HEALTH, ENVIRONMENT AND INNOVATION COMMITTEE

Members present:
Mr R Molhoek MP—Chair
Ms SL Bolton MP
Ms K-A Dooley MP
Mr JP Kelly MP
Mr DJL Lee MP
Mr LP Power MP

Staff present:
Ms K Jones—Committee Secretary
Miss A Bonenfant—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE ENVIRONMENTAL PROTECTION (EFFICIENCY AND STREAMLINING) AND OTHER LEGISLATION AMENDMENT BILL 2025

TRANSCRIPT OF PROCEEDINGS

Wednesday, 10 December 2025

Brisbane

WEDNESDAY, 10 DECEMBER 2025

The committee met at 9.36 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Environmental Protection (Efficiency and Streamlining) and Other Legislation Amendment Bill 2025. My name is Robert Molhoek. I am the member for Southport and chair of the committee. I acknowledge the Aboriginal people and Torres Strait Islander people of this state and their elders past, present and emerging. I also acknowledge the former members of this parliament who have participated in and nourished the democratic institutions of this state. Finally, I acknowledge the people of this state, whether they have been born here or have chosen to make this state their home and whom we represent to make laws and conduct other business for the peace, welfare and good government of the state.

With me here today are Mr Joe Kelly MP, member for Greenslopes and deputy chair; Ms Sandy Bolton MP, member for Noosa; Ms Kerri-Anne Dooley MP, member for Redcliffe; Mr Linus Power MP, member for Logan, and Mr David Lee MP, member for Hervey Bay.

This briefing is a proceeding of the Queensland parliament and 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 or affirmation, 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 briefing at the discretion of the committee. I remind committee members that officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

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, and images may also appear on the parliament's website or social media pages. Please turn your mobile phones off or onto silent mode.

BENNINK, Ms Kate, Director, Business Centre Coal, Coal and Central Compliance, Environmental Services and Regulation, Department of the Environment, Tourism, Science and Innovation

KLAASSEN, Mr Ben, Deputy Director-General, Queensland Parks and Wildlife Service and Partnerships, Department of the Environment, Tourism, Science and Innovation

LLOYD, Mr Kahil, Acting Deputy Director-General, Environment and Heritage Policy and Programs, Department of the Environment, Tourism, Science and Innovation

SMYTH, Ms Louise, Acting Executive Director, Environment and Conservation Policy and Legislation, Environment and Heritage Policy and Programs, Department of the Environment, Tourism, Science and Innovation

CHAIR: I now welcome representatives from the Department of the Environment, Tourism, Science and Innovation who have been invited to brief the committee. Please remember to turn your microphones on before you start speaking and off when you are finished. I invite you now to provide a brief opening statement, after which committee members will have some questions. Thank you.

Mr Lloyd: Thank you for the opportunity to appear before this committee. I would like to make a brief opening statement. The Environmental Protection (Efficiency and Streamlining) and Other Legislation Amendment Bill is about delivering practical and sensible red-tape reduction while ensuring Queensland's environmental legislation remains contemporary, effective and responsive. The bill amends the Environmental Protection Act 1994, the Water Act 2000, the Nature Conservation Act 1992, the Forestry Act 1959 and the Recreation Areas Management Act 2006, with a number of consequential amendments required to other acts as well.

The amendments through this bill aim to modernise the architecture of the Environmental Protection Act. This includes creating a new regulatory option in the licensing framework—environmentally relevant activity codes, ERA codes—to further deregulate certain lower risk activities. New ERA codes will provide an alternative to the existing requirement to hold environmental authorities for those lower risk ERAs. This will reduce administrative burden for industry and government while maintaining an appropriate level of regulatory oversight to achieve sound environmental outcomes.

To help facilitate these efficiency measures, the way that environmentally relevant activities are prescribed under the Environmental Protection Act is also proposed to be amended. Currently, some activities are prescribed by regulation while others are referenced broadly and regulated through act-level provisions. Under the bill, almost all environmentally relevant activities will instead be prescribed by regulation, allowing for a more targeted, risk-based approach to be taken.

To provide improved clarity to industry and regulators, the bill will clearly identify and consolidate significant environmental values that are priorities for protection under the act. This will allow for government and industry to focus on what matters most while continuing to provide for broad protections against environmental and community harm.

The bill also includes amendments to the progressive rehabilitation and closure plan framework, known as the PRCP framework, to respond to concerns and challenges from industry in completing the transition into the framework which has been ongoing since 2018. Progressive rehabilitation and closure plans are a tool to ensure mined land is progressively rehabilitated and, where possible, returned to a post-mining land use. The current legislation has been the cause of difficulties for operators seeking to transition into the framework—something this bill is proposing to help address. Some of the fixes included in the bill are administrative such as ensuring operators who have fallen out of the framework can reapply. Other amendments aim to remove ineffective or duplicative requirements.

Amendments to the Forestry Act and the Recreation Areas Management Act in the bill will deliver on the commitment in the government's 20-year tourism plan, Destination 2045, for a single integrated permission. The bill enables this permission to be granted to businesses conducting tourism activities on protected areas—marine parks, state forests and recreation areas. For example, following the amendments a tourism operator will be able to get one single integrated permission to authorise a guided tour that involves four-wheel driving in a state forest and kayaking in a state marine park. The amendments will provide a consistent term and one application fee for a single integrated permission.

Several other amendments to environmental legislation are proposed in the bill as well. These include strengthening the seizure and forfeiture powers for a court to prevent reoffending; providing clearer statutory timeframes to commence summary proceedings—this will generally be two years for most and three years for a set of more serious offences; clarifying when a residual risk requirement is to be met and allowing for an extension if needed; removing the duplicative public notification process of terms of reference for an environmental impact assessment; removing duplication for matters already adequately assessed under the State Development and Public Works Organisation Act 1971; providing administrative improvements for recognising industry-led accreditation programs as part of the Great Barrier Reef protection measures; streamlining processes associated with monitoring underground water impact reports resulting from resource activities, including the routine preparation of those reports; providing greater certainty to resource tenure holders and owners of water bores regarding make-good agreements; and the process for seeking a review of a decision about requiring a bore assessment. The bill also includes providing conservation officers with the ability to investigate under the Nature Conservation Act matters that are regulated under the Planning Act as well as clarifying the meaning of 'protected areas'.

To give full effect to the proposal of the bill, draft amendments to the Environmental Protection Regulation 2019 and other subordinate legislation will be required. These have been provided in a draft format as an indication of how certain changes are anticipated to work in practice and were provided to the committee as part of the department's written briefing on the bill. This completes our opening statement and we would be very happy to take any questions that the committee might have. Thank you.

CHAIR: Thank you for that. I think we will have a lot of questions. I wanted to start by asking if you could dumb things down a little for us. I would appreciate if you could just walk me through the characteristics of the significant environmental values. In making that assessment, what sort of things are you looking at, or what sort of matters are considered as being of a significant environmental value?

