AGRICULTURE AND ENVIRONMENT COMMITTEE

Members present:

Mr GJ Butcher MP (Chair)
Mr SA Bennett MP
Mrs J Gilbert MP
Mr JE Madden MP
Mr EJ Sorensen MP

Staff present:

Mr R Hansen (Research Director)
Mr P Douglas (Principal Research Officer)

PUBLIC HEARING AND BRIEFING—INQUIRY INTO THE ENVIRONMENTAL PROTECTION (CHAIN OF RESPONSIBILITY) AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 5 APRIL 2016

Brisbane

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Committee met at 10.31 am

TUBMAN, Ms Wendy, Coordinator, North Queensland Conservation Council, via teleconference

CHAIR: Welcome, ladies and gentlemen. I declare this meeting of the Agriculture and Environment Committee open. I acknowledge the traditional owners of the land on which this meeting is taking place today. My name is Glenn Butcher. I am the member for Gladstone and chair of the committee. Other members with me today are Mr Steve Bennett, the member for Burnett and our deputy chair; Julieanne Gilbert, the member for Mackay; Jim Madden, the member for Ipswich West; and Mr Ted Sorensen, the member for Hervey Bay. We have an apology from Mr Robbie Katter, the member for Mount Isa.

We are meeting today to hold hearings and briefings on our inquiry into the Environmental Protection (Chain of Responsibility) Amendment Bill 2016. Submissions to the inquiry will be available from the committee's website later today. We thank all groups and individuals who took the time to share their views with us. The hearings today will finish at approximately 2.30 pm and the departmental briefing will finish at 4 pm today.

These hearings are formal proceedings of the parliament and subject to the parliament's standing rules and orders. The committee will not require evidence to be given under oath, but reminds witnesses that intentionally misleading the committee is a very serious offence. The meeting today is being transcribed by our parliamentary reporters and broadcast live on the Parliament of Queensland website. We welcome all those who are watching today. I now welcome our first witness, Ms Wendy Tubman, a coordinator from the North Queensland Conservation Council based in Townsville. Would you care to make a brief opening statement for us today?

Ms Tubman: It will be very brief. Good morning to everybody. We basically summed up our strong support of this amendment in the very brief submission that we did put in. It is long overdue and it is very welcome. We are concerned about a number of environmental issues, problems, that arise from not only coalmining, although that is of course a big one, but other sorts of mines and, of course, being based in Townsville we are very aware of the Yabulu mine particularly at the moment with complete uncertainty as to the future of that mine and the financial backing of that—sorry, not mine but refinery—and the potential cost of rehabilitating that mine if it does not reopen, particularly, of course, given its proximity to the Great Barrier Reef World Heritage lagoon.

We support it in relation to that particular project, but also in relation to the thousands of abandoned mines across the state. Obviously with the major and structural downturn in the price of coal and the coal industry we are looking at the potential for a greater number of abandoned mines, people walking away from them, people running out of money to fix them or people turning them off for a small price to people who will not accept responsibility for clean up. So we strongly support it.

Our concern, if there is one, is the robustness of the amendment. I have not looked at it in detail, but I am aware of the litigious nature of various companies and their ability to tie up cases in court for a long time at huge expense. It is making sure that the amendments are sufficiently robust to actually catch the people who are usually intentionally avoiding their responsibilities. That is all I have to say.

CHAIR: In your submission you mentioned concerns that your organisation holds about the future rehabilitation of the Yabulu Nickel Refinery site and that you are aware of risks associated with the refinery's physical and financial management. Can you please explain to the committee what those specific risks associated with the refinery's physical and financial management are and how that will impact on any future rehabilitation of this site?

Ms Tubman: I think, as you would appreciate, the situation at Yabulu is a black hole for an awful lot of people. Even in Townsville with the media intentionally trying to find out what is going on they find it extremely difficult. There have been concerns about the nickel refinery at Yabulu for some years in relation particularly to the tailings ponds. Some two years ago the then and possibly current owner went to the media and said unless we are allowed to empty our tailings ponds into the Great

Barrier Reef Marine Park—not empty them, but allow them to drain into—there is a possibility that kiddies will die. There was a lot of concern. But that concern about the tailings ponds is ongoing. It took an awful lot of input to get the tailings ponds raised. I understand that they are unlined and therefore have the potential to drain into the Great Barrier Reef World Heritage lagoon. The refinery is approximately a couple of kilometres at the most from the lagoon itself, from the waters of the Great Barrier Reef, and the tailings ponds are between the refinery and the reef itself. There are deep concerns about not only the amount of ammonia which could be released, but also the other particularly heavy metals that have accumulated in those tailings ponds for some time.

CHAIR: With that explanation, how do you think that this bill will fix this problem in the future?

Ms Tubman: My understanding is that it would legally require the owners or the people behind the owners in the chain of responsibility—excluding, of course, the workers and if there are other financial investors in the mine, mum-and-dad investors in a mine or refinery, but it would ensure that there aren't clever tactics in order to evade the responsibility and to chase it down to the person who is responsible.

Mr BENNETT: Good morning, Wendy. In your brief interlude and your assessment of the bill, I am just curious about what the North Queensland Conservation Council has done over the last couple of years to try to seek financial assurance under the current Environmental Protection Act 1994 which clearly sets out provisions for seeking financial assurance?

Ms Tubman: We probably have not taken any direct action in relation to any particular mine or refinery. NQCC has been involved in the issue of the nickel refinery in the past. That is when the tailings ponds were of great importance in the media. That experience led us to be very cautious about being involved in any sort of legal action with any major resource company and basically we have now left that to others to take on, but we have always, I think, lobbied for the full environmental rehabilitation of abandoned mines or abandoned sites.

Mr BENNETT: In your presentation and your submission to the committee you talk about mines, but clearly this bill has a very clear intent about all regulated activities and prescribed persons under regulated activities, and that could be anyone from a car cleaner or a feedlot operator. Would you like to make comment about how you feel about knowing that this is about any regulated environmental activity?

Ms Tubman: I would suggest that the position from which we come is that the person who is exploiting the environment in any way has the responsibility for cleaning up any damage that is caused by that if they then leave the project.

Mr BENNETT: Are you aware of how much financial assurance is currently held by the department in Queensland for all regulated activities?

Ms Tubman: I have been told that number, but I cannot recall it right now. I believe it is not enough.

Mr BENNETT: That is a comment. Thank you for that.

Mr MADDEN: Following on from that question you were asked, you mention in your submission that the bonds to cover rehabilitation works are often totally inadequate and that these circumstances make the bill both necessary and urgent. If the bonds to cover rehabilitation works are inadequate, why not simply legislation to increase the amount of bonds?

Ms Tubman: Obviously I am not a legal practitioner and I am not quite sure how effectively that could be done, particularly in retrospect, and what happens when you have got a company that does not just does not have the money. I suppose going forward we could make the bonds much more realistic. I know in the case of Yabulu the amount of money that BHP has suggested would be necessary is $1.4 billion. I do not believe that the current owners have that amount of money in order to do that. I think it is all very well to say, well, in the future we are going to make you deposit a much larger amount, but I suppose it is how long is a piece of string as to how much it costs to clean that up. It is somewhat unknown at the time that possibly the bond is set. I think the requirement that you are responsible for getting it back to this state regardless of the expense is possibly more important.

CHAIR: Thank you for assisting us today, for your opening statement and answering our questions. I thank you for your time today.

HEBER, Ms Tania, Principal Solicitor, Environmental Defenders Office of Northern Queensland

POINTON, Ms Revel, Solicitor, Environmental Defenders Office Queensland

CHAIR: Good morning. Would you care to make a brief opening statement?

Ms Pointon: Thank you for inviting EDO Queensland to appear before you today on this important bill. We are very glad to see that the government is finally taking action to ensure it has the power to make sure that those who are responsible through causing or profiting from environmental harm can be made liable for remediating or avoiding that harm. It is hard for us to imagine anybody being against this bill as a fundamentally positive and necessary step in good regulation of industries by our government. At present the Department of Environment and Heritage Protection does not have sufficient power to ensure that operators in financial difficulty continue to comply with their environmental obligations. This is leaving the government at risk of having to bear the burden of remediating or avoiding that environmental harm that is being left potentially by these companies. This also creates an increased risk of environmental harm where the government itself might not have the resources to bear the burden of remediating or avoiding that harm.

This issue is a longstanding one. The committee might be aware of the Queensland Audit Office having reported on this issue in 2014 and estimating that there are approximately 15,000 abandoned mines in Queensland. EDO Queensland have assisted our clients with their concerns about the management of mines such as Mount Morgan mine for instance—an abandoned mine now under the management of the government—and the tailings dam from this mine overflowed in 2013, causing contaminants to enter the Dee River. Various community members have contacted EDO Queensland over recent years expressing their concerns around the management of this site and we understand the department does not have sufficient money to actually fully rehabilitate this site and thus may remain as perpetual caretakers. As pointed out by Wendy Tubman of the North Queensland Conservation Council as well as the minister in his explanatory speech, the circumstances reported to be occurring around Yabulu refinery also demonstrate the risks that this legislative gap in the department's current powers are potentially posing even to our Great Barrier Reef through concerns that the refinery might be seeping contaminated water which may be contaminating creeks on site. My colleague solicitor Tania Heber from EDO Northern Queensland will also be providing an example relevant to North Queensland's area.

I want to briefly clarify that EDO Queensland believe that while this bill is an urgent and important start there is future work that would be needed to be done to ensure that environmental harm is avoided and those responsible for this environmental harm can be made fully responsible for meeting their obligations. Just briefly, there are three points that we would like future consideration to be given to. The power to amend EAs that is currently in this bill when the EAs are transferred we believe should also extend to being able to amend all relevant EAs—environmental authorities—which pose environmental risks of a certain level so that they align with the updated financial assurance guideline that the department has developed without this power being necessarily dependent on the transfer of the EA to a new operator. The department should also have the power to refuse an operator the grant or transfer of an EA where the proposed EA recipient is not actually financially sound. We are surprised that this power does not actually exist currently in the EP Act potentially. Finally, the time period by which a person can be considered a relevant person we believe should be extended longer than two years due to a risk that a mine, for example, can remain in care and maintenance for longer than two years and the potential environmental harm that can occur during this time due to the responsibility of operators that might have long since departed the mine's operations. While these amendments I have just mentioned are important, we hope that they will be addressed in the future and it is more important that this bill is passed urgently for the good of all Queenslanders. Thank you very much, Mr Chair and committee members. I understand that Tania Heber will now provide some remarks and I will be happy to answer questions afterwards.

CHAIR: If you could just keep your opening statement brief, Tania, that would be great so we have the opportunity to ask you a few questions in our time frame.

Ms Heber: Yes; thank you, Mr Chair. Thanks for the opportunity to make a submission and provide a statement to you today. The Environmental Defenders Office of Northern Queensland supports the provisions of the chain of responsibility bill and recommends the committee supports all of the amendments to the Environmental Protection Act provided by the bill. The Environmental Defenders Office of Northern Queensland supports the submission and statement made by my learned friend Revel Pointon appearing before you today. EDONQ is a community legal centre providing legal services in relation to the public interest environmental law. This covers legal

education, legal advice, litigation and law reform. Our focus is on northern and Far Northern Queensland—from the Torres Strait in the north, Sarina in the south and the Northern Territory border in the west. Over the almost 20 years that we have provided these legal services to our community EDO North Queensland has seen many examples where industry has not been held responsible for the environmental harm that it has caused because government authorities have insufficient powers to impose or enforce the requirements. This bill helps to remedy this situation.

I wanted to provide you with a local example of the problem that this bill seeks to remedy. This came about in 2012 when our office helped out and represented the Walsh River group. There is a long history, but I will just give you a few important facts. In short, property owners near the town of Watsonville on the Atherton Tablelands relied on the waters of the Walsh River and its tributary Jamie Creek for their potable water supply for stock watering, for irrigation and for recreation purposes. The Walsh River, just to give you some context, runs into the Mitchell River and it ultimately ends up in the Gulf of Carpentaria. A company called Baal Gammon Copper Pty Ltd, which was a wholly owned subsidiary of Monto Minerals Ltd, held the mining lease and they contracted a company called Kagara to operate the mine. In August 2011 Kagara were granted an environmental authority. Not long after in the wet season of 2011-12 following a large rain event, contaminated water was released into the Jamie Creek from the mine. Residents were not notified, but they became aware of the contamination when they found a large number of dead fish.

The Department of Environment and Heritage Protection then exercised its powers under the Environmental Protection Act and issued some environment protection orders and a notice to conduct an environmental evaluation. Less than a month later after DEHP acted Kagara went into voluntary administration, ceased operations and almost two years later the company went into liquidation and has now been delisted. They left many environmental problems behind. Since that time, our clients have reported contaminated seepage from the site throughout 2013 and 2014. The new provisions contained in the bill could have helped this situation by giving powers to DEHP officers to firstly make related persons responsible by issuing those environment protection orders and notices to the parent company—that is found in clauses 6 and 7 of the bill—and it would have given the powers to the officers to continue to access the site even though the operating company was no longer relying on the environmental authority because it was no longer trading, and that is provided in the provisions of clause 9. For these reasons and for the reasons given by EDO Queensland, EDO North Queensland supports the provisions of the chain of responsibility bill and recommends that the committee supports all of the amendments provided in the bill. Thank you.

CHAIR: Thanks for that, Tania. You mentioned in your opening statement that the companies had changed, even though they were related entities, and that the multimillion-dollar financial assurances for the mining activity were never paid to the government. Is that correct: there were no financial assurances ever paid? Is it correct that that was never paid for that mining activity?

Ms Heber: My understanding is that up until the point that the contamination occurred it had not been paid. It may have been paid subsequently. I am not aware of the facts.

CHAIR: Can you explain to the committee how that possibly could occur? Do you have an understanding of that?

Ms Heber: I am not the right person to understand how that could possibly occur. Through our conduct of that matter I am aware that there was some dispute between the company that held the mining licence and the company that held the environmental authority which were two separate companies, a dispute which was never resolved and meant that the assurance was not paid. I am really not the right person I think to answer that question.

CHAIR: Have you guys ever asked the question of why a government department would grant a mining lease without the financial assurances being paid to that secondary company?

Ms Heber: Like I said, I am not really aware of that particular background to this story.

CHAIR: That is fine.

Mr BENNETT: With regard to the Environmental Defenders Office around some of these issues, can you give the committee examples where you guys have actively tried to engage with the department about these financial assurances under the current Environmental Protection Act, the EP Act?

Ms Pointon: I can say that we have met with the departments as EDO Queensland and discussed how they are undertaking financial assurance calculations at the moment and also assisted clients in understanding how financial assurance processes operate and if there are conditions in an EA that require financial assurances when they are required to be paid and instances like that, but other than that I cannot speak myself to other work we might have done in that area.

Mr BENNETT: I have a question from a legal perspective as you are representing as a solicitor. One of the concerns that has been raised is about the new criminal and financial liabilities component within the bill and the accusation has been raised with the committee about how it strips the powers of the courts and the infringements and of course there are calls about human rights and the disregard for privilege. Would you like to make comment about how you feel about the changes in the proposed legislation about the changes in the courts and I suppose the fact of natural justice being applied?

Ms Pointon: Just to make sure that I am speaking to the correct area you are interested in, are you talking about the criteria as to the granting of a stay by the Land Court?

Mr BENNETT: That is another part, but there are new financial liabilities and criminal implications in the bill which clearly are a significant change from where we are at now and I am just curious about how you feel about that as a solicitor.

Ms Pointon: I am just not sure exactly what you are talking about. In terms of the potential that a related person might have criminal or financial—

Mr BENNETT: No. Clearly there is an act now where if you have a problem you can go through a court and clearly this bill is talking about eroding some of that away and making the department the sole arbitrator on criminal and liability issues. I am just curious how you would feel about the human rights issues being breached.

Mr MADDEN: Is this appropriate? You are asking for a personal opinion and this lady is representing the Environmental Defenders Office.

Mr BENNETT: Okay. With regard to reducing the ability of a court to stay decisions on the department, which is clearly part of the bill, could you make a comment about how you feel about that component about the stay in the courts?

Ms Pointon: I think it is perfectly acceptable in this instance. As explained in the explanatory notes, there is a need for it in that, if there is the ability to get a stay once a matter is before the court, committee members might be aware that a stay can effectively delay proceedings for a very extended time to potentially years. Where environmental harm might need to be acted on with some urgency, this can be a risky possibility and it seems perfectly appropriate that there are limitations under power. I think the way that they are expressed in the bill is perfectly appropriate as well in that they are intended to not be used where there is a significant risk of high environmental harm posed or, I understand, where financial assurances have not been secured at all and the government might be therefore up for liability instantly to avoid the environmental harm while this issue of the decision is still being reviewed.

Mr BENNETT: Thank you.

Mrs GILBERT: In your submission you are saying that you support the bill in its entirety. We have had a lot of submissions from businesses and other groups saying that it is a flawed bill. Minister Miles in his introductory speech provided some assurances. A number of submitters have suggested that the landowners or native title owners or registered native title bodies could be held liable for rehabilitation of mining activities as related persons with a relevant connection to mining that has been conducted on their lands. Does your group have any concerns about the current wording of clause 7 in the bill specific to a relevant connection with a company?

