HEALTH AND ENVIRONMENT COMMITTEE

Members present:
Mr AD Harper MP—Chair
Mr R Molhoek MP
Mr SSJ Andrew MP
Ms AB King MP
Ms JE Pease MP

Staff present:
Ms R Easten—Committee Secretary
Ms R Duncan—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 7 NOVEMBER 2022

Brisbane

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The committee met at 9.44 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Environmental Protection and Other Legislation Amendment Bill 2022. I am Aaron Harper, the member for Thuringowa and chair of the committee. I would like to respectfully acknowledge 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 people, whose lands, winds and waters we all share.

With me here today are: Rob Molhoek, the member for Southport and deputy chair; Stephen Andrew, the member for Mirani; Joan Pease, the member for Lytton, who will join us shortly; and Ali King, the member for Pumicestone. Samuel O'Connor, the member for Bonney, will be joining us later today. This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

I also remind members of the public that they may be excluded from the hearing at the discretion of the committee. I welcome those in the public gallery observing today. I am sure we will not have to enact that rule. These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings. Please turn off your mobiles phones or put them onto silent mode.

HOOPER, Ms Kim, Executive Officer, Australian Prawn Farmers Association

RUSCOE, Ms Jo-Anne, Chief Executive Officer, Australian Barramundi Farmers Association

CHAIR: Welcome. Thank you very much for your submissions. Would you like to make an opening statement before we go to questions? You have obviously raised some issues in your submissions.

Ms Hooper: Yes, please. The Australian Prawn Farm Association, APFA, is the peak industry body for the Australian prawn farming industry, with 95 per cent of farms located in Queensland. In 2021 our industry value was $160 million. Global aquaculture production of aquatic animals has grown significantly over the past two decades to contribute 46 per cent of the world's total seafood production. Consistent with global trends, annual aquaculture production in Australia has more than trebled over the last 20 years, with wild caught fisheries declining in production volumes.

Aquaculture increased to 51 per cent in value of Australia's fisheries production in 2019-20. Queensland's aquaculture industry has been enjoying very strong rates of growth. Its share of the gross value of fisheries production has increased 40 per cent to 55 per cent over the past six years. Prawns and barramundi dominate the Queensland aquaculture sector, with prawns accounting for 76 per cent of total value of $147 million and 67 per cent of total production. I will hand over to Jo.

Ms Ruscoe: Last year Queensland's barramundi production increased by 19.7 per cent and we are forecasting the sector to be worth over $60 million by the end of the current year. It would be worth noting that we are also an extremely efficient sector. We estimate that the land area for barramundi farming in Queensland is less than 100 hectares. Our members rely on a clean and healthy environment for their operations. We support appropriate regulation to protect the environment and to support sustainable development.

CHAIR: In my electorate of Thuringowa I have some barramundi ponds. I am always keen to go down there. We also have a recreational area where you can catch barramundi. That is one thing I enjoy. Ms Hooper, from a prawn farmer's perspective, you say in your submission that the bill shifts aquaculture and prawn farming away from encouraging continuous improvement by working towards a load-based system. Can you unpack that a little for us?

Ms Hooper: Thank you for opportunity to unpack that a bit further. The Australian prawn farming industry has about $1 million a year in R&D. There is a compulsory levy on our farms and it is matched by the FRDC. Obviously R&D is very important, and with that money we undertake a number of trials each year and look at a lot of technology for different uses. At the moment we are looking at electrocoagulation. We are working with the department of agriculture in relation to a call-out for challenge. These are trying to specifically address nutrient load issues.

The receiving environment is very important to aquaculture, and specifically to prawn farming, as the water that goes out into the receiving environment does need to come back onto our farms. We are one of the most heavily regulated industries in Australia, which we are very proud of. We work very hard to make sure that the receiving environment and the environment around prawn farms remains pristine in order for us to grow healthy prawns.

Some elements of this bill may lead to the limiting of scale or impact on being able to run these different types of trials while we look at how it is that we can mitigate even further the requests by the department in relation to nutrient. As a specific example, at the moment we are being asked to make sure we have nil nutrient load that goes out with any expansion. The algae that goes out into the receiving environment is biodiverse friendly. It is not something we want to get rid of; otherwise, we are going to upset that receiving environment.

Elements of this bill will actually impact on being able to undertake these types of innovative trials, looking at the technology side of things and being able to implement those. It is a concern that the potential change to these licences will affect us in terms of making smart farming choices.

Mr MOLHOEK: I was interested in some of the comments in your submission around the potential removal of due process. You talk about retrospectively changing the approval or the authority to undertake certain actions. Can you give some examples of what that would look like?

Ms Ruscoe: In answering technical questions, I want to stress that the time lines and the confidentiality constraints have meant that I have been restricted, in both time and capacity, to effectively consult with members or legal. The ABFA was only alerted to the bill on 27 June—and not by the department; it was actually the prawn farmers who advised us. I feel like I have an answer prepared to your question, but if I get something wrong please note that I have been constrained.

We do feel that the understanding of aquaculture within DES is not high. That is not to cast aspersions on any officer within the department. The understanding is not high and the experiences of some of our members suggest that the decision-making within DES is not always objective and that the default position is a negative response towards aquaculture. That is setting the scene.

While some of the provisions that were in the first exposure draft of the bill have been removed—for example, explicit prescription of intensity or yield limits—we were made very nervous about the policy direction being pursued. We feel that there are still opportunities within the bill for the department to have an overreach in terms of its on-farm regulation and the removal of a transparent and fair process of appeal. I will give you some examples of that.

I want to talk about the potential for retrospective change. For agriculture producers who operate under EAs, say a farm reported a breach in discharge limits—possibly due to a big rain event—the department can use this to amend the conditions of the farm's EA. In effect, it can retrospectively change the EA. Another example would be if an aquaculture producer initiated an administrative change—for example, they elected to grow an additional species, whilst still having no material change in discharge according to their approvals. With this bill the department can subjectively and arbitrarily determine what is indeed a material change and can compel you to comprehensively modify your EA and introduce new conditions as a result, and without a transparent appeals process beyond a court appeal.

Mr MOLHOEK: In looking at the legislation, is it an overreach to suggest that they would want to do that and that they have perhaps put provisions in for some unforeseen situation or do you feel it is a bit more deliberate than that?

Ms Ruscoe: I will hand to Kim for an example, but I reiterate that the first exposure draft was extremely concerning. It talked about control of yields. That is akin to telling a banana farmer how much they can produce as a crop. We feel like the understanding is not there. We have significant concerns about the direction that this bill takes the policy framework.

Ms Hooper: As an example, back in 2009, 2010 and 2011 there were a number of changes to prawn farming licences that used to be estuary marine organisms that were then amended to crustacean only. This has resulted in a segregation of the industry. Also, to on-sale the farm, the impact now is: if you are going to do finfish you would need to do another EA. That type of impact did occur and is impacting our prawn farms right now.

The changes that are being looked at here—giving that discretionary power to the department—will result in the same outcome in that they can, at their discretion, change the licence conditions, as my colleague Jo has said. For example, if there was a flood event and it was deemed a breach, those licence conditions can then be amended. Then we come down to the ability of the department to put that on yield or intensity. It should not matter what happens on-farm; it is about what comes out of farm. That is where the jurisdiction should be and not whether we have five ponds or whether we have 500 ponds.

Ms Ruscoe: I note that the department has responded to some of the points raised in our submission, but I contend that those concerns around the retrospective changes and early termination of development applications remain. If we want to talk about the response from the department that aquaculture is not subject to an environmental impact statement, I point out that for new agriculture projects a very similar, if not identical, process to an EIS is undertaken in order to get the environmental authority. As I have mentioned, the bill indicates a policy shift within DES that concerns us with regard the overreach, subjective decision-making and the removal of the minister's review of refusal.

Mr ANDREW: In terms of consultation with the industry, was it intense? Was there a lot of it so that you could thrash that out and come to some understanding? It was my understanding that the push is towards farming rather than live caught and that is why they are winding down one side and bringing up the other—the offset is there. Was there heaps of consultation involved in this or was it basically delivered as, 'This is where we're going'? It does not sound like there is anything advantageous for the farmers to go on with if they keep getting hamstrung by all the different laws?

Ms Ruscoe: With regard to consultation, as I said, Kim alerted me on 27 June this year to the bill and I immediately asked to see a copy of the exposure bill. It was under a confidentiality arrangement that it was forwarded to me so I had, I think, a maximum of two weeks to provide a submission on that exposure bill and was hamstrung in terms of any consultation or being able to secure any legal advice. Again, the time frames from the tabling of this bill until the close of submissions was two weeks. I feel that that has really stretched my capacity. We are a lean industry association. I think the consultation, certainly for the barramundi farmers, has been inadequate.

Mr ANDREW: Would you consider that this should be extended—that the government should look deeper into understanding the farmers' position and how this will impact them over time—rather than just putting it in and hoping they will get whatever outcome they seem to be searching for?

Ms Ruscoe: Without a regulatory impact statement it is very difficult for us to be able to consider what these implications are, particularly as we have not had the opportunity to get advice ourselves.

CHAIR: I note that in both submissions you said that 98 per cent of prawn farming in Australia is in Queensland and around 50 per cent of barra farms. How many producers do we have in Queensland in terms of barra?

Ms Ruscoe: There are a number of licences, and a lot of those licence holders are very small producers or are not actually producers so they are not members of the association. I think we probably have eight sites at the moment in Queensland farming that are members of ours.

Ms PEASE: Thank you very much for coming in today and thank you for the great work that you do in providing all the lovely seafood for everyone. Everyone will be looking forward to the lovely fresh prawns and barramundi for Christmas. I acknowledge all of your members and their hard work. You both mentioned in your submission the impact that this bill will have on sovereign security. I am wondering if you could unpack that a little bit more for me, please, and explain to me what it is that you mean by that.

