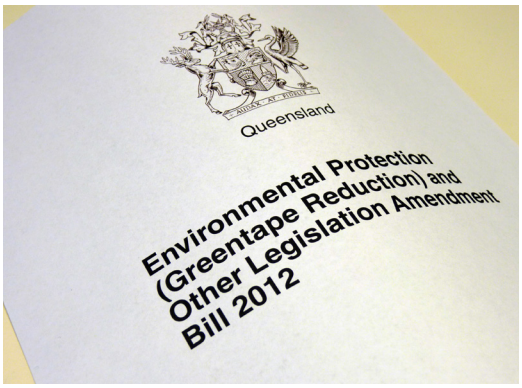
Parliamentary Committees



Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012

Report No. 3
Agriculture, Resources and Environment Committee
June 2012

Parliamentary Committees

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Agriculture, Resources and Environment Committee

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Technical Scrutiny Secretariat	Ms Renee Easten, Research Director
	Ms Marissa Ker, Principal Research Officer
	Ms Dianne Christian, Executive Assistant
Contact details	Agriculture, Resources and Environment Committee Parliament House George Street Brisbane Qld 4000
Telephone	07 3406 7908
Fax	07 3406 7070
Email	arec@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/arec

Acknowledgements

The committee thanks those who briefed the committee, made submissions, gave evidence and participated in its inquiry. In particular the committee acknowledges the assistance provided by the Department of Environment and Heritage Protection.

Contents

Abbreviations

AREC	Agriculture, Resources and Environment Committee
DEHP	Department of Environment and Heritage Protection
DERM	Department of Environment and Resource Management
EAREC	Environment, Agriculture, Resources and Energy Committee
ERA	Environmentally Relevant Authority
SPA	*Sustainable Planning Act 2009*
QMDC	Queensland Murray-Darling Committee

Chair's foreword

This report presents a summary of the committee's examination of the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

Public examination of a Bill allows the Parliament to hear views from the public and stakeholders they may not have otherwise heard from, which should result in better policy and legislation in Queensland.

On behalf of the committee I thank those organisations that made written submissions on this Bill, and others who have informed the committee's deliberations.

I commend the report to the House.

Mr Ian Rickuss MP
Chair

June, 2012

Executive summary

This Report presents the findings of the Agriculture, Resources and Environment Committee's examination of the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012. The Legislative Assembly referred the Bill to the committee for examination on 29 May 2012.

The Bill proposes to introduce a licensing model proportionate to environmental risk, introduce flexible operational approvals, streamline the approvals process for mining and petroleum and streamline and clarify information requirements, whilst maintaining environmental outcomes.

The Bill is similar to a Bill of the same name presented to the 53rd Legislative Assembly on 26 October 2011. The previous committee received eight submissions on the 2011 Bill and invited those submitters to revise their submissions in view of the 2012 version of the Bill. In response to that invitation, the committee received a further seven submissions.

The Department of Environment and Heritage Protection (DEHP) assisted the committee during its inquiry by providing a public briefing, responding to issues raised in the submissions and from the public hearing, as well as providing advice in respect of fundamental legislative principles.

After consideration of all submissions and advice given during the course of the committee's examination, the committee recommends the Bill be passed and that the recommendations, clarification and assurances regarding the points raised be met by the Minister.

Recommendations

Recommendation 1 **5**

The committee recommends that the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012 be passed.

Point for clarification **6**

The committee seeks the Minister's clarification as to what action will be taken to ensure the continued suitability of operators is monitored at appropriate intervals, and that mechanisms will be put in place for the monitoring of environmental offences by operators.

Recommendation 2 **7**

The committee recommends that proposed sections 154 and 155 in Clause 8 be amended to ensure that business days between and including 20 December in one year and 5 January in the following year are excluded from the notification period for submissions. The purpose of this recommended amendment is to ensure that individuals and community groups are afforded reasonable opportunities to adequately respond to applications for large mining and other resource projects.

Point for clarification **7**

The committee invites the Minister to provide advice as to the adequacy of the 20 business day notification period for individuals and community groups to respond to environmental applications for large mining and resource projects, and whether he has discretion to require a longer period.

Recommendation 3 **9**

The committee recommends that the Minister consider requiring his department to work with other departments to promote the use of readily understood, standardised terms in legislation across government.