Ms Pointon: No. We do not have any concerns with respect to this. We think it is sufficiently limited in that the related person has to be measured in terms of the extent of control or a financial interest they have in the operations of that company. Potentially it is true what you just said. If those entities had a significant element of control that was considered sufficient or a financial benefit that was being reaped from the operations and the consequent environmental harm that was posed by those operations then it is true that under the bill it seems to me that they would be potentially liable. I think the way it is limited is sufficient to ensure that only those most appropriate and those responsible for that environmental harm would be captured.

Mrs GILBERT: We did have a lot of submissions from people thinking that if they leased their land they would be liable for the actions. Thank you for clearing that up.

Mr MADDEN: I have a question about the comment that was made in your submission that there is little ability at the moment to amend the environmental authority when a new entity takes over a mining lease. I am curious as to how often this change of ownership takes place. Is it something you are familiar with?

Ms Pointon: It does occur. I could not speak to the frequency with which it occurs, but it definitely does occur.

CHAIR: Thank you for your comments today and for your opening statements. Thank you for coming in today. I now invite the next witnesses to the table from Lock the Gate Alliance.

HUMPHRIES, Mr Rick, Coordinator, Mine Rehabilitation Reform Campaign, Lock the Gate Alliance

HUTTON, Mr Drew, Coordinator, Mine Rehabilitation Reform Campaign, Lock the Gate Alliance

CHAIR: Would either of you like to make a brief opening statement?

Mr Hutton: I will make an opening statement and then you can direct your questions to either me or Rick. Thank you for this opportunity to speak to you. We recognise and acknowledge that mining and mineral processing are very important contributors to the Queensland economy and have an important role to play. Having said that, I have been aware for decades now of the extent of the problem that exists with the rehabilitation or non-rehabilitation of mine sites around this state and have actively campaigned on this issue for a long time—in fact, over a quarter of a century.

I had leave to appear at the Matthews inquiry in 1993 at which this topic was discussed and some very harsh criticisms were made of the rehabilitation and environmental management records of the Queensland mining industry. I again appeared at the Connolly-Ryan inquiry to talk about the same issue. I negotiated with Premier Beattie about transferring the environmental enforcement role from the mines department, where it had been up until then, across to the newly set up EPA. Premier Beattie put me on a stakeholder panel to reform the legislation concerning the environmental management of mine sites including rehabilitation.

I can say after all of that that absolutely nothing of substance was achieved. The situation was absolutely no better after all of that effort on my part and other people's part over the previous decade. It is with some elation that I look at this legislation as the first attempt in those 25 years of my concern with this issue to see something positively emerging from government action. We endorse the provisions of the Environmental Protection (Chain of Responsibility) Amendment Bill. We think it is a good bill and a very good start to what is required with proper regulation of the environmental management of mine sites.

With the end of the mining boom, Queensland is certainly faced with the very real risk of default by companies. In fact, several are heading in that direction. As a result of that, we would be looking at potential default on their rehabilitation obligations and in fact the sale of some of those older mines to junior players who have very doubtful ability to pay the costs mounting in the rehabilitation of mine sites. That is the context in which this bill has been presented to the parliament.

We have done a far bit of research on this. The real recognition of the fact that rehabilitation had been done on mine sites would be the relinquishments of those sites. You cannot relinquish a mining lease until the rehabilitation has been done. There has been no relinquishment of any mine site in Queensland in the last 25 years. There have been a few hectares here and a few hectares there. I think it amounts to no more or little more than 100 hectares for the whole of Queensland in that time. Otherwise there has been no relinquishment.

Instead, we have a mounting number of sites from which the owners have walked away. They have gone into bankruptcy. They have left sites. There are about 15,000 abandoned sites in Queensland. Most of them have little or no problems associated with offsite pollution, but some of them have enormous problems. There is something like 137 with a very high risk of offsite impacts. These include Mount Morgan. I am sure you have heard Mount Morgan mentioned a number of times in this inquiry. I might add that respected academics in this area have put the proper rehabilitation of Mount Morgan at something like $800 million to $1 billion just for that site alone.

There are other sites like Mary Kathleen and Mount Oxide which are similar weeping sores in the Queensland countryside. The Lady Annie mine back in 2009 had a spill from its tailings dams which sent millions of litres of highly contaminated water down the rivers from the headwaters to Lake Eyre. That list of abandoned mines continues to grow. Just in the last couple of weeks we have had the Texas Silver Mine go on to that list with no financial assurances. They have gone into bankruptcy, with tailings dams set to overflow at the next heavy storm.

There are other steps that need to be taken with mine rehabilitation beyond what this valuable bill has contributed. We need to have a proper review, which I understand is being conducted now by the Department of Environment and Heritage Protection, into the level of financial assurance in Queensland. From my discussions with the department, that is something like just over $6 billion if you include coal seam gas. Without coal seam gas it is something like $4.5 billion. That is a very real improvement on what has gone before. It is nowhere near enough but it is an improvement. Back in the day when I was first campaigning in this area I used to say you have no financial assurances

because they used to take company self-guarantees—company self-guarantees would you believe?—for financial assurances. I used to say the rehabilitation liability is likely to be about $1 billion to $2 billion. That was a long time ago. Since the resources boom, it could be—and various people have said various figures—$20 billion, $30 billion or $50 billion that we are looking at, especially if you include abandoned mines in the costs of rehabilitation. The level of financial assurance is definitely important to look at.

Also just as important is the lack of any clear policy defining what is an acceptable final land form and land use post mining. There is no clear definition in the legislation of what is a post mining land use. What is rehabilitation? That needs to be spelt out clearly in legislation. That is another area of reform which is desperately required.

There needs to be a great improvement in the department's capacity to monitor and enforce the legislation. There needs to be an effective management and rehabilitation of abandoned mines. With those abandoned mines, the only body that can now rehabilitate those mines, if they are going to be rehabilitated, is the state because the owners have walked away from them. We are looking at billions of dollars to do that. We will be looking at many more billions of dollars unless this legislation and other legislation that is needed to back it up go through the parliament.

Rather than go through the legislation and our attitude to it—we have done that in our submission—we endorse totally what the Environmental Defenders Office has stated. They are very clear statements of support and indications of where further work could be done on that basis. We endorse those comments and invite you to read our submission.

CHAIR: Thank you, Drew. In relation to relevant persons, in your view should the Department of Environment and Heritage Protection be allowed to issue an environmental protection order to a landowner on whose property a company is conducting mining or mineral processing or to a native title holder for that land for any environmental harm caused by the mining company that is on their land?

Mr Hutton: I agree that the wording, especially in the minister's second reading speech, is totally adequate to this. It is very clear that a relevant person is somebody who benefits financially heavily from the mine or is in a high degree of control over what is happening. Any person who is in that situation therefore is a relevant person, and we endorse that.

CHAIR: So you do not agree that the landowner who has no control over the company should be—

Mr Hutton: Absolutely not.

Mr BENNETT: There were a lot of figures thrown about and you were very succinct in your presentation. I asked one of the earlier witnesses whether they knew what the current financial assurance was held by the department. I think you alluded to $5 billion or something. Can I ask for that figure again that you are aware of? I am not asking you for an exact figure, but it is some billions.

Mr Hutton: It is about $4.5 billion for mining and a bit more for the coal seam gas.

Mr BENNETT: In all those figures we mentioned that there are a couple of mines of deep concern to Queenslanders, not just Lock the Gate but all of us have concerns about those mines so I acknowledge that, and you are saying some of those could be bigger. Based on the assessment that there are some billions of dollars that the department would have some capacity to apply to care and maintenance—

Mr Hutton: Not care and maintenance. That is a different thing altogether.

Mr BENNETT: Sorry, rehabilitation.

Mr Hutton: Yes.

Mr BENNETT: One of the things that keeps troubling me is that the current EP Act has criteria for setting financial assurance. It does have a criteria for stating what is site specific, what is rehabilitation, but it is very loose.

Mr Hutton: Very loose.

Mr BENNETT: It does set how they should be calculated. My deep concern is over the 20-odd years since this was brought in the late nineties that the department has not got the financial assurance on the EA or during the process. Where I am leading to is we are putting in another piece of legislation when it appears that we have already got legislation under the Environmental Protection Act that has the capacity to set the criteria you are alluding to. Would you care to comment?

Mr Humphries: If I can talk specifically around the financial assurance and completion criteria, I have worked in the mining industry, both for Rio Tinto and most latterly for MMG on mine closure and rehabilitation issues—I had a global role with Rio Tinto and a corporate role with MMG and you will be aware that MMG is currently closing the Century mine up in north-west Queensland and making a fist of it I might add, they are doing a pretty good job, which is a rarity in this state. But I just say around financial assurance, I agree with you that it is astounding that we have not got it right yet given publicly available information from the mining industry itself that goes through in great detail what leading practice mine closure rehabilitation and cost estimation involves. All the information around calculation of financial assurances to shield the state and the taxpayer from any liabilities, all the information around completion criteria, how to actually plan for closure in advance et cetera, et cetera is all out there. The industry has already been there. But the simple fact is the state has an opportunity, if it chooses to, to actually troll through, get industry experts in on designing the appropriate legislation, regulation and, indeed, the financial calculator to finally hold the industry to account and to protect the Queensland taxpayer going forward.

As Drew alluded to, this has been an ongoing debate in Queensland for quite some time. I think the difference now is there would appear to be a growing critical mass on the back of the boom and on the back of various companies' attempts to forego or avoid their obligations. There is greater public interest now and certainly we would hope that that translates into more reforms around financial calculation, around policies that actually aligns industry practice with public expectations around mine rehabilitation which surely must relate to the fact that on commencement of mining there is a social contract that in return for making profits the industry must make good on the damage and basically restore or substantially rehabilitate to somewhere close to the pre-mining land use that was there before. I think that is where the state has to get to. But I think the information is available. It just needs to start tapping into what the industry itself has created over the last 20 years.

Mr Hutton: I think it is reasonable to say—quite fair to say—that there has not been the political will in this state to enforce even the current legislation let alone having a legislative basis for effective action. Having said that, everybody says—the mining industry says it, the government says it—that these sites will be restored to productive capacity, they are going to be there for economic activity, for conservation, some land use which is productive. None of it is. There is no productive land use virtually in Queensland as a result of rehabilitation of mine sites, especially the coalmine sites.

CHAIR: Just to clarify, in all your comments I have been hearing you say there are no, but then you say virtually there are some. Have you got proof someone has rehabilitated a mine site?

Mr Hutton: I have not looked scrupulously at every mine site in Queensland. I have not heard of any mine site that has been restored to a situation where they can have productive use of that land. In the old days they used to say restore to grazing land in the Mining Act. There is nothing restored to grazing land out there that I am aware of. I wouldn't run a herd of cattle on it, anyway.

CHAIR: Would anyone know if there has been a full rehabilitation done of an ex mine site?

Mr Hutton: No, there have been no audits.

CHAIR: We might ask that same question this afternoon.

Mr SORENSEN: Do you have some examples to explain the problems with the financial assurance calculations that might justify a full review? What I mean by that is if a mine is running for 20 years and you put that cost in 20 years ago, with inflation occurring, how do you calculate that?

Mr Hutton: Rick, do you want to take that?

Mr Humphries: Sure. It is standard engineering practice that is applied to mining at the beginning of any project. At the beginning of a mining project there are a lot of unknowns because mine plans change over time. The way that cost engineers deal with that problem is to put in a significant contingency of somewhere between 25 and 35 per cent on top of their cost estimations to deal with all the things they do not know throughout the life of the project. I think that is one key area that when the financial assurance is set very early on in a mine's life a calculator does not necessarily recognise that and include contingencies that will take into account all the various unknowns.

From our initial discussions with the department around some of the deficiencies I think there is an assumption around tailing storage facilities, those tailings dams, that in many cases when it comes to copper and nickel and mines that deal with highly toxic and long lived substances, that that specifically is not taken into account. Tailings facilities can be very, very expensive to deal with. The assumption in the calculator is that they are relatively benign therefore the covers that are needed to protect the environment in the long-term are standard and that is clearly not the case. There are specific elements of mining that really need a review. There needs to be, I guess, greater granularity

to suit site specific realities around things likes tailings dams, the degree of acid forming material, the design of rock dumps et cetera, et cetera. It is a moving feast, but the department needs the capacity to really reach into industry best practice around calculation and the ability to regularly update the financial calculator to reflect the reality. But in my experience and talking to other practitioners in the industry who are much more skilled than I, whose actual job is full-time cost calculation, I have not come across one yet that says that the financial assurance calculator in Queensland reflects the true cost of closing and rehabilitating the mines. There are several aspects that are deficient, but it needs a deeper dive and there needs to be greater transparency around it if we are to protect the interests of taxpayers.

Mrs GILBERT: You have already touched on this a little bit. I was interested in the post mining land use. The Bowen Basin is in my back yard out west of Mackay. I have been out to have a look at some of the mines there where they have talked about rehabilitation and they have talked about how they cannot fill the holes in completely because of sink holes and that type of thing. Do you have a set of words around what you would like to see in the legislation about the post mining land use? Looking at that land, it will never get back to flat cattle country.

Mr Hutton: It is a highly technical answer really that is required, and for that I will go over to you, Rick.

Mr Humphries: I think there is no one-size-fits-all. However, there needs to be a clear aspiration I think from a policy sense that we need to get back to as close as possible to what was there before mining started in terms of land use and land form. Other countries have gone down this path before. In relation to coalmining in the United States there is the Surface Mining Control and Reclamation Act that was passed in 1977 I believe that requires companies to basically put the land back in terms of its rough topography to what was there before. You cannot put stuff back exactly, but that is the aspiration point and from that point on the companies had clarity and certainty about what the regulatory expectation was and to their credit they came close to achieving the goals of the act. But in relation to groundwater and other things there is still a lot of work to do. I think more can be done, particularly in coalmining in bauxite mining, and we have seen over the history of mineral sands that they have attempted to put the landscape back in a similar condition. I think you can carve out per commodity expectations because there is homogeneity amongst those different mines. When it comes to hard rock mining, I think that is a more difficult case given the model and the cost of actually backfilling the pit, but I think your question raises the opportunity that there needs to be a much more informed and robust debate in Queensland about what we want the mining industry to deliver post mining and if it can be done on a commodity by commodity basis, looking around the world, looking at world's best practice because Queenslanders deserve world best practices as a major mining province. Others that have gone before and particularly amongst the multinationals where in some instances they have done really, really good work, the problem is that they do take advantage of lax regulation and they do not apply a consistent standard across their operations. It is really up to the people and the regulators to give clarity to the industry around what is appropriate land form. I am sorry I cannot be more specific, but I think there is a commodity by commodity regime we could look at to look at leading practice across the world in terms of regulation and final land form.

Mr Hutton: I should point out too they do not fill final voids in Queensland. There will always be holes left in the ground which means that there will be substantial spoil heaps left after a mine is finished. What you have to do with the spoil heaps is make sure that there are no gradients on there that are going to cause erosion and therefore off-site impacts and exposure of acid forming material, for example. There are mines in Queensland where that is simply is not the case—coalmines—and the gradients are too steep, the erosion is basically integral to the whole site. In fact, if you go to a place like Collinsville which is highly acid forming, where the angles are too steep, you are likely to find another Mount Morgan there in the next few decades just simply because of that.

Mr MADDEN: I have to challenge you on one point that you have made. As you are aware, I represent Ipswich West which takes in the Rosewood coal area. New Hope Colliery have two mines at Rosewood, one that has ceased production, Oakleigh, where they have almost finished rehabilitation, the other one is Jeebropilly, which is still producing but they are partially rehabilitating. I have two questions: firstly, do you concede that there are some reputable mining companies that are making a genuine effort to rehabilitate their mines and, secondly, do you think we know enough about the science of mine rehabilitation and should the government be investing in research into this area?

Mr Hutton: Once again, I will answer first and then Rick will follow me. On your first question, yes, there are companies that are attempting to do the best they can. Rick mentioned, for example, Century Mine. They cannot fix it up, but they are making a really good effort to do that, and Rick has

worked on that mine and he is full of praise for what they are trying to do. The problem is that it is an afterthought. Rehabilitation is always an afterthought. It is what you think about when you have done everything else. You mine like crazy when the boom is on and you do not do any rehabilitation because all you want to do is dig it up and flog it off. So progressive rehabilitation, which is what they are supposed to be doing, almost never gets done. It does, but it is 50 hectares here and 50 hectares there and nothing substantial. Yes, there are examples where they are doing as good a job as you expect them to do, but it is certainly nowhere near enough and nowhere near widespread enough.

Mr MADDEN: Do we know enough about mine rehabilitation, or is it something we should be doing more about?

Mr Hutton: Rick, do you want to answer that?

Mr Humphries: Yes. There are numerous conferences around and there will be another one in Brisbane later this year—Life-of-Mine—and it is a highly technical area. Companies that are smart start investing in studies very early on in mine life so they equip themselves with the knowledge that reduces the risk as they go through progressive rehabilitation if they are actually undertaking it. To a degree, it is always a work in progress and there is a continuous learning model whereby you monitor and you study and you feed the learnings of those monitoring programs and study back into your rehabilitation and apply it as you go through the life of mine. The theory is absolutely there. There is a lot of technical expertise out there. Is it well shared between companies? Is there a lot of repetition and money wasted by reinventing the wheel? Absolutely, and every mine rehab practitioner will tell you that. Would it be a great idea if Queensland set up a centre of excellence which actually put all of that information together and made it freely available across-the-board? Yes, it would. That would be a great initiative. Again, there are numerous standards, policies and guidance documents from the likes of Rio Tinto, Anglo American, BHP-Billiton et cetera that put the theory and what should be leading practice out there.