Ms Ruscoe: In terms of the impact on some of our members who are seeking expansion and new development, their experience has been that it is slow and sometimes it is seen that the immediate response is to say no if they do not understand. It is extremely risk averse. With the opportunity for retrospective changes and no transparent appeals process that this bill invokes, business confidence is certainly reduced. If you are looking to secure investment for new development, as has been raised in submissions by other sectors outside of aquaculture, there are probably easier states to do business in.

Ms Hooper: As a specific example, I have a farm that is in the Bundaberg area, a medium-sized prawn farm, that was encouraged by the department to have a more streamlined licence to make it a bit more contemporary and no major changes in relation to that, but after going through it with two different consultants with the department he has actually gone fallow for this season because he cannot meet what needs to be done at this point. That has severely impacted a medium-sized business as a true example.

As Jo mentioned, it does put a lot of concern in relation to any business confidence in any future investment into prawn farming. Another example would be that there is a restriction on transfer rights. Someone may be looking at a prawn farm, but they may have had an exemption for a particular way and that may not carry through to the new owner. It does make it very difficult to encourage investment in the prawn farming industry at this point.

Ms KING: Thank you very much, both of you, for being here. I know that in my electorate there is quite a lot of research which goes into aquaculture which is something I am very interested to see. I want to congratulate your industry members on their continuing and growing success in the sector. I am interested in this issue of transfer rights between, say, barramundi and prawn farming on occasion. Can you talk us through what some of the differences in environmental impacts might be between, say, finfish and crustacean farming?

Ms Hooper: Negligible.

Ms KING: What about in terms of disease exposure issues? Correct me if I am wrong, but I imagine that is top of mind at this time, particularly for the prawn industry given the white spot outbreaks.

Ms Hooper: Both barramundi and prawn farmers have biosecurity plans. They are very strict plans. They would be roughly similar in relation to those risks.

Ms Ruscoe: The nature of the discharge is the same. It is the same nutrients that are going out. To be able to have an overreach to completely change an environmental authority to restrict—you might make a business decision based on market forces, and to be prevented from doing that and really constrained in what you can potentially grow, the intensity that you can operate at—those things stymie investment. They certainly stymie innovation. That is a big concern. That is an overreach, we believe.

Ms Hooper: Our industries do not use pesticides or herbicides or anything like that that some other agriculture sectors do use.

Ms Ruscoe: With our barramundi farms, 50 per cent of their land use is put towards wetland remediation.

Ms KING: The nutrification concerns that might be had, rightly or wrongly, are about the nutrient-rich discharge water. Is it the case that nutrient builds up in the pond waters over a period of time?

Ms Ruscoe: Just to clarify, one of the issues we have in treatment of water is that it is actually a high volume of water and a low concentration of nutrients. The technologies that are employed in other industries, like maybe sewage treatment plants or something like that, to remove these nutrients—it is extremely inefficient to use that. CSIRO research over many years has demonstrated no impact on the reef at all. The assimilation capacity of the receiving environments is high. Did you want to add anything else?

Ms Hooper: Just to expand a little, for example, seawater will come in onto a farm. It is normally full of sediment. It is part of the farm's job that, as the water goes back out, it goes through settlement ponds and it actually drops that sediment. The water going out has less sediment than when it came in in the first place. That is part of what we do. If algae goes out there it is actually binding up a lot. There was a question that I have had from one of my members, because we are also looking at removing carbon. We could have a look and see if algae or biomass harvesting is also going to assist us in removing carbon because it binds the carbon. As an overlay with it, the water that is coming in may be full of sediment but, the way that it goes through the different farms, a lot of that sediment is dropped down and does not go back out into the receiving environment so it is actually filtering it.

CHAIR: To take you back to that case in point you were talking about—that farmer in the previous question—was the burden regulatory? What was the cause of that particular farmer not being able to continue?

Ms Hooper: The licence conditions have been changed, going through this procedure of streamlining the licence and making it more contemporary, to bring it up to different nutrient release standards. The way that farm is structured has made it very difficult to be able to meet the new one that is being proposed so he has had to go fallow. That is apart from the stress. He was crying to me—and he is not someone you would normally have do that, but I guess it was a build-up of what they have been working on for over the last two years. He just made the business decision to go fallow, to look at both the electrocoagulation that we are working on at the moment and whether there is another way—if he can do longer settlement ponds or something else—to try to meet it. We do hope that he will come back into production. There is on-farm infrastructure that he is working on at the moment as a business decision to enable him to get the licence or change that licence.

Ms Ruscoe: Kim makes a good point there. Both of our sectors have been investing heavily in terms of making sure that our environmental footprint is minimalised. Any industry is going to have some impact, but we are extremely regulated. We are very appreciative of the fact that we operate in some of the most pristine and valuable parts of the world and so we invest in research. We are not trying to be at all recalcitrant or ignoring the fact that there is room to move and improve, and we are happy to and work willingly with the department and the science branch on that.

CHAIR: I think that is a good way to end your contribution. I thank you both for your representation of your members and for being here today.

DUNN, Mr Matt, General Manager, Advocacy, Queensland Law Society

THOMSON, Ms Kara, President, Queensland Law Society

VICKERY, Mr Phil, Member, Corporations Law Committee, Queensland Law Society

CHAIR: Welcome. Thank you very much for being here today. Thank you for your submission. Would you like to start with an opening statement?

Ms Thomson: I would like to thank the committee for inviting the Queensland Law Society to appear today in respect of the Environmental Protection and Other Legislation Amendment Bill 2002. In opening, I would like to respectfully acknowledge and recognise the traditional owners of the land on which this meeting is taking place here in Meanjin, home of the Turrbal and Jagera nations, and pay our respects to all elders past, present and emerging. The Queensland Law Society is the peak professional body for the state's legal practitioners and we have over 14,000 that we represent, educate and support. We are an independent, apolitical representative body upon which government and parliament can rely to provide advice when needed which promotes good, evidence-based law and policy.

The bill includes extensive amendments to a range of legislation; however, the Queensland Law Society appears today to discuss one aspect of the bill only. We are concerned about the significant consequences of the proposed amendments to executive officer liability in section 493. The Law Society acknowledges the impetus for the proposed amendments; however, we do not support the amendments as they are currently drafted.

The amended section 493 would substantially extend liability to historical acts or omissions taken by a broad group of individuals without regard to the knowledge of the former executive officer at the time of the decision or potential intervening events beyond the influence of the former executive officer. We consider that the potential defences provided under section 493(4) are an inadequate mechanism to overcome these concerns. Any enforcement regime must be fair and balanced, as well as be clear and unambiguous in its application. We are of the view the proposed amendments to these executive officer liability provisions are not consistent with these principles. In our written submission we have also highlighted other concerning consequences of these amendments, such as insurance implications.

If this amendment is passed in its current form, an executive officer will remain indefinitely liable for historical acts or omissions until a contravention of the act crystallises. Moreover, the amendments could render historical acts or omissions of the executive officers uninsurable or, alternatively, prohibitively expensive when obtaining director and officer run-off liability insurance. Such an outcome is likely unintended. However, this far-reaching liability provision will have a chilling effect on the willingness of qualified and capable people to accept senior positions in corporations likely to be affected by these extended liability provisions. This would be a disappointing outcome as environmental harm is best avoided by having experienced and committed people in these senior positions.

I am joined today by Phil Vickery, member of the Law Council and Law Society Corporations Law Committee; and Matt Dunn, the Law Society's General Manager of Advocacy, Guidance and Governance. Both are happy to answer specific questions the committee may have today.

CHAIR: Thank you very much. It was an interesting opening contribution, with the words 'clear and unambiguous'. If I read this, the effect of the proposed amendment is to extend executive officer liability to an executive officer who is a former executive officer when the offence is committed but who was an executive officer when the earlier act or omission that caused the offence to be committed occurred. For me, that is about as clear as mud. How do we make that a little clearer? Who would like to unpack that?

Mr Vickery: I would be happy to address that. I am a member of the Corporations Law Committee and a partner practising corporate law. I do think it would be prudent to reflect further and undertake further consultation on the appropriate structure of liability for former officers. If we think about the vast majority of legislation which imposes liability on executive officers and the Corporations Act and so forth, it is somewhat of a novel concept to impose liability on former officers. Therefore, I think it is prudent to reflect carefully on particularly the causation elements in thinking about who ought to be liable in what circumstances, given there might be circumstances where liability has occurred some years prior—many years prior—and the breadth of the legislation, on its face, is quite significant.

Mr Dunn: In terms of the current drafting, it is a little bit of a blunt instrument because of this complexity of trying to deal with finding the balance of former executive officer liability in these important circumstances. We are by no means suggesting that people should be committing environmental harm, and when they are they should be brought to account. The difficulty in this circumstance is that it takes the approach of saying, 'Well, everyone's liable unless they can prove their innocence,' because that is the easiest way to achieve the outcome. The department will then decide who to prosecute and who not to prosecute using their discretion, and I am sure the department will do a good job at that.

From a legal perspective, simply casting the liability net to every executive officer of a corporation, potentially since the formation of that company, lacks that relevant connection. It needs to be brought together so that it is the people who contributed directly to the actual acts that caused the offence who are the ones held liable. That is probably something that we could do with a little bit more consultation on and something that could be refined a little bit more.

The process up to this point has been a little bit rushed, from our perspective. We have only been very marginally involved up to this point and we have not seen the rest of the bill, other than the provision we are talking about, so it is difficult to speak more broadly than that. I think there is an opportunity to get this right but it is going to need a little bit more engagement and a little bit more working through exactly how to take this quite novel concept of former executive officer liability and make it work. It needs to be refined so that people can know when they will be on the hook and when they will not be on the hook and how that liability will work. That is especially so that officers, as Phil said, can get run-off insurance cover so they can necessarily insure.

