AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

Members present:

Mr IP Rickuss (Chair)
Mr JN Costigan MP
Mr SV Cox MP
Mr DF Gibson MP
Mr S Knuth MP
Mr JM Krause MP
Ms MA Maddern MP
Ms J Trad MP

Staff present:

Mr R Hansen (Research Director)
Ms A Jarro (Principal Research Officer)

PUBLIC HEARING—ENVIRONMENTAL PROTECTION (GREENTAPE REDUCTION) & OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 6 JUNE 2012

Brisbane

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Committee met at 11.00 am

BLANCHARD, Ms Christine, Principal Advisor, Environmental Health, Local Government Association of Queensland

DOYLE, Mr Geoff, Principal Officer, Policy, Planning and Partnerships, Ipswich City Council

HENRY, Mr Frank, Principal Policy Officer, Pollution Prevention, Brisbane City Council

CHAIR: Good morning and welcome, Geoff, Christine and Frank. It is good to have you come along here today to the hearing. Members of the committee are Jon Krause, David Gibson, Jackie Trad, Shane Knuth, Sam Cox, Jason Costigan and Anne Maddern. It is fairly informal. Would you like to start, Geoff?

Ms Blanchard: I will start. I am presenting today on behalf of Greg Hoffman, my general manager, who has unfortunately at the last minute been unable to attend. The LGAQ thanks the government for the opportunity to provide comment on the bill. To date the government has consulted with local government on this process and the bill we are discussing today is the outcome of that consultation process. However, it should be noted that those councils that made submissions on the 2011 bill were requested to review their submissions and the time frame for such review was only a matter of days. So the bill we are talking about today had some amendments to it and it was not more broadly circulated to local government. The comments today are based only on information that has been publicly available to local government, and we noted in Elisa's presentation earlier there were some comments made on issues we felt that we had not been provided information on.

It should be noted that local government generally supports the government's intention to reduce green tape for business and government which ultimately benefits industry and the community as a whole. However, this should not occur at the expense of our environmental protection. Local government is a partner in administering the Environmental Protection Act and has been since its commencement in 1995. During this time throughout many reviews local government has been consulted and in response we have provided significant input and assistance.

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.

In 2009 regulation of commercial nuisance was devolved to local government, with no supporting revenue stream. At the time we were told to use revenue generated through ERA licensing to fund this work. We draw the committee's attention to any proposed future changes that may impact on local government's financial ability to do this work and seek recognition by the committee that the community expects local government to regulate environmental protection but should not have to bear the financial burden for this work. As for timing of these changes in the bill, the minister in a press release recently advised that changes in the bill will be implemented by March 2013. 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.

Questions were raised in the officers' briefing before this session about the capacity for regional and rural councils to comment on this bill. It should be noted that these smaller councils generally have no such capacity and they gratefully acknowledge the support of councils such as Brisbane, Ipswich and Logan in allowing their officers to make comprehensive submissions that reflect local government's thoughts as a whole.

I will now hand over to my colleagues, Geoffrey Doyle from Ipswich and Frank Henry from the Brisbane City Council, to make further comments. It should be noted that today Geoff Doyle is supporting the LGAQ as opposed to representing the Ipswich City Council. The association acknowledges their time and their support and is very grateful for their time today.

Mr Doyle: I might start off by just having a look at a couple of the key issues within the proposed legislation that we wanted to raise. Christine has mentioned the potential for cost shifting into the commercial nuisance world. That is obviously of significance to councils, especially those in some of our rural and regional areas, considering that there is a potential shift away from councils being able to

regulate those activities proactively, which results in potential significant impacts in terms of complaints and environmental harm occurring. So we see the proactive measures as being very important in terms of the role that not just local government but also other regulators play in that space.

If we do move down that path where we have a shift towards that reactive approach, depending on the outcomes, there is a potential that councils may lose some of that expertise and resource within our organisations to be able to respond effectively—to have the appropriate technical expertise and experience to respond to those important issues that the community expects us to address. That is primarily based on if councils have to depend on their rate base to actually fund those positions.

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 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.

One of the other issues relates to the environmental authorities and the move away from focus on the development permit process. The environmental authorities concept, of having as many conditions as possible in one place, is generally supported. However, the split of having design and construction type conditions, we understand, left within the development permit process results in a situation where you have two separate documents being required for operators to continually have to comply with and understand. That, we believe, could lead to some confusion or misunderstanding about how those work. Because they are separate documents, there is the potential for those to become inconsistent over time if the operating conditions change. Frank, do you want to provide an example of a case study of that?

CHAIR: Geoff, maybe I can even provide something along those lines. I know they have permits for explosives on mine sites as well as the permit to operate the mine site. Is that what you are talking about there?

Mr Doyle: What we are referring to is if something requires a town-planning approval they will have a development permit, or part of the development permit will have concurrence agency conditions attached to that which relate to how that environmental activity is designed or constructed—noise barriers or a particular building form or that sort of thing. The environmental authority is proposed to have conditions attached to it which directly relate to how the activity is operated from then on. That split has potential problems. There is also a very fine line between what is a design or construction outcome and what is an equipment issue, or selection, or even an operational condition in some circumstances. That continuum varies from activity to activity. So a very broad-cut approach to that makes it very difficult.

CHAIR: Do you have any issues or comment on that?

Mr Henry: Firstly, I would just like to say that the Brisbane City Council strongly supports any initiatives that reduce cost impacts or make things easier for small business and medium business. With regard to the split between environmental authorities and development approvals, between 1994 and 2001 there was a separate system. In 2002, that changed to a single system because of the problems posed by that split system. That single system, which has operated since 2002, enables all the matters relating to that activity to be considered together in one document. So the operator has a single piece of paper that they have to refer to. What can happen is that the person who applies for a development approval may not be the same person who then operates the particular business at that site. So if a development approval is issued to one person, they have those conditions and then the environmental authority is issued to another person and they have those conditions. So there is a potential for a lack of communication or a mix-up between the requirements.