The reality is, however, that once the approval is given generally the bean counters and the chief financial officer take over and their metric of success is lower the cost and increase production. Unfortunately, in life-of-mine planning when you have dilemmas around spending money versus getting more tonnes on a ship versus moving that rock dump and doing a bit of progressive rehabilitation, all of the reward structures in companies say, ‘Go for the tonnage.’ What tends to happen is all the goodwill and all the planning et cetera either gets watered down or put to one side while the boom is on and later on they will play catch-up, but unfortunately it is generally too late to rectify a lot of the mistakes through bad planning, and Collinsville is a classic example where they did not separate the acid-forming material from the non-acid forming material. At the end of their mine life, they are going to be faced with an awful dilemma about having mixed everything up and how you manage tonnes and tonnes of acid-forming material which is going to be very expensive. As Drew said, that is life, but there is a good chance that one will revert to the state at some point. There is lots of research to be done. I think there is a role to bring it together, but more research will not solve the problem but better standards and clarity for industry around outcomes that the state is demanding will. If the state was to adopt leading practice planning and really regulate that and put it in its regulations and legislation, we may well not be having this conversation and hopefully we will not be having this conversation in 15 years time.

Mr Hutton: And enforcement of that regulation, so you have to have the resources in the department to do it.

Mr MADDEN: Thanks, Rick and Drew.

CHAIR: I thank you, Rick and Drew, for assisting us today.

MASON, Mr Lee, Secretary, Darling Downs Environment Council

CHAIR: Good morning. Would you care to make a brief opening statement?

Mr Mason: It will be brief. We concur with Wendy Tubman, the first witness this morning, and we concur with Revel Pointon and Drew Hutton on their view in that we approve of the proposed bill, and we do that for a number of reasons. The key points are that from our perspective sufficient bonds need to be lodged and there needs to be transparency in how they are applied and they need to be redeemable through guarantee or insurance, and that is in our submission. We support the powers being given to DEHP to enforce or utilise environmental authorities where previous agreements have fallen through. Just a little bit about my group, Darling Downs Environment Council is not actually just the Darling Downs. The Texas silver mine technically falls into our region because of the way it is split up among the Queensland Conservation Council, as does the coal seam gas area out to Chinchilla. From that perspective we are very pleased that landholders, particularly those affected by coal seam gas or those who have it on their property, will not be liable for damage done by the mining industry on their land which is a point that was raised earlier.

While we do support the bill, we do have concerns. The major concern, as Drew raised earlier, is that while the legislation—if it goes through, which we hope it does—may be good legislation actually enacting the legislation or carrying it out by the department may be difficult, and this has proven to be the case. Representatives from the mining industry are coming in this afternoon to talk to you and they will tell you that we have a highly regulated system, which, to a degree, we do. Unfortunately, the department does not necessarily have the resources to monitor or check those regulations. This is a difficulty that we come across as an environment council all of the time: the law or legislation may be decent, but the actual practice or the actual carrying out of that in the field often does not match what is written on paper. The mining industry itself knows that this is the case and often there are, as Jim said, good operators and there are of course others that would like to get away with as much as possible, and that does happen. That has been the culture of the industry unfortunately up till now and I am sure that some of them will be highly opposed to a bill such as this. That is a major concern we have. While in principle it is a good thing, I would still really like to see how it is actually going to happen in terms of resourcing the department to actually carry out this work.

I am raising that concern because I have concerns with CSG and the monitoring of it. I have been working with the department to try to get some answers on those issues and the department either has information that is in confidence for them only or not enough information to actually give me an answer in many cases, and that is due to the number of officers that they have on the ground to go out and monitor these existing sites. In concert with this legislation, when we are not monitoring efficiently now, it is going to be hard to know what has actually happened on those sites when the information is held by a company that has folded up and gone away and you cannot access it. They are some difficulties we see with carrying out the legislation, but we do support the bill as it stands.

CHAIR: In your submission you raise the Twin Hills silver mine in Texas and the problems that the community has had with the tailings dam. Twin Hills has not made the news in the same way that the Yabulu refinery has as we have seen in recent weeks, so it will not be as familiar to many people watching this telecast. Could you briefly talk us through the issues that they are currently having on that site with that tailings dam?

Mr Mason: I do not actually specifically live there or know those details, but I do know that it is an issue. The big one really is the effect on the waterways and that getting into the Murray-Darling system.

CHAIR: So that mine has closed from your statement?

Mr Mason: Yes.

CHAIR: How long ago?

Mr Mason: I am not sure on that either, but I do know it also straddles the Queensland-New South Wales border and it is the responsibility of both to a degree as well. But I do not know the specifics of that particular mine.

CHAIR: You said before that you are glad that landholders are not involved with the changes in this bill. They actually are under proposed section 363AB—'Who is a related person of a company'. Subsection (b) states—

the person owns the land on which the company carries out, or has carried out, a relevant activity ...

So you do have concerns with that?

Mr Mason: Does it not say that they need to have a significant part in the process?

Mr BENNETT: They own the land.

Mr Mason: Pardon?

Mr BENNETT: It is pretty significant if you own the land.

Mr Mason: All right.

CHAIR: We just want to make sure you are—

Mr Mason: No. In that case, I withdraw that statement then. I would say that would be a serious concern because I misheard that before. I would say landholders, particularly out Chinchilla way, would be very worried about being responsible for the legal ramifications of pollution on their land.

CHAIR: For your benefit, I will give you the clause. It is proposed section 363AB(1)(b) in clause 7 of the bill if you want to have another look at that—'Who is a related person of a company'. I do thank you for that retraction. If you have concerns about that, I am glad we clarified that.

Mr MADDEN: I was interested that you raised the issue in your submission of coal seam gas and you referred to unconventional gas. What are your thoughts with regard to the notion of the rehabilitation required with regard to coal seam gas? It is an unusual aspect. We are drilling holes in the ground; we are not moving rock. What is your view with regard to the potential rehabilitation that might be required?

Mr Mason: I am not an engineer and I cannot even come at that. With it and shale oil similarly being a relatively new industry and there not being many examples to look at that have been carried out so far, I think it is almost an impossible question to answer.

Mr MADDEN: Thanks, Lee. Sorry if I gave you a difficult question.

CHAIR: Thank you, Lee, for assisting us today in our inquiry.

BOWIE, Ms Leanne, Member and Legal Advisor, Queensland Resources Council

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

LANE, Mr Greg, Acting Chief Executive, Queensland Resources Council

CHAIR: Would one of you like to make a briefing opening statement, if possible?

Mr Lane: Yes, I would. The QRC welcomes the opportunity to appear before the committee as a complement to our submission on the Environmental Protection (Chain of Responsibility) Amendment Bill 2016. Firstly we would like to express our understanding of the committee's own restricted time frames in the holding of this inquiry and the attempts to give stakeholders such as ourselves time to prepare submissions and appear before you. Thank you for that. I am obviously joined by my colleagues here today—Frances Hayter and Leanne Bowie. As you would be aware, we are the peak representative organisation of the Queensland minerals and energy sector. Our membership includes minerals and energy exploration, production and processing companies and associated services companies. We work on behalf of our members to ensure our resources are developed profitably and competitively in a socially and environmentally sustainable way.

QRC supports the stated overarching policy objectives of the bill. They are to facilitate enhanced environmental protection for sites operated by companies in financial difficulty and to avoid the state bearing the costs for managing and rehabilitating sites in financial difficulty. The emphasis is on the final words in each of those objectives. We, along with the people of Queensland, would far prefer taxpayer dollars to be spent on essential services infrastructure and encouraging employment rather than cleaning up behind poor environmental performers. However, QRC is seeking recommendations for amendments from the committee that ensure the bill goes no further than achieving its stated intent, as I have just outlined above.

Our quite broad concerns with the bill, the detail of which is fully set out in our submission, relate to the drafting of provisions about financial assurance, particularly the removal of the stay and payment of all but 15 per cent of EHP's calculated amount which does not consider the range of circumstances as to why a company may be challenging EHP's calculation; related persons, particularly in relation to landholders and also aspects of the relevant connection test; the joint or several liability provision, which does not consider the range of joint venture arrangements including the different levels of commitment both financially and in management control of the joint venture partners; removal of the privilege against self-incrimination; and aspects of the land access provisions which do not appear to consider safety issues. This bill is causing an almost unprecedented level of concern for QRC members worried about the apparent implications for joint ventures and future investments and investors. Relationships with landholders may also be potentially severely impacted under the draft framework of the bill.

I must express our significant concern with the lack of consultation on the bill, although we do appreciate that a briefing was provided by EHP to QRC following the bill's introduction. Lacking proper consultation, there are numerous ways in which the drafting of the bill has overstepped its stated objectives, in our opinion, with potentially severe unintended consequences both for innocent landholders and for investor confidence in Queensland.

The almost open-ended discretion given to the regulator in the bill means that at its broadest the bill could allow the chief executive to pursue any related person with substantial financial resources, even if they had no control of the activities that caused the environmental default, as long as they received a financial benefit. While this may not be the intent of the legislation, it is open for such an interpretation to be formed. We urge the committee to recommend against this open-ended administrative discretion in the interests of investor and landholder certainty and that clear provisions sit in the bill itself rather than be an assurance given separately by government or the Department of Environment and Heritage Protection. Thank you again for the opportunity to appear here today and to make this statement. We would now be happy to take the committee's questions.

CHAIR: Thank you, Greg. Firstly, does the Queensland Resources Council believe that the financial assurance system, which we have heard a little bit about today, in Queensland is not working and what evidence are you aware of that the system has failed?

Ms Bowie: The Queensland Resources Council has some concerns about the way that the financial assurance system is working in Queensland. That is why we support some of the overarching policy objectives of the bill. It is just the way they are drafted that we have concerns about.

Starting with the Yabulu nickel refinery, this was an example where there was a discretion available to the department at the time to have required a financial assurance from the operator of that mineral processing activity from the beginning but failed to do so in the original environmental authority. There are actually drafting errors in the provisions about transfers where a mineral processing operation is transferred from one operator to another. They may potentially be less suitable to carry out the operation or they may have a different way of operating. There is a series of provisions in the existing Environmental Protection Act about transfer of prescribed environmentally relevant activities and about replacement of a financial assurance where there is an existing EA condition requiring a financial assurance. Unfortunately, the drafting error is that the provisions assume that there is an existing condition requiring a financial assurance upon a transfer. If there is not such a condition, the power does not currently exist to impose that condition. There was that issue when BHP transferred to a company owned by Clive Palmer. That is one issue that relates to environmentally relevant activities other than mines and petroleum activities.

For mines and petroleum activities, they are required to have financial assurance. They have financial assurances in place. The relevant provisions are actually set out partly in the act and partly in conditions. The conditions for mines and petroleum or gas activities do not say, ‘This is the amount that is required.’ They just require the correct amount to have been lodged by whichever mechanism is appropriate in accordance with the guideline. The guideline sets out the calculator. Those financial assurances are reviewed every time in the case of a mine they put in a new plan of operations or an amended plan of operations in terms of area of disturbance or progressive rehabilitation. There have been examples such as Texas Silver Mine where the amount of the financial assurance was lodged but it was inadequate.

Ms Hayter: The issue is not with the system itself but ensuring that the system operates well. On the one hand, there are examples of where there clearly has not been enough financial assurance lodged and the onus is on the department to look at those calculations. There have also been times when the amount that has been proposed to be lodged is in excess and the discussions with EHP have not necessarily gone as well as they could to resolving those discrepancies.

The other major thing to add about financial assurance is that it is the last port of call. There is a substantial regulatory and penalty framework within the Environmental Protection Act. It should never get to the point where the financial assurance is called on. Whether that calculation is adequate or not is the last line of defence.

CHAIR: In your submission on page 6 you note that, for the Yabulu nickel refinery, the administering authority had jurisdiction to impose a financial assurance requirement as early as 1 March 1995 and for the past 22 years but has never done so. Is that correct?

Ms Bowie: Yes, that is correct. In the original version of the Environmental Protection Act 1994, which commenced in March 1995, the relevant section was section 115, which permitted the administering authority to have imposed a financial assurance requirement upon that facility. It was not restricted to mines and petroleum. In fact, at that time mines and petroleum were administered in terms of a security deposit by the department of mines. For other activities such as mineral processing, the relevant provision was section 115. There was either an oversight or a discretion was exercised deliberately not to require it.

Mr BENNETT: We are really going into this financial assurance area this morning. Our understanding under the EP Act is that there is capacity for the department to change or re-evaluate the amount of assurance that is held at any stage during the life of the mine. Would you like to comment on that?

Ms Bowie: Correct. For a mine—and we are not talking here about the Yabulu nickel refinery—there are existing provisions in the Environmental Protection Act which require financial assurances. In addition, in every environmental authority that is issued for a mine there is a requirement that the financial assurance must have been lodged before the mine can commence carrying out the activity. There are also provisions set out in the model mining conditions, which are available on EHP’s website. It is a guideline. The conditions are conditions A6 and A7. They do not specify the amount. They specify that each time the mine submits a plan of operations, which will set out the areas of disturbance and the areas of progressive rehabilitation, the financial assurance is required to be reviewed. The financial assurance, increased or decreased, then has to be addressed before the mine can carry out those changed activities. For mines, there is that requirement, and when a plan of operations is lodged there are details about financial assurance calculations that are provided with it.

Ms Hayter: It is the same for CSG. There are slight variations but the principle is the same.

Ms Bowie: There is a difference though for other prescribed environmentally relevant activities. That is the issue that needs to be addressed.

Mr SORENSEN: I would like to discuss your concerns about clause 7, which provides for environmental protection orders to be issued to related persons of a mining company. It says that one of those persons is the person who owns the land. How can somebody be responsible for a mining company when the conditions are set by the government?

Ms Hayter: The short answer is that that is a very good question. That is why we fundamentally have a concern about that part of the bill. Thank you for having a look at that section when the previous speaker said that that would not be the case.

Ms Bowie: Just to correct what one of the previous speakers said, under section 363AB there is no limitation or qualification about a relevant connection or influence or financial interest or anything else like that if the person owns the land. That means that the grazier or agriculturalist—whoever has the underlying land—or perhaps somebody who has purchased it following rehabilitation has liability with no limitation or get-out clause there. Surely that must have been an unintended consequence. We know that because between each of those paragraphs (a), (b) and (c) the word 'or' appears. There is nothing about the person who owns the land and has a relevant connection.

Mr MADDEN: I have a question with regard to the time frame for adding a financial assurance requirement to an existing EA. You have suggested in your submission that there should be a statutory time frame for the adding of a financial assurance requirement to an existing EA on the basis that it may affect investor confidence. What sort of time frame did you have in mind?

Ms Bowie: That comment was about the fact that the amendment provision in the bill for inserting a financial assurance requirement upon a transfer is actually in a section that is about compulsory amendments where in most cases there has been some kind of infringement where there has been a breach of EA conditions. It is adding that and making it a retrospective provision that, upon or following a transfer, EHP has the ability to impose a new condition requiring financial assurance. Instead, what should occur is that the provisions about transfers of an environmental authority upon a transfer of an operation should be amended.

There are existing provisions there. The existing provisions already allow for an amendment of the environmental authority. It should specifically say 'amendment of an environmental authority which can include imposition of a new financial assurance', and it should be part of that process. The process should in itself have some kind of a time frame. Many commercial transactions such as approval of finance will be in, say, 30 days. You would think that EHP within 28 days could make a decision about whether or not when it receives an application for transfer it is going to require financial assurance. Then the financier, the investor, will be able to say, 'I am going to drop out of this transaction. I am not going to approve finance,' if that is what they want to do.

CHAIR: I want to ask a question about joint ventures and why you believe that joint ventures under clause 7 are an issue. My feelings are that if you are taking on a risk with a company you also take on the risk of what potentially can happen at the end of the company's life. Why do you think it is a concern for joint ventures?

Ms Bowie: There are a couple of reasons why we have a concern about joint ventures. Joint ventures are picked up in a couple of ways already under the existing law. If you have a couple of holders of an environmental authority and a mining tenement, they may be, for example, in the proportions of 10 per cent and 90 per cent; with the 90 per cent holder actually making all the decisions and carrying out the operation. It is just a step more difficult under these provisions where, for example, you might have both the 90 per cent holder and the 10 per cent holder fall over. It then becomes their parent companies, who have had even less to do with the operation, becoming responsible. We have no problem with the 10 per cent holder having some responsibility, the problem that we have is with them having 100 per cent responsibility. At the moment what we have got in the joint and several liability provision, section 363AE, order may provide for joint and several liability, if those two companies fall over and EHP has to go after the parent companies it should be in the proportions that they hold the mining tenement—10 per cent and 90 per cent. If the 90 per cent holder then fails to pay then you could look at the 10 per cent holder, but there needs to be a hierarchy similar to what we have already under prescribed persons for contaminated land where there is a hierarchy to pursue people for responsibility when there has been contaminated land. There should be something similar here. With contaminated land, for example, you start with the polluter and then if the polluter is no longer available or not known then there is a hierarchy to pursue other people. Something similar should occur here.

Ms Hayter: Just to add to that, I think Steve hit on that earlier on when he asked about why we need this new bill and what advantages could have been taken from existing parts in the Environmental Protection Act. I think that is a key one where that could have been looked at. We have actually suggested that hierarchy could be considered by EHP as a way of dealing with a few of the issues that we have raised.