Recommendation 4 **10**

For the information of the House, the committee recommends that the Minister advise when his department will have completed calculating the methodology for residual risk payments in Section 318K to 318ZN, and whether there is any outstanding risk to the State by not having this calculation completed.

Recommendation 5 **10**

The committee recommends that the Committee of the Legislative Assembly consider options to ensure that the Parliament, and its committees in their examination of Bills, are duly informed of methodologies for the calculation of fees and payments provided for in Bills, at the time these Bills are presented in the House.

Point for clarification **11**

The committee seeks clarification from the Minister if it is anticipated that the Bill will shift costs for administration of environmental licensing onto local governments.

Recommendation 6 **11**

The committee recommends that the Minister has further discussions between his department, the Local Government Association of Queensland and local governments to ensure a smooth transition in relation to council budgets for 2012-13 budgets due to the Bill's commencement date being 31 March 2013 which is not in alignment with current council budgets.

Point for clarification **12**

The committee seeks the Minister's clarification that the Bill will be extensively reviewed for drafting errors, unintended drafting consequences, ambiguity and typographical errors and that such errors, consequences and ambiguity will be amended. Plain English only is required.

Recommendation 7 **13**

The committee recommends that the Committee of the Legislative Assembly consider whether the provisions in Standing Orders and the Sessional Orders should be amended to ensure that Members are afforded fair opportunities to debate the provisions contained in large multi-part clauses in Bills.

1 Introduction

Role of the committee

The Agriculture, Resources and Environment Committee is a portfolio committee established by a resolution of the Legislative Assembly on 17 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.[1]

In its work of Bills, the committee is responsible for considering:

- the policy to be given effect, and
- the application of the fundamental legislative principles.[2]

The referral

On 29 May 2012, the Legislative Assembly referred the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012 to the committee for examination and report.

The Bill is similar to a Bill of the same name presented to the 53rd Legislative Assembly on 26 October 2011. The 2011 Bill was referred to the Environment, Agriculture, Resources and Energy Committee (EAREC) of the 53rd Legislative Assembly for examination and report. However that Bill lapsed with the dissolution of the Legislative Assembly on 19 February 2012 before EAREC could report.

The committee's processes

As part of its brief inquiry, the committee:

- Sought advice from the Department of Environment and Heritage Protection (DEHP) on the differences between the 2011 and 2012 Bills. The committee published comparison versions of the Bill and explanatory notes on its web pages
- Considered eight submissions accepted by EAREC on the 2011 Bill, as well as advice on those submissions EAREC received from the former Department of Environment and Resource Management (DERM)
- Invited submitters to EAREC to revise their submissions in view of the 2012 version of the Bill
- Notified other stakeholders of the inquiry, and accepted seven further submissions
- Received briefings by DEHP officers and heard evidence from five stakeholders at a hearing on 6 June 2012. Transcripts of the briefings and hearing are available at www.parliament.qld.gov.au/committees. The briefings and hearing were open to the public and broadcast live via the Parliament of Queensland website, and
- Sought advice from DEHP on possible fundamental legislative principles issues based on a briefing prepared by the Committee Office's Technical Scrutiny Secretariat

The submissions considered by the committee, the briefing officers and the witnesses who appeared at the hearing are listed at Appendix A.

[1] Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland as at 18 May 2012.
[2] Section 93 of the *Parliament of Queensland Act 2001*.

2 Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012

Primary policy objectives

Hon Andrew Powell MP, Minister for Environment and Heritage Protection, noted in his introductory speech that the main objective of the Bill is to introduce a transparent and simplified regulatory system for environmental approvals.[3]

The Bill seeks to amends the *Environmental Protection Act 1994* to: introduce a licensing model proportionate to environmental risk, introduce flexible operational approvals, streamline the approvals process for mining and petroleum and streamline and clarify information requirements, whilst maintaining environmental outcomes.