We can also deal with some of those issues we raised in our submission. One issue is when there has been quite a significant period of time from when decisions were taken to when those decisions were actually enacted. Alternatively, there may have been a change of information or knowledge about a particular state of affairs. The directors or officers made decisions at an earlier point in time on one state of knowledge and then extra knowledge has become known. Had they known that at the time, they may not have made those decisions, but those decisions had already been made and rolled out and so the liability may change.

There is the defence provision that they had no power to influence the company or that they reasonably complied with the act. They are good defences, but they are really considered in the context of someone who is currently in the job. They are not really well suited to somebody who was in the job some time ago and may, for example, now have significant difficulty in accessing records and information of the company to prove their innocence. That is a bit of a complex task. How they would then go about getting this information from a company in order to prove their innocence is very costly and very difficult, especially if they are not just targeting the people who really caused the environmental harm to be brought about. That is a very costly thing for a former director or executive officer to be put to in order to prove their innocence, or they may just not be able to find that evidence to prove their innocence in which case they will likely be deemed convicted of the offence. I think we can get there, but it is going to require a bit more work.

Mr MOLHOEK: How do the provisions in this proposed legislation differ from, say, normal defence provisions under ASIC for directors of companies or in respect of past taxation issues or any matters generally that would impact past directors or executive officers?

Mr Vickery: In general, the approach taken in the law across the board—and obviously there are lots of different laws—is to focus on the liability of current directors and officers rather than seek to apportion responsibility to former officers. That means we are in somewhat of a novel situation where we are looking to impose liability on former directors. It is quite well accepted that if you do not comply with your duties during a time you are in office you ought to be liable for that, but this is somewhat of a different scenario.

The application of the defences that exist in the Queensland legislation to a former officer is unclear. I understand there have been a number of submissions around this, but how they would apply in practice is somewhat unclear. That has a number of implications—and we talked about insurance in particular, because a number of directors that maintain insurance do not necessarily maintain it for an indefinite period; they might maintain it for a period of time after they are in office. In this situation it would be unusual for them to have to consider whether they might have ongoing exposure beyond a certain customary period after being in office.

The current provisions that we see in most legislation do not really contemplate defences for this scenario. For instance, what can you reasonably do to prevent an offence if you are no longer an officer or a director? What could you reasonably expect those who have come after you to do? What can you reasonably expect them to have done to prevent the offence? These things are very unclear and it creates a lot of uncertainty.

Ms KING: Thank you all for being here and for your very considered comments on the legislation that is before us. I ask this question knowing that your role is to reflect on the specific legal provisions before you. To grapple with this issue in a broader, perhaps more philosophical way, would you agree that it is perhaps the case that some of the significant environmental harms we have seen globally over the last generation have come about precisely because former executive officers have not been required to be responsible for those harms? I think about very significant global events—oil spills and the like—where the fact that people do not continue to hold responsibility for the decisions they made while an executive officer has perhaps been an active part of the eventual environmental harm that has ensued. I would love to have your comments on that.

Mr Dunn: Thanks very much for the question. It is an excellent question in the circumstances. It is certainly not our position that former executive officers cannot and should never be held responsible for egregious occurrences of environmental harm. That is certainly not a perspective that we would entertain. What we are speaking to, though, are some fundamental principles of the legal system that we are dealing with. We would propose that people who have contributed to the causing of offences are the ones who should be held liable; they are the ones who should be necessarily caught by the scope of the provision. We are saying that the current drafting of the provision achieves that, but it achieves a whole lot of other things as well in order to try to do that. We think we can do better in terms of narrowing it.

As Phil said, this is a very novel, very new but in some circumstances quite potentially appropriate policy objective. The devil is always in the detail, and the hardest part of this job is getting that good policy objective and actually achieving it in good legislation without a whole host of unintended consequences. What we are saying in this circumstance is that the unintended consequences are just a little too big, there are too many of them and it is a little too uncertain and a little too woolly. There is a need to come back and do quite a bit more work in the circumstances and also to understand how the existing chain-of-responsibility provisions could play a role in this particular circumstance without necessarily just attacking this particular provision.

We have a lot more work to do. The explanatory notes talk about the COAG governance principles, and there is quite a lot of work in that. There is a lot of balancing of individual factors required. It is a little bit more complicated than perhaps the explanatory notes might have you believe, but there is a process in those principles, which are really golden principles, to work through. There is some complexity in terms of balancing and considering what resources are available to former officers, what evidence they should be able to achieve, what evidence they should be able to attain and who is best placed to provide that evidence.

This is the issue we are dealing with here. I agree with your point furiously: we would say that people who are bringing on significant elements of environmental harm are people who should be held to account. What we might need to do is quite a bit more work on figuring out how to do this in this very novel and interesting context where no-one else has really managed to get this down and get it done in a way that is appropriate and right. It perhaps just needs a bit more work.

Ms KING: It is an interesting balancing act, as you note, between traditional structures of corporate responsibility and the kind of emerging global environment and landscape around environmental harm. Thank you for your comments.

Mr ANDREW: As the law stands now, if acts and laws change, would these officers be captured again because of the retrospective aspect? If we changed laws to reach other goals in terms of emission standards, could the retrospective aspect of this law capture those officers for what they did in the past? I am trying to work that out. Do you see what I am coming at?

Mr Vickery: I will have a go at addressing your concern. There is some concern around the retrospective aspect of this. As of today, it is probably the case that it would be difficult to prosecute a former officer for an offence under this legislation. This would mean it is now clear that they can be prosecuted. However, the points that we have raised are that the breadth of that liability is what is of concern because, on the face of the legislation, every officer within that broad definition back to basically the inception of the company is facing exposure. There would be defences, but the defences for former officers are not particularly clear, are untested and are not used in other areas of the law, creating uncertainty.

That is why we raise issues like insurance. One of the things a director—or an officer potentially—would look to do is seek some form of insurance cover. That is why we think, for instance, there should be more consultation with the insurance industry around this, because of that retrospective impact. Some directors, for example, who may have maintained cover may have let it

lapse under an assumption they would no longer be exposed. That might need to be reviewed as a result of this, so we think some of those implications ought to be considered further as part of further consultation.

CHAIR: I think your points today have been well articulated. I thank the representatives of the Law Society.

Proceedings suspended from 10.30 am to 10.51 am.

GUERIN, Mr Michael, Chief Executive Officer, AgForce Queensland

VITELLI, Ms Marie, Senior Policy Officer, AgForce Queensland

CHAIR: Welcome. Thank you for being here. I invite you to make an opening statement.

Mr Guerin: Good morning. My name is Michael Guerin. I am the CEO of AgForce. Beside me is Marie Vitelli, Senior Policy Officer at AgForce, responsible for the work we will talk about briefly today. Thank you to the committee for giving us the time to make an opening statement this morning and to appear before you. AgForce is a state farming organisation, representing over 6,500 farmers and agricultural businesses across Queensland in the beef cattle, sheep, goats, broadacre crops and sugarcane sectors.

Farmers are caring stewards of land, water, animals and crops and produce food and fibre. This year AgForce has launched the AgCarE program to enable farmers to assess and evaluate the condition of their natural capital. Natural capital is defined as the world's stock of geology, soil, air, water and all living things which combine to provide ecosystem services. Suitable for all properties, AgCarE identifies options for carbon abatement, drought mitigation, improved biodiversity, sustainable long-term landscape management and business resilience. AgCarE builds social trust in farmers. Without that social trust, community and governments lean towards increased regulation.

Today we are here to discuss proposed amendments to four regulatory acts including the complex and lengthy 784-page Environmental Protection Act 1994. Even the 126-page amendment bill is lengthy and complex. AgForce, however, welcomes the opportunity to discuss sections of the EPOLA Bill 2022, which can affect farmers. One very positive outcome from the EPOLA Bill is clause 111, which allows personal names and location to be excluded from the environmental authority public register if personal safety is at risk. A few years ago we saw a series of farm invasions by activists who were campaigning against feedlots and intensive livestock facilities. Farm invasions threatened farming families and their workers, damaged equipment and machinery and caused major biosecurity breaches and animal welfare concerns.

Since 1 June 2021, farmers wanting to develop or expand cropping or horticulture areas require an environmental authority and their details to be included in the public register. AgForce previously advocated for farmer personal details and locations not to be included on the public register. We do not want farmers at risk of invasion, biosecurity risk and machinery tampering or animal welfare issues by activists campaigning against agricultural footprints. The EPOLA Bill has included an option for environmental authority applicants to withhold their information from the public register which, in our view, is a very positive and welcomed amendment.

Our AgForce submission suggests further regulatory impact information is required before endorsing the amendment to the Land Title Act 1994. Clause 127 of the EPOLA Bill requires land subdivision applications in the Wet Tropics World Heritage area to obtain consent from the Wet Tropics Management Authority. Additional residential blocks will be required as many coastal urban communities expand. Adjacent landowners, which often is farmed land, should be entitled to the same sustainable subdivision planning policy rules as elsewhere across the state. The proposed amendment potentially affects 2,500 properties, neighbouring or part of the Wet Tropics World Heritage area.

Thank you again for the chance to present today. We welcome any questions from the Health and Environment Committee on the EPOLA Bill and thank the committee and the secretariat for the opportunity to appear at the public hearing today.

Mr MOLHOEK: Thank you for joining us today. Perhaps to pick up on the issue you finished on—that is, the request for an EIS because of the impact on some 2,500 properties—why are you calling for that? What is the benefit of that? What do you hope to achieve by having that?

