, Queensland Cane Agriculture and Renewables (via teleconference)

CHAIR: I invite you to make an opening statement. Margo, you have the floor because the others have not been able to join us at the moment.

Ms Andrae: Thank you so much for having us here today. We are very pleased to represent the Australian pork industry. We are a $6 billion industry operating nationally. We represent around 6,600 pork farms across the country and we employ about 34,600 people across the country. We have exports worth around $183 million. Ninety per cent of our product stays here in Australia, so we are very privileged to feed Australians through the pork industry. We process around 5.5 million pigs annually. We have been asked recently to try to estimate how many meals that would be, but that is a little bit tricky. We try to remind people that it is breakfast, lunch and dinner. We know it is well into the millions of meals that we are privileged to supply.

One of the things I want to highlight is that, from an environmental perspective, the pork industry has actually been doing a lot of work for about the last three decades. Since the 1980s we have reduced our carbon emissions by seven per cent, we have reduced our water by 80 per cent and we aim to have about 60 per cent of our farms operating on almost a closed loop production cycle by 2030. A lot of the focus is always on carbon neutral and things like that. We are a low-emissions protein.

We have been working with farmers around how they continue the biodigester process, removing any waste on-farm. Because of our biodigester process, we are part of the renewable energy industry as well. We have vehicles on-farm that are powered by pig manure. From an environmental perspective, we have done a lot of work for a lot of decades. The opportunity today is to answer any questions and talk to you about what we do and, most importantly, why we do it and very much get across some of our key recommendations in our submission. We really want to be working with government on any steps and working on science, evidence-based regulations. Working together is really important for us. We are very much around celebrating the pork industry and supporting the committee on the job you have to do today. I will pause there.

CHAIR: Thank you very much.

Mr PERRETT: I am always interested in how these bills will impact agriculture and the farming industry. Margo, could you expand on the specifics in this bill and the potential impact on your members, particularly in that important food production area?

Ms Andrae: I might just pause for a second and welcome my general manager of policy, Tanya Pittard. She has been able to join now as well. I will hand over to her in a minute. In terms of some of the changes, we often find that we are already doing a lot of things on-farm that are going above and beyond some of the regulations, guidelines and science-based research that we have been doing for decades. Sometimes we find that the regulations and legislation can halt us doing things, particularly around manure and supply chains and the work that has been done. That is probably where our plea came from to work with government on any of these changes. We are a national industry, so having that harmonisation across the other states and territories and across the other departments is really important as well. Tanya, would you like to pick up there?

Ms Pittard: When we had a look at the department's response to some of the submissions, we were a little disappointed in a couple of areas. First of all, they noted some of our recommendations. They mentioned that they were developing updated guidelines and guidance documents to enable farmers to implement or to respond to general environmental duties. Again, our plea is: instead of updating guidance notes, actually work with the industry. We are the RDC as well as being the peak industry body for the pork industry. We have the up-to-date research.

We are currently working on our own update of the national environmental guidelines for indoor and for rotational outdoor piggeries. In most states these guidance documents are incorporated into their regulations with regard to the planning and management of pig farms and how they interact with

the environment. We have an opportunity to support good practical guidelines for farmers so that they can meet those environmental expectations but also meet them in a way that provides consistency of regulation and also provides an environment in which farmers can confidently invest on their farm—in sheds, in the upgrading of sheds, in the upgrading of facilities that they use to manage manure and to manage some of their other environmental impact areas.

CHAIR: Queensland Cane Agriculture and Renewables have now joined us via teleconference. Welcome, and thank you for overcoming the technical challenges. Would you like to start with an opening statement? Then we will move to questions if we have time.

Mr Spyrou: Thank you for the opportunity to appear before the committee today. We are a sugarcane farmer representative company called QCAR. We will make this brief opening statement on the key features to the grounds for amending, or at the very least giving more consideration to, the amendment bill that is before us today. QCAR represents sugarcane farmers primarily in the Herbert, Burdekin and Central Queensland regions of Proserpine, Mackay and Sarina. QCAR has worked in collaboration with organisations including the Australian Cane Farmers Association and AgForce Cane Ltd. We represent a large collective of sugarcane farmers, being approximately 20 per cent of all sugarcane farmers in Queensland and 15 per cent of the total sugarcane production in Australia.

The sugarcane industry's contribution to the Australian economy is well documented and communicated by Sugar Research Australia Ltd. Australian sugarcane production is expected to grow at 2.3 per cent, and opportunity growth in the sugarcane industry is estimated at $3.6 billion over the next five years. Our Queensland sugarcane producers provide high-quality food and fibre to Australian and overseas communities as we deliver stewardship of the state's natural environment.