In addition to amending the *Environmental Protection Act 1994,* the Bill seeks to amend the:

- *Aboriginal Cultural Heritage Act 2003*
- *Coastal Protection and Management Act 1995*
- *Geothermal Energy Act 2010*
- *Greenhouse Gas Storage Act 2009*
- *Mineral Resources Act 1989*
- *North Stradbroke Island Protection and Sustainability Act 2011*
- *Petroleum Act 1923*
- *Petroleum and Gas (Production and Safety) Act 2004*
- *State Development and Public Works Organisation Act 1971*
- *Sustainable Planning Act 2009*
- *Torres Strait Islander Cultural Heritage Act 2003*
- *Transport Infrastructure Act 1994*
- *Waste Reduction and Recycling Act 2011*
- *Water Act 2000,* and
- *Water Supply (Safety and Reliability) Act 2008*

Context for the Bill

The Bill is an outcome of the Greentape Reduction Project announced by the former government in 2009 as part of *ClimateQ: Toward a Greener Queensland*, the former government's climate change strategy. The project commenced in 2010 and sought to reform the licensing framework for environmentally relevant activities under the Environmental Protection Act 1994, focusing on the application and assessment processes.[4]

A key aim of the Greentape Reduction Project was to reduce licensing costs for industry and government without compromising environmental standards. As noted by the Minister, the Bill seeks to achieve this aim by introducing a single, integrated approval process for all environmentally relevant activities[5] (ERAs) from small motor vehicle workshops to the largest mines. This single process has five clear stages for all ERAs, including mining and other resource activities.

The government estimates the Bill will help achieve savings of $12.5 million per annum. The figure below shows the staged assessment process that the Bill seeks to implement.

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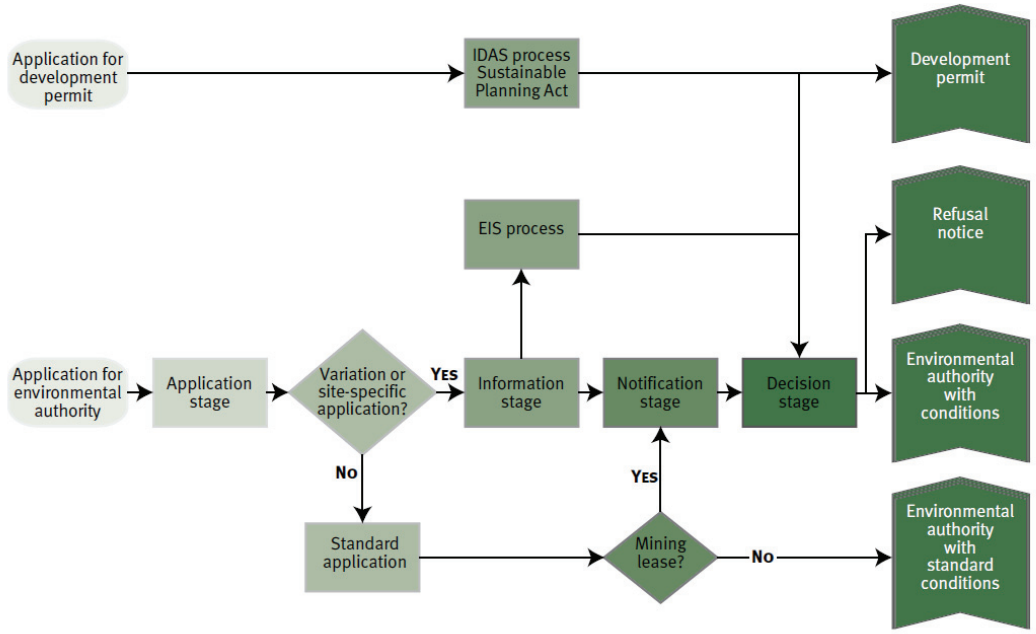
[3] Queensland Parliament, 2012, *Record of Proceedings*, Brisbane, 29 May, p. 196.

[4] Nichols, E. 2012, *Briefing Transcript*, 6 June, p.1.

[5] Basically, something becomes an environmentally relevant activity if it is likely to have a contaminant release that needs to be managed.

Stages of assessment process for environmental authority applications



Source: Department of Environment and Heritage Protection. 2012, A Quick Guide to the Greentape Reduction Bill

The new approval process

The new approval process for environmental authorities contained in Chapter 5 of the Bill is divided into modular stages as depicted in the boxes in the lower half of the diagram. These stages are:

- Application stage
- Information stage
- Notification stage, and
- Decision stage.

Not all environmental authorities are subjected to all stages.