Ms Bowie: Not the same hierarchy, I might add. For contaminated land the local government is one of the ones that stands in the line.

CHAIR: I do thank you for your time and for your submission. It was very detailed and very thorough. Thank you for the time that you put into that.

HOGAN, Mr Bernie, Regional Manager, Association of Mining and Exploration Companies

CHAIR: Would you care to make a brief opening statement?

Mr Hogan: Certainly. For those members of the committee who may not be aware or those watching online, the Association of Mining and Exploration Companies is the peak national industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises hundreds of explorers, emerging miners and the companies that service them. Many of those organisations obviously operate here in Queensland. I would like to start this statement with a brief quote: 'Rushed laws do not make good laws.' These are the words our Premier Annastacia Palaszczuk used in a press conference just yesterday. The Premier was discussing the need for revision of the VLAD laws. Sadly, it appears that this bill is repeating the errors her government has identified in other rushed law laws.

AMEC was not consulted prior to the introduction of this bill to parliament and had the minister sought our input AMEC would have highlighted that this bill portrays the mining industry unfairly as irresponsible and disrespectful to Queensland's environment. This generalisation is extremely detrimental to one of the sectors that provides jobs and economic prosperity across all of Queensland.

There are four main issues that AMEC members have identified with this bill and were outlined in our submission. Considering the rushed manner of this bill, there is no doubt there are other unintended consequences which other witnesses have highlighted. AMEC identifies the broad definition of the related persons that can essentially capture any and every shareholder even if it may be through a super fund or those landholders upon which mining operates; the retrospectivity of the act to capture prior events leads to companies reconsidering investment as they are lumped with rehabilitation liabilities for past government decisions; the powers to compel witnesses that actually appear duplicative; and there is no real recourse in the Land Court for any companies as even if companies appeal against a financial assurance liability they are required to furnish 85 per cent of this amount while the case is heard. AMEC does not support any of these positions that are currently in the bill as they simply decrease the attractiveness of companies investing in Queensland. This will lead to fewer jobs and less royalties for the state ultimately.

AMEC has discussed financial assurance for rehabilitation liabilities on many occasions with the government and our member companies do so on a regular basis as well. This proposed bill appears to be a blunt instrument to handle very specific issues. It also appears to give a government department extraordinary powers without constraint. Instead of introducing an amendment bill in this ilk to attempt to rectify these very specific issues, AMEC recommends the government investigate a mining rehabilitation fund framework that has been implemented in Western Australia to cover the risks to the state of environmental rehab costs. The fund is not bound by titles or leases and would have the benefit of actually encouraging progressive rehabilitation, an element apparently lost in this bill.

In conclusion, AMEC is eager to point out that we support strong environmental standards and good public policy being upheld here in Queensland. This rushed bill does not meet those standards at present and will not improve the environmental outcomes or promote rehabilitation efforts for the vast majority in the mineral exploration and mining industry.

CHAIR: You use the word 'lumped' there quite a few times and commented about financial assurance as well. We have heard comments today that financial assurance should only be used as a last resort if companies cannot come up with the funds to rehabilitate the land or the mine. My concern with your comments is that it seems to appear to be coming across that the rehabilitation is lumped on you to do, not as if it is something you should be doing.

Mr Hogan: Absolutely not, Chair. We actually support the fact that mining companies need to have an end-of-mine life plan right from the very beginning. AMEC wants to make sure that that is set.

CHAIR: So not lumped on them?

Mr Hogan: No, what I was actually saying there is a company that comes in to invest in an area that has old workings—you will find a lot of that as there are cycles in the mining industry; a title or a lease may have been relinquished 10, 20 years prior and had been signed off by the government that it had been rehabilitated correctly—the new investor comes in and then suddenly it is said that there is rehab to be done there. The new investor then says, 'Hang on, that is a rehab cost that was cleared prior and the government took that land back. Why do the new investors have to pay for a

government decision that was made 10, 20, 30 years prior?' At that point an investor goes, 'This doesn't seem right. We're getting something that was to regulation at that point and we intend to do from now on.'

CHAIR: Doesn't the government only sign off if they are comfortable that the rehabilitation has been fully finished?

Mr Hogan: Under regulation at that time. It has changed over and over throughout the years as rehabilitation standards have lifted or changed.

CHAIR: Are you aware of any companies that have gone to a rehabilitated mine site and started mining but they have been given an obligation to pay an upfront cost for the rehabilitation that was not done properly?

Mr Hogan: There are many who will come and look at an area, but it is the rehabilitation, the financial assurance, that is put on top of them there that actually may sway that decision as to whether they actually may make that investment. In some cases that will deter them from investing in Queensland.

CHAIR: I am a bit confused. Isn't a financial assurance on the mine that they are about to undertake not on what was done previously?

Mr Hogan: But it may include what is there already if it is on existing workings.

CHAIR: You have got proof that that has happened?

Mr Hogan: I am not going to give you names, obviously, of members, but there are opportunities that will happen and it is in the typical areas that you would expect around the state. We are talking generally it will be in hard rock, gold and minerals.

Mr BENNETT: I have two questions. You mentioned the Western Australian model. Our understandings through deliberations over the last couple of hours is that clearly the department holds—the figure has not been established—some $5 billion in funds already; is that not part of a similar thing that we are talking about in the WA model?

Mr Hogan: In Queensland they hold around $5 billion.

Mr BENNETT: That is a fund of some sort.

Mr Hogan: There are two issues there. Within Queensland at the present time that fund that you are talking about is only specific to the title. If that title is working along perfectly, that mine is going fantastically but its neighbour folds, disappears, then you cannot transfer the funds from that title to another because it is to one particular entity. The difference with a fund that is set up, this has been set up as an act of parliament in its own right, is that everybody who participates in the mining industry contributes into that fund. Then the fund has a steering committee that can actually, if there is a need for an environmental rehab, direct the funds rather than being stuck to a title. That $5 billion at the moment sits there, it does not earn interest, it does not do anything, whereas this fund can actually be invested. The interest will grow and then be able to support other projects within the mining industry perhaps.

Mr BENNETT: And a second question: considering the time frames you have alluded to and, of course, no regulatory impact statement on this issue, have your members done anything around the impact of job losses or employment that you are expecting?

Mr Hogan: Not in that time frame I would not be able to comment with surety.

Mr MADDEN: Thanks for coming in today. I just wanted to get a comparison between Queensland and Western Australia. There has been a figure quoted by some of the witnesses today that there is something like 15,000 abandoned mines in Queensland. Would it be a similar number in Western Australia? I am sorry to put you on the spot with this.

Mr Hogan: I wouldn't be able to pick out the number and say it is 14,400. I would not be able to give you the number. That would be a number that would actually come more likely from a government department. However, it depends on their definition of abandoned mines. Is that every drill hole or is that a mine shaft or is that an open pit? I think 15,000 sounds like gilding the lily. I struggle to think there are 15,000 open pit mines sitting in Queensland. It just does not quite ring true. Every state would have a similar impact in that there would be drill holes, there would be mines. There would be situations where their environment has been affected by their other industries. I wouldn't be able to say with confidence what number WA has. It is a larger industry than Queensland, but it would be hard to actually say they have far more or far less. I could not tell you.

Mr MADDEN: I was just trying to get a comparison between the two states, that is all.

Mr Hogan: It would be very difficult. I don't think you could compare apples with apples because what we regard as an abandoned mine somebody else talks about legacy mines. It is a slightly different definition. It is very difficult.

CHAIR: Is your body actively involved with these mining companies that you look after in their rehabilitation process? Do you have programs or do you monitor them to see how they are going with them? Are they continually improving? Is that part of your role as far as your corporation is concerned?

Mr Hogan: Our association?

CHAIR: Yes.

Mr Hogan: As one of the previous witnesses said before, there is regular education and conferences about end-of-life planning. One of our national committees is on environment and rehab. We host our own conferences for members for that exact reason taking the best ideas that happen from each state and try to encourage that cross-pollination using the consultants that are already in the industry and the people who are in those mining companies to try to improve. Yes, that is a goal and a role that we undertake.

CHAIR: One gentleman this morning made comment that very few mining companies actually do their rehabilitation. It is a last port of call in that when the money has run out that is the last port. What are your comments on that?

Mr Hogan: I think I mentioned that in my opening statement. That is a pretty dire indication of what they may think about the mining industry and I do not think a bill of this nature is going to change the activity of those people who want to walk out on a mine, because they are going to do that anyway. This bill does nothing to change that behaviour. Some of it encourages progressive rehabilitation, and there is a mining rehabilitation fund or a fidelity fund. Each year a company assesses their liabilities, so if they are doing rehabilitation their liability and what they have to pay decreases. It actually then becomes a financial imperative or a financial incentive to do your rehabilitation. At the moment it is 30, 40 or 50 years later. It is way down the track. Why not make it every year? It moves into their operational plan rather than end-of-life plan. I think that statement is probably in reaction to some very specific issues and projects that have been mentioned here this morning and were mentioned in the explanatory notes of this bill. That is where straightaway it looks like it is a very blunt instrument to handle some very specific issues which probably would not make any difference to the activities anyway.

CHAIR: From your comments are you saying that walking away from mines after they are done is common practice?

Mr Hogan: I did not say that at all. In terms of the people who are going to do that—those individuals and those companies that have chosen to do that—a bill framed in this way is not going to change that behaviour. The standard behaviour for everybody in the mining industry is to look at their end-of-life plans to make sure that their environmental conditions are upheld. I think it really is a very poor reflection on the industry if the low standard that this bill assumes is accepted by the government because from our indication across hundreds of companies across Australia that is not the standard practice by any means.

CHAIR: This morning we heard that there are 137 high-risk mines that have closed down and are now sitting with the government to try to fix up. Is that acceptable, do you think?

Mr Hogan: That is 137 out of how many? I do not know. I do not think that is a question of whether it is acceptable. It is whether those companies have a plan to actually address it. Again, as was pointed out before, if it is the very last port of call, at what stage are they in high risk?

CHAIR: Don't you think that this bill though makes those people and those companies responsible, even if they do walk away financially, to get someone else to clean up their mess? You are saying that the bill does not affect people if they just walk away. Doesn't this bill—

Mr Hogan: If these companies already held a financial assurance—there was already a financial assurance in play—it has not affected their ability now. Are we saying that increasing their financial assurance is going to change their behaviour? It does not necessarily equate. Our members do not see that as an obvious connection. Those companies come in saying, 'We've given you the financial assurance to ensure that we will make sure that we stay with our environmental conditions.' There is not a company that could start operations in Queensland saying, 'We're going to break all of our environmental conditions.' It is a very poor premise to assume that people are going to operate in that way.

Mr SORENSEN: Are you suggesting that rehabilitation should be occurring during the life of the mine, not at the end of the life of the mine?

Mr Hogan: It should be encouraged. Each mine will have a different plan, depending on the style or where it is, but it should be encouraged.

Mr SORENSEN: In a big coalmine they could do that, couldn't they—a big open cut?

Mr Hogan: It depends. It really does depend. I would not say everyone can do it.

Mr SORENSEN: I would agree with you there.

Mr Hogan: I would not want to make a broad statement, but it needs to be encouraged.

Mrs GILBERT: I was interested that you sounded quite offended by the legislation on your members. When legislation comes in it is not meant to catch the good guys because there are always people out there in society no matter what who do the wrong thing. Legislation coming in is not for the majority; it is for those that are not doing the right thing. Have you got suggestions additional to what you have said here today as to how to stop those recalcitrant miners from behaving the way that they do, because we do have to have laws that capture everyone?

Mr Hogan: Firstly, I am not offended and I do understand we have to have laws. Some of the points that were made before are that there are powers already in place, particularly about financial assurance. It is about the compliance with that and that actually being enacted. What has been shown very obviously by the two projects that keep on being brought up here—the nickel refinery in Townsville and Texas Silver—is that there were discretions or financial assurance was not applied or was missed in the transfer. That is not an indication that the law does not work. That is an indication that it was not applied, and that is the question that our members ask. They say, 'Hang on, we pay our financial assurance. We keep within our conditions, yet now the rules are changing and they're looking far more draconian.' That is where our membership looks at us and says, 'Hang on. We're doing the right thing,' and yet because a small number do not we legislate for the lowest common denominator. That is offensive to those who do do the right thing. We need to have that discussion and look at how we can raise the bar of something that is far more equal for all members.

CHAIR: I remember reading something through one of the submissions, but do any of your companies get involved in environmental insurance?

Mr Hogan: Sorry, using environmental insurance?

CHAIR: Yes.

Mr Hogan: Generally not. We had advice that there are very few insurance companies that will offer that type of insurance and that some of those policies that are administered are very few and far between. So in general no. They tend to have to either have a bank guarantee or the funds themselves, which obviously curtails their ability to grow and operate as a company.

CHAIR: Thank you very much for your assistance in answering our questions.

KNUDSEN, Mr Keld, Policy Director, Access, Australian Petroleum Production & Exploration Association

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

CHAIR: Good afternoon, gentlemen. Would one of you like to make a brief opening statement?

Mr Paull: We would, thanks. For those who are not aware, APPEA is the peak national body representing the upstream oil and gas exploration and production industry in Australia. Our members produce about 98 per cent of the nation's oil and gas. We also have about 250 associate members that provide goods and services to explorers and producers. At the outset we would like to make clear that we fully support the principle that resource proponents must meet their rehabilitation obligations under the law. No responsible operator in the resource industry wants to see a project not comply with these obligations. Government should not be held liable for end-of-life project rehabilitation but nor should companies or individuals that are not responsible for the project.

The core issue that we have with this bill is that it extends potential liability for rehabilitation to any individual or company that has received a financial benefit from an environmentally relevant activity. Contrary to statements to this committee, under this bill there is no limit on government's power to make a determination that a person is responsible for rehabilitation provided they have received such a benefit. The bill in that way introduces a significant new risk to those who invest in or receive any financial benefit from resource projects. It would retrospectively impact everyone's superannuation funds, mum and dad investors, goods and service providers, employees, advisers and those who may own land on which resource activities take place. The Queensland Parliamentary Counsel describes the retrospective imposition of a liability to pay a penalty as one of the most objectionable things that can be provided for under legislation.

As the committee has heard this morning, the Queensland government already has in place a financial assurance regime that is comprehensive and is designed to manage the risk of projects failing to meet their environmental obligations. We are not aware of any instances of a petroleum project failing to comply with its environmental obligations such that the Queensland government had recourse to this financial assurance to cover the costs of managing and rehabilitating sites in financial difficulty. The Queensland government, as the committee has also heard this morning, holds about $1.4 billion—over $1 billion—in assurance for petroleum activities, meaning that the government is comprehensively insured were this to occur. On that basis, we have submitted that there is no regulatory failure for the petroleum industry and wish that the industry should be exempt from the bill. If the government does consider there is a deficiency in the financial assurance system it should sit down and work with stakeholders on the problem, but this bill was introduced with no consultation and would have severe unintended consequences. There is a need to fully evaluate these and other options through a regulatory impact statement and we do not support the passage of the bill in its current form. We are happy to take questions.

CHAIR: Thank you. You have requested that exemption that you just talked about for petroleum activities from the provisions in the bill on the grounds that the oil and gas industries already operate under financial assurance requirements. Could you tell us a little bit more about what those requirements are and how they work and why you believe the exemption is justified compared to everyone else?

Mr Paull: At a high level the financial assurance regime applies to the oil and gas industry. The companies work out what a full rehabilitation cost would be and the government essentially then requires that a financial guarantee—cash or a bank guarantee—is provided to cover the costs of that rehabilitation if the company does not do it. For our industry, it is close to 100 per cent. There are very limited discounts available to the 100 per cent calculation. The government is essentially fully insured for the possibility that the industry suddenly walked away from all of its projects all at once and the government needed to come in, pull up all the wells, replant the grass and get everything back to normal. So the government is comprehensively insured. Notwithstanding that, the government has never actually had recourse to that financial assurance for the petroleum industry. The projects listed in the bill are mining projects and it is an isolated problem in the mining industry. There are no petroleum projects in that situation at the moment. We are not aware of any that have been in there and the government is comprehensively insured against that risk. That is the justification we believe for an exemption for petroleum activities.

Mr BENNETT: Would you be able to provide some examples with your brief exposure to the bill about some of the legal ramifications that have been espoused with potential employees or others that may be forced to give examples in a case that may go before the department?

Mr Paull: The issue for us is that the core of the bill says that if you have received a financial benefit—and that is retrospective—then the administering authority, EHP, can issue an EPO, an environmental protection order, to you. There are a number of tests in the bill. None of those are compulsory. None of those are required. The administering authority does not have to have regard to any of those. In a legal sense, if a landholder, an employee, mum and dad investor or a superannuation fund comes to a company and says, 'Can you guarantee that the DEHP won't come after me for the rehabilitation liability?', you cannot guarantee that under this bill. It applies to anybody who has received a financial benefit. Companies will never be able to escape that. It is retrospective. A company with a spotless record that has done everything right might legitimately sell out of a business for whatever reason. If the person they sell to does not meet their rehabilitation liabilities, the original owner is now potentially liable. So you can never say, 'I have fully rehabilitated under Queensland law and I don't have that risk on my books anymore,' and that applies to anybody.