Mr Lloyd: Under the Environmental Protection Act, we look at environmental values as a general term that is there, and it can be a range of matters, depending on the specific types and circumstances. What the bill is looking at proposing is establishing a subset of all of those environmental values which are out there—it can be endless—into a very clear, what are the most significant values that we are wanting to look at protecting, and having those in a very clear format. At the moment, the statute books are in various different parts. We have aspects which relate to the State Planning Policy which are in a different format. We have ones which are defined in regulation. We have our own ones in the environmental protection policy which is also a bit confusing. So, the idea is we are wanting to consolidate them all into one format so that it is a very clear set of significant environmental values that we will be looking at protecting.

CHAIR: If I can just pull you up, can you give us some examples of an actual value, like so many trees per hectare or protecting a particular habitat? I would like to hear three or four examples of things that you actually look for on the ground.

Mr Lloyd: Absolutely. These ones are proposed and we have provided them in draft in the regulation which is being provided to the committee as well. The proposed list includes things around essential habitat for threatened wildlife, so that if it is koalas, the habitat for koalas in that situation. Looking at threatened wildlife and any impact to species would be a key one we would look at as part of that process as well. It includes any of the state environmental values which are protected through the State Planning Policy. Wetlands would be one of the proposals as a significant environmental value, and any of those other aspects around that, so water courses or a marine plant under the Fisheries Act. It would go as far as our protected areas under the Nature Conservation Act as well. There are a range of those ones that are of the higher values which we are wanting to protect through this process and it is really about providing clarity from an administrative point of view for how we are administering the act but also providing certainty to stakeholders and our staff about what it is we are wanting to focus in on that. Lou, do you want to add anything to that?

Ms Smyth: I will add that these are the same kind of values that we are already prioritising in the way that we administer our environmental protection laws, and that is a broad reference. We have protected areas under our Nature Conservation Act, we have matters of state significance under the planning legislation, and we have particular vegetation communities under the Vegetation Management Act that we prioritise for protection. This is to make sure that the Environmental Protection Act is very clear about which priorities we have for Queensland as part of our environmental protection laws, and putting those all in one place as a way to help us administer the legislation for those more significant environmental values.

CHAIR: I note the briefing note talks about, in a sense, creating a table of development or a planning code for assessment. I would be curious to see what that table of development would look like, what sort of statements would be in there and how would someone self-assess, I guess. I am assuming it is like under the Planning Act where is it within a certain distance from a train station or public transport? I am assuming that we are talking about a tick-a-box type approach. Do we have any draft tables?

Mr Lloyd: This may be in relation to environmentally relevant activity codes, the GED codes under the Environmental Protection Act. There are a few bits to unpack in that question. The way that we regulate under the Environmental Protection Act and the activities that we regulate are ones which are defined as environmentally relevant activities. The bill itself looks to amend that so that we will have most of those activities prescribed via the regulation, with the exception of agricultural ERAs, so those related to the Great Barrier Reef kind of conditions. They are not proposed to be taken out of the act; they will stay there, but the rest will be prescribed by the regulation. The main change is around resource activities in terms of that definition, so moving it from the act to being able to be prescribed by the regulation. That is the key change around definitions of activities which we would regulate under the act.

The next step, as part of that process, is how we set environmentally relevant activities under the act. It looks to do that by adding a new ability for us to prescribe something as an activity which will require an environmental authority or be a code-related activity which we will want to manage, and that would be an impact on a significant environmental value as one of the other thresholds. The existing one under the act is around a release of a contaminant to the environment. For example, a mine which might have dust, that sort of activity would be one which you could then regulate through the code because there is a release of a contaminant into the environment, or potential release of a contaminant into the environment. That is how those activities would be defined as activities.

Then, in terms of the licensing framework that exists under the act, there is a range of existing approvals which could potentially apply currently. They are things like site-specific environmental authorities. A large-scale coalmine or a large-scale resource activity would require a site-specific environmental authority and to go through the process of an environmental impact statement and getting their licence through there. We have ones which are standard environmental authorities. If you can meet the existing eligibility criteria and can comply with the conditions, you can have a standard environmental authority. It has quick turnarounds in terms of the timeframes under the act, but it is still an environmental authority that you hold. The difference with the bill is that we are now proposing to create a new category, which would be an environmentally relevant activity code, and they are ones which we would look at how we can regulate those activities. They are lower risk: we know that the risk to the environment can be managed through the controls and appropriate conditions for the activity that would be in place. That will be one of the elements which the bill looks to establish.

As we noted in our written briefing, one of the proposed first activities which we would want to look to move would be around small-scale mining into the ERA code framework. There is already a small-scale mining code, but this is about contemporising that process and making it consistent.

We also went through a consultation process where we sought a range of feedback about what other activities would stakeholders like us to investigate as being potentially ones for an ERA code. We heard things around small-scale sewage treatment plants potentially being one, and potentially some small-scale quarrying activities from local governments and those sort of aspects. So, we have a range of other non-resource activities where there have been suggestions that they might be good ones which we would look at having as ERA codes, and create those when they are lower risk. There is a process in the bill which sets out a statutory consultation process: we would need to engage stakeholders; the minister would need to be satisfied before going to Governor in Council to give effect to those codes; and that the risk can be managed through a code and that it is an appropriate way of managing that risk. The compliance approach would then apply to any of those codes. If a code condition was not complied with, that would mean a breach of that condition and an offence attached to that. There would also be the ability for other aspects in the framework—so duty to restore, causing environmental harm—all those sort of other offence provisions, and those tools in the act would also apply to any ERA code that might exist.

Mr J KELLY: If you wanted it dumbed down, you have come to the right place. Thank you for the briefing and your information today. I think you have been very critical of previous bills before this committee that have had no provisions in them or very few. You certainly have changed the trend in relation to that. This bill, from my reading broadly, seems to make it easier to dig a mine to take your fat-wheeled bikes on tours through national parks or go paddling through sensitive Barrier Reef ecosystems, and then seems to decrease the capacity of the community to have a say in that and increase the minister's ability to control whether that goes ahead. Is that a fair summation of what this bill is doing?

Mr Lloyd: I think there is a range of policy questions that you have raised through that process. There are specific questions around elements of the bill which you would want me to talk through. That might be an easier way for me to respond to that.

CHAIR: You are almost straying into asking for an opinion, but I think it would be helpful if you could maybe—

Mr J KELLY: Let me rephrase: does this make it easier for people to commence a mine or to get a permit for activities in national parks related to ecotourism?

CHAIR: There are actually two questions there. I think the first one relates to is it easier to mine and the other one being is it easier to—

Mr Lloyd: Yes.

CHAIR: And explain the process.

Mr Lloyd: That sounds good. I might get Kate to assist a bit more around the process side as well. The bill itself is maintaining the existing process for those large-scale mines which will need to go through the appropriate environmental assessment process. They will still require an environmental authority process. They will still require a progressive rehabilitation and closure plan to be able to obtain the approvals which they need for obtaining that in terms of the process. There are a couple of elements which the bill looks to change around the environmental impact statement process. There is one element which, under the act as it currently stands, is a two-step process in

terms of public notification. One is around the publication of a draft terms of reference for an environmental impact statement and then we still have to go out and do public consultation on the EIS itself.