Mr Guerin: There are a couple of things from me and I will hand to Marie as well for follow-up. Firstly, it is consistency of rules across urban and rural land, so a consistency of rules and regulations and approaches to considering subdivision and development. Secondly, it is recognising, which we do through AgCarE, the enormously strong role producers play in looking after environments and landscapes and having that correctly recognised within that work. The regulatory impact statement and the further work will identify and pull those things forward properly, in our view, and it is an important piece in finalising the EPOLA Bill.

Ms Vitelli: Because in the Wet Tropics area there are a lot of properties adjoining the World Heritage area, there is a concern that there will be diminished rights for land tenure for that area when requiring the Wet Tropics Management Authority to sign off on subdivision. There are some properties that elected to go into the World Heritage area when it was first declared—others not. As we know,

there are a lot of lovely coastal communities up and down the coast. The only way they can really expand is into land westward of the ocean. Those landholders now need rights to be able to subdivide that land to provide some more living areas for those urban communities or coastal communities. We are just not sure what impact the requirements of the Wet Tropics Management Authority will have on the subdivisional areas. We just want a lot more work done and a lot more consultations with those properties affected. The feedback to date is erosion of land tenure rights—a kind of stealth of taking some rights away from some of those landholders in that area. Subdivision should be included in that State Planning Policy and the rules apply across the state.

Mr MOLHOEK: What is the actual benefit of a regulatory impact statement? Is it just about creating a benchmark or a line?

Mr Guerin: The foundational request from us is that the same rules apply to all—so whether you own a small urban plot or a rural plot, you run by the same rules which recognise and provide relevant protection around an environment, landholder rights et cetera. The piece of work you talk about can flesh that out and understand why there is a need to differentiate, if there is or if there is not—to acknowledge that and to bring it back into alignment.

Ms Vitelli: Further to that, this final EPOLA Bill has had quite a short time for public submissions. It is a very lengthy amendment bill. To our knowledge, the producers we have consulted with—and there are other landholders, not just producers—are not aware of that change to the Land Act. I do not know if there has been much consultation with some of these affected communities in that area. At this stage, with the short time for submissions, we have not had time to get strong feedback from people. I think just hold off and do due process, consultation and awareness for some of those affected properties across the Wet Tropics World Heritage Area.

Ms PEASE: I thank you for coming in today and for the great work that you do for your members, and I acknowledge their great stewardship of the land they look after. I appreciate all of the work of your members and also your great advocacy. I am interested in talking about your concerns around clause 108, new section 506A, where it talks about the insertion of orders against persistent offenders. Could you please elaborate on your concerns on that matter?

Ms Vitelli: Yes. The maximum penalty for 'persistent offenders' as defined is, I think, above 1,500 penalty units. We can understand environmental harm; if someone persistently does damage to the environment, that is an issue. The environmentally relevant activity standards for agriculture—for grazing, cane and bananas—have requirements on farmers to keep records, to make sure they do not put excess nutrient on and to manage sediment. To make sure farmers abide by those standards, the maximum penalty is 1,665 penalty units. That is above the maximum penalty for a serious environmental offence, which is 1,500 penalty units.

There are many record-keeping requirements in relation to agricultural ERAs. For some people it is a struggle to keep the records. They are good farmers—they are doing the right thing by their land, crops and cattle—but, in terms of record keeping, sometimes we all slip up. If someone said, 'No, look, I just can't keep these records. I'm a good farmer,' but the compliance staff say, 'Well, you're always not keeping your records. You're in breach of your agricultural ERA standard,' you can initially be given a penalty infringement notice. If a farmer says, 'Look, I can't. I won't. For some reason I cannot do these records'—they are quite complex; we have different nationalities out there with different English writing skills—the department can take them to court and say, 'You're in breach. You are a serious persistent offender.'

We believe it is not the right of courts to say that just because you are not keeping your records you are 'persistent'. They could be provided an order and have to stop farming. You cannot take away people's rights like that. It is record keeping. Okay, they have to keep their fertiliser and sediment under a certain threshold, but we feel that the courts having an ability to take away a farmer's right to farm because they are in breach of agricultural ERA standards is too far. We would like to see agricultural ERA standards exempted from that clause whereby the court can order someone to stop carrying out their activity. Sorry, I speak from the heart.

Ms PEASE: Can you elaborate on that a little bit more? I understand that canegrowers and banana growers have to complete the paperwork with regard to their fertiliser, nutrient run-off et cetera. Are these the same people that you want excluded from the agricultural requirements?

Ms Vitelli: No. That is their agriculture. They have to keep those records. If the records are not complete, a Department of Environment and Science compliance officer can say, 'Those records aren't complete. You haven't put the date on which you wrote your records. You haven't put down the amount of fertiliser you have put on' or 'You haven't put down the type of fertiliser or the amount of nitrogen and phosphorus.' If it is not a complete record, that is still seen as incomplete and it is

basically a penalty. It has been a lot better now, but it is more a learning curve. The compliance officer will say, 'Well, that's not quite complete. I'll come back in six months and you must have all these columns of information. You must allocate how much nitrogen and phosphorus you've got on.' That is what we are saying: those incomplete records could be seen to be persistent offending.

We all get a bit agitated when we are faced with compliance sometimes. When you are working day and night, seven days a week, and your records are not quite complete to a compliance officer's requirements and they say, 'That's not quite good enough,' sometimes you think, 'Well, I'm not going do that.' There are characters out there who sometimes can express their disappointment. That is what we are saying: they are still doing their agricultural ERA standards, but we do not want them considered a persistent offender if they do not have complete records.

Ms PEASE: Thank you very much. I do acknowledge the great work that those farmers are already doing.

Mr MOLHOEK: We had a very similar issue raised during the review of the reef regulation bill. It might be helpful to have the department provide us with a schedule of the penalties. If my recollection is correct, basically you could go and pour drums of toxic chemical into the Brisbane River and get fined $13,000 but if you overfertilised you could be fined $130,000 or $200,000. I think it would be helpful just to seek a bit of clarification around that from the department.

CHAIR: The department is back in later today.

Mr ANDREW: Are you aware of exactly how much land was cleared for renewable energy in Queensland between 2017 and 2022?

Mr Guerin: I would have to take that on notice. It is significant.

Mr ANDREW: I will say this, because some of this is in my electorate. It is actually on the hills in the catchment that feeds into the farms—

CHAIR: While I appreciate the member's enthusiasm, this is not relevant to the bill. I am going to rule that question of order. I will go to the member for Pumicestone for a question. If you have another question, member for Mirani, we will come back to that.

Ms KING: Thank you for being here today, for the work that you do and for the really considered responses that you have put on various aspects of the bill. I am interested to hear more about your comments around clause 111. I wanted to ask you to unpack that a bit for us. Is it the case that the disclosure of locations and names on the register previously is thought to have been a contributing factor to the farm invasions that occurred?

Mr Guerin: Absolutely. We have a lot of evidence that we can provide if required. It is a little bit like any of us who own or rent a property to live in: it is their personal home, and they often have young children running around. That is putting aside animal welfare and biosecurity risk outcomes. To have that form of information available to those who break the law and put all that at risk, if not necessary, is something that we think should be avoided. The evidence from the farm invasions reinforced that. It is a real concern of ours. Without overdoing it, we had a couple of farm invasions where young children were traumatised by what went on. The information the activists got, to understand where to go, came from public registers. We are pleading for those public registers to be filled with only what is really required and to take some of that out and protect privacy.

Ms KING: Did you provide that feedback, or your members' feedback, to the government that has led to those proposed amendments?

Mr Guerin: Yes, we have.

CHAIR: Member for Mirani, I will allow you to ask another question that is relevant.

Mr ANDREW: In your statement and when you came forward, you said that everyone should be treated equally. There could be run-off from other situations within Queensland that is happening at the moment that could affect farmers. Do you think the government has taken into consideration that this could create larger and higher particulate run-off situations and that people could be chastised? There are 9,600 hectares being cleared, and it is on the top of the mountains. Can it have an effect without those people understanding that it is affecting them? This is what I am trying to get at. Do you think the government has taken that into consideration?

Mr Guerin: One of the very broad concerns we have—partly related to this and partly related to other pieces of legislation—is getting to the bottom of using science to understand the baseline. To your question and to provide an example of that, you have DIN—dissolved inorganic nitrogen—from natural sources that flows to rainforests or cleared areas on to the top of a farm, and then you have DIN that runs off the bottom end and into the rivers. What we have modelled is what is coming

off the bottom end of the farm. What we have not modelled or measured—and it is quite simple to measure—is what comes in at the top end, so we do not know what is coming from other activities. We do not know what is coming from other sources, natural or otherwise, but the farmer is being penalised or acknowledged for what is running off the bottom without any understanding of what is coming in at the top. That is the piece that is missing across these pieces and other pieces—that fact-based foundation to thinking about where we need to legislate to protect the environment even better than we are at the moment.

CHAIR: I thank both, Mr Guerin and Ms Vitelli, for being here today on behalf of AgForce. Our time has concluded with your good selves.

HAYTER, Ms Frances, Policy Director, Environment, Queensland Resources Council

MACFARLANE, Mr Ian, Chief Executive, Queensland Resources Council

CHAIR: Good morning. Would you like to start with an opening statement, after which we will go to questions?

Mr Macfarlane: Thank you, Mr Chairman and committee. The Queensland Resources Council welcomes the opportunity to appear before the Health and Environment Committee on the Environment Protection and Other Legislation Amendment Bill 2022. Firstly, it is appreciated that several major amendments that had been proposed in the exposure drafts of the bill have been omitted from the version introduced to parliament following submissions from the QRC and other stakeholders expressing significant concerns about retrospectivity. QRC also welcomes a range of minor amendments included in the bill.