It is a particular issue for the CSG industry. We have 5,000 or so agreements with landholders. For the most part we operate on other people's land. We have led the way in coming to agreement with those landholders, working with them. If you have a property and an oil and gas company is operating on it obviously a key concern for you is going to be that they rehabilitate properly, that the company meets its rehabilitation obligations. That is a key concern for landholders. Under this bill landholders are now going to be told that if the company does not do it well EHP might force you to do it. That is going to undermine the entire industry. Who would want to sign an agreement on that basis? You can be sure that there are those in Queensland who will be making that point loud and clear to landholders. This is placing the entire industry in some jeopardy.

They are just some of the impacts of this bill. Again I would like to stress that we do not support anybody walking away from their rehabilitation obligations. Our industry has an excellent record as far as that goes. This bill goes far beyond that. It does not solve the problem it claims to address and it imposes a retrospective liability on a very large group of people. We have not been able to find any comparable approaches to this in Australian jurisdictions. Queensland would be out on its own with this legislation.

CHAIR: Not too many other jurisdictions have a Great Barrier Reef sitting outside of it either, by the way.

Mr Paull: We think there is a system in place to protect that. We have no problem with that system being applied. It is being applied to our industry. Other jurisdictions have their own unique environmental assets and other features that need to be protected and they should be protected. That is not a justification, in our view, for the approach of this bill.

Mr MADDEN: Thanks very much for coming in today. I want to clarify things a little bit. Can you provide me with any insight as to what financial impost, the financial assurance, would be required per drill hole or per property? The second question is what does rehabilitation or clean up of a petroleum site or a gas site involve?

Mr Paull: On the first question I would have to come back to you. Per property the impact varies quite significantly. You might have a very small impact, it might be more significant. There is no standard figure. Per well I suspect there is a standard amount that EHP would expect. We could get back to you on that.

CHAIR: Would you like to take those on notice?

Mr Paull: If we can. The second question?

Mr MADDEN: What does clean up or rehabilitation of a mine site actually involve?

Mr Paull: For a petroleum activity it is a little bit different from a mine. To produce petroleum you drill a well. You connect that well by a pipeline to a facility. Cleaning up, rehabbing that, involves plugging the well—filling it with cement, that is—cutting it off several metres below the surface and filling that in so that you cannot see it, you cannot feel it, you can conduct agricultural activity over the top of it. It is a quite different situation from an open cut mine, for example. There is no void left. There are no tailings dams. The sorts of issues that you see in Queensland Nickel, Texas Silver, they are not present in the petroleum industry. The industry has also obviously grown significantly in recent years. All those projects are just starting to commence export. They are at the beginning of their project life. The LNG projects have long-term contracts that underpin viability. There is very low risk of the sorts of issues that are covered here eventuating, but as I said, to the extent that there is a risk the government is fully insured for that risk. Rehab financial assurance is a very different issue as applied to petroleum activities than it is to other activities.

CHAIR: Thank you for your statements today and answering our questions.

RUSSELL, Ms Patricia, General Counsel, Australia & Pacific, Thiess Pty Ltd

CHAIR: Would you care to make a brief opening statement for the committee

Ms Russell: Thank you for the opportunity to speak to you today. I come from Thiess which has an 80 year history in Queensland. We are a contractor to the industry. We work for mine owners. We dig dirt and we remove coal, we cleanse it through coal handling prep plants and we help our clients export it and use it internally in Australia. We employ over 2,000 people in Queensland alone and we feel it is important to make the statement today that I have heard a number of people make already and that is that there are some serious unintended consequences of the bill. The main one from our perspective is that it really gives us the solvency risk of mine owners. It permits the government or the administering authority to say to Thiess or Downer or other contract service providers, 'All right, your client who has been paying you has walked away. You must now be liable, without cost or payment, for the rehabilitation of mines.' We fully support the importance of the Great Barrier Reef and we have very professional, strict high standards in terms of rehabilitating our many coalmines that we operate in Queensland so we really support the bill, but we think it oversteps the mark in allowing the administrative authority the subjective discretion to extend it beyond the corporate veil of mine owners. The contractor should be made exempt from the bill or some sort of commercial arrangement made which allows contractors to be paid to carry out that rehabilitation because, of course, that is how we do business and that is our contract with our clients, to perform that rehabilitation, and sometimes we do it progressively in accordance with the environmental approvals. We work collaboratively with the government and the clients to perform that work.

CHAIR: Can you give us an idea of how much day-to-day responsibility a provider of mining services would have on a site?

Ms Russell: In terms of rehabilitation?

CHAIR: Yes.

Ms Russell: We would have two to three environmental management specialists on site for each of our sites. They work intensively with the client reps to understand not only the movement of the pit but progressive rehabilitation in terms of planting of trees, tailings dam management, that sort of thing. We have very sophisticated mine planners who work with the client to ensure that those environmental risks are managed. It would constitute, I think, a substantial part of our day-to-day activities, the environmental management of the mine, and, of course, if you are not complying with the environmental conditions which are part of our contract the industry is not sustainable.

Mr BENNETT: I am curious whether you would like to make comment about the issues that I have been consistently asking everyone about: the changes to liability, particularly through prosecution, on perhaps Thiess's employees.

Ms Russell: In terms of personal liability?

Mr BENNETT: Yes.

Ms Russell: Not really. That is beyond the scope of my remit. We support the concept that government must heighten the awareness of environmental management. Individual liability is very personal and it certainly makes people sit up and listen from my experience. But it is beyond the scope of my remit today to really address that question.

Mr BENNETT: Has any work been done in the preliminary short time frame that this has been for about investment risk for Thiess and ongoing contractual arrangements?

Ms Russell: Not in that short time frame. What we are concerned about is that if a mine owner were to walk away, as I said, it means that there is going to be a heavy impost on our balance sheet to fund something that has not been budgeted for that particular project. That will come back to creating a significant liability that has not been taken account of by our management.

Mr MADDEN: I am curious about this notion of rehabilitation. It seems that you are generally in favour of the bill other than the potential for companies like yours to be subject to litigation pursuant to the bill, but do you think we really know enough about rehabilitation and what the goals are with rehabilitation and do you think that this bill progresses that notion of what we are aiming for with rehabilitation?

Ms Russell: The particular section that alarms me is the cost recovery order. It is not so much the litigation, it is the receipt of a notice from the Queensland government to say your client has walked off the site, you have received some sort of financial benefit from being there for three years having been a contracted service provider, you must now pay out of your own pocket the $4 million, $5 million cost to plant those trees and rehabilitate the mine which the client had promised as part of

the environmental approval, licence or authority. The threat of litigation comes then from whether we would challenge that notice, but I think we should take this opportunity to really nip that in the bud to save wasted time and cost both from the Queensland government's perspective and the private sector's perspective because it is futile and I think it stifles the confidence of companies like ours.

CHAIR: We have heard several times today that when mining companies start to tighten their belts the first thing that they look at doing is removing their rehabilitation of the sites—that continuing rehabilitation. Have you seen that with any of your sites? Has any question been asked to try to remove some of that to concentrate more on digging the black stuff out of the ground than fixing up what has been left behind?

Ms Russell: No. I think it is quite a coordinated approach on our mine sites in our experience. That would be a rare occurrence and I am not personally aware of that happening on any of our coalmines in Queensland.

CHAIR: Thank you for assisting us with our inquiry. We will now take a short break.

Proceedings suspended from 12.43 pm to 1.15 pm

CARELESS, Mr Paul, Special Counsel, Corrs Chambers Westgarth, Mining and Resources Committee, Queensland Law Society

REID, Mr Tim, Partner, Clayton Utz, Chair, Queensland Law Society Corporations Law Committee

CHAIR: Would you like to make a brief opening statement for us, please?

Mr Reid: Thank you for the opportunity to make a submission and appear before the committee today. The Queensland Law Society supports the general policy objectives of the bill that we are examining to appropriately protect sites operated by companies in financial difficulty and taking steps to avoid the public bearing the costs of managing and rehabilitating those sites. The society agrees that it may be equitable to seek to identify persons who are directly responsible for relevant activities of companies in financial difficulty and to hold them accountable for the cost of managing and rehabilitating affected sites and to identify those who may have directly benefited from the company's activities to ensure that those obligations cannot be avoided by a corporate artifice.

The society considers that despite the intention that the bill be directed at persons with some relevant relationship with the subject companies, the mechanisms adopted in the bill may have some unintended consequences due to the broad scope of some of the drafting. The principal issue arises in the broad meaning of 'related person' under the bill. The bill seeks to allow the administering authority to impose obligations under the act on a broad range of related persons. On the current drafting this could include company officers, shareholders, employees, service providers, financiers, investors, landowners and other people holding rights such as royalty rights. The bill gives the administering authority an arbitrary discretion to determine who has what is described as a relevant connection such that they might be regarded as a related person and although they may not seek to determine that a relevant connection exists in all circumstances, there is no conclusive parameters as to who might be included or excluded or the extent to which the prescribed factors listed in the bill will be relevant in that determination. Even though the explanatory notes seek to assure that persons dealing at arm's length should not be caught, the bill itself does not give that assurance.

A similar issue arises for landowners who may have no connection with the company's activities on their land. The example we thought of was an agricultural landowner on whose land a coal seam gas well is established or a landlord leasing their property for an industrial premises where they do not have any real influence over what the activities are. Landowners can contractually require their tenants to comply with the law, but the bill seeks to place a primary obligation for environmental compliance on the landowner in circumstances where they may be completely unrelated to the company carrying out the activity or they may have even objected to the company's activity. In the area of resource projects, that seems to run contrary to some legislative provisions for landowners that protect landowners in the Mineral Resources Act and the petroleum and gas legislation.

The bill allows the administering authority to issue an environmental protection order even where financial difficulty for a company has not been established. The explanatory material indicates this is to allow the authority the ability to act early where a company may be approaching financial difficulty, but the bill at the moment does not even require the authority to have even a suspicion of financial difficulty. That widens the impact of the bill quite significantly.

The power to adjust financial assurances required under permits is another change which seems to be a useful provision, we think, but the regime proposed creates some uncertainty, particularly for a purchaser of a business who is purchasing that business and it is coming with the environmental permits—or the environmental permits are being transferred, more to the point—and we in our submission have suggested a process where a purchaser of a business in that situation could be told upfront what liabilities they might be taking on or what further financial assurances they might be required to make before they acquire the business.

There are a number of potential impacts arising from these issues, including adverse effects on investment and employment in affected industries as financiers and investors will assess the potential exposures they might have liability for relevant activities of companies that they finance under the way this bill has been drafted and that could clearly have an impact on the financing of relevant projects in Queensland. There is also the potential for a negative impact on corporate governance and the behaviour of directors of companies and those who stand behind corporate entities. Appropriately balanced liability regimes will encourage proper corporate governance by experienced and skilled directors who will be aware of what their responsibilities are and they will be aware that they may be accountable if they do not live up to their responsibilities. However, the breadth of the provisions of this bill and the way in which it places a primary obligation on people in

that position might encourage less transparent behaviour, including attempts to hide the ultimate owner of corporate groups, the ultimate owners of assets, potentially putting in place company directors and officers who may have a lower level of qualifications and experience, as the people with the appropriate qualifications and experience might seek positions elsewhere and avoid the liability that they might have under this bill in Queensland.

In our submission we have suggested a more far-reaching study and inquiry and greater consultation with relevant stakeholders to seek ways to achieve the policy objectives. This might include looking at tightening the drafting to better identify the class of persons to which it is appropriate to establish a chain of responsibility—for example, those who do substantially benefit from the company's activities in a direct way or have substantive control over the company's relevant activities. Thank you, Mr Chairman.

CHAIR: You mentioned on page 2 of your submission that this bill is out of step with nationally consistent guidelines on personal responsibility for corporate fault. Could you give us some background on those national guidelines?

Mr Reid: Sure. The national guidelines developed in COAG and adopted a few years ago were aimed principally at criminal liability for company officers, for directors, and the purpose of those guidelines was to give state governments a set of guidelines to look at as to when they would impose criminal liability on company officers. The general principle was to look at the importance of the legislation, the importance to the public of the particular activity that was being regulated and whether it was equitable to take a liability back to individuals as distinct from a company who may breach. In this particular case it is a little bit different to what those guidelines deal with because we are not talking about necessarily a criminal liability, we are talking about a primary obligation under the act to comply with an environmental protection order, but the principles that we draw out of those guidelines is that the guidelines look at the particular public importance. This is obviously an area of public importance, the environmental protection of sites, and some sites are more sensitive than others but generally it is a particularly important thing. The guidelines also talk about the equity of looking at who is in control, who is responsible and taking that liability back to a person who has actually got some form of direct culpability for what occurred in relation to, in the case of the guidelines, some sort of breach.

Arguably in relation to environmental legislation, and I am not a particular expert on environmental legislation, but one could argue that the importance of this legislation is such that a company director should be liable if their company breaches and that director was involved in that breach, but in this case where we see it departing from those sorts of broad principles is that the primary obligation is imposed on the individual company officer as the primary person the subject of the order. It is not a case of them having done something, failing to live up their responsibilities necessarily that caused the company to breach something. The order could be given directly to the person. That is where we see it departing and I guess we draw some analogies from those guidelines.

CHAIR: My experience with companies I have had dealings with before, particularly with the issue of insolvency, if the company trades insolvent, just say it is a club or a pub or something and they trade insolvent, each of the directors from my belief is liable for the incorrect running of the club or whatever as a board member, as you said before. Should that be any different to treating the environment differently and where your business is placed? I know you said there was a difference between law and that type of stuff.

Mr Reid: In the circumstances you are outlining there, where a company is trading while insolvent, that is a breach of the Corporations Act and a director can be personally liable for the debts that arise during the period and usually the biggest argument is as to when you actually became insolvent and then whether you can recover is usually a function of whether a liquidator has enough money to pursue the directors. Your question relates to is it analogous to say if they are responsible for those debts should they be responsible for other liabilities that the company may have incurred. To the extent that a company might have a financial obligation to comply with particular legislation, it may be a case of insolvency in the first place, I guess the difficulty we have with this particular bill and the way it does it is that potentially the way it is drafted you are removing altogether the requirement really for the company to have failed in the first place. The director, particularly one who may have taken on a role some time ago and this legislation now comes into place, might be in a position where previously they might have thought if people suffer a loss as a result of the company's failure here and the company incurs a debt I might be personally liable for that, if the company breaches the act I might be brought in as someone who has aided and abetted that breach. In this situation we are now saying to them, well, really you can be given an order at any time to say you are now personally responsible to clean this up. If it is in the situation where the company has already

gone into administration, you could argue that maybe that is appropriate, but the way the bill is drafted at the moment that could happen at any time. I think that is where you would find a lot of company directors and executives would be quite nervous about that. Even if there was an expression of we probably wouldn't do that, the power is there.

Mrs GILBERT: I just wanted to ask you about the CEO's discretion. On page 3 of your submission you talk about how inappropriate it is to give the chief executive officer of the department the arbitrary discretion to determine who is a related person to assume a company's environmental obligations. If the bill was passed in its present form and the rest of the provisions were there, what better way would you propose that that be written into the bill to determine the related persons, because that has come up quite a bit today?

Mr Reid: One of the key issues with that process under the current bill is that there is a set of parameters and a set of considerations for the authority to take into account, but there is no guidance on where those parameters land in terms of saying, 'If I find X, then I can find that there's a relevant connection.' For example, it is someone who gets a financial benefit from the relevant activity. There are ones which are fairly obvious. If you can find that someone has control, then you could probably make an argument that there is a relevant connection. In terms of someone who gets a financial benefit, there is no suggestion in the bill as to what degree that financial benefit is. If you look at other legislation like foreign investment legislation at the Commonwealth legislation or financial sector legislation at the Commonwealth level they pick an arbitrary number, which is 15 per cent in those cases, but in this bill there is no real guidance as to what extent. One of the factors to take into account is whether you are dealing at arm's length, but there is nothing in the bill to say, 'If you're dealing at arm's length, therefore you won't have the connection.' It seemed to me from, I think it was, the minister's speech there was a suggestion that said, 'We have put in that factor of arm's length so that a bank lending money or a shareholder who doesn't have any real involvement in the company will be excluded.' The drafting of the bill does not get you there. It simply talks about, 'We'll just take into account whether you're at arm's length.'

The people who might be very surprised to hear that they are caught by this bill might be someone who owns three per cent of shares in the company and someone else owns 50 per cent of the shares, but they are theoretically potentially caught by those provisions and there is nothing in the bill itself. Administratively I am sure the authority could say, 'Well, we'll think about when we trigger those,' but the bill itself seems to not give any guidance to that or parameters. With regard to how you could do it better, I guess control is an easy one to look at. There is lots of legislation such as the couple that I mentioned such as foreign investment legislation and the financial sector shareholding legislation where there are provisions that assist in tracing controllers of entities, because in those situations you are looking at associates and associates of associates and looking back to who is the ultimate controller of the entity. That would narrow the field to, I think, the class of person who is really in the mind of perhaps many people as perhaps being appropriate to have a chain of responsibility.

In terms of company officers, again the parameters seem to say that if you have been in a position of influence in the previous two years then you potentially have the connection and then you look at whether you are an executive officer and so on. Obviously someone who is an executive officer is going to have a lot more day-to-day influence than someone who is, say, a non-executive director of a larger corporation. That also segues into another potential issue there in that you are dealing with entities of vastly different sizes and structures—that is, a company which is a subsidiary of BHP as against a company which is owned by a mum and dad in regional Queensland who run a business where they handle chemicals and therefore they need a permit. In those sorts of situations, the parameters that we are talking about as to who might have influence start to get quite difficult to apply when you are looking at the chairman of BHP as to whether he would be an appropriate person to give an order to in relation to a mine somewhere in North Queensland. I think control of the entity and tracing through as to who actually does have the economic interest in the entity would be a potentially more effective way of getting to a class of person who might be appropriate.