What the bill looks to do is remove the legislative requirement for us to do public consultation on the draft terms of reference. What we are experiencing—and Kate might be able to talk more to this—is that a lot of the feedback we get through the draft terms of reference process is actually matters which are better addressed or better considered as part of the actual consultation on the environmental impact statement process itself. There was a bit of confusion from stakeholders around that. The bill looks to streamline that process. There would still be the ability to engage stakeholders on an EIS process without it needing to be in the legislation itself. Kate, I might let you talk through the actual assessment process for existing mines and how the bill looks to change those in terms of an operational perspective.

Ms Bennink: As Kahil stated, a large-scale coalmine would require a site-specific environmental authority, and an associated progressive rehabilitation and closure plan. That process is not proposed to be changed from these framework changes—the comprehensive assessment steps of a large-scale coalmine would still be required. It might involve an environmental impact statement process. That might be under the Environmental Protection Act, or it might be under the State Development and Public Works Organisation Act if it was a coordinated project. What would be required, as part of that change to the draft terms of reference step—the department already has a generic draft terms of reference that is published on our website that provides a quite comprehensive list of all of the elements and considerations that must be prepared and developed as part of an environmental impact statement.

What we found in practice is that the public is often a little bit confused when that document is published, thinking that it is missing the elements of the actual environmental assessment because what they are looking for is the environmental impact statement itself. We are proposing to streamline that process, and still have that generic terms of reference published on the department's website and it would be customised as necessary for each project to ensure all the specific and unique elements of that project are to be addressed by the environmental impact statement. It is a streamlining proposal to provide greater clarity for the public and the applicant and the department in moving through that environmental impact statement process.

CHAIR: Can you come back and address the other part of that question which was about small-scale mines? What is the difference?

Mr Lloyd: It was about ecotourism.

CHAIR: I was going to come to ecotourism.

Mr J KELLY: I am interested in the small-scale mines.

CHAIR: Can you explain the difference between a full-scale mine and a small-scale mine?

Mr Lloyd: One of the proposals in the bill is to establish environmentally relevant activity codes. We are looking at two aspects which we are keen to do. There is currently a standard environmental authority for certain small-scale mining activities. There is also a small-scale mining code which is confusing, because there are two different lots of codes.

CHAIR: Sorry, if I can just pull you up: what is a small-scale mine? What is the difference between that and a big one?

Mr J KELLY: You need to watch 7mate on a more regular basis.

CHAIR: So we are talking about Lightning Ridge. Okay. I think it would be helpful to have that clearly explained.

Ms Bennink: Small-scale mining is non-coal activities. It is typically corundum, gemstones and other small minerals. There are a variety of criteria that activities fall into and that determines their level of regulation. One of the typical measures for setting the criteria for what framework applies to these activities is the disturbance footprint in terms of the number of hectares associated. Typically, with a small-scale mining activity we are looking at under five hectares of disturbance. There are also, as Kahil mentioned, provisions for an environmentally relevant activity standard for smaller mining and that has an eligibility criteria of up to 10 hectares. As Kahil was saying, we are looking at first moving the small-scale mining, being those under five hectares, into a code. At present those activities do not require an environmental authority. They have to comply with a set of prescribed

conditions in the regulation, and that is their point of difference from environmentally relevant activities that have to have an environmental authority. Those small-scale mining activities—that is, under five hectares—are those ones that are proposed to be moved in the first instance to a code-managed activity.

CHAIR: Just to be clear, we are talking about places like Lightning Ridge and Rubyvale; we are not talking about someone opening a small-scale mine in a national park somewhere?

Ms Bennink: Yes, there are those defined areas where those types of activities are undertaken. The tenure element is managed by the Department of Natural Resources and Mines and that does prescribe some areas where the Fossicking Act determines the relevant framework of where that activity can take place and therefore what framework it falls under. Rubyvale is an example of one of those areas.

CHAIR: I will hand back to the deputy chair on the activities in national parks.

Mr J KELLY: More broadly, the ecotourism elements if it is national parks or elsewhere.

Mr Lloyd: I might hand to Ben for that one.

Mr Klaassen: Essentially, the bill is streamlining the application process across four areas, being national parks, state forests, recreation areas and marine parks. Instead of having to potentially apply for four permits to conduct your activities across those areas, you can apply for a single integrated permit. The assessment process is remaining the same in terms of the criteria. We will assess that as one application rather than four. You will not have to pay four fees and you get one integrated permit which has all the conditions in one spot. It does not extend to ecotourism facilities. That is not being impacted by the bill. That is a separate part of the act that we are not dealing with as part of this bill. It is just commercial activity permits, organised event permits and state marine park permits.

Mr J KELLY: So you are saying that I cannot build an eco resort but I can take a tour—walking, cycling, whatever—if that is approved?

Mr Klaassen: Correct. It is tours that we are focusing on here, yes.

Mr J KELLY: In terms of these single permits, obviously different areas of land management will have potentially different legislative requirements and different priorities in terms of how the land is managed. How would that be managed if one permit is being used across different areas and there might be conflicting legislative requirements or conflicting priorities around the land management?

Mr Klaassen: Through our assessment process we would consider that. An example could be, say, Bribie Island, where you have state forest, national park, marine park and recreation areas. Someone may want to do an integrated, multipackage process for a four-wheel drive tour through the state forest, going out onto the beach, which is the recreation area and national park, and then doing something in the marine park. We would get the necessary information through the application and assess the relevant parts of their activity against the legislative requirements. Each of those acts has things we need to consider in authorising a permit. Our assessment process essentially in the department will consider those necessary steps and weigh them up and decide whether we can authorise that, we can partially authorise some of it or we can not authorise it all. That is the process we go through.

Mr J KELLY: Who is at the top of the tree? Who has ultimate authority?

Mr Klaassen: Ultimately, it is the director-general of the department who is the decision-maker under the act, but that is delegated down to various assessment people throughout the department. For efficiency purposes, not every permit needs to go to the director-general. We have permits officers who will make a decision based on criteria and they have an appropriate assessment process to make a decision.

Mr J KELLY: Mr Lloyd, has this legislation been considered in the recently passed changes to the federal EP act, and does that have any impacts here?

Mr Lloyd: In terms of the Commonwealth government's passage of the Environment Protection and Biodiversity Conservation Act reforms, we are going through a process at a state level to look at the implications. We do have an assessment bilateral agreement with the Commonwealth government. We are still looking to progress those elements. We do not see the bill itself having any issues with those Commonwealth requirements because they are the matters for the Commonwealth to deal with through their framework.

Mr J KELLY: In relation to the genesis of this bill, where have the amendments come from? Is this something various industry players have been pushing for? Has this been a ministerial directive? Are they things the department has recommended?

Mr Lloyd: We went through a consultative process to develop these suggestions, some of which have come from stakeholders when we have engaged with them throughout the years. Some are also from our experience in administering the legislative framework as well as options. It is always good practice to go through a review of the legislative framework.