We certainly thank the department for its timely consideration of the matters raised in all submissions and its response provided to the committee on 14 March 2024. However, the response confirms where a number of shortfalls exist with the current bill and supporting documentation. Firstly, we believe that the bill has not reflected a full and proper assessment of the adequacy of penalties imposed under the EPA. Secondly, we believe that the bill and the supporting documentation provide insufficient and in some instances inadequate information to enable a proper assessment of the potential impacts and, just as importantly, an assessment for any inadvertent or unintended consequences. This is evident in the 32 occasions the department has provided a standard response that more guidance is being developed to help people and businesses understand the potentially new and onerous legislative obligations contained in the bill. Thirdly, we seek to emphasise any key points that have not been addressed by the bill and/or the department's response or which we believe require further clarification as a result of the department's response.

CHAIR: Thank you. Your last point was about key points that you want to raise that were left out. What are they?

Mr Kern: Are you happy for us to go back through those three points and provide some more information around those issues?

CHAIR: Okay, if you can briefly do that.

Mr Kern: The first issue is in terms of the full and proper assessment of the adequacy of penalties imposed under the EPA. We noted the department's comments in their 4 March 2024 public briefing. They stated that the bill would—

> … make enhancements to the efficacy and efficiency of powers and penalties in the act and to help ensure that the tools available to prevent and respond to environmental harm are sufficiently contemporary to address current and future challenges.

With respect, we believe that the bill fails to address one of the primary goals of the independent review into the adequacy of existing powers and penalties under the EPA terms of reference, namely—

> The adequacy of existing … penalties for … prosecuting operators and deterring environmental offending … and with respect to … the adequacy of existing maximum penalties—

From our point of view, I guess it appears that adequacy has been overlooked in place of efficacy and efficiency and that a full and proper assessment of the adequacy of penalties imposed under the EPA has not been undertaken. The 'adequacy of existing penalties' and specifically the 'adequacy of existing maximum penalties' were the key words. If we look at a dictionary definition in, say, Merriam-Webster, the definition of 'adequate' is the quality or state of being adequate. Adequate in its essence refers to something that is sufficient or satisfactory in meeting a particular requirement or standard. It signifies the presence of an acceptable amount, degree or quality necessary to fulfil the specific purpose or expectation. An adequate solution, for instance, is one that adequately

addresses the problem at hand without exceeding the necessary measures. It is important to note that adequacy does not connote excellence or surpassing expectations; rather, it denotes a level of sufficiency that is satisfactory but may not necessarily be exceptional. Adequacy sets the baseline, ensuring the minimum requirements be met without exceeding them.

Therefore, from a sugarcane farming point of view in particular and reflecting on the environmental protection measures that were introduced in 2019 affecting the sugarcane industry, we had some maximum penalties: for example, section 82, the penalty for wilful breaches is 1,665 penalty units, or $257,000, and for other breaches it is $92,000; section 85, false and misleading advice about an ERA, 600 penalty units, or $92,000; section 316P, requirement to replace noncompliant EA, 4,500 penalty units, or $696,000; and section 357, failure to comply with a temporary emissions licence, 6,250 penalty units, or $967,500. Even in the proposed new section 319C(3), the duty to restore, the maximum penalty is 4,500 penalty units, or $696,000. We are concerned that, unless there is evidence that the maximum penalties are being imposed and such impositions are not having the desired deterrent effect, then a lower baseline maximum penalty should be set that is adequate to achieve the intent of the act. We believe that the issue of adequacy has not been properly addressed. That is the first point.

In terms of the bill and supporting documentation and in some instances inadequate information, we note the use of subjective, unclear and ambiguous words in the legislation: 'ought reasonably' to have known, 'reasonably believes or should in the circumstances reasonably believe', 'ought reasonably to have become aware' such as in section 320A, and 'reasonable and practicable measures', such as in section 4 et cetera. We are concerned that that unclear and subjective language, particularly as it relates to sugarcane farmers having to respond in some cases with positive obligations around proactive action, should be further defined or there should be explanatory notes included to ensure that any unintended or inadvertent consequences do not occur. Obviously, to some extent that concern is alleviated if the onus of proof falls on the government and not the persons or business expected to meet that requirement. The concern is, particularly where farmers are supposed to be acting proactively, that there may not be sufficient clarity around that to make that determination. The department has provided a standard response on 32 occasions along the lines of—

> The department is currently drafting new and updated guidance and web content to ensure that information about key reforms is available, and that people and businesses understand their obligations under the EP Act.