CHAIR: I am pretty sure from what I am reading that what they are chasing is the person who is responsible for the environmental harm, not particularly the business itself. It still has the same effect of what you are talking about of who would actually follow, but it is not actually to do with financials and the business. It is more to do with who is giving instructions on the environmental issues that are left behind.

Mr Reid: I guess we would say there is a consistency with some of the guidelines and principles around COAG and so on where you look at someone who has failed to perform their duties properly and to make that person accountable would be entirely appropriate. The bill does go though to financial interest, so we are looking at someone who may not be involved in the day to day but may be getting the economic benefit, and that seems to be what it is trying to approach.

CHAIR: Very good. Great answer.

Mr SORENSEN: I have asked this question of other witnesses. With regard to the related person of a company and in terms of the person who owns the land on which the company carries out the activity, can you explain to me—because I own a property as well—how a landowner can be responsible for a mining lease over his land and if the mine goes ahead the conditions are set down by the government? How can he be a related person?

Mr Careless: That is the issue that we have raised and, as has been pointed out, it is inconsistent with protections that are given in the Mineral Resources Act which say that, provided the landowner himself has not carried out acts or omissions, he cannot be liable in civil liability for any extra omissions of the miner. As you have pointed out, many landowners will not have any say in how it is actually operated. In fact, it is an offence to interfere with the operation itself and there does not seem to be any reason why the landowner should be a related person, because there are already provisions in the Environmental Protection Act that deal with contaminated land which, in certain aspects, will place that liability already on the owner. If the intention was to concentrate on people with actual control and control through financial benefit, then we do not see why there should be a reference to a landowner as being a related person in those sections.

Mr BENNETT: I might have missed it earlier, but was your association consulted in the drafting of the bill?

Mr Reid: I am not aware that we were consulted before the bill was released for consultation.

Mr BENNETT: One of the questions that has been asked consistently of me and I have asked it a couple of times today is about the ability of a court on the stay of decision making somehow being effected now back with the department and of course the transparency and open transactions being questioned. Have you guys made comment—I have not picked it up in your submission—in terms of reducing the ability of the court to stay a decision of the department?

Mr Reid: The provisions around not being able to stay the order so that in a case of urgency the order can be served and carried out?

Mr BENNETT: That is an urgency motion.

Mr Reid: Yes. We did not comment on that in our submission I suppose for the reason that I guess we were focusing on the primary obligation issue per se. It is not something I think that has been directly considered by my committee. I do not know whether Paul and the mining resources committee looked at that particular point.

Mr Careless: We had acknowledged that, but again the issue seemed to be more dealing with the related person so hopefully the matter of a stay did not arise if we could confine who a related person is. But, yes, that is an issue in that the requirements to get that stay do seem to have been increased with regard to that and also with regard to the financial assurance. It might be more understandable in the case of financial assurance that you have to put up some degree of the financial assurance before you can get a stay, but there does not seem to be any collateral reason or equitable reason why there should be a refusal of a stay in the case where an environmental protection order has been issued and where the decision should otherwise be reviewable as to that particular person against whom the environmental protection order has been issued.

Mr BENNETT: Thank you.

Mr MADDEN: Thanks very much for coming in today. You mention at page 7 of your submission about taking away a person's right to internal review when the department orders them to produce information to determine if they are a related person. You pointed out that this goes against the usual rules of procedural fairness. Can you outline why you have a concern about that?

Mr Careless: I believe that was because of the amendment itself. As is already in the act, any other requests for information can be subject to review, but there has been a specific exclusion without indicating why there should be an exclusion from review where you are requested to provide information in order to establish you have been the related person. It seemed therefore that in this particular case the natural justice which would otherwise apply to any other request for information was actually being excluded without explanation.

Mr MADDEN: When you talk about review, are you talking about review by a court?

Mr Careless: I believe that is the case, yes.

Mr MADDEN: You are saying the act does not provide for a review by the court when that request for information is sought?

Mr Careless: My understanding is at the moment it has a blanket ability to review where a request for information is being made, but the amendment actually says that that does not apply in the case of requests for information to establish whether the person has the relevant connection to be constituted a related person.

Mr MADDEN: Thanks very much.

CHAIR: Thank you, gentlemen. We appreciate your time today answering our questions and for your submission. Thank you very much.

Proceedings suspended from 1.44 pm to 1.47 pm

PETSCHLER, Ms Louise, General Manager, Advocacy, Australian Institute of Company Directors (via telephone)

PELLING, Ms Lysarne, Senior Policy Adviser, Advocacy, Australian Institute of Company Directors (via telephone)

CHAIR: Good afternoon. How are you today?

Ms Petschler: Good afternoon. Apologies for the connection issue at our end.

CHAIR: No, that is fine. My name is Glenn Butcher and I am the chair of the committee. For your benefit we also have with us here today Mr Stephen Bennett, the member for Burnett; Mr Ted Sorensen, the member for Hervey Bay; Mrs Julieanne Gilbert, the member for Mackay; and Mr Jim Madden, the member for Ipswich West. Could you make a brief opening statement for us today?

Ms Petschler: Thank you very much and thank you for the opportunity to dial into the committee's deliberations today. The Australian Institute of Company Directors is committed to excellence in governance. We are the largest director institute in the world. We have over 37,500 members and they come from a wide variety of walks of life—the biggest listed companies in the land as well as not-for-profits, the public sector, private, small business. We are a broad church and our interest in the legislation that is before the committee relates to a common thread across our membership, which is the appropriateness of the liability regimes and the penalties that can be incurred by directors of all sorts of organisations.

My colleague Lysarne Pelling, who is here, will be able to go into greater detail about the concerns that she has set out in our submission, but I want to make a few remarks in summary up-front. Firstly, as I am sure all the stakeholders who you have heard from today agree, the broad objective, the ambition of the bill, the principle that those who make the mess should pay to clean up the mess, is something that we wholeheartedly endorse. We appreciate the concern for Queensland taxpayers where they are left footing the bill for companies that create environmental damage without the means to clean that up and the particular issues related to high-risk companies that are in insolvency situations.

While we share that objective, we believe that there are better ways to achieve that objective than this bill as drafted. Our big concern, as we set out in the submission, is just how far reaching, particularly the concept of the 'related persons' definition is. Obviously, for us we are looking at that through the lens of how it might impact on directors of companies—not just resource, mining and other companies but companies in general. That is the particular focus that we wanted to raise with the committee.

We feel that, if the bill passes as it is currently drafted, it risks creating undue uncertainty for the Queensland environment in terms of investors, financiers, even landholders and, obviously, executive officers but also company directors. We think that that is an unintended consequence. In our view, the bill as drafted would capture an extraordinarily wide group of potentially related persons and it would provide no defence for those captured who have acted diligently, honestly or, in fact, have had absolutely no opportunity to influence the decisions of the company that may have created the environmental issue.

We are also concerned that the bill offends fundamental principles of our legal framework—and we have touched on those in our submission—in relation to the retrospectivity of aspects of the legislation. We are particularly concerned about the very broad discretion that will be available to the CEO of the department in making decisions and determinations around who the 'related person' might be for the purposes of the legislation, the non-reviewable nature of that broad administrative power and, as we have raised in the submission, concerns about the limitations on the right to protection against self-incrimination.

Our concern is that the broadness of the drafting right now creates a reach for the bill that can flow through to directors of companies who have had no opportunity, no direct involvement in the decisions that created the environmental issue. It could occur at a future point in time after which their dealings with the company have ended. They are not specific enough in terms of identifying and defining the nature of the controls that we assume the bill is looking to tie down and do not really achieve the aim of making those who have some culpability for the decision and achieve some material financial benefit from the activities of the organisation being held to account for its environmental damage.

We are also conscious that this bill has been moved remarkably quickly to parliament and that there has not been much consultation. In that respect we think that, given just how broad these unintended consequences are, the uncertainty that it might create for those looking to sit on boards

in Queensland, or those already on boards, it is definitely worth pausing and considering whether there are other ways to achieve the objectives of the legislation as set out in the minister's second reading speech. We would strongly and respectfully encourage the committee to consider recommendations that would approach this challenge by looking at a tighter solution and, at the very least, would engage a little more broadly with the business community in particular. Thank you very much.

CHAIR: Thanks very much for that. I have a question in relation to financing these clean-up activities. On page 3 of your submission you bring up some alternative means for securing financing for environmental clean-up activities at resource sites, such as what you call a fidelity fund. Can you please elaborate on what these are about and how they work for the committee?

Ms Petschler: We are not experts, I should say, in terms of the operation of fidelity funds. We picked that up from our limited ability to look at our stakeholders in terms of suggestions on ways that the Queensland government could look to create greater financial assurance up-front on the ability to remediate environmental conditions. As nonexperts in environmental law it seems to us that, if there is a problem with the financial assurances currently in place for projects that could have a significant environmental risk, perhaps the best remedy is to look at strengthening that regime as opposed to creating a very broad and, we would say, very loosely defined reach of potential responsibilities.

CHAIR: Okay. If this bill is passed, would your company directors' insurance cover for litigation against a director of a company cover these matters?

Ms Petschler: We are happy to take that on notice, but our understanding is no. As drafted, the bill's reach would certainly exceed the existing general director and officer insurance coverage.

CHAIR: Thank you.

Ms Petschler: But we will clarify that with some of our members and come back to you.

CHAIR: If you could take that on notice that would be wonderful, thank you.

Ms Pelling: On that point as well, there is quite a bit of variety between the different policies that individual directors have. There can be quite a bit of variety around the D&O arrangements that individual director or individual companies have for their directors. So while we will take it on notice and get a flavour, obviously, there will be individual differences.

CHAIR: No, that is fine. If you could do that, that would be great.

Mr MADDEN: Thanks very much for assisting us today. I just wanted to clarify the matter that is of primary concern to the Australian Institute of Company Directors and that is the issue of directors' liability. Under the existing laws of Australia, directors can be liable for actions of companies that they are directors for. Is your principal concern with this bill the section dealing with a related person to a company, proposed section 363AB? Is that your concern?

Ms Petschler: That is our immediate concern. Our concern when we look at this bill is that the danger—and I am not suggesting that the department would do this—is that the legislation, if it is passed, would provide really unfettered power to define a related person across time, across companies, across shareholders potentially, across landholders. I should say, too, that we absolutely acknowledge that, in instances where directors breach their obligations, they should face penalties—and they do under a wide variety of legislation, principally the Corporations Act. But the bill as drafted is placing directors potentially in a situation where they can be liable for actions over which they have had, we would argue, very little—potentially no—control and will not have directly contributed, or influenced the decisions that led to the environmental issue in question.

I might ask Lysarne to step through a couple of the principles that we outlined at the beginning of our submission, if that would be helpful. We definitely are not arguing that directors should not be liable where they breach their obligations. We absolutely hold to the principle that those who have culpability for a criminal act or a breach of any kind of legislation should be held accountable for it. Our concern is that the bill as drafted is going well beyond that in its potential coverage.

Ms Pelling: From a starting point, as we have outlined in the submission, our view is that a company should bear the primary responsibility for its statutory obligations and if it breaches those obligations then it should bear the responsibility. We appreciate that there are circumstances in which, for public policy reasons, it is considered appropriate to pierce that corporate structure and to hold directors accountable. We would caution, though, that the corporate structure be pierced only in circumstances where the directors have involvement, were recklessly involved, or knowingly assisted in the breach.

We also advocate that directors be in a position to be able to defend themselves where they have acted with due diligence, with care, where they have fulfilled their responsibilities given their role as a director—that role being one to guide and not to manage the day-to-day environmental operations of the company—and that they be liable only in circumstances where they are involved in the misconduct. Otherwise, they should be entitled to a defence where they have acted with all due care.

Mr MADDEN: And that would be in accordance with the existing company law, would it not?

Ms Pelling: That is right. We tend to follow the principles under the Corporations Act. That is really the heartland for directors with their duties. All of those duties continue. This bill would be seeking to add another regime over that. However, directors are already under a duty to ensure that their companies meet their obligations and that they take reasonable steps to do so. There is an existing regime under the Corporations Act and, through that, directors would potentially, if they fell short of those duties, be liable for environmental breaches. But there is that existing regime.

Mr MADDEN: Thanks very much for that. I note that directors are not mentioned in new section 363AB, but they could be assumed to be covered by that section.

Ms Pelling: I think there are several ways in which they could be covered. Certainly, if they are an executive director, that is a consideration or one of the factors that the authority can have regard to. If you look at subsection 4(b) it states, 'whether the person is an executive officer'. Certainly, the executive directors on a board would be. Our concern is that it would also potentially extend to non-executive directors through several means, because they will have benefited financially—whether that be through remuneration for their role on the board or whether they have shares and receive dividends. The concern also is that they may be perceived to influence the company's conduct by virtue of their role on the board. So our view, or our reading of that provision, is that it is certainly broad enough to capture both executive directors and non-executive directors.

Ms Petschler: We think that there are other stakeholder groups who might be equally concerned about being captured by that drafting. Before we get to the considerations that the department can take into account, which are not qualified or ranked in terms of priority or even suggested as things that should either be ruled in or out the way the bill is drafted, for directors the drafting of even subsection 2(b) of new section 363AB—

The person is, or has been at any time during the previous 2 years, in a position to influence the company's conduct—

we believe potentially captures directors.

Ms Pelling: That said, our concern is that the definition is essentially open-ended. It is couched in the language of 'may', 'there are factors that can be considered'. There is potential for it to be interpreted broadly and our concern is that not only is there the potential but also it can create, we believe, an unhelpful level of uncertainty around who is captured and who is not captured.

Mr MADDEN: And would you like that clarified?

Ms Petschler: We believe that it should be clarified. We think that, if it is not, it will create an environment of uncertainty that would require repair at a later date. It may be, for example, that focusing more directly on the definition of 'control' and also 'financial benefit' might, notwithstanding our arguments around corporate responsibility and culpability—which we believe do stand and should be considered on their merits—but if those arguments were rejected a version of the bill that focused more directly and specifically on control and financial benefit might be a better way to go.

Mr MADDEN: That is great. I think you have answered the question—unless you wanted to say something more.

Ms Pelling: Yes, I just wanted to quickly reiterate that our concern is not so much just that the definition is broad and potentially creates an unacceptable level of uncertainty but really it is the nexus by which somebody becomes caught by this regime. At the moment, it is on the basis that they have a relevant connection. We would say that the nexus should be involvement—that they knowingly assisted or were involved. Our belief is that the definition should be predicated on a culpability requirement as opposed to a connection.

Mr MADDEN: Thanks very much for that. I appreciate it.

CHAIR: I would like to thank you. We are running short on time. We need to go to the next witnesses. Thank you for assisting us today.

Ms Petschler: Thank you.

Ms Pelling: Thank you.

JACOBSEN, Ms Rhonda, Senior Legal Counsel, Manager—Future Acts Mining and Exploration—FAME—Unit, North Queensland Land Council (via telephone)

FATCHEN, Ms Shanti, Legal Officer, North Queensland Land Council (via telephone)

CHAIR: My name is Glenn Butcher and I am the chair of the committee. How are you today?

Ms Jacobsen: Well, thank you, sir.

CHAIR: Would you like to make a brief opening statement for the benefit of the committee?

Ms Jacobsen: Yes, thank you, sir. First of all, thank you for the invitation that we received by email on 16 March to make a submission in respect of the bill. As our submission demonstrates, we went through the bill thematically with particular consideration of our clients, our constituents who are the native title holders in the North Queensland Land Council area, looking for matters which were of significance and import to them. As you can see, as we have structured our submission, we support the objective to enhance the environmental protection regime in Queensland. However, we felt that the drafting of the bill in its current form may inadvertently capture persons and parties that it was not intended to, including the native title parties. We believe that the intent of the bill is to capture those parties who have control or otherwise significant financial interest in the operations as opposed to persons or parties such as the native title parties whose authority, control and benefits arising in any dealings that they have with those operators may be of a very modest kind.

In terms of how the native title parties were captured, we saw that there were two primary limbs where they were captured, in the first instance, as a related person. The bill refers to the person who owns the land. We looked at the definition of the landowner, or the owner of the land as provided in the dictionary of the EPA at schedule 4. As we replicated in our submission, there are a number of categories of landholdings that native title parties, or indeed, Aboriginal parties would well be captured in respect of freehold land, pastoral leases, trust lands generally, lands held or transferred under the Aboriginal Land Act and, most particularly, land that is subject to a registered native title claim. A large portion of our lands within our boundary is captured either by a registered claim or, in fact, a consent determination of native title.

We were concerned that the breadth of 'related persons' in the current drafting could well capture native title parties. We also then went to the 'relevant connection' and primarily focused our attention on the criterion of the persons having a relevant connection in respect of financial benefits. Under the Native Title Act, where there is a registered claim and native title has not been determined to have been extinguished, our clients have rights to negotiate with proponents. In that context, our clients do not have the right of veto. They either have the right to negotiate with a view to reaching an agreement or are subject to an arbitrated or ministerial determination. It is the case that those negotiations very often, where there is an agreement, will result in financial benefits and/or other benefits arising in favour of the native title parties. On our reading of the current drafting, we would see that our clients would be captured by virtue of those agreements as having a relevant connection. They are the critical, substantive matters that we turned our attention to and sought to draw attention to the committee on those concerns that we have.