In terms of the consultation process for this bill, earlier this year—I think it was around June—the department released a discussion paper on proposals in the bill. That was released online and publicly. We had a range of workshops, in person and online, and engaged with a range of stakeholders across all different elements of the sector—industry, resources, aquaculture, waste industry and others. There were a range of engagement sessions with the environmental and conservation groups. We have engaged with First Nations stakeholders through this process as well.

That process was out for about six weeks and we received 61 submissions which came through that process. Based on the feedback that we received through that process, there were a number of proposals which were not progressed. Building on that, we then released an exposure draft of the bill to stakeholders in around September. We received 24 further submissions through that process which also helped refine the elements in the bill. That has helped inform where we have landed in terms of this process as well.

Ms DOOLEY: Thank you for explaining that consultative process. That is really helpful. I know that there has been some feedback from my electorate. I commend your work in terms of trying to reduce the regulatory process for people, in particular tour business operators. As you know, I have spoken to you about Moreton Island and some of the challenges we have there trying to navigate and apply for permits. I really appreciate your work. Looking at that, if you are reducing the cost, where they would have paid for four different permits, how does that balance potential loss of revenue to the state and the volume of work in terms of your assessment processes? Has that work been done, too?

Mr Klaassen: We do not get significant revenue through the permit application fees. They are not designed to make revenue. They do not fully cover costs. We do not anticipate there being any significant reduction in revenue. If anything, we are trying to encourage more businesses to apply and operate across the estate which will hopefully deliver more permits and more ability for people to experience the estate. It is not going to be a financial cost or burden to the department that this will generate; it will be a benefit to operators. Should they desire, they could still apply for four permits and pay us four fees if they wish. I do not see that being a wise business decision, but that is still an option for someone if they wanted to.

Mr Lloyd: If I could add, in terms of the implications of the proposed changes under the Environmental Protection Act, a lot of the small-scale mining ones which are dealt with under the code do not pay annual fees to the department, so we do not have that revenue source from those, and any development of a new code would go through an appropriate consultation process where the regulatory impacts and costs of that proposal would be considered. The bill itself does not enable a head of power to deal with those matters, if it was that they were needed, to look at cost recovery.

Ms BOLTON: I would like to go to the deputy-director first of all. Further to the questions from the member for Greenslopes, I am trying to understand: we do not know who ultimately has the final say on the integrated permit?

Mr Klaassen: Yes, it will be a delegate within the Queensland Parks and Wildlife Service who is delegated. An assessment officer in our permissions management team can make the decision to authorise the permit.

Ms BOLTON: With that integrated permit, for example, in some of those areas where you have a tour operating it might be a manageable situation, but in another that that permit covers there is an overload already which is not being managed; how then will that be picked up and assessed as it goes through the permit process?

Mr Klaassen: What we have to look at in considering an application is the existing uses that are already in place, the number of operators that are there, any capacity issues that we need to manage, any limits set within a management plan that we may already be at or nearing and then the overall visitor experience. They are criteria that we would consider in an assessment process. As we have discussed regularly, we do not want to have too many people going to certain locations. This is through commercial operators who want to provide a high-quality experience to paying customers, who do not want to have people complaining that they are not getting the experience they want. That

is all considered in our assessment process. If an area does not have capacity then we would encourage the operator to apply for a location that has capacity. We try to redirect them to different locations if we can.

Ms BOLTON: That will provide reassurance for current operators who are concerned that suddenly they may have lots of other operators in their area, with numbers that exceed, because currently there is a cap—I will call it a cap—on the amount they can take on walking tours. With this particular set of amendments, there are no changes to those limits?

Mr Klaassen: No, it is not affecting any of the management plans or the limits that currently exist.

Ms BOLTON: Acting Deputy Director-General, I want to go to the draft terms of reference. According to your briefing paper, the environmental group and our First Nations people did object to that being removed and you have explained why. However, within the terms of reference, whether it is these new ERA codes or existing EAs, have there been any improvements to include in the terms of reference the impacts external to that EA or ERA code area?

Mr Lloyd: I might get Kate to talk a little more around the draft generic terms of reference, but it might be something we could also provide through to the committee secretariat so that they can have a look at what those are as well. I am happy to provide that.

Ms BOLTON: Thank you.

Ms Bennink: In relation to the proposal to introduce the code managed ERAs, those would not be types of activities. They are lower risk activities so they are not the types of activities that would trigger an environmental impact statement process. The environmental impact statement process is for those site-specific, large-scale activities that need that site-specific assessment—that more comprehensive assessment and public consultation process.

Ms BOLTON: You did refer to those small ones with less impact—not coal, five hectares or less—yet they can have great impacts from activities. They are not coal and they could be less than five hectares, but the impacts to the surrounding area, environment and community are extensive. Some provision is being made. If these are being transitioned in some way, is there an improvement to what currently exists?

Mr Lloyd: As part of the process for any of the codes, it will need to go through a public consultation process to develop those codes, which will allow for that engagement around what that process would look like. Any of the codes effectively need to be prescribed by the type of activity that it would be and we would be looking at making sure that those activities are the lower risk ones, which could be regulated through an ERA code. Any that are not lower risk would still need to go through an environmental authority process as well. That is one where we would go through a process on a case-by-case basis to work through what is an appropriate form of regulation for that as they are developed and those codes are implemented.

Ms BOLTON: So small mining would actually go through that?

Mr Lloyd: It will go through that process of public consultation. The bill sets out that the codes will transition into an ERA code, but that gives us a process to follow. Subject to the passage of the bill, that would then allow that engagement process broadly in line with the act, so that has that public consultation and the need to consider any submissions, and it would still go through a regulation-making process and would require the minister to be satisfied of those tests I was mentioning before. The Governor in Council then makes that regulation and then it is subject to parliamentary scrutiny through that process as well.

Ms BOLTON: Lastly, on the rehabilitation of sites, I am trying to get my head around a provision in there. If a site is sold when rehabilitation was supposed to occur, is extra time given? I am a bit confused around that.

Mr Lloyd: In terms of the actual sale of a mine, that is regulated through the department of natural resources, which manages that process. I think the provision in the bill—Kate, you might be able to talk to this a little further—is just around those progressive rehabilitation and closure plans, particularly in that transitional process where they have not actually got a progressive rehabilitation and closure plan in place but there is a proposed sale or transfer of that site to an operator that wants to take on that liability and manage the site. If the sale goes through, they almost end up with that immediate liability from day 1 of not having an approved PRCP plan. Some of them do not have an application in for a PRCP plan, and some of the other amendments in the bill are looking at enabling that process so that they can apply for those in the transition.

Effectively, for those new operators of a mining site that are coming in and trying to do the right thing in terms of developing a new PRCP and wanting to take on that liability to manage the site, they can negotiate with the department in an appropriate time to develop a progressive rehabilitation and closure plan. That is something we would need to work on on a case-by-case basis as to what would be appropriate in the circumstances to be able to get that through. The bill will have that—and the act already does—around the transitional PRCPs, that they have I think until 2028 where the existing transitional provisions apply to maintain those existing rights. I am not sure, Kate, if there is more that you want to add to that.