I believe it is critical for the preamble to the bill, explanatory notes or subsequent guidance to more clearly articulate the intent of the amendments and, more importantly, to state what is not intended. From our point of view, QCAR believes it is simply not good enough for inadequate or insufficient information to be contained in the proposed new legislative amendments and that further time taken to provide that information, clarification and further consultation to affected people and businesses could be taken. That, we believe, would be a more prudent and responsible action on the part of the committee and government. Specifically, we note that in one case the departmental response was—

> … a person will not have committed the offence if, in doing the act that gives rise to the contravention, they complied with a code of practice made under the EP Act that applied to the relevant act.

In the sugarcane industry we do in fact have a sugar industry code of practice 2005, which sits under the Work Health and Safety Act. It is good that there is a corresponding code that we can comply with that does not constitute a contravention under the EP Act.

In terms of the other points of clarification that we were seeking where we did not feel it was clear, we raised a concern under environmental nuisance about the practicalities of determining how to quantify instances of environmental nuisance in financial terms. In what we were looking at, we were hoping there would be more clarification in relation to the application of the proportionality principle—that is, thereby ensuring a scaling of the impact of the alleged nuisance. We would certainly not like situations where a single complaint or couple of complaints in relation to light, noise, smoke et cetera could ultimately hold a business to account and force them into a situation where that business had to suspend its operations while those matters were being dealt with.

CHAIR: I might pull you up there because we are about to go on a break and the ladies from the pork industry have been very patiently waiting. I am trying to draw a synergy between canefarmers and the pork industry, and I certainly know that canefarmers do not like pigs in their paddocks. What you have said is helpful. We will have the department back in front of us on Friday, and you have certainly made your points there. To the pork industry: is it your view that this bill increases or detracts from that national harmonisation of environmental laws as it relates to your sector?

Ms Pittard: I think it is slightly problematic, to be honest. Obviously, there are different ways that each state is looking at general environmental duties or incorporating general environmental duties. I would like to support the comments made by the canefarmers with regard to particularly the quantum of the penalties being considered and also the general response from the department in that they will be writing the guidelines. It would be really nice to see them working proactively with those industries that have spent the last three decades actively undertaking research, improving their environmental footprint, managing their environmental risks and investing millions and millions of dollars in maintaining and managing their environmental sustainability. It would be lovely if the department would actively work with us so they could understand the work and the practicalities on farms and then recognise the role that farmers have played in substantially improving their environmental outcomes.

CHAIR: I thought you might pick up some points from the canefarmers. I want to thank each of you for your contributions. QCAR represents the canefarmers in the Herbert area, which is pretty close to my patch in Townsville. We are out of time but we do appreciate your contributions here today.

Mr ANDREW: Do we have time for questions, Chair?

CHAIR: You can have a quick question.

Mr ANDREW: I would like an update on the impact to producers of the current EPA regulatory framework. Are you aware of many people leaving the industry since 2019? Are there fewer people entering the industry? What have been the mental health impacts in terms of all this extra pressure? It seems a little bit punitive.

CHAIR: That is slightly outside the scope. I will allow the question.

Mr Kern: Yes, there is evidence that there is less land under cane in some areas and in particular close to the member for Mirani's area, where we have noted there is a reduction in land under cane. In talking to our members, there is certainly an ongoing impact on mental health and health generally. They are concerned about the impact of the legislation and the penalties. We do not understand that many penalties have been imposed, but some of our members have indicated that, if they were, that would cripple their business in a typical sugarcane farming business. Yes, there is evidence of some people leaving the industry because of the extra stress and the obligations and, equally importantly, the size of the penalty that could come down on them.

Ms Andrae: We believe that science-based, evidence-based research underpins a lot of this. We say that the right information at the right time supports really good decision-making. That is probably where we come from: if we can work with government on that right information. The reality is that the world is getting a lot tougher for pork farmers. It does feel like there are more and more hurdles to jump. It does feel like the time taken to go is suddenly into years and the money taken to prove what we have actually been doing for decades anyway in that we are a low-emission protein doing right by the planet. We have a little bit of a saying, that we are good for the hip pocket, we are good for the waistline and we are good for the planet. It is a bit of a trifecta. The hurdles are getting harder and the regulations are not getting clearer. Sometimes they are actually counteracting some really good, progressive movements—some policies, positions and things like that—which is not their intention.

Our parting comment is that we really just want to work with government and use our science and research to support what the government has been doing as well to progress and support our farmers. If there is a plea for better mental health services in rural and regional Australia, where our farmers are, we would certainly put that forward on the record as well.

CHAIR: Thank you very much, again, to everyone online.