Consultation by department on the Bill

The advice provided to EAREC by DERM in February 2012 lists the department's consultation with community, industry and government stakeholders on the 2011 version of the Bill. According to DERM's advice:

- Consultation commenced with peak bodies in April 2010
- The community was consulted from 23 May – 1 July 2011 in relation to a discussion paper, *Greentape Reduction – Reforming licensing under the Environmental Protection Act 1994*, and the Regulatory Assessment Statement. Letters were posted to 4,200 registered operators of ERAs administered by DERM inviting them to attend an information session to discuss the proposals contained in the discussion paper and regulatory assessment statement. DERM advised that almost 600 people attended the department's 26 information sessions at 12 localities across the state. Additional sessions were help for peak bodies by request
- The department wrote to each local government enclosing further notices to provide to holders of environmental authorities administered by them
- Key stakeholders were consulted on an exposure draft of the 2011 Bill in September 2011

3 Examination of the Bill

Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the form and policy intent of the Bill. The Bill introduced an integrated environmental licensing system with reduced administration and compliance costs for businesses and government, whilst maintaining crucial environmental protections. After examining the Bill, the committee determined that the Bill should be passed.

Recommendation 1

The committee recommends that the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012 be passed.

The committee identified provisions in the Bill that warrant amendment, and other issues warranting clarification by the Minister when the Bill is considered by the House. The committee also noted drafting issues, issues concerning the information provided with Bills and problems caused by the structuring of this and other Bills with very large clauses with multiple parts. These issues are discussed in the following sections of the report.

Suitable operator provisions (Clause 8 Chapter 5A Part 4, 318F – 318V)

Clause 8 of the Bill inserts new chapters 5 and 5A in the *Environmental Protection Act 1994* (Qld). Part 4 of Chapter 5A of the Bill provides for the registration of suitable operators for the carrying out of an environmentally relevant activity.

The Bill allows current holders of a registration certificate and a development permit for a prescribed environmentally relevant activity to be automatically registered as a suitable operator. The Bill also provides that the suitability of operators to hold an environmental authority will only be assessed on the first application.[6]

During the briefing on 6 May 2012, the committee questioned departmental officers about the timeframe between when a suitable operator may be registered and the period before they undertake any activity as well as the reporting of breaches of environmental guidelines by suitable operators, an issues raised by Ipswich City Council in their submissions.

Ipswich City Council, while generally supportive of these provisions in the Bill, questioned how relevant authorities would become aware of environmental offences committed by operators, which would trigger concerns about the operator's continuing suitability.[7]

At the public hearing, the council told the committee:

> *In terms of some of the environmental licensing issues that have been presented in the Bill—the suitable operators aspect—we believe that the process looks very good and councils are generally supportive of that. However, I think there are some improvements that can be made, or maybe are being considered, within the other supporting documentation such as the regulation or other information that the department is working on that allows administering authorities to provide active input into that system to ensure that, where in particular local government and other regulatory agencies other than the Department of*

[6] Explanatory Notes, Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012, p 115.

[7] Ipswich City Council 2012, *Submission No. 10*, p. 2.

Environment and Heritage Protection are involved, they are able to provide details about when an operator may be triggering some of those environmental offences that have been described within the Bill when questions of an operator's suitability may be relevant. To date, we have not seen any details on that information, but we think that is crucial in ensuring that the suitable operators system does work the way it is intended.[8]

Point for clarification

The committee seeks the Minister's clarification as to what action will be taken to ensure the continued suitability of operators is monitored at appropriate intervals, and that mechanisms will be put in place for the monitoring of environmental offences by operators.

Submission periods (Clause 8 Chapter 5 Part 4, 154 & 155)

The proposed chapter 5 contains two new sections relating to submission periods for applications for mining activities (section 154) and other resource activities (section 155). The Environmental Defenders Office Queensland (EDO Qld) raised concerns about the length and timing of these submission periods.

According to EDO Qld, the 20 business days allowed in the Bill for submissions on applications does not allow sufficient time for individuals and community groups to properly consider application documents, seek advice and then prepare submissions; particularly on applications for large mining and other resource projects. They have proposed, instead, that the submission period be changed to 50 business days. At the public hearing EDO Qld explained to the committee:

My central message is why on earth are the time frames and the community's right to information more or less similar or equivalent to what you get on your average small urban planning matter? For example, in relation to public submission periods under the Sustainable Planning Act, when the notice goes up the public gets 15 business days or maybe 30 if it is a big project. What is proposed under the Bill for coal seam gas projects and what is the normal public submission or objection period for mines? Twenty business days, and that does not make sense.