While there were issues with some aspects of the consultation process, as set out in our submission, overall it was pleasing that the Department of Environment and Science generally listened to the concerns of stakeholders, although the degree of urgency involved in the consultation process made this more difficult. We also note that the period given, of less than two weeks, to provide a submission on the introduced bill is inappropriate, particularly when compared to the reporting time frames of other bills introduced on the same day.

It would be remiss of us not to mention some of the unfortunate and confusing statements in the media about the consultation process overall including the use of confidentiality deeds, which are not accepted by the QRC as a leading-practice approach to consultation. QRC has set the record straight on these issues in our submission. The QRC did not raise the use of confidential deeds with the media, and I would ask that the committee note that. We only responded when asked, having been advised that others had provided the information. The QRC notes that both the concerns about stringent confidentiality and the latest rushed timing have been expressed by a wide range of organisations in their submissions.

The QRC submission sets out numerous problems that remain with the version of the bill introduced to parliament. Essentially, there are four remaining key issues of significant concern to the QRC and a list of more minor issues. The first is early refusal of projects without undertaking an assessment on the merits, in particular the criteria for the early refusal, which are too broad and make little sense as defined in the bill. While QRC would have no objection to the early refusal powers based on limited objective grounds, such as where the project would obviously be illegal under the law, this bill would allow early refusal for a range of absurdly vague reasons; for example, the definition of cultural heritage, such as that the project is considered to impact on an area of social or technological significance to the present generation or past and future generations.

The second point is the change to the threshold for public notification of environmental authority amendment applications. The QRC provides detailed reasons for why these amendments should be removed, but failing that there is a delay in their commencement for six months for assent pending a review of the existing major and minor amendment guidelines. We also ask that the retrospective element of the transitional provisions be removed from the bill.

The third point is the overriding of section 23, which currently gives priority emergency legislation in emergency situations while creating more green tape in those emergency situations, despite an appreciation of the well-meaning intent of this section. The fourth is an extension to executive officer liability without creating a corresponding extension to the available defences. With regard to this item, we commend the submission of the Queensland Law Society, who appeared before you earlier today. QRC also commends a number of other submissions that raise similar issues with the bill, including the Association of Mining and Exploration Companies, Australian Contaminated Land Consultants Association Queensland, and APPEA, who appear following us.

As a general comment, QRC believes that these key issues would not have remained in the version of the bill introduced to parliament if there had been a more thorough regulatory impact statement process, which would have examined the actual problems the department was trying to address, any data to support those concerns, the options to address those issues, and the relative impacts of each of these options on the industry, the community and government. It is noted that the explanatory notes state that all amendments have undergone regulatory impact analysis in accordance with the government's Guide to Better Regulation. Some of the amendments were deemed to fall within agency assessed exclusion categories.

With regard to early refusal, the Office of Best Practice Regulation surely cannot have been aware of the peculiar definition of 'area of cultural heritage significance'. The committee might consider referring a sample of industry's submissions on this issue to the OBPR and asking for their

advice as to whether there should have been a regulatory impact statement. If there had been a more thorough process—that is, the department was not enabled to exclude itself from the process and a less rushed time frame—some of the glaring problems with the bill may not have arisen. We understand the department's response to the submission that this exclusion was a decision of government—and DES is part of government but taking a finer definition—in which case, we would ask that the minister address the reasons for this in her second reading speech.

While we are talking about procedural issues and the importance of leading practice consultation, when it was first mentioned by senior officers of the department that a draft bill was likely to be progressed in 2022, QRC and our members were explicitly assured that any changes that proceeded were expected to be minor refinements and necessary adjustments to existing provisions and mechanisms and were not intended to represent fundamental shifts in policy or new reforms; in other words, they would not be major reforms. Unfortunately, QRC and other affected stakeholders consider that a number of the proposed amendments are in fact not minor at all. In future, if the government decides to include major changes in a bill after having previously given assurances that the content would only be minor, it would be appreciated if some explanation could be given about the revision of plans. The unfortunate miscommunication in this instance could undermine the trust in the broader process of government which is obviously fundamental to investment certainty.

In addition, due to the extreme rush there was no opportunity for the department to provide stakeholders with copies of the draft explanatory notes to accompany the draft exposure bill. QRC's regular experience is that, whether or not consultation periods are rushed, government departments have normally taken the approach of failing to offer draft explanatory notes, or indeed any explanation, together with consultation drafts of bills. It would be appreciated if the HEC could ask government departments to change this process.

Thank you for the opportunity to appear here today and make an opening statement. I ask that the committee considers the matters set out in our statement and our submission, including the recommendations. We would now be happy to take questions on the submission.

Mr MOLHOEK: Thank you for joining us today and for the significant contribution that your sector makes to the Queensland economy. Can you elaborate on the issue of officer liability and your concerns in that respect? I will pose the same question I put to the Law Society earlier: do these provisions differ significantly from normal practice—for example, under ASIC and the Australian tax act and other areas of practice that would impact on directors?

Ms Hayter: Yes, we fully commend the comments and responses the QLS gave today. I think they nailed it when they said that these were the extent of these provisions and that if you are going to extend the provisions you should also extend defences. The short answer is that they are an extension; you extend the defences as well. That is the only point. The drafting is incorrect.

Mr MOLHOEK: Are you able to elaborate a little on that?

Ms Hayter: There is a lot of detail in our submission about that. I can read that out to you if you like. I think there is actually a fair amount in there about that.

Mr MOLHOEK: I am happy to move on, Chair.

Mr ANDREW: It seems like everyone was caught off guard. Are you seeing an impact on confidence in doing business, continuation of business? Is it reverberating through industry and coming back to you that people look to be pulling out or redesigning their association with government or not getting involved in business in Queensland in that respect?

Mr Macfarlane: I think the committee would be well aware that Queensland is just one jurisdiction where you can carry out resource extraction operations. We have competitor states—New South Wales in particular in relation to coal and Western Australia in relation to gas—but of course internationally competition is very widespread. There have been a number of issues, probably the biggest being the unexpected and extraordinary increase in royalty rates on the coal industry—an issue which the QRC and the industry are asking the government to reconsider. Unfortunately, with that as a headline, every step or every move that the government makes to impose more regulation and more green tape, to take away the certainty of process, is seen through the prism of 'does Queensland really want resources to underpin its economy in the future?'

We are seeing investment decisions made where companies are investing in other countries, sometimes in other commodities. We have also seen projects such as BHP's put on hold for a number of reasons. The continuing uncertainty sees Queensland fall down the Fraser Institute's analysis of rankings in terms of countries that companies want to invest in. From memory, we are now currently

17 or 18—I will give the committee the exact number as a follow-up—compared to Western Australia, which is one. That is on a global scale. Queensland is falling out of favour with investors for a whole range of reasons, but uncertainty of process and increased green tape is certainly one of them.

Ms KING: Thank you for coming in today and thank you for your very detailed submission. Correct me if I am wrong, but it seemed to me on the basis of your submission that, while you have some concerns about the ability for early refusal as contemplated in this proposed legislation, you do see potential for early refusal of projects to be acceptable. I wonder if you could talk to us about whether there are any circumstances where, in your view, perhaps a differently expressed early refusal right might be of use to the sector.

Mr Macfarlane: There are merits in an early refusal right where the parameters around the way that works are clearly defined. As I said in my comments, there definitely was not enough time during the consultation process, because the consultation process was so short, to get that better defined. Where a project is illegal or where it clearly is going to contravene traditional lands or the like, or where it is outside a process that it should be in, then early refusal is a benefit because it gets that issue off the agenda. It allows investors to either reframe the project or abandon the project and not spend 15 years—as New Hope did—in various processes trying to get approval. I am going to ask Frances to just give a bit more detail around it.

Ms Hayter: Very specifically, as stated in our submission and as Ian just mentioned, if it contravenes a law of the Commonwealth or the state or if the documentation submitted is not appropriate or it does not comply with the appropriate section in the legislation, we would note—again that is in our submission—that when we were originally informed about this we were told that it would align with the State Development and Public Works Act and the EPBC Act. That is not the case. The state development act, for example, only speaks to Commonwealth legislation and inconsistencies with that.

CHAIR: Are there any supplementary questions?

Mr MOLHOEK: No, thank you.

CHAIR: Thank you very much for your contribution here today.

O'ROURKE, Mr Joshua, Queensland Policy Manager, Australian Petroleum Production & Exploration Association

PAULL, Mr Matthew, Queensland Director, Australian Petroleum Production & Exploration Association

CHAIR: Welcome. Thank you for being here. Would you like to start with an opening statement?

Mr Paull: Thank you, Mr Chair and members of the committee. First I would like to acknowledge the traditional owners of the land on which we meet and pay our respects to elders past, present and emerging. My name is Matt Paul. I am the Queensland director for APPEA. We are the peak body for the oil and gas industry in Australia. With me is Josh O'Rourke, who is our Queensland policy manager.

Thank you for the opportunity to present on the EPOLA Bill this morning. You have had an opportunity to read our submission and so I propose just to highlight a few key points before taking any questions that you might have. Firstly, I make a point on process that frames our overall response to this bill. The bill was presented by the Department of Environment and Science during development as containing minor and administrative changes to the law. The legislation before parliament contains some material, serious and unexpected shifts in policy, and we share some of the concerns you have heard today about the consultation process for the bill. We do acknowledge that some significant changes were removed from the bill prior to its introduction to parliament and we welcome that, but the bill still contains major changes to policy.