Mr Kern: Chair, would you welcome a further submission from us on the areas that we were not able to cover in the time?

CHAIR: Certainly. We will just need it back by 25 March.

BOWIE, Ms Leanne, Service Member and Legal Adviser, Queensland Resources Council

GARDINER, Ms Hannah, Environment Policy Adviser, Queensland Resources Council

CHAIR: I invite you to make an opening statement, after which we will move to questions.

Ms Gardiner: Thank you, Chair. The Queensland Resources Council appreciates the opportunity to appear before the committee today. We also participated in the department's consultation process last year. At the public briefing by the department on 4 March, there was a question from a committee member noting that one of the biggest issues that came up from stakeholders at the time of the last EPOLA Bill concerned problems with NDAs for the exposure drafts and asking whether that situation had improved. In fact, this time there was no consultation at all with stakeholders on any exposure drafts of this bill, which is why the question of NDAs did not even arise. Whenever the department does consult on exposure drafts of a bill, this allows the opportunity to address drafting errors and unintended consequences, so it is unfortunate that this did not occur. We would like to acknowledge that QRC does support many of the changes proposed by the bill—we have listed those in an annexure of our submission—at least in principle. For example, QRC supports the general intent of simplifying the current complex system of notices and orders into single environmental enforcement orders.

Ms Bowie: At the public briefing by the department on 4 March, the chair inquired about what had happened to recommendation 12 from the independent review, which was the proposal to give additional powers to the department to impose amended conditions on existing operators notwithstanding their compliance with their existing conditions. There was then a supplementary question from the deputy chair to which the department responded that recommendation 12 would require further regulatory impact assessment and quite significant stakeholder consultation which was not undertaken as part of this process. That is on page 3, paragraph 6 of the draft transcript. The department did a basic IAS but did not do a consultation RIS or decision RIS. However, in fact recommendation 12 has been implemented by this bill by what looks very like a backdoor approach while omitting the full RIS process. The Queensland Water Directorate described that on page 2 of its submission more bluntly than we did as a 'stealthy mechanism for amending an environmental authority condition'. CCAA has raised similar concerns. I heard this morning that the Queensland Law Society had asked to provide a supplementary submission on the topic.

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

At the public briefing by the department the deputy chair also asked about this in connection with concerns previously raised by the aquaculture industry. This is exactly the same problem as the aquaculture industry previously raised concerns about last year at the exposure draft stage for EPOLA. The member for Mirani also then asked about what RIS had been done on the bill's impact on farmers, miners, commercial fishers and the aquaculture industry. The true answer is that a proper RIS process was cleverly avoided because recommendation 12 is being achieved here by a two-step approach rather than by openly amending section 215.

In the department's response to submissions, which we received last week, they have repeated the same line throughout the document that where an operator is carrying out their activity lawfully and in compliance with an EA which clearly provides for the management of the levels and type of environmental harm occurring, the administering authority would not issue a notice in response to such harm, but what they say there that they would do is roughly the opposite of what the bill itself says, for example at clause 23.

Another of QRC's key concerns with the bill is about unintended consequences arising from the drafting of the new general environmental duty, GED, offence. Both the Queensland Law Society and the CCAA have raised some of the same concerns as QRC. There are several drafting issues, but the key one is this. Clause 13 tries to protect operators from being in breach of the new offence where they are complying with a code or an approval such as an environmental authority. The code defence is fine—it is well drafted—but the bill says that for compliance with an EA to count as a defence the EA itself needs to have provided for reasonably practicable measures to be taken in relation to the doing of the act. Typically, most conditions of an EA are what we call outcomes oriented, which means they set the standard or a quantitative limit. The independent review called them 'quantitative standards'. Basically, for example, if you have a noise condition it will say that for certain hours of the day a certain limit is the maximum limit measured at a noise sensitive place, but it does not say how you go about that so you have flexibility to how you achieve it differently on any given day. The more modern drafting practice for the department is a more prescriptive approach where they want to set out exactly how measures are carried out, but that is not the way most existing conditions are set out. In fact, the independent review specifically praised quantitative conditions, so it is unclear why this would be reversed now so that you have to have EAs setting out prescriptive measures as is required by clause 13. That also really opens up historic approvals, not just by the department but also by local governments.

In the time available here we cannot really touch on a couple of the other questions that came up at the public briefing, but we could deal with them in questions. For example, there was a question about the ability to enter third-party land when carrying out the duty to restore and there was a question about how the general environmental duty compounds on top of other offences. We could deal with those in questions. We are happy to take questions.

CHAIR: In your submission you say that the new powers contained in the bill around EEOs and environmental investigations into matters covered by an existing EA will create sovereign risk. Can you please elaborate on that?