These are massive projects. I do not know if any of you have tried to do a submission on a mine, a major project or a big industrial development; it is an absolutely massive job. I have written there the sorts of things that people need to do. If they want to do more than just dash off a couple of lines, they have to know the submission period is open. Currently, it is really hard to even know that the submission period is open. If it is a group, they have to talk to each other, try to arrange to get together, read the information—in the case of some big projects, there are hundreds of thousands of pages—talk to friends, arrange meetings of your group, try to find some legal help from the Environmental Defenders Office or a private solicitor which most people cannot afford, try to get a water expert or someone else to help you and try to meet.

It is really important for ordinary people and submitters that they are not doing this work during business hours or business days; it is done on weekends and after hours. It is my submission that allowing 20 business days for a public submission period is completely inadequate. I propose it should be 50. I think it is important. These are massive projects. Some of them will last 30 years. Others that are coming through like the Carmichael

[8] Doyle, G. 2012, *Hearing Transcript*, 6 June, p 2.

> *coalmine—I think that is a really big one—are going to last for 120 years. I really think 20 business days is just ridiculously short for a public submission period.*[9]

The committee notes that Section 298(1) of the *Sustainable Planning Act 2009* (Qld) (SPA) provides for notification periods of 15 to 30 business days for applications –allowing up to 10 business days longer than is proposed for submissions in the Bill.

EDO Qld also noted that the proposed sections 154 and 155 do not exclude business days that coincide with peak holiday periods (ie 20 December in one year to 5 January in the following year from the submission period as is the case with section 298(2) of the SPA[10]).

EDO Qld stated that:

> *Community groups might be caught out unawares by activities being publicly notified in and around holiday periods. Both Christmas and Easter are key time[s] when people go away or generally switch off from looking at public notices. For fairness to the community those periods ought not to be counted in the public submission period or any appeal.*[11]

In considering the issues raised by EDO Qld, the committee reviewed section 298 of the SPA and the comparable section in the now-repealed *Integrated Planning Act 1997* (Qld), the predecessor to the SPA. According to the Explanatory Notes to the Integrated Planning Bill 1997 (Qld), the then clause 3.4.5 specified the notification period to be not less than 15 business days, and not including the period immediately before and after Christmas:

> *The latter requirement has been included to overcome any reduced effectiveness which may result from notification over this significant holiday period.*[12]

Recommendation 2

The committee recommends that proposed sections 154 and 155 in Clause 8 be amended to ensure that business days between and including 20 December in one year and 5 January in the following year are excluded from the notification period for submissions. The purpose of this recommended amendment is to ensure that individuals and community groups are afforded reasonable opportunities to adequately respond to applications for large mining and other resource projects.

Point for clarification

The committee invites the Minister to provide advice as to the adequacy of the 20 business day notification period for individuals and community groups to respond to environmental applications for large mining and resource projects, and whether he has discretion to require a longer period.

9 Bragg, J. 2012, *Hearing Transcript*, 6 June, p. 8.

10 Section 298(2) of the *Sustainable Planning Act 2009* (Qld) provides that the notification period must not include any business day from 20 December in a particular year to 5 January in the following year, both days inclusive.

11 Environmental Defenders Office Qld 2012, Submission No. 4, p. 2.

12 Explanatory Notes, Integrated Planning Bill 1997, p. 108.

Standardised terms

The committee received submissions and correspondence about the lack of consistency in standard terms between the Bill and other Acts. The committee notes from the explanatory notes that these are the sorts of issues that the Bill was intended to address:

> *The Greentape Reduction project was established in response to business and government concerns that the regulatory environment had become unnecessarily complex and difficult to navigate.*

The committee supports the intent to streamline and clarify information requirements but notes the evidence provided that this Bill introduces new jargon relevant to devolved ERAs which the community and industry will be forced to learn.