Also, you may have the situation where if I am applying for, let us say, an activity that is very noisy, in considering the development approval the council would assess it and say, 'That use is appropriate for that location provided they build a noise barrier.' So the noise barrier would be considered to be part of the development approval, because you would not have approved the development unless they had built that. But in the future, if the industry comes up with new technology and they say, 'We have this new technology that is much quieter. We no longer need that noise barrier,' in order to make that change to improve their environmental performance they would need to make a new development application to change the original conditions that were issued. Another example might be for a service station with underground fuel tanks.

Mr GIBSON: Sorry, can I just get you to clarify that a little? We heard in earlier evidence today of the ability to create variations to an ERA that is provided under this bill. So what you are indicating to us is that a noise barrier would not be within the conditions of the ERA; it would be within the development application conditions?

Mr Henry: Yes.

Mr GIBSON: Is there the potential for that noise barrier to sit elsewhere—or the way the legislation is currently, is it required to sit under the development application and not anywhere else?

Mr Henry: Currently it sits on the development application but is linked as a concurrence condition to the Environmental Protection Act. So it is actually enforced or can be changed via the Environmental Protection Act.

Mr GIBSON: Does that bill provide the opportunity to move that condition from a development application to an ERA?

Mr Henry: Not as far as I am aware, no, and that is our concern. It is not just a noise barrier; it can be any pollution control infrastructure. It could be groundwater-monitoring wells. It could be a particular type of spray booth. It could be double-walled underground fuel tanks.

CHAIR: What were you going to say about the fuel tanks?

Mr Henry: For example, if you are building a service station next to a creek or a wetland—it might be in the Whitsundays, for example—with a lot of sand and soils, you do not want any leaks. So in order to approve that application and the development process you would require them to put in certain pollution control infrastructure—double-walled tanks, leak detection and so on. Because that was considered as part of the development application, it would go on the development approval. But then, as I said previously, technology or measures may improve over time. In spite of the principle of continual improvement that is built into the Environmental Protection Act, which says 'what might have been acceptable in the 1950s is not acceptable in 2012', because it is on the environment approval it is locked in—not like if it is in the environmental authority or regulated under the Environmental Protection Act, which allows that continual improvement and the conditions to be changed and upgraded.

Mr COX: So you are saying that the development authority is a static thing—it sits there—whereas an environmental one has an ability for a variation and you would like just to—

Mr Henry: That is correct. Under the current system, both conditions are included on a single development authority, but the conditions that relate to protecting the environment are called concurrence conditions and are administered through the Environmental Protection Act even though they are on the development approval.

Mr KRAUSE: So what happens if there is a variation required through those environmental approvals that are sitting in the DA at present?

Mr Henry: They can be amended via the Environmental Protection Act, which is a much easier process.

Mr KRAUSE: But they would still be contained in the DA?

Mr Henry: They are contained in DA.

Mr KRAUSE: So it is effectively an amendment to the DA?

Mr Henry: It is an amendment to the DA, but it does not trigger a new development application because it is administered under the Environmental Protection Act.

Mr KRAUSE: Are you concerned that with the splitting there will be a requirement for councils to determine what is going to be dealt with under the DA and not deal with that but only deal strictly with things that should be dealt with by way of DA and there could be some inconsistency between the two?

Mr Henry: That is correct.

Mr KRAUSE: Potential inconsistency.

Mr Henry: That is correct.

Mrs MADDERN: So you are also suggesting that, if there is a change in the ERA that impacts on the DA, they might have to go back through the whole DA process again? It would not be just a change to the DA; they would have to reapply?

Mr Henry: There is potential for that to occur with the split of conditions. When the environmental conditions are split between the DA and an EA, if a change is needed to an EA that then impacts on the DA it would require a new development application to be made. That removes the incentive for business to continually improve, because why would I invest in improvement if I have to go through the whole process of making a new development application, which can be costly and can trigger a range of other things?

CHAIR: But it is the DA legislation that is at fault more so than the environmental legislation?

Mr Henry: That is the nature of the DA legislation; that is correct.

Mr GIBSON: Just to pick up on that, we have been advised that the consultation on this bill—both the current one and the one that was presented to the previous parliament—has been ongoing for some time. Have these concerns been raised with the department and, if so, what has been their response?

Mr Henry: The concerns have been raised with the department and the responses have been that they believe the legislation is adequate to cover that, but our view is that the department lacks the, I guess, practical on-the-ground application that local government has with regard to being the planning assessment authority. We have a very good handle on how the planning system works that perhaps the department does not have.

Ms TRAD: What legislation would need to be amended to account for that?

CHAIR: The Sustainable Planning Act.

Mr Henry: The Sustainable Planning Act.

Ms TRAD: So there are amendments to the Sustainable Planning Act currently as detailed in the minister's explanatory speech but it does not go far enough.

Mr Henry: They do not address this issue. It works with the current system where we have a single development approval with concurrence conditions administered through the Environmental Protection Act and essentially splitting development approvals and environmental authorities creates the problem.

CHAIR: What they are actually saying is that it is actually making it worse.

Ms TRAD: I do understand that, but if there are proposed amendments to the Sustainable Planning Act these concerns are not addressed in those raft of amendments. I am just trying to establish that.