A chief concern for us is how clauses 31 and 32 will require mandatory and automatic public notification for all major amendments to environmental authorities regardless of actual impacts of a change on the environment or on third parties. I would like to make it clear that we support reasonable public notification processes, but forcing unwarranted notifications will result in material costs and potentially significant delays, all at a time when we are seeing unprecedented pressures on energy supply across the east coast. The approach in the bill applies only to the resources industry. Non-resource activities are proposed to be treated differently regardless of their environmental impact.

The genesis of the proposed change is existing uncertainty around how government should determine whether a major amendment should be notified. We actually asked the government to provide increased certainty on this question. Instead, the ambiguity will be replaced with an inflexible notification threshold, with no regard for actual on-the-ground impact of changes, which in itself will cause further uncertainty because going through a public notification process is unpredictable in terms of its outcome.

We are also unclear why the significant change is being made in advance of the upcoming review of public notification processes that will be undertaken by the Queensland Law Reform Commission. Until that review and any subsequent legislative reform occurs, we strongly consider that DES should revise its current guideline on major and minor amendments, in consultation with all stakeholders. It will be important to revise this guideline even if the relevant clauses of the bill are not removed. In that event we request the committee recommend such a review of the guideline.

Other aspects of the bill that we have concern about are covered in our submission but, in brief, the bill would prohibit carbon capture and storage from being eligible for a streamlined application assessment; the bill will extend executive officer liability to a person no longer with the company when an offence occurs but who is in office at the time of the act—as you have heard from others, there is no causation defence and there are no transitional provisions; the bill allows environmental impact statement applications to be outright refused where it is seen to have unacceptable effects or contravene law—again, as you have heard, this is a major change; and the bill will mean an environmental impact report automatically lapses after three years—that could require potentially significant rework if environmental values have not changed. We would welcome any questions that you have.

CHAIR: Just on that last point about the three-year winding up, can you unpack that a little bit for the committee?

Mr Paull: Some large projects take quite a long time to develop and the environmental impact statement process can occur over a fairly long time frame, so having the potential for your EIS to expire and be taken back to square one can cause difficulties for larger projects.

Mr MOLHOEK: Thank you for joining us today. You made some comments around the consultation process prior to the bill coming to the parliament. I think you used words like 'rushed', and I think you suggested the process was somewhat misleading. What are the differences between, perhaps, what was suggested to you in the consultation process and what has actually made its way into the bill as presented that are of concern?

Mr Paull: There are a number of ways I could answer that, and it could get fairly complicated, but from the outset it was described as 'we are going to progress a package of amendments that are minor and administrative—they will fix up some quirks of the law, clarify a few things, nothing significant'. Then relatively late in the process there were some very significant additions to the bill that we only saw in an exposure draft that was subject to a confidentiality deed that meant that we could not discuss it with our members. We are a member based organisation. It is very difficult—I would argue impossible—for us to represent members' views when we cannot speak to them about a bill that is progressing.

The changes to public notification for major amendments are a significant change. That is moving to an automatic rule where any major amendment to an environmental authority goes to public notification. There is some detail in our submission, but I would like to be clear that a major amendment is not necessarily what you would think is a major change. It can include any change that expands your footprint by 10 per cent. There is no regard for scale there. You could have a very large project that expands by five per cent and that is a big area. You could have a very small project that expands by 15 per cent and it is not a very big area but that would be counted as a major amendment. That is one example.

Ms PEASE: Thank you very much for coming in today. I would like to go on a little bit further from what the member for Southport was talking about and why you have concerns about having to do public notification for minor and major amendments.

Mr Paull: As I said, it is not that we have concerns about public notifications in principle, but when you are making a relatively small change to your project and seeking an approval for that, the experience of some of our members has been that when it goes to public notification it adds quite significantly to the approval time—that is a significant cost in and of itself—and the process followed by the department can then lead to quite significant changes to the approval that you were expecting. Those things together lead to a more costly and unpredictable approval process.

Ms PEASE: I want to refer to your submission. Could you give me some more information with regard to your concerns about the streamlined application process for the carbon capture use and storage and give me some details as to why you are concerned and what the situation is with that?

Mr Paull: Carbon capture and storage is not a prescribed environmentally relevant activity. The bill makes changes which would mean that, because of that fact, you would not be able to get a streamlined approval for CCS. As we are all aware, climate change is a big challenge. APPEA is committed to reaching net zero by 2050; a lot of our members are committed to getting to net zero before that. We are already seeing significant new investment in CCS—not in Queensland yet—and we just do not see why you would not want to allow a streamlined assessment for any technology or project that could reduce emissions.

Ms PEASE: At the beginning you said that CCS is not a prescribed environmentally relevant activity.

Mr Paull: Correct.

Ms PEASE: Can you tell me what you said?

Mr Paull: It is not a prescribed environmentally relevant activity at the moment. There is a list of prescribed activities. It is not on the list.

Ms PEASE: Could you give me an example of what is?

Mr Paull: Petroleum activities would be one.

Mr ANDREW: Thank you for coming in today. With people not understanding the confidentiality side of things, because you are a member organisation, how do you think that has affected your members in being able to give feedback to the government for unintended consequences and some of the things that can affect business in different ways, or even the way that government works with business in different ways?

Mr Paull: I do want to be clear: we eventually got an amended confidentiality deed where I could list entities that I would provide it to, but we had to push quite hard for that. Other representative groups were also making the same points. The signal that it sent was that the government is

progressing changes that—everybody knew that there were significant changes in the bill that might affect their projects and the extent of their operations. Everybody knew that. They did not know the detail of what those changes were.

Put yourself in the shoes of an investor. You have invested significant funds into Queensland to run a project. You know that the Queensland government is developing a bill which could have very significant effects for your project but you cannot see a copy of it. That does not give a company in that situation much confidence in public processes. I have been in this space for a while. I have never had to sign a confidentiality deed of that nature in order to receive and distribute draft legislation to our members. We respect confidentiality. If the government says to us, 'We would like you to keep this confidential and your members to keep it confidential'—sometimes it does say that—we do, but having it so restrictive that I could not even send it to our member companies was unprecedented, in my experience.

Ms KING: Thank you for coming in today and thank you for your considered response to the proposed legislation. You note at one point in your submission that you had concerns about the extension of executive officer responsibility. I put a question to an earlier submitter that I will in part relay to you for your comment. Over the last several decades—perhaps even a generation—we have seen globally some incredibly serious environmental disasters, frankly. My understanding is that at least in one case the decision-making of previous executive officers is thought to have contributed to that harm. I am interested in hearing the basis for your concerns about former executive officers being held accountable for decisions that result in significant environmental harm.

Mr Paull: I think we have a very similar response to others who have given evidence this morning. In principle we do not have an issue with what you are suggesting. If you have done something wrong, if you have contributed to the kind of outcome you are describing, then we do not have an issue with being held accountable for that. The problem is that the bill does not have a causation defence. You can have been an executive officer in office at the time a lawful action was taken and only when combined with other acts or omissions by the company after you had left then be found that your action, which was lawful at the time, has indirectly contributed to the causation of an offence. It is a very broad-reaching change to target the issue that you are raising. There are no transitional provisions. Recent prosecutions that the government has undertaken probably would not have had a different outcome had this law been in place.

Ms KING: With the right settings, you would be favourable to the extension of responsibility to former executive officers for decisions that resulted in significant environmental harm?

Mr Paull: With the right settings, but these are fairly complicated legal questions and there needs to be the time taken to discuss those to make sure that changes to legislation have the intended effect. We heard this morning about company directors talking to insurers and potentially being exposed to things and being concerned about that. These sorts of changes have an effect on the willingness of good quality managers and directors to participate in businesses in Queensland, and that should not be discounted.

Ms PEASE: During your opening statement you gave some commentary around delays around approvals et cetera, and you quoted New Hope as an example. Could you give us some commentary around that?

Mr Paull: I think that would have been the QRC.

Ms PEASE: My apologies. It was. You were talking before to the member for Mirani with regard to confidentiality and that this is the first time you have ever experienced that; is that correct?

Mr Paull: I have never previously been asked to sign a confidentiality deed of the sort I was asked to sign for the first draft of the deed in order to get a copy of this bill.

Ms PEASE: Did you sign it so you could get to see it?

Mr Paull: I signed it so I had a copy, but I could not discuss it with our members.

Ms PEASE: Why do you think that might have been the case? Do you have an opinion as to that?

Mr Paull: Why?

Ms PEASE: Was it explained to you why you had to sign a confidentiality statement?

Mr Paull: I think that question would probably be better put to the government as to why they did it, but it was mentioned that it was because it was an exposure draft that had not been to cabinet.

Ms PEASE: They gave you an explanation at the time?

Mr Paull: Yes, but I have previously seen exposure drafts. I think that is a side issue. Whether it is an exposure draft or whether it has gone to cabinet, I do not think that is fundamentally the question for us.

Ms PEASE: Certainly that was not my question to you. My question was whether they had explained to you and I wanted to know whether you signed it.

Mr Paull: Reasons were given, but, to boil it down, there were major changes to policy, to legislation—there were major proposals being advanced that had not been consulted on and discussed with major investors who were going to be affected by them and it was being done in a very compressed time frame. When I first got the first version of the deed it was—

Ms PEASE: May I ask when that was?

Mr Paull: I would have to check the date, but I do recall that it was a matter of days—I think three or four days—before Easter, during school holidays. It was, 'Here is the bill. You can sign the deed and then you have to get back to us the day after the Easter break.' That is less than a working week, during school holidays, over a four-day weekend. I think government needs to recognise that people take leave. The people who need to review these sorts of proposals might not be around during school holidays. Even if they were, to give four days to review about 125 pages of legislation containing proposals that we were seeing for the first time—I just cannot see how that is a good consultative process.

Ms KING: Just to clarify, you did provide a response to that initial exposure draft?