Ms Bowie: Yes, the risk here is that companies have invested significant money into developing projects in Queensland and have based infrastructure on the conditions they have been granted. Take as an example a noise condition. They have invested sufficient to protect neighbours from noise through the infrastructure they have built based on the quantitative limits that have been set out in their conditions. The problem is: if an environmental investigation notice is issued, this can override—it can disregard the existing conditions. A report is prepared and, whatever the report says, there is then power under section 215(2)(i) for the department to change those conditions, which then makes the investment in that site pointless because the potential is that it is impossible to comply with the reduced limits. For example, there might have been a limit of background plus 10dBA in a condition and the department might decide that is out of date and they want background plus 3dBA. There is now a procedure available through this bill to effectively put people out of business because they cannot comply with the reduced limits.

Mr ANDREW: Thank you for coming in today. Have any areas that we are considering in the bill been offered the same options as renewable energy projects, where offsets can be paid to be able to continue with working and allow that sort of punitive side of it to be relaxed?

Ms Bowie: Sorry, I think we are a little out of scope there. The offsets provisions available to wind farms are a little different from what is available to the mining industry. The mining industry has offsets available, for example, for land clearing. The main difference between wind farms and the mining and petroleum and gas industries is that there is a system of financial provisioning or bank guarantees or a financial pool to guarantee a rehabilitation which is a government-run pool.

Mr ANDREW: So it is held in bond.

Ms Bowie: Yes, and that is different from what is available to the renewable industry.

Mr ANDREW: I understand.

Ms Bowie: That is not really related to this bill.

Mr ANDREW: No, I understand. This bill could possibly end a lot of different industries in Queensland. You have spoken about how there are other provisions in the bill, for instance, where if you have been accused of something then the government can actually approach it in another way or make it very stifling for anyone to be able to continue on with any of their activities or the investment that has already been made. Could you elaborate on that?

Ms Bowie: I think my response to the previous question actually already addressed that question of people having invested on the basis of a set of conditions and then being at risk that those conditions could be overridden to the extent that the investment in infrastructure becomes pointless.

Mr ANDREW: Basically, this legislation could wipe out certain industries or certain businesses within Queensland if it is used in a certain way?

Ms Bowie: The department has proposed guidance material to try to explain how it proposes to do something different from what the bill actually says. At the moment we have not seen that guidance material, but the problem is that guidance material cannot override the words of the legislation and the words of the legislation say that they can disregard an existing environmental authority.

Mr ANDREW: That makes me think of the regulatory impact statement. This is a major consideration for a lot of businesses and a lot of big businesses right across our state. Where is the regulatory impact statement? Where are the stakeholders? Was anybody consulted? I did get a question on notice where the regulatory impact statement by the department basically said there was not an impact statement needed. What I am hearing from most of the investors and the people here is that it could be really dangerous to work under this bill.

Ms Bowie: The department did the most basic stage required by the Office of Best Practice Regulation, which is an IAS. If you go to the individual items that are covered by that IAS, nowhere does anyone mention what has happened with that two-step process because you actually have to work through a bit of a maze to understand how the overriding of conditions occurs. But, yes, the department have admitted that if they are carrying out recommendation 12 there should be a full RIS and there has not been.

Mr MARTIN: I have a follow-up question on the ability to amend. You mentioned in your submission that you were concerned about that, but doesn't the ability to amend environmental authorities already exist in section 215?

Ms Bowie: Section 215 sets out a long list of bases on which the department can impose compulsory amendments. They are basically related to where there has been some noncompliance or where there has been false or misleading information or where there has been a miscalculation at the time the original environmental authority was issued. It also does include section 215(2)(i), which is the one about if there has been an investigation report or an order. Previously, an environmental investigation or an order would not have been an approach that would be taken if the company was complying with an EA. What we have now is a provision that overrides the EA when the environmental investigation notice is issued, which is not previously the case, and then, neatly, there is an existing provision that says that if there has been an environmental investigation—it does not matter what the outcome has been—you can change the condition.

Mr CRAWFORD: Just before you finished your introduction you mentioned about taking questions about third-party access. I am just giving you the opportunity. It is a bit of a Dorothy Dixer for you, but I know that you wanted to get something out so go for it.

Ms Bowie: QRC had no objection in principle to the duty to restore, subject to a few drafting issues, but there were some questions from the committee at the public briefing on 4 March—particularly there was one from the member for Barron River—about whether there is an ability for the person to enter on third-party land where they just have a duty to restore. I think the department may have misunderstood the question, because they then went on to talk about how there is a framework available to be able to enter third-party land. That framework only comes up if the person who has the duty to restore has failed to do the restoration and has a punitive measure imposed on them, which is the new EEO, and then the department can start a framework of giving notice to the third parties.