Mr Doyle: Our preference would be that they are contained all in the one document for that consistency to allow operators to understand their full obligations at one place rather than having to look at a number of things under their one head of power, which is the Environmental Protection Act in this case. They may still have town planning approvals and other authorities that they require but they may well be under separate documents, but that is part of the way they operate their business.

Mr Henry: May I also say that there are some environmental authorities that will not require a development application, they are called the stand-alone environmental authorities, if it is an as-of-right to operate an activity in the middle of an industrial estate, for example. You do not need a development application or approval to start a new business in the middle of an industrial estate if it is a certain type. So the environmental authority would be the only piece of paper and it would have to include all the conditions. So there would be an inconsistency. You would have some environmental authorities that would have all the pollution control infrastructure and some environmental authorities where it would be split between a development approval and an environmental authority and the operator would have to chase whoever made the application to get both pieces of paper.

Ms TRAD: In the latter instance, that is where you do not have an industrial estate established, where you are actually starting an enterprise on a new parcel of land. The former example is where you are actually going into an established land use area.

Mr Henry: Yes, that is correct.

Mr Doyle: I might just clarify that. Potentially under the planning requirements it might be an industrial estate but it may still require a land use approval because of the type of activity. That is dependent on what the planning scheme would say or what the planning legislation will require as a trigger. I think the discussion that we are having really focuses on the difference and integration between land use planning and environmental licensing of particular issues and that over time those have become very, very closely related and potentially confused. The proposal we are presenting is that environmental licensing as it always has been in practice or in theory is that they are a license activity or a license document, they have been incorporated into a planning world and then may not have achieved the outcomes we were expecting out of that.

In terms of the proportional ERA application processes, we are generally supportive of the standard approval process because we can see that that is efficient for both administering authorities but also for industry which has benefits for the community overall. However, we do raise caution about the way in which those activities are identified, as to which ones will be allocated into the standard approval process, and, secondly, what the eligibility criteria and standard conditions are that will be applied to those activities. We have had a very preliminary and very high-level input to that process through the consultation on this bill, but we have not seen anything on that for some period of time. We are obviously very keen to see where that travels in the near future when we obviously now know that the regulation is being considered at the moment for review.

Ms TRAD: When you mention the consultation, was that the 2011 consultation?

Mr Doyle: Yes. That was through the local government working group and local government panel as well. We have had some input there. Local government is obviously very keen to participate in that process because we do have a lot of experience in condition setting and how they can work so we are obviously always keen to be involved and support that process. In terms of the variation applications, we are not convinced that there is merit in changing elements of a condition within the standard approvals because there may be a risk that that may change the overall intent of the approval and without particular guidance on where those boundaries are or the lines between what is appropriate to change and to what extent you can change it, you are sort of triggering that process of maybe it needing a full site specific assessment if the standard approval conditions are not appropriate for that activity. Our position is that we do not really support those amendments or changes to standard approval conditions because of that risk.

Mr GIBSON: If I can just pick up on that, your concern is when there is that opportunity, as this bill provides, for a variation, the bill does not provide enough detail as to what may or may not be varied?

Mr Doyle: That's right.

Mr GIBSON: Your concern is that it could open it up to be far too broad a gambit: that they are able to vary things that could change the fundamental nature of it?

Mr Doyle: Yes, and that is the concern. Because they are standard approvals, once you change the intent of any of those conditions or the flow-on impact of one condition changing onto others, that may change the scope of what that activity actually is. It is our position that that really should go through a site specific assessment if that is the outcome.

Mr GIBSON: That a variation should go through a site specific assessment?

Mr Doyle: Yes, so then that way it is clear that there are only two processes—standard approvals and site assessments. In terms of probably one of the last major issues that we have identified, the guidelines that have been proposed under the bill, there are two types. One informs people about particular aspects of the legislation. We are highly supportive of that because that has been one of the deficiencies in the past about having very clear guidance at a state level about what the requirements are of the legislation, how to apply it, changes in interpretation of the legislation et cetera. That information is valuable to our community but also to our industry operators and regulators in terms of enforcing the legislation. So we are very supportive of that approach. However, in terms of the guidelines that are proposed for administering authorities, we do have some concern about that: that the scope as it is written, or as we have interpreted it, is very broad. Our position is that those guidelines for administering authorities should be focused on the intention of the legislation, interpretation of the legislation, achieving consistency in application and maybe some technical issues if that is appropriate at the time.

Mr KRAUSE: Do you have an example of how they are too broad?

Mr Doyle: An example of where they are too broad is where the state may decide, through the chief executive who has the power to issue those, to instruct councils to deal with a chemical spill or something like that that is not necessarily our jurisdiction. So there is potential for the jurisdictional boundaries set by the legislation to vary through guidelines which are approved by the chief executive.

Mr KRAUSE: Is that in an enforcement phase or in a regulatory phase?

Mr Doyle: In terms of the scope of our interpretation it can apply to anything. It is not limited within the proposed bill. One of the real key concerns is the changing of those jurisdictional boundaries via a document such as a guideline.

Mr KRAUSE: Is that the CEO of the department?

Mr Doyle: Yes.

Ms TRAD: So you would like less ambiguity and more prescription around how these instances are dealt with?

Mr Doyle: Yes, and it should be focused on the application of an interpretation of the legislation to provide guidance to administering authorities on its consistent application.

Ms TRAD: And not just at the CEO's discretion?

Mr Doyle: I can see that there is flexibility in having the chief executive having that capacity so that you can keep it contemporary and keep information up-to-date. The concern that we have is consultation around the development of those, because obviously it would have a direct impact on administering authorities and the way they do their business but also, secondly, the content of that and the flow-on effects of how that is applied.

Ms TRAD: Can we draw that out in terms of an example? The Moreton Bay oil spill, for example, what would happen under the proposed amendments?