Mr Paull: I did. My response was, 'I have been unable to talk to our members and therefore I am unable to offer a response; however, it is clear that there are major changes in this bill and we are quite concerned that these are being advanced without an effective consultation process'—words to that effect.

Ms KING: You did not provide specific responses to any of the individual proposed changes that were contained in the exposure draft?

Mr Paull: Correct, not until I got an updated version of the deed, eventually, and was able to discuss it with our members and get feedback from them directly.

Ms KING: In fact, that change was made so that there was the ability to discuss with members what was proposed?

Mr Paull: Correct.

Ms KING: Other submitters today have told us that some of their concerns were addressed following that process.

Mr Paull: Correct, and that was what I acknowledged in our opening statement. That is welcome. I would put that it did not need to be this way. We could have had this discussion. We could have discussed the changes. We could have provided our feedback without all the secrecy and the angst that that caused.

CHAIR: We thank representatives from APPEA for being here today. Thank you for your contribution.

DAVIS, Dr Georgina, Chief Executive Officer, Waste Recycling Industry Association Queensland

WHALAN, Mr Kurt, General Counsel, JJ Richards, Waste Recycling Industry Association Queensland

CHAIR: Welcome. Would you like to begin with an opening statement?

Dr Davis: Thank you very much. I would like to extend my gratitude to the members of the Health and Environment Committee for considering our submission on the Environmental Protection and Other Legislation Amendment Bill, otherwise known as EPOLA, and also for inviting us to participate in today's public hearing. The Waste Recycling Industry Association of Queensland represents more than 90 Queensland-based organisations. These range from large multinational and international companies through to mum-and-dad owned and operated entities. We engage in a broad range of state-specific issues of strategic importance to our sector to ensure the sustainability and the development of the waste management and materials recovery sector. We represent all aspects of the waste management and recovery sector in terms of major landfills, transfer stations, resource recovery facilities, firming power generation through to collection services.

As mentioned, we welcome the opportunity to provide a submission on the inquiry into the EPOLA Bill. We do note the short consultation period, as is often the case on matters before committee. This did reduce our ability to provide very detailed responses or levels of evidence to support some of those responses. As such, we would like to reiterate that WRIQ provided this submission without prejudice to any other submission from our sector and we also note that our submission is limited to the amendments of the Environmental Protection Act 1994.

We would like to say that WRIQ is generally supportive of the bill and we acknowledge that some changes are required to achieve better environmental outcomes. However, it is WRIQ's position that the bill, without some thoughtful amendment in areas, will not achieve the desired objectives of modernising and improving efficiency in the environmental management process. Specifically, we do not support the proposed inclusion of section 319A, the special provision for activities involving relevant industrial chemicals—essentially, the inclusion of IChemS updates into the general environmental duty. We are also cautious about the amendment of section 326BA. That is when environmental investigation is required into the contamination of land. That power could see more environmental investigations being undertaken simply based on a viewpoint or an officer's perspective. Environmental investigations are incredibly costly and onerous on landholders—and that is not just limited to our sector; that is all landholders—and that may not actually improve environmental outcomes, which we are all seeking.

I would like to finish by saying, though: we do strongly support the proposed new section 316GC. That was allowing a person to apply to the administering authority, which is the Department of Environment and Science in this case, for an authority to carry out a relevant environmental activity on a temporary basis or to increase the scale and intensity of an existing environmentally relevant activity in response to an emergency situation, but we would ask that the emergency situation definition be expanded to include a localised disaster situation for the waste and recycling industry. We think that is a very prudent provision given the climate change factor and Queensland's propensity for disaster events. As well, we are seeing a rise in related climate disaster events, so issues such as biosecurity. That concludes the opening statement. We would be happy to answer any of your queries. Thank you.

CHAIR: Thank you, Dr Davis. I would like to start by getting you to unpack 326BA a little further. You say that it is likely to be onerous on industry and landowners in regard to when an environmental investigation is required because of contamination of land. You then suggest that this is not the intent of this expanded power; it is not based on the nature of level of harm. Can you go a little bit further into that for me?

Dr Davis: It would appear that the intent of this is to actually provide more power to the department, with broader regulatory powers to say when an environmental evaluation is required. What I would say is that there needs to be more consideration in terms of the criteria for that environmental investigation being asked for. There needs to be a higher level of grounds provided by the department when asking for that environmental investigation into contaminated land to be undertaken.

Our concern is that it could be essentially just the viewpoint of a single officer, an officer who may not be particularly experienced or may not be suitably qualified in that area. It could well be a reasonably held belief by the departmental officer, but we think there needs to be a higher level of onus and pushback onto the department to justify why that landholder would need to do that environmental investigation. It should not be on the whim of an individual.

Mr MOLHOEK: Can you expand on the scope of your membership and the sorts of facilities that they run that would require these sorts of approvals or that would fall under these proposed new regulations? Generally people who collect waste dispose of it at council or government owned facilities, but there are a lot of privately run facilities. I think it would be helpful to understand how it applies more broadly through our application and approval processes and some examples of that.

Dr Davis: The majority of landfill—so those are points of disposal—within Queensland is actually owned and operated by private proponents. Those are our members, although we do have some council members that have disposal facilities as well. In terms of things like transfer stations, we are talking around several hundred of those across Queensland—council operated and also operated by the private sector—and then resource recovery facilities mostly owned and operated by the private sector, with the exception of two materials recycling facilities, both towards the north of Queensland, which are owned and operated by council.

In terms of where these environmental investigations could be required, it could be at any of those facilities. I would probably propose, though: a lot of it could be focused towards facilities such as organic composting facilities and those sorts of treatment facilities. Indeed, the sector at the moment is looking to invest in new infrastructure here in Queensland. We have very ambitious recycling targets under the waste strategy and certainly in terms of our climate emission aspirations and reaching those targets, so Queensland is seeking significant investment into new recovery facilities for not just dry recyclables but organic materials as well, and our sector needs certainty to invest in that infrastructure to ensure we reach the required targets within those documents. Did that answer your question?

Mr MOLHOEK: Yes, partly. In terms of this legislation, you talk about the need for certainty. How does this legislation potentially impact certainty or lack of certainty either way? What are your broader concerns in that respect?

Mr Whalan: I might touch on the new section 319. Georgina touched on the introduction of the requirement that states that a person is taken not to have complied with their general environmental duty unless that person complies with the risk management measures for the chemicals under the Commonwealth Industrial Chemicals Environmental Management Register. We are talking about emerging contaminants, such as PFAS or other types of contaminants, that can be added to this register. What this new provision does is: as soon as a chemical is added to that register, operators such as ourselves then need to comply immediately with any risk control measures that are prescribed. Our sector operates under environmental authorities—so licence conditions—which may already prescribe control measures that must be adhered to. There is no transitional period that I am aware of under the proposed bill, and those risk control measures may require investment in infrastructure that we might not be capable of putting in place immediately. There may be land use approval requirements, which we know can take anywhere from 12 to 24 months, and also we operate under long-term commercial contracts so there may not be the provision to allow for that additional investment. We understand the intent of adding these chemicals to that register. There is a whole piece of work that happens in the background to make sure that we are not actually undermining what might be already a condition within an environmental authority that may need to take time to transition in. That is probably one of the key things that I saw within the bill that might undermine confidence for investment, because of the uncertainty that might present.

Ms PEASE: Thank you so much for coming in. I really appreciate hearing from you. Thank you for your thoughtful submission; it is very to the point. I wanted to hear some more information about the transitional environmental program that you have mentioned at point 6 of your submission. I am wondering if you can elaborate on that and outline your concerns regarding that.

Dr Davis: Absolutely. Actually, some of our concerns may have been answered this morning, but I will elaborate on what our concerns were. We were concerned that the change gave more power to the administering authority to draft the TEP on our behalf and we were concerned that not only does that increase the workload to the department of environment but also they may not be fully cognisant of the commercial and also environmental settings of our business. I did, however, clarify that with the department this morning, just as I arrived, because behind some of these amendments there is usually, or sometimes, a good reason for that amendment. The department have clarified that the reason they wanted to make that amendment was to bring that provision in line with others and that the proponent would still have the power to essentially provide guidance, what the outcomes would be and the methods of the control as to how the business would comply with that TEP. The TEP would not be drafted by the department. The intent is certainly not in a way that would pursue undue costs or regulation onto the proponent.

Ms PEASE: You spoke in your opening statement with regard to when there is an emergency or weather event. I do not know if you want to talk further to that. I thought it was interesting given we have had such complex and difficult issues in recent times and we have had to respond—particularly organisations like yours, which would be responsible for the collection and destruction of a lot of the waste. I really wanted to acknowledge, by way of going through that very long-winded introduction, and to thank your members because I know that you are a very large part of helping those people who were impacted by the terrible rain events and flooding. Thank you very much for all you have done. I know it has been hard and challenging picking up all of that waste, but I acknowledge the great work that you have done in that space, so thank you.

Dr Davis: As I said, I think it is really important that that definition of emergency situation is expanded to include that localised disaster situation for the waste and recycling industry. Indeed, during the most recent floods we did have sites and facilities that were impacted themselves and this reduced their ability to take waste. In fact, we still have some sites impacted because we still have floodwaters on them. Expanding that definition is very important.

We also need that flexibility to enlarge that end date beyond four months. We are still receiving and treating waste. In fact, my operators in SEQ took over 125,000 tonnes of flood impacted waste just from the SEQ region during that flood in a very short time frame. Because of the lack of disposal facilities in far north New South Wales, we also took 110,000 tonnes of flood impacted waste from Northern New South Wales, which is actually in close proximity to those facilities that took it just over the border. We are still going through and processing that waste. Wherever possible, we seek to recover the precious materials from them. Obviously some of that waste is contaminated and requires specialist treatment and disposal. In terms of the four months, we would like some flexibility to make sure we can comply within the time frames, given the huge volumes of waste that we can see from these emergencies.