Logan City Council's submission stated:

> *The Bill will introduce a lot of new jargon that industry will have to learn. Examples of new jargon relevant to devolved ERA's are:*
>
> - *Standard application*
> - *Variation application*
> - *Site-specific application*
> - *Conversion application*
> - *Amalgamated environmental authority*
> - *Eligibility criteria*
> - *Standard conditions*
> - *ERA project*
> - *Significant project*
> - *Registered suitable operator.*
>
> *While some of the terminology is necessary to implement the proposed changes, others appear to have no benefit, for example, changing the 'holder of a registration certificate' to a 'registered suitable operator'.*[13]

The QLS stated in its submission:

> *We do have a concern that the numerous frequent changes to the names of approvals for prescribed ERAs in recent years have led to widespread confusion. In the experience of our members, it is difficult enough to explain to international or interstate investors the current series of deeming provisions which mean that older approvals for ERAs have one name but are now deemed to have another name and that the descriptions of the ERAs shown on the front cover are now superseded by other descriptions in a regulation; it is going to become one step more difficult with the latest round of changes.*[14]

Similarly, Ipswich City Council remarked in their submission:

> *Generally, many terms used in the Bill are quite complicated and confusing (eg prescribed ERA project, significant project, registered suitable operator, amalgamated authorities etc). It is suggested that simpler terminology be considered so that the community (in particular)*

[13] Logan City Council, 2011, *Submission No. 7*, p.5.
[14] Queensland Law Society, 2011, *Submission No.3*, p.2.

> *will understand the legislation. Considering the evolution of the legislation, there have been so many changes that operators will struggle with the terminology of this legislation. Local Governments deal with a large proportion of small to medium businesses and as such the terminology and changes can lead to confusion, frustration and distrust which results in greater administration by Local Government.*[15]

In their commentary on the submissions, DERM noted the positive feedback received from regulators and industry as part of the Greentape Reduction project, the overall benefits of the proposed separation of the environmental operating conditions from the development permit, and that the model proposed in the Bill represented 'the best of both worlds'. DERM also referred to its rolling implementation plan to update the physical documentation.

The committee acknowledges the complexity of existing environmental regulations, and strongly supports the objectives of the Bill to reduce the regulatory burdens on business and government. The committee is, however, concerned that this Bill will in fact introduce further terminologies and complexity, at least some of which appear to be unnecessary. The committee believes that government departments should try to ensure that legislation uses readily understood terms and consider the benefit of the use of standardised terms in legislation on related matters across the government.

Recommendation 3

The committee recommends that the Minister consider requiring his department to work with other departments to promote the use of readily understood, standardised terms in legislation across government.

Calculation of residual risk payments (Clause 8)

Part 6 of new Chapter 5A provides for progressive rehabilitation. The Explanatory Notes to the Bill state that Part 6 is largely unchanged from the current *Environmental Protection Act 1994* (Qld) except that the proposed provisions extend to all resource activities. The explanatory notes state this is because the provisions encourage early rehabilitation through refund of part of the financial assurance having potential benefits to all resource activities.[16]

During the public hearing, the committee questioned departmental officers about residual risk payments and how they would be calculated. The questions were taken on notice. In its written response received on 7 June 2012, the department advised:

> *The department is unable to give an example of a residual risk payment under the current Environmental Protection Act 1994 equivalent of sections 318ZK to 318ZN as a residual risk payment has never been required under those provisions.*
>
> *The department does not currently have a published methodology for calculating a residual risks payment, but a methodology is currently being developed in consultation with industry.*

The committee is surprised that, at this late stage, the department has not finalised how it will calculate these payments provided for in the Bill, and that the methodology is still subject to further consultation with industry. In the committee's view, this limits its ability to effectively scrutinise the

[15] Ipswich City Council, 2011, *Submission No.2*, p.8.

[16] Explanatory Notes, Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012, p. 125.

policy objectives of the Bill in an appropriate level of detail. The committee suggests this omission would also impact on stakeholders asked to comment on the Bill. The committee notes that these provisions were included in the 2011 version of the Bill presented to the 53rd Parliament for which consultation by the department commenced as early as April 2010.

Given the truncated timeframe for consideration of this Bill, the committee recommends that the Minister inform the House when debating the Bill of the methodology that the department will use for calculating residual risk payments. Given that the residual risk payments have never been levied in Queensland, and that the methodology for calculating the payments has not been resolved, the committee also seeks further assurance from the Minister regarding the potential financial liabilities to the state as a result of these payments.