Queensland Water Directorate, at pages 9 and 10 of their submission, queried the practicality that arrangement—having to basically request to have a punitive measure imposed on them, an EEO, in order to be able to enter. They suggested some kind of compromise—that if it was state land they could automatically enter to do the restoration. I recognise that there was also some discussion from the Queensland Law Society in their submission and this morning about how the third-party provisions should work and perhaps having a longer notice period. I think we could just say that the issues about third-party notice have not really been worked through. If there had been a proper consultation process, we could have worked out some of those issues.

CHAIR: Thank you very much to representatives from the QRC for being here today. We appreciate your contributions.

BUCKLEY, Mr Roger, Interim State Director Queensland, Cement Concrete & Aggregates Australia (via videoconference)

MUSGROVE, Ms Victoria, Queensland Planning Approvals Manager, Holcim Australia, Cement Concrete & Aggregates Australia

CHAIR: Welcome. I invite you to make a brief opening statement, after which committee members will have some questions for you.

Mr Buckley: Thank you, Chair. I am Roger Buckley. I am the interim state director for Queensland for Cement Concrete & Aggregates Australia, CCAA. I am ably assisted today by Victoria Musgrove, who is there in person. She is the Queensland planning approvals manager for Holcim Australia, one of our key members operating in Queensland. Again, thank you for the opportunity to present online and in person to the committee.

CCAA is the peak industry body for the heavy construction materials industry in Australia. That includes the cement, pre-mixed concrete and extractive industries. Our members operate cement distribution facilities, concrete batching plants, hard rock quarries and sand and gravel extraction operations right throughout Queensland. I think we operate in every electorate throughout the state. CCAA members produce and supply these materials that are used to construct Queensland's infrastructure including Queensland's roads, our railways, our bridges, our ports, our airports, our hospitals, our schools and, most importantly, our homes, as well as infrastructure for the Olympics. With concrete the most commonly used construction material in the world today, the reliable and cost-effective supply of concrete is fundamental to the state's sustainable growth and to the delivery of affordable infrastructure and affordable homes. It is CCAA's aim to promote policies that support this particular outcome.

Our industry has worked hard over many years to minimise the environmental impact of operations and, where possible, achieve a net positive benefit to biodiversity and other environmental values. In fact, many quarry sites are recognised as biodiversity havens. With respect to this bill, CCAA, along with other industry bodies and the Queensland Law Society, has the following key concerns.

One, the administering agency can issue an environmental enforcement order to an operator that is compliant with their current environmental authority where the conditions of the EA are deemed insufficient. As others have indicated, this invokes an unacceptable sovereign risk and potential significant cost to an operation. CCAA suggested solution: an amended EA condition should only be introduced with the agreement of the EA holder.

Two, an EA holder can be found in breach of their general environmental duty, even when operating in compliance with their EA conditions. Again, this invokes an unacceptable sovereign risk and potential significant cost to an operation. Others have also outlined this issue today. CCCA suggested solution: the term 'reasonably practical measures' in clause 13 of the bill should be defined as those achieving compliance with EA conditions and/or measures from an industry accepted body of knowledge such as an accepted code of practice.

Three, the requirement for notifying potential or actual environment harm is ambiguous and subjective and poses, again, unacceptable risk and is inconsistent with other Queensland legislation. CCAA suggested solution: define the term 'ought reasonably to have become aware of' in clause 17 of the bill so that it is, in fact, practicable or, preferably, delete that particular clause. More detail on each of these points is provided in our submission.

Queensland's regulatory environment needs to be internationally competitive to attract international investment so that affordable heavy construction materials can continue to help deliver affordable homes and affordable infrastructure. Thank you.

CHAIR: Roger, your submission objects to the bill's proposal to require a person to notify about environmental harm when they 'ought reasonably to have become aware'. Can you unpack and elaborate on that point, please?

Mr Buckley: I suppose it becomes a little bit ambiguous and uncertain about what 'ought reasonably to have become aware' is defined as. In this particular instance, the requirement under the proposed environmental legislation is somewhat similar to the requirement under safety legislation for a PCBU to notify the health and safety regulator of a particular instance. In that instance, section 38 of the WHS Act says to 'notify immediately after becoming aware'. That is something that our industry and other industries are comfortable with and understand. It is not ambiguous and I suggest that something similar should perhaps be included within this environmental legislation.