Mr Henry: Essentially there are some aspects of the legislation where there is, I guess, a blurred jurisdictional boundary between the Queensland government's responsibility and the local government's responsibility. With issues such as the Moreton Bay oil spill, the wording of this particular section in the bill is so broad that it could be used to direct the local government to undertake activities which are not currently within its jurisdictional responsibilities. It could be directed to undertake certain clean-ups or to undertake certain aspects. So we certainly think that the way that it is worded is far too broad in enabling things like that to be directed. Essentially they can direct how we do our job.

Mr GIBSON: If I can build on that example, because I think it is a very good one to look at, there were impacts upon local government areas as a result of that oil spill that were outside of the Sunshine Coast. In many cases local governments actually undertook action to address that which would have been, I guess, outside of their jurisdiction but their constituency, the ratepayers, said, 'We don't want our beaches with this oil on it', and they went to that task. Is this not just simply formalising that or do you have a concern that it is much broader than what has occurred in the past in that example?

Mr Henry: Our concern is that it is much broader than what has occurred in the past. For example, in that particular oil spill, the various local governments did undertake works, they were able to reclaim the costs and they were covered by insurance and so on in doing that. It was not a direction to say, 'This is now your responsibility. You have to wear all the costs and you have to do the clean-up yourselves.' It was more a case of, 'We need your assistance to clean up this area,' it was cleaned up and the local governments had access to recover those costs.

CHAIR: Couldn't it be interpreted as the EPA being the lead agency in that sort of stuff?

Mr Henry: The EPA or the department of emergency services as the lead agency: certainly they have a role in directing something as major as an oil spill. Certainly there are still jurisdictional boundaries in regard to what is a local government's responsibility in regard to what costs they wear and how they are covered in the work that they do. It goes beyond just doing the clean-up. It includes how the workers are covered for insurance.

Ms TRAD: And rehabilitation—long-term rehabilitation.

Mr Henry: Rehabilitation and so on.

CHAIR: Dumping the waste et cetera.

Mr Henry: Although you have the department of environment, for example, coordinating a major spill and all the other agencies working within that, there is still a clear understanding of roles and responsibilities. We are concerned that the section in the bill that we are referring to blurs that a little from our perspective.

Mrs MADDERN: Which section is it specifically that you are referring to?

Mr Doyle: I will find that for you.

Mr GIBSON: Whilst that is being looked up, I assume that you obviously raised those concerns with the department. What was their response?

Mr Henry: This is a new provision, a change since the 2011 bill.

Mr GIBSON: So you have not had the opportunity to raise it with the department?

Mr Henry: No, we have not had the opportunity. I have been aware for less than a week.

Ms TRAD: I think the Moreton Bay oil spill is a good example, but it is a disaster so insurance kicks in and there are a whole range of things. Where there is a disaster from an operational consequence, like land use and so on, how would that play out? The owner skips town or goes overseas and leaves the contamination in a particular area. The council and state then have an argy-bargy about who cleans it up and the long-term rehabilitation of the land. Is that part of your concern?

Mr Henry: Yes. The concern is that council, through this section, can be directed to do the clean-up and wear the costs and any other associated works with it.

Mr KRAUSE: And not be supported.

Mr Henry: And not be supported, that is correct. We are not saying that we want the section removed completely but, I guess, clearer scope and clearer boundaries around when it is used and how it is used.

Mr Doyle: To respond to that earlier question, proposed sections 548 and 549 are the two about guidelines. The one that refers to the administering authority is section 548. That is on page 194 of the bill.

Ms TRAD: Was the LGAQ asked to review this new section or did you just find it?

Ms Blanchard: It just came out as part of the amended bill.

Mr GIBSON: Christine, in your opening remarks you alluded to what we are discussing here with regard to the issue of cost. In our earlier hearings we heard evidence that the department's view is that there would not be additional costs on council. Has the LGAQ looked at this bill and done any sort of preliminary modelling to say, 'We expect the cost burden could be in the range of $X to $Y'?

Ms Blanchard: We did not, as such, across broad local government, but I believe Frank can give you some examples of what it might cost the Brisbane City Council to implement this.

Mr GIBSON: Okay.

Mr Henry: In Brisbane City Council we administer up to 2,000 environmentally relevant activities, whereas the support that the department is talking about offering is training on the legislation and producing guidelines on how the legislation works, where the cost that will be borne will be in changing the internal council processes and systems—that is, everything from the front desk right through to the officers who have to make the application. Systems are computerised. Most local governments have an IT system that manages applications and processes and so on. This is essentially throwing out the old system and creating a completely new system. We will be building a whole new council system from scratch to deal with internal processes, internal record keeping, internal IT systems and internal training on those matters. The training on the legislation being provided by the department will not cover the internal costs that the councils will bear in making these major changes to their licensing systems. In Brisbane, for example, it will be in excess of $800,000.

Ms TRAD: That is the $800,000 that we were talking about, yes.

Mr Henry: That is to completely change our internal system. As I said, if you consider that we administer around 2,000 authorities, we get many applications. You need processes for how to receive applications, how to process those applications—

CHAIR: Will there be a long-term saving on that, Frank?

Mr Henry: Our reading of the legislation is that, while it appears to be making many improvements at what you would say is the big end of town—for mining—it is making negligible change at the small to medium business area that local governments cover. There will not be substantial operational savings from our perspective. The small to medium businesses that the local governments administer will not be that greatly affected by these processes. For example, the panelbeater does not generally make big expensive environmental impact statement submissions and approvals and so on, like a mining company or a large refinery would. The time to process it will probably be the same for that business under the new system as it would have been under the old one. The council itself will have to completely change the way that it handles the paperwork, issues the approvals and records those approvals.