Ms Bennink: Further to what Kahil said, that proposal is really about providing a balance between ensuring we are moving these transitional sites into the PRCP framework and getting everyone transitioned—those existing sites. Also, it is recognising that when a new buyer comes in and is looking to progress potentially a site that is in care and maintenance and has not been operating and they are coming in with goodwill, wanting to develop the site, they are not immediately burdened with the plans of the previous holder or the timing or failure of timing of the previous holder. As Kahil said, we would negotiate with that holder to set a new time for them to put that application in and work through the transitional assessment process with them.

Mr LEE: I have a broad question and then I will follow up with a couple of technical questions. I reside in the whale-watching capital of Australia and I have the World Heritage listed iconic K'gari Fraser Island on my doorstep. What does this bill mean in practical terms for the promotion of tourism in Queensland?

Mr Klaassen: As you would remember through Destination 2045, the government has set that broad framework for tourism and the minister has made various statements around Queensland being an ecotourism hub and outpacing Tasmania and New Zealand. We recognise in and around Hervey Bay you have not only the whale watching but also K'gari and a range of other assets on the mainland that will attract a range of people. Through this bill, we are making it easier for tourism operators to get the necessary permits and authorities they require to undertake their business. Not through the bill but through the department's relationship with Tourism and Events Queensland, we are coming up with plans around how we promote destinations and ensure that those we need to highlight are really promoted across not only Queensland and Australia but also the world so we can get as many tourists as possible to come out and enjoy the great experiences that Queensland has to offer.

Mr LEE: I am already getting very positive feedback from the marine operators. Going to my technical question, I am interested in the practical differences in terms of the process and the matters that you consider between an environmental impact assessment under the EP Act on the one hand and under the state development and public works legislation on the other hand. What are the practical and substantive differences in terms of both pieces of legislation?

Mr Lloyd: I think Kate might talk to this one a bit further. In terms of the proposed changes in the bill around impact assessment reports being recognised for doing effectively the environmental assessment work, which we are required to consider under the Environmental Protection Act, it still needs to meet all of the requirements in the Environmental Protection Act for the matters that we will want to consider through that process. It would also still need to have gone through a public notification process under that framework if it was for a mine, for us to be satisfied that that had occurred. Kate, did you want to provide a bit more detail? Then I am happy to add more if needed.

Ms Bennink: The processes for an environmental impact statement under the Environmental Protection Act and the State Development and Public Works Organisation Act are rather similar. They have the same series of steps, even though some elements of it might have slightly different names. It is a standard process in terms of having terms of reference that outline what is expected to be developed in the environmental impact statement by the applicant. That environmental impact statement then is reviewed by the government to ensure it adequately meets the terms of reference, and input is sought from stakeholders at that point. It is then published so that there can be consultation on the content of that environmental impact statement. Those submissions from the public have to be considered by the applicant and the government in terms of assessing that environmental impact statement.

At present, the Environmental Protection Act recognises an EIS that is completed under both the EP Act and the state development act as an assessment document that could lead to an environmental authority for that activity. Those two processes come to a conclusion with either an environmental assessment report or a Coordinator-General's report. Then those documents, as well as the environmental impact statement itself, are considered as part of the application for the

environmental authority or the permit or licence for the activity. Then the department makes that decision about whether that permit should be approved or not, subject to the conditions, as I outlined, in the recommendations in the EIS assessment report or the Coordinator-General's report.

Mr LEE: Presumably they could not cherrypick one piece of legislation to get an easier assessment conducted?

Ms Bennink: No. We work very closely with the Office of the Coordinator-General through the EIS process if it is a coordinated project. As I said earlier, we also seek input from a range of government departments as well as members of the public when we are looking at the environmental impact statement to ensure it is capturing all of the relevant matters in that assessment process.

Mr POWER: In the new section 19 there is a trigger between a code managed ERA and a non-code managed ERA. The minister must actively prescribe an environmentally relevant activity and there is a series of criteria. One of them involves the definition of contaminant. In this context, what does 'contaminant' mean?

Mr Lloyd: That is an already existing test under the act when prescribing an environmentally relevant activity. It is what I was mentioning earlier around the release of a contaminant. It could be something like dust or water that goes offsite or something like that that has the potential to release that contaminant.

Mr POWER: A contaminant is a polluting or poisonous substance; is that a fair definition?

Mr Lloyd: I do not think we define the word 'contaminant' in the Environmental Protection Act, but it is a general—

Ms Bennink: It is very broad. It is a broad term.

Mr POWER: So it is a polluting or poisonous substance released into the environment but then the second clause says that the release of the contaminant—a polluting or poisonous substance—'will, or may, cause environmental harm'. In what circumstances would a polluting or poisonous substance be allowed, then?

Mr Lloyd: 'Contaminant' is not specifically defined in the act so it has a general definition and it can be quite broad. It is broad for the purposes of being able to define it. I think section 11 of the act—

Mr POWER: I am curious: there is sort of an out here with a polluting or poisonous substance released into the environment and it refers to the satisfaction of the minister and for this he has to make a positive test.

Mr Lloyd: There are a few examples that we can give. Noise is one of those. We have a noise environmental protection policy that helps respond to that, so that could be a contaminant.

Mr POWER: Noise is a contaminant?

Mr Lloyd: The way that the act is set up and the architecture, yes, it would be one of those that could be managed through that process. It could be a gas, liquid, odour, energy. It is a range of matters. It is broad in the act how we have that term so it allows for the prescription of activities that may cause environmental harm. The purpose behind the regulations, whether it is a code or an EA or—

Mr POWER: The structure of this limits the minister from prescribing them as an ERA, an environmentally relevant activity, because they have to meet a satisfaction test. There is a lot of subjectivity to that as well.

Mr Lloyd: The current act has that as well in that it is a release of a contaminant or potential release of a contaminant causing environmental harm as being the threshold for prescribing something as an environmentally relevant activity under the existing framework. On the change to section 19, the key changes are around significant environmental values and adding that as a new trigger.

Mr POWER: I was just getting to that. That was the question the chair asked earlier. There is a lack of clarity. He asked you to dumb it down, which I thought was a satisfactory thing because a lot of people would be saying there is no clarity about what 'significant environmental value' means. Is it really just at the subjective whim of the minister at that point or satisfaction, as the act says?

Mr Lloyd: I appreciate the question. For us, it will be around looking at the science and the evidence base behind that. There are elements within the framework which are not environmental harm but can be environmental nuisance.

Mr POWER: When you say 'we', this is really the minister making—

Mr Lloyd: 'We' is the general way that I was explaining what the intent was behind it. It will be the minister's discretion through that process, which would then be prescribed through an environmental regulation to any of those codes.

Mr POWER: At this point there is an application being put through for the activity. The minister obviously gets the application and may be subject to the lobbying of the proponent. Are there any other voices from outside the department that go into this process that would help prove or disprove the satisfaction of the minister or is it really just the applicants that would be part of the process?

CHAIR: If I can just pull you up there—I think it would be fair to say that the department would receive the application in the first instance.

Mr Lloyd: Correct.

CHAIR: Then it would go to the minister's office for signoff at some later stage after it has been assessed.

Mr POWER: I am not sure that that is true.

CHAIR: It would be good to clarify that.