Ms Musgrove: I echo Roger's feedback about the ambiguity. The other thing to note is the number of different types of operations that operate under environmental authorities throughout Queensland. There are obviously quite a range of operators and of resources within those operations. I think having that level of ambiguity for operators that are not as sophisticated in their systems and processes highlights the risk for those operators, as well as all others. The subjectiveness of that could expose operators to some really significant risks.

CHAIR: To break it down a little bit, we have a number of quarries in Townsville and surrounding areas. There is currently a situation of noise and dust monitoring. Roger, you make a good point: under the workplace health and safety regulations, these would be items that the industry deals with. I think you have made the point, Roger, but can you speak to the changes in this bill affecting those daily operations, from Holcim's point of view or your own?

Mr Buckley: Perhaps Victoria, as an operator, might be in a better place to respond.

Ms Musgrove: To clarify, Chair, do you mean in terms of the specific issue around 'ought reasonably to know', or just the bill in general?

CHAIR: In general, yes.

Ms Musgrove: From an operator's perspective, we believe that the act is being implemented appropriately in that regard as it currently is. We welcome the opportunity to improve how the act operates. I think the issue the CCAA and other submitters have raised in relation to this particular bill is the significant increase in risk. That would have implications on how our members may operate day to day because of that heightened risk we would be exposed to. That could have implications—as some of my colleagues who presented earlier suggested—around the infrastructure that is required onsite and the resources that are required over and above what we feel we are comfortably operating under at the moment.

Mr MARTIN: Roger, I have question about amending agreements. It was your submission that an EA could only be amended with the agreement of the EA holder due to the sovereign risk, costs to the business and other things in your submission. What would you say to community members and neighbours being affected by a new impact that was not originally on the EA?

Mr Buckley: Community engagement is a very important aspect for our members. It is not just a requirement as a one-off; it should be part of an ongoing business-as-usual situation. There should be an active dialogue ongoing between the operators of quarries, concrete plants and cement facilities and their neighbours so that there is a two-way conversation. A complaint should not be a surprise. Theoretically, in good practice, an operator should have an ongoing relationship with their nearest neighbours so that any unforeseen impacts due to unforeseen operational issues can be dealt with in a mature and positive manner. Victoria, do you have anything you would like to add?

Ms Musgrove: Yes, thank you, Roger. In terms of new impacts—particularly for operations that have been around for quite some time—anything that would be considered, in my opinion, a 'new impact' would be as a result of a change in the operation which would generally trigger an application process to either add a new activity or amend the current activity—for example, the scale or intensity of that activity—which would trigger a reassessment around what those new impacts might be, or changes to existing impacts. That would then result in updated conditions to address those. I cannot think of any examples where a new impact would come about from an existing operation that had not already been dealt with under existing conditions for an environmental authority.

Mr ANDREW: You talked about sovereign risk earlier, Roger. Could you tell me about the business risk overall from the environmental side of it, and how this will affect the community that will be directly impacted?

Mr Buckley: Businesses make investment decisions based on risks for their particular sites. If that risk is increased, people will make their business decisions accordingly. Many sites are family-owned businesses operating in regional areas and there are multinationals, so that decision can happen around the kitchen table for a local business or in the boardroom in Zurich, Geneva, Sydney or wherever. It needs to ensure the benefit to run a particular operation is commensurate with the risk of that site. As we have indicated, there are some significant issues that we and other industry bodies have identified in this bill that increase that risk of operation. Different companies will make different decisions depending on that particular risk. That is not to say that there are not current good compliance requirements for existing operations. We are building on an existing system. As Victoria has indicated, in many instances that is operating perfectly well. The requirement for these additional aspects that increase the risk for businesses has perhaps not been properly identified by the department. Hence, it is up to our industry to outline these particular issues.

Mr ANDREW: What is your confidence like, when there has been very little to no consultation on the whole process?

Mr Buckley: We have provided submissions to the department on this. We are providing a submission here because we see the importance of these particular issues. It is not often that CCAA, with its limited resources, contributes to these particular aspects, but certainly we see this as quite important. We trust that this committee will recognise and take on board the issues that have been raised, not just by us but also by others. It is good that we can get this particular face-to-face opportunity because sometimes the bureaucrats do not always see the industry's perspective. They are seeing it from the view of government risk, which is fine and fair, but at the same time there needs to be a degree of practicality and understanding the issues associated with business and the risks involved in operating those businesses.

CHAIR: We are out of time for this session. Thank you, Victoria and Roger, for your contributions. It was very beneficial for the committee to hear that.