Ms TRAD: That is interesting, Frank, because a counterclaim is being made that it is actually the small and medium enterprises that will make the most saving out of this green-tape reduction bill. Is that from a state perspective in terms of the state department processing it, because obviously there is very limited change at the council level?

Mr Henry: I guess that is the state government's view or the department's view. The department does not administer small to medium industries very much, so I guess the local governments are better placed to make that assertion.

Mr Doyle: In terms of the question about the modelling of the impact, that is extremely difficult for local government to do, for two reasons. One is that we have had three business days to review this proposed legislation. Obviously, it is hard enough to get a comment together let alone do that extensive modelling. The second component of it is that these are some of the high-level changes to the administrative system under the act. For councils to be able to identify what those impacts are—positive and negative—we need to have an understanding of what are the environmentally relevant activities that may be deregulated, what activities may go to standard approvals and what processes will flow across as a commercial nuisance issue that councils need to regulate, without proactive opportunities and the funding that goes with that. It is very difficult to do that.

Mr GIBSON: To be clear, this bill fundamentally is the same as what was introduced previously. Was there any modelling done on that bill?

Mr Doyle: Probably through Frank, primarily.

Ms Blanchard: Not across broad local government, no. Individual local governments indicated they had expenses—mostly operational issues.

Mr KRAUSE: Before Frank steps away, in the guidelines in part 1, section 548 I notice that they seemed to be in the previous bill but for the minister to make the regulations on the guidelines. We spoke about how this could blur the lines or place responsibility on local government without resultant support. Does it make a difference? You said this issue had not been raised previously. Does it make a difference that it is the chief executive making the guidelines rather than the minister?

Mr Henry: Our understanding was that if it were the minister it would require public consultation and greater natural justice processes.

Mr KRAUSE: From your perspective is that the issue, rather than the actual fact that the guidelines might be put in place?

Mr Henry: Yes. I guess there would be less scrutiny and we could be directed without having the opportunity to put forward our position or the impacts that the direction would have on local government.

CHAIR: Christine, have you had any discussion with the department about the time lines for the budget?

Ms Blanchard: No. We were advised only earlier this week that March 2013 was the announced date, in a press release. I must have missed that, because I was not aware of that. Hence our request to continue it to a commencement of post 1 July, to allow councils to get it into their next budget, because the budgets for next financial year are already set.

CHAIR: I can understand that. So you had no response from the department about that?

Ms Blanchard: We did not raise it officially. We became aware of it only yesterday morning.

Mr Doyle: To wrap up quickly, councils are obviously very keen to continue to be involved in the process of the regulatory reform that we are going through and to continue our active participation in that process. We look forward to the significant input from the department in terms of allowing that transition to occur as smoothly and effectively as possible. Thank you for the time for us to present today.

CHAIR: I would like to thank you, Geoff, Christine and Frank, for a very informative session.

BRAGG, Ms Jo-Anne, Principal Solicitor, Environmental Defenders Office

CHAIR: Thank you for making yourself available today. It is good to have information from all sectors of the community. We are very pleased to have the Environmental Defenders Office here with us today.

Ms Bragg: Thank you. Firstly, I work for a community legal centre, the Environmental Defenders Office. It is non-profit, it is state and Commonwealth government funded and our main job is giving advice to people in the community, landholders concerned about coal seam gas and water, communities concerned about dust and impacts of mines, and environmental groups concerned about water quality, nature conservation and coastal development. It is a very broad range of work. It has been going for over 20 years and I have been there pretty much all of that time. We have quite a lot to do with the Environmental Protection Act and how it affects environmental values but also people in the community trying to access information, trying to participate and make submissions and occasionally go to court. That is the background I am bringing to it. While a lot could be said about the bill, I have chosen to just do a narrow slice because that is all we have the resources really to do. We are very small office.

CHAIR: Of course, we did read your submissions on the previous bill.

Ms Bragg: That was extremely brief due to lack of time. What I did provide to Mr Hansen—perhaps it could be handed around—is a summary of six points that I would like to make today.

Mr KNUTH: Before you go on, is there a cost to this service for the public or is it a free service?

Ms Bragg: It is a free service. We are always happy to accept donations, but it is through the Department of Justice and Attorney-General. We have a backlog of 50 people needing help at the moment whom we cannot assist, but it is a free service.

The perspective I am taking is that there are benefits in cutting green tape to make things more efficient. However, from the community's perspective there are a lot of things that are not efficient about the Environmental Protection Act and its administration, and community time is valuable, too. If we want to make things efficient, they need to be efficient from the perspective of a member of the community, be they in the Lockyer or in Brisbane. We think it is important, from a social justice perspective, that that is not overlooked and that this is not rushed through without considering that perspective.

On the handout I have briefly tried to compare the Sustainable Planning Act, which is the one that governs most developments in Queensland such as if you see a notice when you are at West End saying to put in your submissions under the Sustainable Planning Act. Under the Sustainable Planning Act you get public submissions and appeal rights for things like big shopping centres, houses in a character area—that sort of thing—and big residential developments. So you have good public submission and appeal rights. The sorts of things that we are dealing with here under the green tape reduction bill include massive coalmines and coal seam gas projects. For example, just the footprint for the Wandoan coalmine is 32,000 hectares or more and the Alpha Tad's Corner coalmine and rail, which has been in the news lately, is 55,000 hectares or more. The life of these projects is something like 30 years and sometimes more, and I have put a current coal seam gas example in that document.

My point is that the sorts of projects we are dealing with here are in many cases far more massive than those things that come under the Sustainable Planning Act. 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 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.