Ms KING: You are saying that you are still taking and processing waste now from the February floods or from the ongoing flood events?

Dr Davis: We still have some waste that we are processing from those February floods.

Ms KING: Thank you for what you are doing.

CHAIR: Thank you very much for your contributions here today. It has been insightful.

BOLZENIUS, Mr Joel, Strategic Partnerships Manager, Healthy Land & Water

McLELLAN, Ms Julie, Chief Executive Officer, Healthy Land & Water

O'NEILL, Dr Andrew, Chief Operations Officer, Healthy Land & Water

ROBERTSON, Mr Stephen, Chairman, Healthy Land & Water

CHAIR: Welcome.

Mr Robertson: Can I begin by acknowledging the traditional owners of the land on which we gather and pay our respects to elders past, present and emerging. Julie will present to the committee and take any questions.

Ms McLellan: Thank you very much for having us present to the committee. Healthy Land & Water really appreciates the opportunity that the committee offered to provide a submission to the Health and Environment Committee regarding the Environmental Protection and Other Legislation Amendment Bill 2022.

Healthy Land & Water is an independent not-for-profit organisation and the natural resource management body formally recognised by all levels of government for South-East Queensland. We work in partnership with traditional owners, government, private industry, utilities and the community to deliver innovative and science-based solutions to address the challenges that put these assets and values at risk. One of our key resources is the SEQ NRM plan, which is recognised under ShapingSEQ. It sets the visions and targets. They are community based. It sets and outlines the visions and targets for South-East Queensland when it comes to our natural assets and natural capital. We also coordinate what we call the Healthy Land & Water Report Card, which is an assessment of the health of South-East Queensland's major catchments, our estuaries, river estuaries and, of course, Moreton Bay. The report card is released annually and we are due to release one mid this month. It reflects progress or otherwise towards achieving the targets in the SEQ NRM plan. Unfortunately at the moment we are demonstrating a trend in environmental decline.

The acts targeted in the bill are important mechanisms to support delivery of the whole-of-community targets detailed in the SEQ NRM plan. To this end, we broadly support the intent of the Environmental Protection and Other Legislation Amendment Bill to improve administrative efficiency and ensure the regulatory frameworks within the environment portfolio remain contemporary, effective and responsive. In particular, Healthy Land & Water supports the intent of the bill to amend the EP Act to support industry, streamline and clarify regulatory processes, better protect the environment and improve community input and transparency. We also support the Waste Reduction and Recycling Act in making those minor technical refinements related to administrative processes and interpretation.

In our submission we outlined our general support of some of the key amendments to the act—the obligations, objectives and proposed amendments—but I would like to bring the committee's attention some of the concerns we have about the potential negative or perverse outcomes that may result from some of the proposed amendments.

In terms of the amendments to section 16 around material environmental harm, we support increasing the threshold, but we ask for careful consideration to be given as to whether that exception needs to be included in circumstances where the threshold amount may not be able to be determined or the nature of harm is significant, even though it is not valued at $10,000. Similarly in terms of the amendment to section 17, we support increasing the threshold amount but, again, we would like to consider that there may be instances where that threshold amount may not be able to be determined or the nature of the harm is still significant or serious, even though it is not valued at $100,000.

With respect to the insertion of 41A, being the decision on the draft terms of reference, Healthy Land & Water supports this insertion; however, we would benefit from a more detailed definition around what constitutes 'unacceptable adverse impact' under both stated circumstances, environment and cultural heritage. While we are supportive of the list of the examples in paragraphs (i) to (iv) of subsections (3A) not be exhaustive so that other matters can be considered, we recommend that if a threshold for these subsections is reached then an EIS should be denied. While these sections list things that a minister could consider, they also suggest that a project could cause an acceptable adverse impact on cultural heritage but still be allowed to proceed. A clear threshold should be set beyond which a project would be denied.

When it comes to public notification in section 51, we support the initiative, but we know that in many instances around Australia internet connectivity is not so great so we say that where there are local newspapers distributed a public notice should be put in. In terms of new section 59A, we ask

that the committee consider whether it is appropriate for the chief executive to extend a period at any time before the EIS assessment report lapses. We support a validity period of three years for any EIS and believe that this period of time should be sufficient.

Finally, on the amendment of section 125, the amendment should highlight a definition of trial, research or innovative activities. It is suggested that this be included to limit the potential for abuse of this provision. It is expected that this provision would only be suitable for activation where there was a detailed research methodology with the involvement and oversight of a research institution and the corresponding ethics consideration. I thank the committee.

Ms KING: Thank you for coming in today. Thank you for the work that you do in the communities of, I am sure, every single member of this Assembly. Could you provide further detail in relation to your final point about research and innovation? You were suggesting that it should be oversighted by a recognised research body. Could you speak to your concerns with the legislation as drafted? How do you see those issues impacting?

Ms McLellan: It is more around the definition of what is a trial. Is it research or innovative? We are not saying that you have to necessarily have a recognised research institute with you, but they have certain ethical obligations and considerations which they have to abide by, including who they are talking to and what they do with information. We felt that, in this instance in particular, there could be an opportunity to get a perverse outcome if someone was to deem it was just a trial or it was innovative, so it was not being monitored, measured and the actual impact being reported. It was more around having transparency that it really was research, a trial or testing some type of innovation.

CHAIR: Ms McLellan, I might ask you to go back to both material and environmental harm and serious environmental harm. You had some particular concerns around the threshold. Can you unpack that for us?

Ms McLellan: In some instances the department, or whoever is assessing this, may not be able to quantify the harm—they know it is serious but they cannot quantify that it meets the threshold of either $10,000 or $100,000—so we felt there may be some exception whereby they can consider it is serious environmental harm that may not meet the $100,000 threshold, because it could not be validated or assessed at that quantum, but they know there has been serious harm.

Mr Bolzenius: An example of that could be an impact upon a threatened species. A threatened species may become extinct because of an action, but how do you place a monetary value on that consequence?

CHAIR: Good point.

Mr ANDREW: We have just been talking to representatives of the waste disposal industry. They mentioned lapses of time to deal with things, and there are thresholds and undefined terms. Do you see any issues with people being caught out by this legislation over time because it is so broad? There are many different scenarios. I know that you deal with a lot of different things. In my area I deal with reef catchments, NQ Dry Tropics and so on. In my area—I know you are not there, but you do deal with these people—people could possibly get caught out in some of those situations by not understanding definitions and thresholds.

Ms McLellan: You are right: we will get caught out, because there may be a small impact but it is cumulative. I will not speak for those in waste recycling, but we are already seeing that the floods will have a cumulative impact on Moreton Bay. If we do not define it well and look at the broader landscape scale when we are making decisions—I realise that under the act and under the ERAs they are looking at specifics, but there does need to be an ability to look at the broader SEQ to understand the impacts. There are certainly cumulative and long-term impacts. In some cases, if you are talking about a threatened species, there is no mitigation; you have lost it. There needs to be some component whereby, if you are producing an ERA for a particular activity, officers should be able to look more broadly at the cumulative impact.

Mr Bolzenius: As has been noted by a number of the submitters today, this is a very broad bill. There is a range of measures in it. Any legislation, as you know, requires support on the ground for landholders to understand that bill and be supported to interpret it according to community expectations. At the end of the day, legislation is about enacting community expectations to look after landscapes and environmental values, so I think supporting landholders on the ground is critical.

Mr ANDREW: The reason I ask is that some things are unintended. Some things may run through the properties of downstream users, but they then have a legal responsibility for that without even being aware of it. That is why I was asking the question. In our area we get lots of rainfall and things change.

Mr Bolzenius: Definitely. We as an organisation advocate at a national level and an international level for very good quality best practice environmental monitoring and reporting so that you are dealing with contamination at the source, not at the receiving landholders. We commonly work with local governments and private industry to identify the source of a pollutant and rectify it there, rather than handballing it on.

Ms KING: Today a number of submitters have provided their thoughts and concerns about what I would term the chain-of-responsibility aspects of this legislation, particularly with respect to previously serving executive officers. Would [Healthy Land & Water like to provide their thoughts about the appropriateness of former executive officers having continued legal responsibility for decisions that they may have made during their tenure which at a later time crystallised into significant environmental harm?

Ms McLellan: I will let the chair ponder, but that is a tough one. My personal view is that if, as an executive, you have made a decision that constitutes environmental harm—or any harm—then you should be held accountable down the track. If your decisions caused harm to a person, you would be held accountable in the future. How do you prove it? It is a tricky one. That is my personal opinion, though.

Mr Robertson: By way of observation, the question is an excellent one and it throws up any number of scenarios that you could contemplate to determine ongoing responsibility for the actions of a chief executive. At the same time, it throws up challenges as to the state of knowledge at that particular point in time that informed the chief executive officer as to the decision he or she made. It may well be that he or she made a decision in very good conscience but based on the evidence as it was at that time but which has subsequently been updated, improved or what have you. It is a question for the lawyers to mull over. It is vexed, to say the least.

CHAIR: Thank you very much. As usual, member for Pumicestone, that is an excellent segue. You mentioned previous serving officers. I will place on the record that Mr Robertson is a previous member for Stretton—for 20 years. Thank you very much for your contribution. It must be strange walking back into the chamber and talking. You are a former minister for resources, mines, energy, trade, health and emergency services. I will chat to you after!

Mr Robertson: Thank you very much. I note that the chair I am sitting on seems to have worn a lot better than I have!

CHAIR: Thank you very much for your contribution. I thank everyone who participated today for their contribution. I thank our Hansard reporters and our secretariat. A transcript of the proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

The committee adjourned at 12.29 pm.