Mr POWER: It might be quite possible that the minister would be subject to significant lobbying before an application is even made, and these are key integrity issues that we are kind of asking about. With respect, Chair, that is one of the things I was developing. I would prefer if the witness gave the answers rather than you.

CHAIR: I understand your point, member for Logan. I just think it is important to clarify: if someone is making an application, does it go to the minister first or does it go to the department?

Mr POWER: Director-General, are you satisfied with the chair's answer, or do you want to give your own?

CHAIR: I am actually asking the director-general to respond.

Mr Lloyd: In terms of the act itself, there is no change proposed to the way that environmental authority applications would be considered. There is no role for the minister under our Environmental Protection Act. The administering authority is the department, so it is the decision-maker for those ones. Similar to how Ben was describing previously, they are delegated to appropriate officers within the department with suitable qualifications to do that process. In terms of any environmental authority process, it will be the same process for that one. If it is in relation to codes, that obviously goes through a regulation-making process to establish those codes, and then there would be the appropriate Governor in Council process attached to any of the codes. In terms of the decision-making under the regulatory framework, it is a decision for the administering authority, which is defined as the department.

Mr J KELLY: There is nothing to prevent an organisation or an individual making an application from seeking to meet with the minister for whatever reason at any point during the process, is there?

Mr Lloyd: We would encourage any applicant going through a process to go through our prelodgement process. I do not know, Kate, if you want to talk through it a little bit.

Mr J KELLY: No, I am not saying meet with the department; I am saying meet with the minister.

Mr Lloyd: That probably is a matter for the minister in terms of that. I am sure he would—

Mr J KELLY: There is nothing legislatively preventing someone who is making an application under the current or the proposed legislation from seeking to meet with the minister about anything?

CHAIR: I am going to pull you up, Deputy Chair. I think it is a valid question. It is probably one we should be addressing to technical scrutiny or to the minister.

Mr J KELLY: I disagree, Chair. I think it is well within the purview of experienced public servants to answer this question. I am simply asking: does the proposed legislation have anything to prevent people who are applying for these processes from meeting with the minister for any particular reason? It is a simple question.

Mr Lloyd: I can answer in terms of the way we would approach any stakeholder, as we have to meet the requirements under the legislation in assessing any decision. The decision-making criteria for an environmental authority are specified in each of the aspects in the act itself. It then flows through into the standard criteria, which you need to consider on a case-by-case basis. We would have to comply with that, regardless of any other conversations.

Mr J KELLY: That is fine. I am not asking what you are compliant with. I am asking: does the legislation preclude a person who is applying from seeking a meeting with the minister before, after or during the application process?

Mr Lloyd: I am not sure there would be any legislation in the statute book which would do that.

Mr J KELLY: Thank you.

CHAIR: I accept it is a relevant question. I suspect it is more broadly covered under ministerial guidelines and other legislation.

Mr POWER: Thank you, Chair, for the answer that the witness could have provided.

CHAIR: Excuse me, if you let me finish—I think it is an issue that would be good to get some further advice on because you have raised it as a concern. I am not sure that the departmental staff are the right ones to ask.

Mr J KELLY: Chair, I think you are putting words into my mouth. I have not raised it as a concern; I have raised it as a question because I am trying to understand the legislation.

CHAIR: Thank you. We will go to the member for Redcliffe.

Ms DOOLEY: You may or may not have this at your fingertips, but what percentage of mining activities in Queensland are classified as small-scale mining activities compared with large-scale mining activities?

Mr Lloyd: I might let Kate talk through this process. Hopefully we have some stats on hand to answer your question.

Ms DOOLEY: If not, it can be a question on notice. Thank you.

Ms Bennink: There are about 2,000 operators that are classified as small-scale miners that do not require the environmental authority. Of the about 9,300 environmental authorities that we have, a bit over 5,000 of those environmental authorities are for resource activities. That includes mining activities for both coal and minerals as well as petroleum gas activities, which fall under that resource activity definition.

Ms DOOLEY: Thanks very much.

Mr LEE: I am interested in how you develop the criteria for assessing an environmentally relevant activity. Do you look at other jurisdictions and what they are doing when establishing the tests?

Mr Lloyd: Establishing any prescribed environmentally relevant activity will go through an appropriate process for doing that, which will be based on evidence that we have. Recently, we did do an assessment—it was published in, I think, June of this year, along with our discussion paper—which was an assessment of resource activities and the risks and the controls which could apply to the resources industry to help inform risk-based regulation. It took us a couple of years to go through that process, engaging with a range of stakeholders.

Any approaches we would take going forward around considering what activities would be prescribed through an environmentally relevant activity would look at the evidence base, look at what that process looks like going forward and ensure there are known controls in place to manage the environmental risk that is associated with any of those. Then there would be an appropriate consultation process to seek feedback from the community, the industry and others which would need to operate under the codes or those elements to make sure it is workable in that situation.

Mr LEE: Based on that, how does the minister go about making the final decision?

Mr Lloyd: It goes through a process where the department would need to brief the minister, and then it goes through a Governor in Council process. Those tests will be spelled out through that process. We would be looking to publish an impact analysis statement with any regulatory change. The consultation materials, which are published, will also detail all of those elements, and that would also be public when we go through that process. It will all be available for stakeholders to consider and provide feedback on as we go through that process.

Mr LEE: At the outset you touched on general environmental duties. What is the process for developing the general environmental duties?

Mr Lloyd: Under the Environmental Protection Act, there is effectively a duty which applies to everyone in Queensland not to cause harm to our environment. That is a general environmental duty that applies. It is an existing element under the framework. A defence for that is complying with a general environmental duty code. If you are doing a certain activity and you comply with that code—I think there are about three which we have in place at the moment—that is a defence to that offence in the act at the moment.

The way the general environmental duty codes were established under the existing act is they went through a gazettal process and they are in effect for seven years. The change in the bill is to move those GED codes to being prescribed by the regulations, similar to an ERA code, for simplicity in that process. That means that the effect of the timeframe for those codes will then be considered through a sunset review process as to whether the codes are still relevant. We can always update them earlier or go through a process to update them in any of those situations with those GED codes.

Mr J KELLY: I think I am getting the abbreviation right, but you talked about the PRCP—what I would call the mine clean-up provisions. Are the amendments sort of weakening the requirements on businesses to participate in this program and, ultimately, clean up current and disused mine sites that no-one actually owns anymore?

Mr Lloyd: The bill itself has a range of amendments related to the progressive rehabilitation and closure plan. Largely, they are in response to supporting or finalising a lot of the issues with moving into the framework around the transitional progressive rehabilitation and closure plans. One of the amendments, which we discussed earlier, was around providing a timeframe for any of those new sale operators to negotiate a timeframe for submitting. One of the amendments relates to section 431A of the act, which is changing that process to make it very clear that it is an offence not to have a progressive rehabilitation and closure plan in place, to deal with that issue and to send a clear signal that the plans will need to be in place. Complementary to that, though, is an amendment to the transitional process to allow those which have fallen out and cannot apply to be able to reapply and transition into the framework which we are supporting.