Mr GIBSON: Can I just touch on that? My community went through the Traveston Dam fiasco and I am very conscious of what was required. The EPBC act does not provide 50 days. That is a fairly significant period of time. Why would you not be arguing that it be consistent with the federal government's legislation? Why are you looking at an even longer period?

Ms Bragg: From my experience this is a fair period for the community that is facing a massive development with big impacts and a development will persist for many years. The fact that there are minimal periods under other legislation probably reflects that those periods are not necessarily reasonable or good enough.

Mr GIBSON: I am curious. Did the Environmental Defenders Office put in a submission against the Traveston Dam?

Ms Bragg: We do not put in submissions on individual developments, but people from your community contacted us and asked us to explain the law. We know about the Commonwealth processes, but we do not individually do a submission; we help people with their submissions.

Mr GIBSON: The point I am making is that my community was able to work within the Commonwealth's time frame. It was incredibly stressful. We found that we were dealing with a state government that was incredibly duplicitous in the information it did not want to provide on that issue. The points you make are all valid. However, we as a community were able to band together and fight against Labor's plan for that dam. We were able to do it in that time frame. Why wouldn't other communities be able to do it in that time frame?

Ms Bragg: That is a good question. The first thing is that the community had a number of different processes they were inputting to. Most of those people almost collapsed with exhaustion. I was in regular contact with them. You were very fortunate that you had extraordinary people, both urban environmentalists and rural people, in the Traveston Dam issue. People had to give up part-time jobs or take leave. People should not be under that amount of stress in order to participate. These projects go on for years. Why can't we have 50 business days?

Mr GIBSON: Fair point.

Ms Bragg: Just because occasionally people do extraordinary things does not mean our community should be stressed out. My further comment is that we are facing multiple major mines and coal seam gas projects in geographic areas. People are going to have more than one of these things coming at once and I have put forward an amendment to address that.

Ms TRAD: We heard from the department earlier that there is discretion to allow for a longer public consultation period. Does that not alleviate your concerns? Would you like to see a longer period mandated in the legislation?

Ms Bragg: I think having a discretion is great. What do you do if there are four major projects in your area? It would be great to get the times extended, but every single extension is a political decision and potentially controversial and the proponent would be in there chewing the ear of the minister and the public servants in order to try to fight that extension. In the interests of fairness to people in the community you need the longer time frame mandated.

Mrs MADDERN: This legislation covers everything from the very small to the very large. As soon as you start extending it to 50 days you are probably impacting on lots of little, small ones and blowing out their time frames. I understand where you are coming from, but I am looking at it from the point of view of the small guy who has a fairly standard thing that he wants to get through and get going on and he does not need to be held up by 50 days.

Ms Bragg: That is a fair question, but there is only public notification, submission and appeal rights on a restricted range of activities under this act. I guess it might be a fair point relating to a smaller mine, but this does not cover motor vehicle repairers and sewage treatment plants because there is not provision for public submissions on those.

I also put forward a suggestion to try to cater for the situation of multiple developments happening at once in an area and people are overwhelmed. It is a suggestion; you might have a better idea to address the issue. It relates to when the applicant puts out the public notice. On the second page—if you managed to get a copy—I suggested we insert a new provision to provide that the applicant cannot put their public notice out and get the project rolling if there are already other public notices for other mines or gas projects in that basin. So that is the Surat Basin, the Bowen Basin or the Galilee Basin. It is just an attempt to give people some protection from multiple major projects overlapping at the one time. People cannot cope with even one big project. We need to try to do something so that they are not overwhelmed.

Mr COX: I hear what you are saying and I take it on board. Is it the case in some areas where there are multiple projects that you are not getting enough information in time—quick enough—or is it just the fact that you cannot process it? If there were some ability for you to have more access to people to please explain certain bits, would that make it easier for you? I understand what you are saying, but if there are multiple things happening at the same time, which one gets held up and which one comes in what order would be hard to determine. However, if you had better access to more information, would that help at all? What do you think?

Ms Bragg: I think it is good to get improved public access to information, and I have a few suggestions on that. However, it does not help. Think about your local community group and how hard it is for them to get a water expert or someone else to help them or think about the backlog of requests for assistance at the EDO for legal help. It is the time frames and the multiple projects that is putting pressure on groups—even well intentioned, intelligent groups of people.

Mr COX: Does that mean that people do not have the confidence in the information that is being presented and they then need to check it, which is obviously what happens at some stage, or is it having the time to look through it all?

Ms Bragg: It is having the time to look through it all. If someone came and said to the Environmental Defenders Office, as they have, 'We're facing a major mine in our area. Can you help us with a submission?', we would want to see the EIS—environmental impact statement—an earlier part of the process. It could be 8,000 pages. You just cannot whiz through that quickly.

Mr COX: I understand.

Ms Bragg: Just emphasising how many projects are coming through, we have a chart at work and there are over 30 coalmines on the way through. In terms of public access to information, we do think it is important to improve that, too. The provisions in the bill relating to public access to information are not too bad because the definition of 'application documents' is quite broad. In my opinion we do need to make sure that information requested by agencies and replied to by government is included in what people can see. So DERM might ask a question on groundwater and then Arrow, Xstrata or whoever might reply. We would like to see that publicly available.

CHAIR: Is it only updated by FOI?

Ms Bragg: As the bill stands that is probably right. I think that is probably a non-controversial amendment that might be made. I am not sure what the department view might be on that.

Mr KRAUSE: When we were talking to the department this morning my recollection is that that would be included in the application documents, but maybe it does need tidying up.

Ms Bragg: I think it might be just a tidy-up type question.