HAYTER, Ms Frances, Director, Sustainability and First Nations, Queensland Renewable Energy Council

MULDER, Ms Katie-Anne, Chief Executive Officer, Queensland Renewable Energy Council

Ms Mulder: Thank you very much for inviting us to appear today. We are a not-for-profit membership organisation for renewable energy specifically for Queensland, so that includes public and private developers, all long transmission distribution, generation and storage. As representatives of the industry critical to Queensland's transition, the QREC of course supports the government's 2022 independent review into the adequacy of the powers and penalties available under the Environmental Protection Act and in principle the intent of the bill, understanding that the review was initiated in part by significant odour and nuisance issues in the Swanbank industrial area.

Overall, we believe that the EP Act already enables government to deal with the concerns of community coexistence with industrial areas and that a number of the key amendments proposed in the bill are unnecessary and may have inadvertent consequences. Within this context we are concerned that there are some significant but highly technical changes in the bill that require measured consideration, especially where amendments result in a legal defence being turned into an offence. In our experience, such substantial changes to any legislation generally benefit from a more comprehensive consultation process and longer submission deadlines. The consultation process we undertook with our members was quite truncated. This was exacerbated by the lack of a clear commitment to update guidance material prior to commencement and the undertaking of a regulatory impact assessment process in preparation of the bill.

As set out in our submission and as raised by a number of other submitters here today as well, our key concerns are the real potential for retrospective application. This concern links with that of the creation of the new environmental enforcement orders and expanding the duty to notify. We would like to lend support to the submission of the Queensland Law Society, which has more eloquently set out our concerns with regard to retrospective elements of the bill. It is imperative that any changes do not have inadvertent impacts on the government's own renewable and emission targets by impacting industry confidence and uncertainty that meeting its approved environmental operating conditions is not sufficient to prevent compliance action by the department. Finally, we note the concerns of the member for Mirani regarding the regulation of the renewable energy sector. We look forward to discussing these issues further. I welcome any questions.

CHAIR: Member for Mirani, do you have a question?

Mr ANDREW: Not at this stage, Chair, thank you.

CHAIR: There seems to be a bit of a theme around 'ought reasonably to have become aware'. Your submission objects to that. Can you elaborate on that?

Ms Hayter: Our submission was pretty similar to what other people have said, which is that it lacks any form of clarity about what 'ought reasonably to be aware' means. We note in our submission that the departmental response to the committee that was published indicated there would be clarification provided in the explanatory notes on that particular change, and there was none as far as we could see. It is definitely something that needs clarification of what on earth it means.

CHAIR: We have the department back in front of us on Friday, so no doubt we will go through that. Member for Barron River?

Mr CRAWFORD: No, I do not have any questions. I was expecting the member for Mirani to have all the questions.

CHAIR: Your submission notes concerns about the department's consultation process, including the lack of regulatory impact assessment process. You have probably seen the department's response. In its response the government advised that it undertook a summary impact analysis statement for this bill. In your view, why did that not contain sufficient consultation?

Ms Hayter: I had the pleasure of reading that. As I think has been raised by a couple of other speakers here today, it was far from detailed. Maybe it was more detailed, but that is not the version that was available on the website and to the rest of the community in Queensland. A document that simply states, 'These are the changes', 'They're okay', 'These are the changes', 'No problem, we're not changing our approach,' is probably less than fulsome. You can see the issues that have been raised by submitters. It just felt underdone and it did not seem a suitable replacement for a full assessment.

CHAIR: Your submission states that the bill's proposal for an offence of breach of the GED will have retrospective detrimental effects on EA holders and as such it offends fundamental legislative principles. Can you elaborate on that?

Ms Hayter: Again, I think this has been a recurring theme. By the time you get to the last one, you feel that you are always saying, 'What they said earlier.' Retrospectivity is not in keeping with FLP. It is definitely to do with: if you have an approval, the way the legislation is drafted indicates that is not sufficient. The use of the word 'purportedly' actually really gets up my nose as well, because it seems to suggest that companies somehow have been misleading in the conditions they have been operating under and have been approved by the government.

CHAIR: I am going to check with the member for Mirani now before we close.

Ms Hayter: Surely he want to ask about offsets.

CHAIR: Let's see. Member for Mirani, are you there?

Mr ANDREW: Yes, I am, Chair.

CHAIR: Do you have any questions?

Mr ANDREW: I have none at this very present time.

Ms Hayter: We are seeing you tomorrow?

Mr ANDREW: You will see me tomorrow.

Ms Hayter: Excellent. You are saving them all up.

CHAIR: If there are no further questions from us, I want to thank you both for being here. Thank you for waiting patiently. Thank you for your submission and your contribution today. I declare the hearing closed.

The committee adjourned at 12.54 pm.