There are a couple of other elements related to the PRCP framework which have changed in the bill. One is around removing the mandatory three-year audits for progressive rehabilitation and closure plans to check compliance that those milestones are being met. Three years has ended up being a bit of a challenge in terms of demonstrating progress. The chief executive is still able to issue an audit, but the timeframe will be considered on a case-by-case basis for those ones, with review rights if we did issue an audit earlier than three years for the proponent in that situation.

I think the last amendment around the progressive rehabilitation and closure process is the proposed removal of the public interest evaluation process. Currently, there has not been an application go through that process. Public interest is already a matter which we need to consider through the assessment of the progressive rehabilitation and closure planning process. There is a new provision in the bill—section 126E—which moves the requirements and the elements which are related to considering a public interest evaluation more upfront in the assessment process which the decision-maker, which is the department, would need to consider. I am not sure, Kate, if there is anything else you wanted to add in terms of the operational issues that were experienced through the process which the bill seeks to address.

Ms Bennink: I can add a little bit more about the transition process. It has been a number of years, as Kahil mentioned in his opening statement, that we have been progressing the transition. There were about 200 transition notices that were issued by the department within the three-year period following the commencement of those amendments to the EP Act. That then provided for the department and the existing mine operators to negotiate a time for them to submit their PRCP application for assessment. Those have all been received now and are under assessment. We have made about 90 decisions on PRCPs to date, and approved progressive rehabilitation and closure plan schedules for those 90 sites that outlined the milestones—the criteria that they must meet and by which date—to ensure progressive rehabilitation is progressing.

In that process of transition that we have been under, there have been some difficulties associated with sites that have a long legacy. For example, there are some coalmines in Queensland that have been in operation for over 100 years. Moving those into a contemporary framework has faced some challenges in terms of the rehabilitation that has already been undertaken and the standard that has met. We had to ensure in the transition process that we recognised the existing approval of those sites and did not apply new standards on top of the standards that were already approved.

CHAIR: I am just wondering if you could walk us through a PRCP. How many mines are we talking about? Is this a legacy issue that has some history to it? Are we going back decades? Have new standards been introduced in the last decade, or are these new standards that we are looking to introduce? I am curious about the relationship between DETSI and the department of natural resources. Who is actually responsible for making sure the mines get cleaned up and the appropriate conditions are imposed on start-up or progressively?

Ms Bennink: As I stated, we issued about 200 notices to existing mines.

CHAIR: Was that in recent months or in the last five years?

Ms Bennink: That was in the period from 2019 to 2022 following the commencement of the PRCP provisions in the EP Act on 1 November 2019. We had that three-year period to issue those notices to the existing sites that were required to transition into the PRCP framework.

CHAIR: Is that done in consultation with the department of natural resources or is that a separate power that your department has?

Mr Lloyd: We work really closely with our colleagues in the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development. We have a close engagement there. Our responsibility under the Environmental Protection Act is effectively to ensure rehabilitation conditions and any impacts to the environment are managed. The department of natural resources and mines not only administers the tenure framework but also deals with any mines which are abandoned. The abandoned mines process sits under the department of natural resources and mines. The other element in this framework is our engagement with the financial provisioning scheme manager, which is housed within Queensland Treasury. They administer the framework around the collecting of any financial assurance in that process as well. There are probably three agencies which have a very clear role in the management of any resource activities in the state.

Ms Bennink: In further answer to your question, it is our department's responsibility to issue those decisions about the progressive rehabilitation and closure plan schedule and then to follow up on compliance with those obligations to ensure they are meeting those milestones and dates.

CHAIR: In this whole process, what sorts of obligations are placed on mines at the startup? There is obviously a plan. I assume part of the approval is subject to them doing these clean-ups. Is there any surety offered or security provided to ensure they follow through with those plans?

Ms Bennink: Yes. There are three elements that come together in terms of the approval of a mine site: the environmental authority, being the permit or the licence with the conditions they must meet for their daily operations; the progressive rehabilitation and closure plan, which outlines how they will do the rehabilitation of their disturbance, to what standard and by when; and the estimated rehabilitation cost, which is the calculation of how much it would cost to restore and rehabilitate the disturbance they have caused. The department is responsible for making those three decisions in relation to mining activities. As Kahil mentioned, we work closely with the scheme manager after we make an estimated rehabilitation cost decision. That decision is provided to the scheme manager to determine the appropriate surety to be collected based on that ERC decision. We also work closely with the department of natural resources and mines with regard to, if a site is abandoned, what their environmental authority conditions are, what their PRCP condition are, whether the site has met those and how best to manage the environmental harm or issues that the site is facing.

CHAIR: In terms of surety, are they paying a sum of money into Treasury as a holding deposit, or is it the threat of legal action or criminal prosecution? What surety acts as an incentive for people to follow through on their obligations?

Mr Lloyd: The reforms which established the progressive rehabilitation and closure plan also established the financial provisioning scheme within Queensland Treasury. Queensland Treasury can probably provide more details on this, but there is a general approach taken. There are two elements to the scheme. One, larger sites or high-risk sites need to provide financial surety. They need to provide either a bank guarantee or another type of surety for those ones—I think it is over $500 million. If that is the site liability in terms of the rehabilitation that exists, they will need to provide that surety—or if they are a high risk. Treasury have their own approach to managing and identifying what that risk rating is. Those which are below high risk—from low to moderate—provide funding into a pooled fund. That pooled fund is available as a kind of insurance scheme for any sites which may need the state to step in to undertake the rehabilitation activities longer term. Our department would work closely with the department of natural resources and mines around that how that process is undertaken to manage any of those sites if they do come back into the state's hands.

Ms Bennink: It is a deemed condition under the provisions of the act that all of these sites must provide the surety as required by the financial provisioning scheme in response to the department's decision on estimated rehabilitation cost for that site.

CHAIR: If they fail to provide that surety or to honour their commitment, are they then subject to criminal prosecution?

Ms Bennink: There are offence provisions and there are steps and processes the department can take if they are in noncompliance.

Mr J KELLY: Point of order, Chair: we are asking questions about a bill that has been operational for quite a while and it is wasting the time of the committee. We have additional questions we would like to ask about this bill.

CHAIR: Okay. Deputy Chair, over to you.

Mr J KELLY: With respect to environmental activities that are prescribed by regulation, presumably that means it will be easier for the minister to basically change things. Will they have to go through the same subordinate legislation process that has to occur now, or will they simply be able to declare something or remove something?

Mr Lloyd: In terms of the bill, the only change around what environmentally relevant activities are prescribed by the regulation is to move the definition of 'resource activities' to being also prescribed via the regulation. There is no change proposed in how the prescription happens. It would be a Governor in Council process which could then go through scrutiny. There are probably around 80 to 90 prescribed environmentally relevant activities under the framework. There is a list which is provided in the schedule of the regulation currently and there is a range of prescribed activities which are already defined there, so it is just building on that process.

Mr J KELLY: Will all current mining activities be prescribed?