Mr GIBSON: I am just thinking this through. You gave an example of correspondence going backwards and forwards. A definition of 'application documents' may be the documents that exist at the time the application is made. How would we capture those further documents clarifying information et cetera in that definition of 'application documents'? Would you see something a bit broader?

Ms Bragg: There are probably a few different ways you could do it. You could just add it into the definition of 'application documents' and say something like 'information request by agencies and replies when received'. I am sure the department could help with how to word that.

Ms TRAD: The issue is because it is concurrent now in terms of the public feedback and the assessment process—because they are concurrently occurring—it is important that the public actually is aware that documents are further submitted in relation to the application as it happens.

Ms Bragg: Yes, exactly.

Ms TRAD: It is not only about being on the application itself but also a notification for the public during the assessment period as documents become available.

Ms Bragg: Yes, and under the Sustainable Planning Act on those urban developments you can go and see the public applications and supporting documents from the start and then you can go back and see if you want to appeal towards the end. They get added to as the process goes along. There is a public register under the Environmental Protection Act that is really important for members of the public, so they do not have to go to right to information. I think this is a really important opportunity to add a few things to that. Remember, this is about being efficient for the community and the agency. People do not want to use right to information for something really basic. We have clients trying to get basic right to information about the dredging at Gladstone and it has taken months. It should be just automatically available.

So the public register currently does include monitoring programs carried out under an environmental authority, the environmental licence that people get. But we think it should be extended to include audits or reports or plans that are required to be prepared under the environmental authority. One example is that we helped lawyer Peter Shannon of Dalby represent some landholders on coal seam gas in the Clapham and Arrow case. I do not know whether you are aware of that case.

CHAIR: I know Clapham.

Ms Bragg: In the environmental authority it provided that an operation plan had to be produced after three months to say where the coal seam gas wells would be. It was not on the public register so we could not get a copy. There was this ridiculous toing-and-froing to try to get a copy. So if the monitoring that is done under the environmental licence has to be on the public register, we are proposing—and we do not think this is controversial; it is something that was meant to happen and it has not been amended yet—that any reports or plans or similar documents that are required to be produced under that environmental authority also have to be on the register.

Mr GIBSON: Paragraph (k) of that section refers to 'other documents or information prescribed under regulation'. So one of the ways we could do that is simply by including in the regulation the requirement for that information to be made available on the register?

Ms Bragg: That is certainly an alternative way. But I am always for seizing the day. If after reflection you agreed, in being efficient it would be great to get it in this bill. That is the end of my notes. The one thing I forgot to say was that there is a definition of 'standard criteria' in the act and that includes matters

that need to be considered when your application for environmental authority is lodged. One item that should helpfully be on that list of standard criteria but is not is the definition of environmental harm. So this act is all about preventing environmental harm. When you get your environmental authority, to some extent you are authorised to commit some sort of environmental harm. It is a pretty broad term. But we have found practical problems and sometimes you just need the words written in the right place. Our suggestion is that the definition of 'standard criteria' be amended to includes the words 'environmental harm'.

Mr GIBSON: Jo, what is your organisation's view on the requirements in section 126, 'Requirements for site-specific applications—CSG activities'?

Ms Bragg: I will have to find that section. I have only been able to look at a certain slice.

Mr GIBSON: Perhaps allowing for time, if you want to take that on notice and write to the committee, sharing with us your views on those requirements for site-specific applications.

Ms Bragg: Were you interested particularly in coal seam gas?

Mr GIBSON: Particularly your organisation's views on that section as to whether or not the requirements are comprehensive enough.

Ms Bragg: Certainly one point which I forgot to make is that it would be excellent to see that when economic data or scientific data is put in as part of the application, including coal seam gas, they have to state their assumptions and their methodology and their references, because sometimes you look at an application or an EIS pertaining to coal seam gas or mining and they baldly state that this will benefit the economy to the tune of $X million. But when you are trying to see if it is correct or not they have not made reference to their methodology or their data, so you cannot check if it is right. I am extremely happy to look at section 126.

Mr GIBSON: The challenge we have is that we are reporting next Tuesday.

Ms Bragg: Yes.

CHAIR: We would like it this week.

Ms Bragg: You have to have your report finished next Tuesday; is that right?

CHAIR: That is right. We will probably finish it Friday. We have a very short time frame because this was a previous bill and we are a new government.

Ms TRAD: It is a can-do government!

Mr KRAUSE: I am glad to hear you say that, Jackie.

Ms Bragg: I can certainly get back to you.

Mr GIBSON: Even via email or something.

Ms Bragg: If we think of extra points, do you want to hear about those or have you got too much at the moment?

CHAIR: You can put through whatever you like and if we can look at it we will.

Ms Bragg: This is all about the fact that we need something that is fair and efficient from a community perspective, not just what suits industry.

CHAIR: Just to allay some of your fears, we actually did have quite a long discussion this morning about some of those time frames, such as only days to read a 1,000-page submission or EIS statement.

Ms Bragg: Even though there is the EIS stage, it is not until the application stage—which is what we are discussing—that people decide to try to raise money to fund, say, an expert. They go back to try to read the EIS when the application is in, and it is so hard to get an expert. They all have a conflict of interest and you have to make 20 phone calls.

CHAIR: Thank you, Jo.

DAVIS, Ms Donnell, Friends of South East Queensland

STANTON, Mr Ron, Friends of South East Queensland

CHAIR: The Friends of South East Queensland have asked to make a presentation. I have told them that we would give them a few minutes to do so. I welcome Ron Stanton and Donnell Davis.

Ms Davis: We only have five areas to address. Friends of SEQ has only been around for 12 years. We only look after South-East Queensland. It is a bioregion. We are based under the Earth Charter, which is one of the pillars of the UN, and we do six things for the community. One of the six things we do is act as a watchdog for government because we do not have a sustainability commissioner for Queensland yet. How is that for an intro?