CHAIR: Thank you very much for your statement. We have heard a little bit today about landholders and their relationship with resource companies operating on their land. Obviously, Indigenous land might be a special area. Can you please explain to us how native title changes the way the standard system operates and, in particular, how much control can native title parties have over how a company goes about its business?

Ms Jacobsen: In respect of the nature of the holding, in the first instance I will say that the Native Title Act arose, as I am sure the committee appreciates, out of the decision of Mabo. The Native Title Act was drafted to acknowledge the ongoing existence and continued nature of native title and to streamline the process whereby recognition could be formally achieved. So it is remedial and a form of recognition of the ongoing rights and interests of our clients and their ongoing connection to country. The very form of native title rights and interests can be characterised differently from that which may be held under freehold, for example. It is one of cultural responsibility and obligation.

CHAIR: Thank you.

Ms Jacobsen: The procedural rights that our clients have—our native title parties—arise only where there is a registered native title claim over those lands. A registered native title claim is prosecuted through the Federal Court, but the procedural rights, which includes the right to negotiate,

arise at the point of registration and there is further involvement, of course, with a consent determination. The contents of those rights and interests are specific to the native title rights and interests of the particular group. So they vary throughout the state.

For some of our clients, as I have mentioned here in the submission, there can be circumstances where there are overlapping tenures where the Aboriginal parties or the native title parties are in effect one and the same. For example, lands may have been transferred under the ALA—Aboriginal Land Act—and held by a corporation for the benefit of a traditional owner group. A registered native title claim can then come and lay over the top of that tenure. Indeed, we have circumstances in our region where that ALA tenure remains and on top of that will come a determination of exclusive native title in some instances. In fact, there ends up being two corporate entities representing and managing the rights and interests of their people.

Just to give some clarity around the corporate structures, specifically in respect of native title where there is a consent determination, the native title rights and interests are then determined to be held by a prescribed body corporate that subsequently becomes a registered native title body corporate. It is a corporation established under the Corporations (Aboriginal and Torres Strait Islander) Act. It is registered under the C(ATSI) Act as opposed to the corporations provisions.

CHAIR: Thank you very much for that answer.

Mr MADDEN: I do not have a question. I just wanted to compliment you on the quality of your submission, both your written submission and the oral submission that you have made today. For me, it has really clarified how this act will apply to native title holders. I would like to thank you.

Ms Jacobsen: Thank you very much.

CHAIR: Thank you for your contribution today. We are running out of time. Thank you very much for joining us online and assisting us today in our inquiry.

Ms Jacobsen: We thank you for the opportunity.

POWELL, Mr Warwick, Chairman, Sister City Partners Ltd

CHAIR: I welcome our next witness from Sister City Partners Ltd. Would you like to make a brief opening statement for the committee?

Mr Powell: Thank you very much to the committee for the invitation to present today and also to field questions in relation to our submission. I think it is important for the committee to understand the context of our work and the submission which specifically comes out of this work and our specific recent experiences. In saying so, my remarks are driven very much out of our experiences in relation to Queensland Nickel as opposed to making general commentary about the application of the provisions more broadly speaking. Others can draw conclusions in relation to how it may affect other industries and other situations. We are quite specific in terms of what our concerns are.

Last October we were approached by workers at Townsville Yabulu refinery seeking our involvement given the news at the time that Clive Palmer was requesting government assistance of one sort or another. We were approached on the basis of our earlier work in pulling together a community anchored structure and consortium to acquire the Port of Townsville should it have been leased. At the time we advised workers who had approached us that there was not any substantive trigger for us to get involved, but we did write at the time to the Treasurer indicating that perhaps a change of company ownership could be a precondition for Queensland Nickel moving forward with any public support.

Anyway, as events transpired, come the middle of January with the appointment of administrators we were again asked to take an interest. Given our work in the North Queensland region and our commitment to the resilience of the regional economy, we decided to at the very least engage with the administrators, review available information and come to a view on whether the refinery business itself was salvageable within a broad communitisation framework of restructured ownership. We progressively concluded that, while severely troubled by declining global nickel prices and an operational model that was no longer viable, there was underneath it all an enterprise that had a viable future subject to significant reorganisation. There was and remains simply too much at stake for the North Queensland region to sit idly by and not leave every stone unturned, so down the rabbit hole we kept going.

Regional economic leadership institutions unfortunately chose to play a dead hand and clearly believed that the region’s economic priorities lay elsewhere. They have spurned invitations to get involved and support the work and that of the workers who have put their hands up. That, of course, is a matter for them. Independent economic analysis undertaken by AEC Group concluded that the loss of such an industry presence is likely to generate significant and long-lasting negative impacts on both the regional economy and Queensland-wide.

The North Queensland economy is on the edge of what I have described as a great regional depression. True unemployment is well over 10 per cent. Youth unemployment is double that. Over 10,000 people are officially looking for work today in a labour force that has actually shrunk by about 7,000 persons in the last five years. This has been an unfolding crisis brought about by a perfect storm of cyclical downturns and structural change combined with elite complacency and misplaced priorities. The human evidence of this decline has been clear for a number of years, but most it would seem chose to ignore it or were blind to it. The city region’s economic elite have been distracted by the baubles of urban vanity when the foundations of the regional economy have been crumbling before their very eyes.

The recent closure of the Yabulu nickel refinery crystallises the economic crisis. The human cost is there for all to see. Lifeline has added three more dedicated people to field calls from workers in despair. Yet much leadership commentary has remained distracted by vain glorious urban monuments. Since the middle of January we have painstakingly reviewed what information was provided to us about Queensland Nickel Pty Ltd and the operations of the refinery. Ably assisted by a team of volunteer former workers, we have developed a new business model that can provide the refinery with a new future. This model hinges on a future structure that is anchored by creditors as shareholders. Additional investment partners in the form of participating customers and our own investors would round off the structure. We have held lengthy discussions with creditors and customers from around the world. Customers in the USA, China and Japan have all been part of our discussions.

CHAIR: Excuse me, Warwick. I know you are very passionate about this. If you can get back to the inquiry and the relevant points if you can, that would be fantastic

Mr Powell: Your interjection is very timely because the next sentence comes straight to it. Investors from Hong Kong have also been introduced to the proposed model and have all shown very strong interest. However, the provisions of the amendment bill are of considerable concern to the investing parties, whether they be equity participants or debt providers, insofar as they create new risks about future uncontrollable exposures and liabilities. These risks are, to put it simply, a deterrent to investor interest.

Our investors are concerned that (a) the provisions in effect enable increased financial obligations on the new owners on the event of the transfer of environmental licences and other regulatory instruments and (b) non-executive parties and other persons including directors are exposed to or can be liable for future costs of environmental remediation incurred by the new ownership company. As a new company proposing to take effective ownership and operational control of the refinery, the provisions of the bill would expose the company's shareholders and possibly its lenders to liabilities associated with the legacy of the refinery as it stands today and for future liabilities that may arise, notwithstanding all efforts to ensure the company does not become one of risk. The mere act of transferring licences also creates a moment of considerable risk.

The realities of base metals refineries like nickel refineries is that the operations are high fixed cost businesses operating in a volatile global commodities market environment. This means that there are risks of business performance that are related to events that are outside of a business's control. Despite the best endeavours and the goodwill of management and creditors, these events may give rise to insurmountable difficulties. In these circumstances for investors, equity holders and creditors—which are all related parties potentially—to be further exposed to additional unknown and unspecified risks of extra liabilities is potentially a deal killer in this instance.

Our consortium of creditors, including workers plus customers and independent private and institutional investors, has no corporate history with the present owners of the Yabulu refinery. Yet the unintended consequences of the bill's provisions are a significant impediment to us moving forward with a constructive and viable solution to a major industry in the North Queensland economy. I am sure this is not the intention of the proposed amendments, but the livelihoods of nearly 2,000 workers in North Queensland and the general state of the region's economy are at serious risk should investors shy away as a result of the emergence of new and unknown risks.

CHAIR: Thank you very much. What are your suggestions for tightening the legislation that we are about to introduce, and that we as a committee can recommend, to stop this from happening in the future?

Mr Powell: To be honest, I think the provisions of the Corporations Act largely deal with the scope of responsibilities. From our perspective, in terms of people who have direct responsibilities for the going concerns of a business and for how it complies with relevant legislation, our concern is that there are a lot of passive investors and creditors who are rallying to support this buyback initiative and, notwithstanding their passive posture, they are exposed to risks. This comes down to how the related parties are defined. When the related parties can be defined as people with a financial beneficial relationship, naturally as investors they would expect a dividend or some kind of an upside from their investment. Whilst they may be a million miles away from the day-to-day activities of the company, they stand to be exposed in the event that a company runs into market related or other storms.

CHAIR: How do we fix it? If companies continue to do this and then decide the easiest way is to sell it to someone else without any ramifications for what they have done environmentally—say, the tailings dam at Yabulu—when they are in trouble is it best just to get out and give it to the next guy who then does not face any ramifications either?

Mr Powell: Our concern is that we are taking on liabilities that are unknown at the moment. The bill is very open-ended in how it defines those related parties. That is one of our concerns. If we have nothing to do with or our investors have nothing to do with decisions made previously and in fact may have very little to do with the ongoing performance of the business into the future—let's say in 10 years time the refinery once again runs into market headwinds and suffers cash flow problems and liquidity problems—passive investors are at risk of being pursued for things that they have absolutely zero responsibility for in terms of decision-making. They have provided working capital. They have provided equity capital. They have taken risk in that regard. This just opens up a new can of worms. That is our concern.

The broader public policy question, as you have described, is about whether or not someone can just walk away. I think that this is a very difficult problem, quite clearly. I do not want to speak more generally beyond our experiences other than to relay to the committee our specific experiences.

I will leave the broader public policy issues to others. We just know that the investors who we have been talking to who have been very supportive and interested have become quite wary of the uncertainties that have been raised by this, notwithstanding the intentions behind it.

Mr BENNETT: Regardless of the current legislation being proposed, the department could in fact ask for additional financial assurances from a new entity anyway. Was that factored into your business model?

Mr Powell: We are certainly aware of the potential additional imposts. Obviously, as part of final considerations of the commercial merits of the investment, we would need to take those things into account.

CHAIR: Thank you very much, Warwick. We have no more questions for you. It was a very passionate opening statement. I understand where you and your community are coming from. Thank you for your time in coming here today and good luck with the project. Thank you for assisting us today.

Mr Powell: I appreciate your time. Thank you very much.

CHAIR: That brings the time available for our hearing today to a close. Thank you to all witnesses. For questions that were taken on notice or for any clarifications of answers and comments provided today, we ask that the responses are provided to the research director by the close of business on Friday, 8 April. We will make the proof transcript of the hearing today available on our website as soon as we are able to. We will now take a short break and then begin the briefing by officers from the Department of Environment and Heritage Protection.

Proceedings suspended from 2.29 pm to 2.39 pm

BRENNAN, Ms Deborah, Manager, Environmental Policy and Legislation, Department of Environment and Heritage Protection

CRADICK, Mr Adam, Senior Director, Litigation Branch, Department of Environment and Heritage Protection

ROBSON, Mr Geoff, Executive Director, Strategic Environment and Waste Policy, Department of Environment and Heritage Protection

CHAIR: I welcome officers from the Department of Environment and Heritage Protection. Would you like to respond to any of the issues that have been raised during today's hearing? Obviously you have had a vested interested today and have been diligently paying attention.

Mr Robson: Yes, Mr Chair; thank you. I have prepared a brief opening statement. Last time at the departmental briefing for the committee I outlined the objectives and key features of the Environmental Protection (Chain of Responsibility) Amendment Bill, so my opening statement today is briefly going to comment on the issues raised by stakeholders in written submissions to the committee. The first topic I want to turn to is the definition of 'related person'. We understand that some industry and stakeholder groups have expressed concern that the definition of 'related person' is broadened and would potentially capture shareholders, liquidators, landowners and others. The definition of a related person is relevant in determining who can be issued with an environmental protection order, or EPO, and therefore who may be held responsible legally and financially for addressing incidences of environmental harm. The provisions of the bill are drafted to try to capture those genuinely responsible for environmental harm that may be considered responsible because of their ability to profit from the harmful activity or their ability to influence environmental compliance on the relevant site. The related person test is intended to allow EHP to identify the true nature of the relationship between the non-complying company and those entities which either significantly benefited from the environmentally harmful activities or which had the ability to influence environmental compliance.

It is important that the definition of 'relevant connection' is adequate to hold those responsible to account while at the same time protecting those who may be associated with the company but do not have a direct role in influencing the company's conduct. The new section that is proposed in the EP Act, section 363AB, sets out qualitative criteria for the administering authority to make a decision. I would also point out that section 363AB(4)(f) includes specific criteria that are exclusionary, meaning that the definition of 'related person' is not intended to capture examples such as professional services such as legal or technical services or employees. The bill is not intended to capture genuine arm's length investors, and earlier we had mention of the mum and dad investors of course. It is not intended to capture genuine arm's length investors, particularly those with only a small interest in the company. Landholders qualify as related persons, but the intent of the bill is for the administering authority to consider the full range of potential related persons. The intent is to take into account that in many cases the landholder will not have the ability to decline the issue of a mining lease over their land for example. In these circumstances, it is unlikely the landholder would be connected in the chain of responsibility unless they have some other relevant connection to the company. The bill is not intended to capture banks in their role as lenders to companies with environmental obligations. It is possible that shareholders that hold a substantial number of shares in a company would meet the relevant connection test.

Turning to financial assurance and the provisions around financial assurance in the bill, as members are aware, the bill enables the department to impose conditions requiring financial assurance where an environmental authority has been transferred. We understand there have been some questions raised about the extent of these provisions, so we are going to try to address some of those questions. First of all, does the bill allow the department to increase the amount of financial assurance? The answer to that is no. The ability to impose a condition requiring financial assurance following the transfer of an EA, an environmental authority, does not allow EHP to increase the amount of financial assurance. The amendments just allow the department to put a condition on the environmental authority to require a holder to provide financial assurance. The financial assurance amount will still need to be determined through the usual way, and that is an application under section 294 of the Environmental Protection Act or a submission of a plan of operations.

Secondly, will the ability to impose financial assurance create transaction uncertainty for investors—in other words, this new provision to require FA on the transfer of an environmental authority in terms of uncertainty for potential investors? Some submitters have suggested that imposing an unspecified amount of financial assurance upon a transfer of the environmental authority

could create uncertainty for businesses. Our response to that is to note that the EP Act requires that the amount of financial assurance cannot exceed the total or likely costs to rehabilitate or restore and protect the environment. The department's financial assurance guideline does outline the circumstances when financial assurance may be required, the former financial assurance, the approved calculation method, application requirements, decision-making criteria and other details that can inform prospective investors.

Thirdly, one question is why it is essential, as the bill proposes, to have a financial assurance of at least 85 per cent to be held before a stay can be granted for an appeal against EHP's financial assurance calculation. Clause 13 of the bill ensures that the amount of financial assurance held for an environmental authority is adequate should a stay be granted and if the financial assurance does need to be drawn upon. This is because during the stay period and before an appeal is determined the operator can continue its operations and is generally not required to pay additional financial assurance. A decision can effectively be delayed potentially indefinitely by a continuous submission of new plans of operations which may mean the department is left with inadequate financial assurance until the outcome of the appeal is determined by the court. The new provision is intended to address situations that have arisen in which the amount of financial assurance is insufficient to address any environmental harm and rehabilitation requirements that may be ongoing during the hearing of that appeal.

In closing, the legislative changes have been proposed in response to increasing difficulties that the Department of Environment and Heritage Protection has confronted in ensuring that sites operated by companies in financial difficulty continue to comply with their environmental obligations. These circumstances mean that there is increased risk that the state may have to step in and bear the cost of addressing environmental contamination. The provisions of the bill only apply if companies are not upholding their environmental obligations. The amendments proposed in the bill will enable the department to effectively impose a chain of responsibilities so that companies not fulfilling their environmental responsibilities and their related parties bear the costs of managing and rehabilitating sites. Regardless of company structure, whether it is a multinational or community shareholder arrangement, the provisions of the bill ensure that all operators fulfil their environmental obligations. Thank you for the chance to make the opening statement and we are happy to take questions.

CHAIR: Thanks for that. Quite a few submitters today have talked about the financial assurances, particularly some that do not actually have them as part of their agreements. Is there any reason why we have not followed up on those previously, and I am going back to Yabulu? Apparently they do not have a financial assurance on their business. Is there any reason why and what could we have done to follow that up or make sure that it did?

Mr Robson: Sometimes there is a legacy issue with respect to what the practice was in the past as to whether or not financial assurance was required. In 2014 we put out a financial assurance guideline. We also updated the method of calculation on financial assurance, and that has recently been updated again—the guideline—and that provides a bit of clarity to how we would approach some activities in the future should there be new applications that require an environmental authority and then we have given guidance as to the additional circumstances where we would require financial assurance. Generally speaking, the practice has been to require financial assurance with respect to resource activities. With respect to resource activities, they have been going through the more modern calculation process, which I referred to a moment ago, but not all resource operations have gone through that yet because they do update their financial assurance on the basis of a plan of operations. I think the committee may be aware that you can have a plan of operations for up to five years, so because that new calculator is less than five years old not everyone has gone through it yet.