Recommendation 4

For the information of the House, the committee recommends that the Minister advise when his department will have completed calculating the methodology for residual risk payments in Section 318K to 318ZN, and whether there is any outstanding risk to the State by not having this calculation completed.

The committee believes this omission by the department highlights a more fundamental issue about how Bills are presented to the House. In our view, it is essential that methodologies for calculating payments and fees that a Bill provides for should be resolved and detailed in the explanatory notes that accompany Bills, or otherwise made known to the Parliament, at the time a Bill is presented. The committee therefore recommends that the Committee of the Legislative Assembly consider the issue.

Recommendation 5

The committee recommends that the Committee of the Legislative Assembly consider options to ensure that the Parliament, and its committees in their examination of Bills, are duly informed of methodologies for the calculation of fees and payments provided for in Bills, at the time these Bills are presented in the House.

Cost shifting (Clause 8)

The Local Government Association of Queensland (LGAQ) indicated their concern about possible cost shifting to councils as a result of this Bill (in particular clause 8 new section 298). At the public hearing in Brisbane on 6 June 2012, the committee heard:

> *It has been brought to local government's attention that this bill may only be stage 1 in a series of amendments to this legislation. Local government is committed to further review and will actively engage in this process but wishes to draw the committee's attention to local government's ability to regulate environmental protection if devolved environmentally relevant activities, or ERAs, are removed or reviewed. Revenue from licensing of these activities primarily fund local government's regulatory activities in this area. Cost shifting this regulatory work on to the general rate base will not be acceptable.*[17]

[17] Blanchard, C. 2012, *Hearing Transcript*, p.1.

The issue of cost shifting to local government is one that has been presented to previous committees in the 53rd parliament and was identified as a factor in the financial sustainability of remote and regional councils.

At the public hearing on 6 June 2012, the Department of Environment and Heritage Protection advised the committee:

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

Given the divergent views as to whether the changes contained in the Bill would result in cost shifting, the committee seeks assurances from the Minister to resolve the concerns raised by LGAQ about possible cost shifting to local governments.

Point for clarification

The committee seeks clarification from the Minister if it is anticipated that the Bill will shift costs for administration of environmental licensing onto local governments.

Commencement date (Clause 2)

The committee notes concerns that were raised by the LGAQ with regards to the issue of the timing of the impact of this bill upon local government budgets. At the public hearing on 6 June 2012, the LGAQ informed the committee it had just been informed of the date and requested that the date be postponed. The LGAQ stated:

> *The association on behalf of local government requests that this date be reviewed and that 1 July 2013 be considered for commencement. This allows local government to budget in the next financial year for any necessary operational changes. Budgets for councils for the coming financial year are already set and insufficient time was given through the review of this bill to local government to provide financial support for these changes in the budget for 2012-13.*

The committee notes that the request to delay the commencement date is a reasonable request and recommends that the department consult further with the LGAQ to identify options to assist local government on the impact of these changes on their 2012-13 budgets. The committee also noted advice from the Brisbane City Council that the changes to its processes if the Bill is passed could cost that council $800,000 to implement.

Recommendation 6

The committee recommends that the Minister has further discussions between his department, the Local Government Association of Queensland and local governments to ensure a smooth transition in relation to council budgets for 2012-13 budgets due to the Bill's commencement date being 31 March 2013 which is not in alignment with current council budgets.

Drafting issues

In its submissions on the 2011 and 2012 versions of the Bill, the Queensland Law Society (QLS), while generally supportive of the objectives of the Bills, has commented on a series of unintended drafting consequences, including typographical errors.[18]

The Committee considers it desirable that all drafting errors and ambiguities be corrected.

The Bill is lengthy and complex and given the short timeframe in which the committee has had to consider the Bill, the committee has not been able to seek expert advice on the drafting of every clause and section. The comments below from the QLS submission highlight the many drafting concerns held by the QLS.

Section 125

Proposed section 125(1) of the Bill sets out the information requirements for applications for environmental authorities. Section 125(3) provides an exemption from the requirements listed in section 125(1) where an EIS process has been completed. The QLS maintains that the drafting difficulty with this section may arise where an EIS process has been completed (thereby exempting the application from the requirements in section 125(1)), and a minor additional activity is later added to the application (necessitating compliance with the requirements). The QLS considers this scenario could potentially trigger the requirements in respect of all of the activities, including those exempted as a result of completion of the EIS process.