Ms TRAD: Excellent.

Ms Davis: So what do we care about? Green-tape reduction relates to streamlining approvals for activities that do or have potential to do environmental harm. We agree that things should be streamlined because we do not want to be pulled from pillar to post on everything that comes through.

I would like to introduce Ron Stanton. He has graciously come to give me moral support today, because the two people who have done the most work on this since 2000 and 2009 have been the people who are not available to come to the table today because we did not get enough notice. I have looked at all of the work they have done in that time; however, I will have to summarise.

Our concerns relate to the restricted democracy in this streamlining. There are ways of working with government and working with systems and departments. We have been terribly efficient in the last 12 years. We are under the radar. You do not see us on TV every day. You might hear us on ABC Radio. But we are on about getting the job done and working together. We do not duplicate what EDO does and we do not duplicate what the Queensland Conservation Council does, because we are about sustainable development. If you read the Earth Charter you will see that that is what it is about. It is about people as well as the environment.

So we are concerned about restricted democracy, and there are several areas within that. Of course the consultation phase is one of them—and I will get into that shortly. We advocate to have the opportunity for community reviews for the whole of the life of these projects. This is where we make the argument that a good investment in prevention upfront is so much better than all the money we spend on enforcement and conditions and when things fall down at the end. The only thing is that things fall down sometimes before the application gets approved because some of the applications are put in once the system is already in place, and they are quite often the micro or medium-sized projects.

I will outline our issues as quickly as I can. Firstly, 10 days for comment on the original draft was just offensive. Part of the reason for that is that community groups—and good strong community groups have been around for 40 or 60 years—may only get together once a month. If they are in Rathdowney or Beaudesert or the Bromelton industrial area, they only see each other once a month. We would be wanting 31 days, which is 22 working days. Fifty days would probably be stretching it. I do support everything that Jo Bragg said about the bigger projects; however, in Friends of South East Queensland we also get the little projects and we have to use a triage approach to decide what comes to our desk, what comes to our meetings. We have to look after the big, important things in the long term, but we also have to look after the urgent things like this bill having to come so quickly before us again.

The notification of proposed material change is a big worry. If you put the original application in and then during the negotiations you have a minor change, it might be a minor change for the developer but it may be a major change for the community and the environment that is affected. So when we look at the definitions under the SPA, section 350, this piece of legislation says that we do not really have to go back and talk to the community about changed impacts. So where this change might happen, we have grave concerns because it might be another opportunity to mediate some sort of resolution or compromise that the community can live with. We are not on about killing everything that comes through. We have to live with the consequences. So having that opportunity of working together earlier on and during those minor and major changes is important. I am quite concerned that that part looks like it is going to drop away.

Amendments have been streamlined—to have no public awareness. I was also concerned about the state development areas. In our case we would use as case studies the Bromelton industrial development areas and the Urban Land Development Authority new cities. I may be misinterpreting your legislation, but I am pretty sure that I am spot on about not necessarily having community involvement at all with those sorts of big projects. Once it has been deemed a state development area, there is no need for consultation with the community.

We have five levels of consultation, and sometimes it is only edict. The sort of consultation that we would want for resolution over time is continual participation such as community involvement on the boards as things are developed. So if you have something like a big state development area, you would want community representatives on the board as the project develops and continuously so you have that participation. In other countries they call it participatory budgeting. It even comes up at budget time. That is a bit cheeky to suggest in this parliament. However, I think it is only a couple of years away before we will be like all the poor countries and have participatory budgeting, too. With the Urban Land Development

Authority—if I have interpreted your documents correctly—there may be limited opportunity for community consultation then. We have four new cities on the drawing board and maybe another four in the pipeline. We do want to be involved with that. We want to have the right sorts of outcomes for those developments.

When it comes to the best way to be streamlined and efficient with your budgets, one is hypothetical training—the training on all those issues you were talking about earlier. When I was the head of shipping policy for five years I had to deal with international jurisdictions' right to coastal development—and there are quite a few rules in there. We used to do hypothetical training for oil spills and for disasters that happen on the coast—not just oil spills but also other disasters. You could just get beached out there on sandbars or coral reefs. They are big issues. The hypothetical training did the most marvellous things across all jurisdictions. It happens in the emergency services occasionally.

CHAIR: The what-if scenarios.

Ms Davis: Yes. We would get locked up for two days and we were not allowed out until we got a pass mark, and then we knew. We knew exactly how to work together. I would like to see that occur. It is a good investment for everybody involved.

CHAIR: I have some paperwork here that I will have photocopied and given to committee members.

Ms Davis: The way we approached this was looking at the risk, responsibilities, rights and rewards on the different types of projects. In our briefing paper we have coal seam gas, but it looks like Jo is doing a fantastic job there, so we will not repeat that. Then there are the chook sheds, which is really about tunnel ventilation. There are 22 towns in South-East Queensland that are affected by that. Then there is intensive caravans. With the affordable housing movement we have low-cost housing popping up everywhere where it should not be. However, we do need housing. We have to compromise and get through this. The other one of course is the toxic industry. With those sorts of categories and with those risks, I will make sure that Robyn gives you our papers on that.

CHAIR: Thanks very much, Donnell.

Ms Davis: I am sorry, I am not the right person. Robyn Keenan has done nine years on this.

Ms TRAD: You did an excellent job. Thank you very much.

CHAIR: This document that I have is fairly comprehensive so I will make sure everyone gets a copy of that.

Ms Davis: Thank you very much.

Ms TRAD: Thank you for taking the time.

Committee adjourned at 12.14 pm