Mr Lloyd: The intent will be from day one of the provisions that any of those ones which are operating as a resource ERA would be considered a prescribed activity, for want of a better word. I think it is a general ERA or a resource ERA. It would be defined as a resource ERA in the regulation so that it would then be prescribed from day one. The process then would be to work through what the appropriate regulation is for that type of activity. For example, one of the proposals would be to move small-scale mining to an ERA code from the commencement of those provisions through a process of transitional engagement with stakeholders. There might be certain resource activities which are defined. For example, for a data acquisition authority that currently requires an environmental authority to do surveys and check what is there or a water monitoring authority—doing works to undertake a baseline assessment or something like that—which requires an environmental authority currently, in the future government may wish to consider whether it is appropriate or not to require an ERA code or an environmental authority or what the appropriate mechanism is, but that would be a future process to go through.

Mr J KELLY: With regard to the decision to remove the mandatory three-year audit periods and instead use the discretion of the auditors, can the department advise if there are any guardrails in place to ensure we do not go long periods of time without an audit actually occurring?

Ms Bennink: The department has a compliance program for the environmental authorities that it regulates, for 9,300 activities. That process looks at whether those activities are meeting their conditions and, with the PRCP schedule in particular, meeting those milestones by the dates that are prescribed in the schedule. We also have an annual return requirement that applies to site-specific resource activities whereby there is an annual provision of information—a reporting to the department—about whether the activity is complying with its conditions and is complying with its PRCP requirements. From that information the department can determine if it is necessary to conduct an inspection, for example, or request further information from the applicant about how they are meeting their activities and determine whether it is necessary and desirable to proceed with the audit requirement.

Ms BOLTON: I need some clarification about the criteria that the Coordinator-General applies when working out whether to declare a coordinated project and determine whether an IAR or an EIS process is to be used.

Ms Bennink: That is under the State Development and Public Works Organisation Act. I cannot talk to those criteria, but the changes we are proposing to make in the EP Act are to recognise those two processes under the state development act—the IAR and the EIS—as forms of environmental assessment that can support an application for an environmental authority and provide information that would then be assessed by our department in determining whether an environmental authority should be approved.

Mr Lloyd: The Coordinator-General has the discretion to determine what the appropriate process under that act would be for a proponent when they come through that process. There is a discretion around what type of approach is taken for those coordinated projects. For us, with respect to the EP Act, as Kate mentioned, the only time the impact assessment report would be considered through our process is if it covers the same environmental matters which we would need to be considering through our decision-making process.

Ms BOLTON: The explanatory notes on the amendments do not address how the Nature Conservation Act amendments comply with fundamental legislative principles. Why is that?

Mr Lloyd: There are two key amendments to the Nature Conservation Act. One is a very minor amendment around the definition of 'protected areas', which is really a clarifying amendment; there is an error where it does not refer to protected areas throughout all of the times that term is used, so the definition is updated through the bill. That is not one that would not engage fundamental legislative principles. The other one is around an existing power which conservation officers have under the act. It is really a clarifying amendment to enable that provision to also apply for our conservation officers under the Nature Conservation Act to investigate a relevant Planning Act matter—for example, koalas or prohibited development under the Planning Act related to koalas—where they could use their existing investigation powers under the Nature Conservation Act but apply it to the Planning Act. It is just a clarifying amendment to confirm that they can already do those investigations when they are out there so that they can leverage the same powers when they are doing that investigation.

Mr POWER: I want to continue with this new section where the minister, to their own satisfaction, gets to determine whether something is a code managed ERA. The minister, in managing an ERA, must satisfy themselves via a two-part test. The first part says that the risk of harm from the environmental activity is known. That is fairly broad in that you can have unknown risks. You can have significant environmental harm but still have clarity about the significant harm the activity undertakes, so it is not much of a test. Given that the ERA codes are intended to remove lower risk activities, these might have significant harm.

The next test is that the environmental harm can be effectively—this is an 'or' clause—prevented, minimised, rehabilitated or remediated—so any of those—to the satisfaction of the minister. In the drafting of this it seems that a minister with a propensity of satisfaction could find that something could be—even though it had significant environmental harm—prevented, minimised, rehabilitated or remediated through their plan. It is a very broad circumstance. Given we have talked about the integrity issues—

CHAIR: What is the question, member?

Mr POWER: Is it as broad as it seems? Can you give the community confidence that this is not just at the whim of the minister, with these very broad categories?

Mr Lloyd: Is this in relation to proposed new section 19?

Mr POWER: The EPA makes amendments that, by regulation, with code managed ERAs 'the minister is satisfied'. Those are the two conditions that were explained to us in the summary we have been given.

Mr Lloyd: With proposed new section 20, the minister may recommend the making of a regulation if they are satisfied that the risk of environmental harm that may be caused by the carrying out of the activity is known and the environmental harm can be effectively prevented, minimised, rehabilitated or remediated by requiring compliance with the code. That is in proposed new section 20(3). Both tests have to be satisfied in that situation.

Mr POWER: Right, but the first one being not much of a test, other than having some knowledge of perhaps significant environmental harm.

CHAIR: Can you repeat the two tests for me?

Mr Lloyd: The first test is that environmental harm may be caused by carrying out the activity, and the second one is that, effectively with appropriate controls—knowing conditions and all of those elements—those conditions could be in place to manage any of the environmental harm. It can be effectively prevented, minimalised, rehabilitated or remediated by requiring compliance with the code. Effectively, to be able to prescribe an ERA code there has to be the potential of environmental harm or a risk to the environment from that activity occurring and that the code would manage that—

Mr POWER: My point is: a significant environmental harm being prevented by an ERA code is quite different from the subjective satisfaction of the minister that the significant harm be minimised.

Mr Lloyd: I might ask Louise to provide a bit more detail around that process.

Mr POWER: There is an 'or' clause on the second phrase.

Ms Smyth: We have a very good understanding at the moment about what activities result in in terms of the risk for environmental harm. As we have referenced before, we use science and other evidence—feedback from the community and stakeholders—about how they are impacted by particular activities and, therefore, what matters we need to take to mitigate in relation to those potential harms. We have very good knowledge about that already. The bill as proposed will not make

changes to what we are regulating in relation to those particular activities. We did need to make some structural changes to these sections in the legislation to allow us—instead of having very broad provisions up-front at act level—to put those provisions into the regulation. That will allow us to take a much more targeted approach, particularly to the resource activities. We want to do that to tease out the different kinds of resource activities so that we can take a risk-based approach to regulating resource activities in particular. As [Kahil said, at the moment things like monitoring and data collection require an environmental authority, as does a significantly large coalmine. Under the regulation we want to be able to tease that out and provide a much more nuanced and targeted approach. Really, this is an opportunity for us to carefully scrutinise the harm that may come from an activity and to match our regulatory oversight to that level of harm.

CHAIR: Thank you. We are out of time.

Mr J KELLY: We have a number of other questions. Would it be possible to put some questions in writing following the session?

CHAIR: I am always happy to accept your questions in writing, Deputy Chair. That concludes this briefing. Thank you to everyone who has participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. Responses to questions on notice will be required by 5 pm on Wednesday, 17 December. I declare this public briefing closed.

The committee adjourned at 11.04 am.