Sections 127-129

Proposed sections 127-129 concern applications that are not properly made. The QLS mentions the likelihood of a situation where an application which is not properly made and is not identified by the administering authority, within the relatively short period of 10 business days, but is noticed at a later date by the authority or third party, after the application has progressed, resulting in the approval being void. The QLS maintains that this scenario is likely given the complexity and subjectivity of the mandatory requirements to be included in a properly made application.

Section 133

Proposed section 133 provides that the assessment process does not stop for a changed application if the change is minor *or the administering authority gives its written agreement to the change*. The QLS' concern is that this section is open to abuse as an applicant can avoid re-notification where the administering authority agrees to the change irrespective of whether the change is minor.

Point for clarification

The committee seeks the Minister's clarification that the Bill will be extensively reviewed for drafting errors, unintended drafting consequences, ambiguity and typographical errors and that such errors, consequences and ambiguity will be amended. Plain English only is required.

The drafting of Bills with multi-part clauses

The committee wishes to draw the attention of the House to a drafting issue in the Bill with implications for how the Bill it is considered and debated. Clause 8 of the Bill spans 136 pages, almost half of the 283 clauses that make up the Bill, and contains most of the contentious parts that Members are likely to seek to debate. The majority of points raised in the submissions and other

[18] Queensland Law Society, 2011, *Submission No 3*, p 1; Queensland Law Society, 2012, *Submission No 9*, p 1.

evidence on the Bill heard by the committee relate to provisions (sections) contained in this one clause.

The practice of placing large numbers of sections within a single clause or within a few clauses may inadvertently limit the opportunities that are available to MPs to properly debate the issues. This is because the speaking times for debates on the clauses of Bills, specified in the Sessional Orders (3 minutes on each question per MP other than the Minister), do not account for multi-part clauses.

The committee is aware that this form of drafting has occurred in other large Bills presented to the House. They include the South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011 in which the most contentious provisions were contained in a single clause, Clause 23, which ran to 62 pages of the Bill.

Similarly the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011 had significant and contentious provisions clumped as sections within three key clauses, cl 47 [4 pages], cl 62 [6 pages] and cl 106 [25 pages].

Recommendation 7

The committee recommends that the Committee of the Legislative Assembly consider whether the provisions in Standing Orders and the Sessional Orders should be amended to ensure that Members are afforded fair opportunities to debate the provisions contained in large multi-part clauses in Bills.

4 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals, and the institution of parliament.

Findings

The committee sought a briefing on possible fundamental legislative principles issues that were not addressed in the explanatory notes.

The committee identified no FLP issues not addressed in the explanatory notes to the Bill, and raises no further concerns.

Appendix

Appendix A – Submissions, briefing officers and hearing witnesses

Submissions	
Sub #	**Submitters to EAREC**
1	Queensland Resources Council
2	Ipswich City Council
3	Queensland Law Society
4	Environmental Defenders Office Qld
5	Local Government Association of Queensland Ltd.
6	Australian Contaminated Land Consultants Association Inc. (Qld Branch)
7	Logan City Council
8	Cement Concrete and Aggregates Australia
	Submitters to AREC
9	Queensland Law Society
10	Ipswich City Council
11	Queensland Resources Council
12	Environmental Defenders Office Qld
13	Friends of South East Queensland
14	Queensland Murray-Darling Committee Inc
15	Waste Contractors and Recyclers Association of Queensland Inc

Briefing Officers, Department of Environment and Heritage Protection	
	Ms Elisa Nichols, Director, Environmental Policy and Legislation
	Ms Kate Watkins, Team Leader, Environmental Policy and Legislation

Hearing witnesses	
	Ms Christine Blanchard, Principal Advisor - Environmental Health, Local Government Association of Queensland
	Mr Geoff Doyle, Principal Officer, Planning and Partnerships, Ipswich City Council
	Mr Frank Henry, Principal Policy Officer, Pollution Prevention, Brisbane City Council
	Ms Jo-Anne Bragg, Principal Solicitor, Environmental Defenders Office, Qld
	Ms Donnell Davis, Friends of South East Queensland
	Mr Ron Stanton, Friends of South East Queensland