Mr BENNETT: Just following up on that and your opening statement, given that this issue seems to have come about from one particular issue, I am reading about a requirement to change or replenish the financial assurance. I am sure you said during your opening statement that you do not have the capacity to change or to replenish FA during a current arrangement. I will get you to answer that first. Secondly, you talk about a legacy issue for this particular refinery. Over successive governments why after all these years was there not an inference to replenish or to require additional financial assurance on a particular problem that was evolving? We all knew it was a problem for many years, again just to back up the chair's original question. Point 5 of the guideline for financial assurance under the Environmental Protection Act relating to the requirement to change or replenish financial assurance clearly says that the department may at any time require the holder of an EA to change the amount of their financial assurance. But did you not say before that you cannot do that?

Mr Robson: With respect to some holders of environmental authorities, there are EAs that do not actually have the condition that requires financial assurance. You would actually need to amend the EA in that context and that is not something that the department can automatically require. The issue that the bill addresses is the issue of a transfer of an EA and at the moment we do not have the ability to require FA to be included as a condition of an EA if that environmental authority is transferred to another company in the situation where the existing environmental authority does not already have that existing condition for FA to be required.

Mr BENNETT: But the EA still remains current though, doesn't it, even if it is transferred?

Mr Robson: Yes. The EA is being transferred, but the issue is when you are looking at the transfer of an EA that does not actually contain a condition for financial assurance. The department is actually constrained in terms of its ability when the environmental authority is transferred to require that the new condition be there, that financial assurance be held.

Mr BENNETT: This is a policy question, but why do we not just make an amendment to that act? That is a policy question I do not expect you to answer.

Mr MADDEN: There is something I wanted to clarify, and that is the notion of how an FA is paid. Is the FA the same as a bond? We hear this word 'bond'. Is that just another name for an FA, a bond?

Mr Robson: Sure. Financial assurance is a form of security that the government can draw on should it be required if the rehabilitation obligations of a site are not carried out, and generally speaking it is at the end of the site's operation.

Mr MADDEN: Just to make myself clear, I understand that.

Mr Robson: Sure; sorry.

Mr MADDEN: What I do not understand is is it a guarantee that is only drawn on if required or is it a deposit held in a bank account?

Mr Robson: It can actually be both. There are forms of financial assurance where the department will hold cash, but financial assurance is often held in the form of, say, a bank guarantee that the government has unconditional access to. Those are circumstances where if, say, a company is in liquidation the bank guarantee is something the government would access for its purposes with respect to—

Mr MADDEN: They can access that notwithstanding the company is in liquidation?

Mr Robson: That is the way it is designed to operate, yes. It can be, as I say—

Mr MADDEN: Be either.

Mr Robson: Yes. We often find that companies with a very large financial assurance requirement will often use a bank guarantee. What normally happens in those instances is they would pay something akin to a premium each year to the bank—to the financial institution that is holding that guarantee—so that there is a guarantee that is available to government should it need to be drawn on for the certain amount of money equivalent to the required financial assurance and the company services that normally by an annual fee.

Mr MADDEN: Assuming that it is a bank deposit as opposed to a bank guarantee, would companies be anxious to finalise the operations at the mine so they can get that guarantee back, the deposit back?

Mr Robson: That would depend on the circumstances that the company faces. Obviously they would be getting it back when the environmental authority is surrendered and government is satisfied that there is no longer a requirement to hold the financial assurance. It is quite possible that there might be circumstances where cash is held or indeed when a company needs to pay an annual fee. There might be some incentive to get to the point where financial assurance is no longer required so they do not have that cost. That would involve a range of commercial considerations with respect to how long they wish to keep operating at the site, but it also involves consideration around the surrender of the environmental authority and the department's satisfaction that it is appropriate for that environmental authority to be surrendered.

Mr MADDEN: Thanks very much.

Mr BENNETT: Today and over the last couple of weeks we have heard a lot of submissions around this related persons, and I thank you for clarifying that. However, my comment is that while we still hear the language, even from yourself, Mr Robson, about 'if', 'should' and 'could', I think a lot of people were just asking for some clarity and some strengthening and tightening up of the definition of 'related person'. That was clearly what I took away from the last couple of weeks. In your

deliberations in drafting the bill and considering that from today's submissions there appears there was not much consultation with impacted industries, were there any other methods of financial surety as a means of addressing the Townsville nickel refinery issue as opposed to the chain of responsibility bill?

Mr Robson: I might, if I may, go back to some of the underlying intent of the bill. I notice in the discussion today there was the discussion around what financial assurance could achieve in certain circumstances, and it is indeed a very important provision for government to hold. With respect to this bill, one of the primary objectives is around the tools that the department has available to it with respect to when it can issue environmental protection orders. In making reference to financial assurance, as I said earlier, financial assurance is held with respect to, generally speaking, the end-of-site rehabilitation clean-up costs et cetera. One of the things that needs to be borne in mind with this bill and the intention behind this bill is the ability of the Department of Environment and Heritage Protection to actually issue EPOs in circumstances where environmental obligations are not being met, and those circumstances might actually pertain to companies that are in ongoing operations. Indeed there are examples where the site might actually need ongoing maintenance, so we are not necessarily talking about the end-of-site rehabilitation work, although that comes into it. What we are talking about for some examples is the need to ensure that certain works are carried out to avoid environmental harm, or in the case of an EPO it can ask for certain activities to stop occurring because there is a risk of environmental harm from the activity.

Mr BENNETT: Sorry to interrupt, but we have that provision now under other acts, don't we? We heard today about the mines and the Environmental Protection Act has that provision now that you could issue a stop-work or other provision. Is that correct?

Mr Robson: That is correct. That is how environmental protection orders work. With respect to this bill, it allows the department to issue EPOs in new circumstances, and I might just turn to some remarks I have with regard to that. This is where the purpose of the bill is allowing EHP to issue the EPO to related persons of the company undertaking activities and the ability to issue EPOs to related persons of high-risk companies. Yes, it is correct that the sorts of powers I am talking about are the powers that currently exist with EPOs. The intent of the bill and one of the reasons why the government has proposed to take this action is because recent examples—and the bill makes reference to some recent examples—have demonstrated the ability of EHP to issue EPOs in circumstances where, for example, a company is not meeting its environmental obligations because it is in financial difficulty. The government has seen fit to introduce these provisions to give EHP some additional tools, if you will, to ensure that those environmental obligations are met, and those tools are effectively the ability to issue environmental protection orders to the related persons.

With respect to the discussion around financial assurance, I thought that it would be useful to point out that the intent of the bill is about ensuring that obligations are met not just at the end of a site's operation but also during operations of sites where we are concerned that environmental obligations are not being upheld and where there is a need, or where it could be effective, to uphold those environmental obligations to place the issue of the EPO on the related person.

Mr SORENSEN: I might have misunderstood you before, but you can charge somebody with an environmental offence and that person then has to turn around and appeal to prove his innocence. Is that the way I understood what you said before?

Mr Robson: With respect to my earlier comments, I think I was relating comments to the issuing of an environmental protection order. That is where there is a concern that environmental obligations are not being met. As the act currently operates, the department does have the ability to issue these EPOs to essentially bring the activities back into compliance with the obligations of the act. The issuance of an EPO is a reviewable decision. So it is subject to both review internally in the department and also through the court system. I am not sure if that answers or helps to clarify the remarks I am making. Generally speaking, we are talking about civil action here; is that correct?

Mr Cradick: I might be able to assist a bit here. When an EPO is being considered by the decision-makers in the department, reference is made to who it can be given to and that is a big object of this bill—to expand that pool of people potentially. Also, standard criteria in the act have to be considered by the department, which includes things like the public interest, the financial implications of the conditions in the EPO, the precautionary principle—a whole raft of factors that need to be considered objectively. When we make these decisions, they need to be made in a reasonable way.

The department has a guideline on making and giving environmental protection orders that affords natural justice to any recipient of the EPO, which would include any recipients caught by this bill. Depending on the nature and circumstances and the urgency, generally speaking, natural justice

would require the recipient to be given a heads-up, as it were, as to what the department was contemplating. That of itself sometimes might bring someone into compliance, or get the potential recipient to take those preventive measures to avoid or to correct the mischief that the EPO is designed to address in the first place. Of course, should the recipient exercise their appeal right, the courts are fairly quick to admonish the executive if they exercise their powers unreasonably. I should say as well that the real admonishment comes with the orders as to costs if we are wholly unsuccessful in defending our statutory decision.

Mr MADDEN: I just wanted to clarify with regard to the Yabulu nickel refinery. Was there ever a financial assurance required for that refinery with the various owners?

Mr Robson: I do not believe so, no.

Mr MADDEN: If the answer is no, why? Why was there no financial assurance ever required for Yabulu?

Mr Robson: With respect to my earlier remarks, I might try to elaborate on those. It does reflect to some extent what was practised at the time. As indicated, it has generally been the practice for some time that we would hold financial assurance on resource operations, but that has not included the types of activities that we would refer to at Yabulu. It is the case that there was at least the legislative ability of the department to require financial assurance in respect of sites that go beyond the resource sector but, generally speaking, it has been the practice of financial assurance to be focused in the resource sector. There are some other examples with respect to quarries and I think landfills as well. That is where, as indicated earlier, we have updated the guidelines that provide some advice as to how the department will operate these provisions in the future. But, as I say, that generally refers to the way financial assurance would be required as a condition of future environmental authorities. Getting back to the point in this bill, there is the issue of the ability to insert that requirement for financial assurance when the environmental authority is transferred and that is the intent of one of the provisions of this bill.

Mr MADDEN: In simple terms, in the past it was the practice to require financial assurances for mines but not for processing facilities or refineries? Is that the case?

Mr Robson: Yes, in simple terms.

Mr MADDEN: In simple terms.

Mr Robson: I would not want to say categorically for every situation, but, yes, that is—

Mr MADDEN: That is pretty much it.

Mr Robson: Yes, if we are speaking generally—

Mr MADDEN: Notwithstanding that there could be tailings dams in both situations; that was the case?

Mr Robson: That is correct, yes.

Mr MADDEN: Is that still the case? Ignoring this bill, is it still the case that the department does not require financial assurances for refineries?

Mr Robson: As I say, the updated guidelines around the issuance of financial assurance have clarified that for the issuance of future environmental authorities, so it is different now.

Mr MADDEN: When did that change?

Mr Robson: There was an update last month, which clarified that. I think the guideline was first issued in 2014, although I might just need to confirm that for you.

Mr MADDEN: There would not be too many refineries created since 2014, but from 2014 the attitude of the department changed?

Mr Robson: Yes. The guidelines provide guidance to the department but also information for prospective applicants so they are better informed as to the considerations that the department would undertake in terms of determining whether it is appropriate to require financial assurance—

Mr MADDEN: But if Yabulu was being built today, you would require it.

Mr Robson: Most likely.

Mr MADDEN: Most likely?

Mr Robson: It is always—

Mr Cradick: It has to go through the process.

Mr Robson: Yes, it has to go through the process.

Mr MADDEN: Okay, thank you.

Mrs GILBERT: Thank you for your explanation around the 'related persons'. That took up a lot of time today. Just about every witness referred to that. They believe that the definitions are so broad in the legislation. Could you point out to the committee what clauses we should be looking at? You explained to us that the genuine arms-length investors are not being caught—the bankers, the landholders; those people. Everybody except for one person—Revel was the only one who read it as though those people would not get caught. But everybody who came today read it that they would be caught in the legislation. Could you point us in the right direction as to where we should be looking where Revel must have looked?

Mr Robson: Certainly. We start at page 6 of the bill, section 363AB, which talks about who is a related person of a company. There are some definitional clauses before that. But the bill starts putting provisions around what is a related person beginning on page 6 at new section 363AB. That outlines who a related person may be. If you go to page 7—and we are still in new section 363AB—subsection (4) starts to talk about the matters the administering authority may consider in deciding whether a person is a related person.

As I mentioned in my opening remarks, some of these clauses have the effect of being exclusionary. If we turn to page 8 at subsection (4)(f), those are the ones that I mentioned in my opening statement. The wording states—

(f) the extent to which dealings between the person and a company ... are—

(i) at arm's length; or

(ii) on an independent, commercial footing; or

(iii) for the purpose of providing professional advice; or

(iv) for the purpose of providing finance, including the taking of a security;

With respect to those provisions, as I indicated in my opening remarks, they are not intended to capture professional services—legal technical services or employees. They are not intended to capture genuine arms-length investors—mum-and-dad investors—and particularly not investors with only small interests in the company. They are not intended to capture banks in their role as lenders. Again, I am just giving some examples of the operation of those provisions. But, as I did say in my opening statement, it is possible that shareholders who hold a substantial number of shares in a company would meet the relevant connection test.

Mrs GILBERT: Does that adequately cover the native title holders as well?

Mr Robson: The provisions set out in section 363AB(1), if you look at paragraphs (a), (b) and (c), there is a range of considerations for where a person may be a related person and, yes, it does refer to landowners there. The way the administering authority would determine these things—they are not binary in the sense of yes or no, but it is about collecting the evidence for the related person. New subsection (4) then gives some of those considerations that the administering authority would also bring to bear in making that decision about being a relevant person.

Just to expand upon the issue with landholders, the administering authority would acknowledge that, in the case of a landholder like a farmer or the native title holders potentially, with respect to some activities on their land—say, the issuing of a mining lease on that land—the landholder may not be able to decline the activity occurring. If a mining lease is granted, the underlying landholder may not be able to decline the issuing of a lease over their land. In that case, as the administering authority, it is not intended that they would be captured as a relevant person unless there is some sort of other relevant connection to the company. In some cases, the underlying landholdings for a mine are held by the mining company; sometimes they are not. The administering authority has the ability to recognise that and make that determination. I would point out, though, of course, that we are analysing those submissions very carefully with respect to landholders. I assure the committee that EHP is giving careful analysis to those issues raised in the submissions.

Mr BENNETT: We have heard from 12 different submitters with real concerns about that. Given that the stated intention of the bill was to address the winding down of the mining industry, we also heard today about sectors that do not see that they should be included. Would you be prepared to consider some exclusions, particularly for oil and gas?

Mr Robson: If I go back to the intent of the bill, it is about being able to provide EHP with some additional tools or options to ensure that obligations under the act are met. If companies are actually meeting their obligations then the provisions of the bill do not have an effect on them.

Mr BENNETT: It is a huge concern when we have heard from eight or 10 submitters today that it is their perception that investment and employment is at risk. I just ask the question on their behalf. They have serious concerns about why they are included in something that is clearly addressing the more traditional mining sector.

CHAIR: My statement was that if they are doing the right thing and they are saying they are on top of their game why do they have concerns with the bill?

Mr BENNETT: We can have that discussion after, but for obvious reasons that we have heard over the last two weeks. Would you mind commenting on the oil and gas industry asking for an exemption from this particular legislation and being captured under the existing EP Act?

Mr Robson: There are a range of activities where, if there is an environmentally relevant activity, they have obligations under the EP Act, whether they are a mining concern, oil and gas, or a refinery. Refineries go through a different process from mining operations. The intent of the bill is not for the mining or resources sector per se, the intent of the bill is around ensuring that the environmental obligations that companies hold under the EP Act are maintained.

As I indicated earlier, the government's intention behind this has come about as a result of some constraints that have been identified on EHP's ability to issue EPOs in circumstances where we are concerned that there is a risk of environmental harm. It may be that there are concerns that the company that is the EA holder for a range of reasons—and one example might be involuntary administration—is not upholding its obligations and therefore there is the ability to issue an EPO to related persons. That may be an effective tool to address the risk of environmental harm that the department is aware of because a particular site is not being maintained appropriately with respect to the environmental obligations that exist on that site.

That could be the case whether it is a different type of industry. It is not just about the mining industry per se. It is about the environmental obligations that exist under the act and the constraint that has been identified, particularly when there is a firm in financial difficulty and there are questions as to their capability to maintain their environmental obligations. Where there is a related person that bears responsibility, the bill would give the department the ability to issue the EPO to that related person.

Mr BENNETT: We heard today though that that particular sector pays nearly 100 per cent of their financial assurances as opposed to some discounts that are available in other sectors. The argument has been made that the government or the taxpayer of Queensland is pretty much insulated in that sector—or 'insured' I think was the word that was used—against that financial liability and, more importantly, the environmental obligations that we all share.

Mr Robson: With respect to environmental obligations and financial assurance, I will go back to the remarks I was making earlier with respect to financial assurance. Generally speaking, it is about the rehabilitation that would occur at the end of an operation. We sometimes use the analogy—and it is a very broad analogy, so I hope the committee will forgive me for using this—and often refer to financial assurance as the airbag. You have probably heard that saying with airbags: it is nice to know they are there, but you do not ever want to have to use them.

One of the distinctions I would point to in some of the discussion we heard today around rehabilitation and financial assurance—and it is a very important discussion—is that, with respect to environmental protection orders, they are a tool that the department can use to bring an operator back into compliance with their environmental obligations. As I say, with respect to financial assurance, it is something that ordinarily would be drawn upon if rehabilitation is not completed at a site and the site has been abandoned because of liquidation or some other occurrence like that. They are different tools, if I can put it that way. This bill enhances the tools available to the department to bring companies into compliance with their obligations.

The intent behind the bill has been informed by the experiences of different sites, and the explanatory notes do refer to those sites. The circumstances around each of those sites are different. One of the considerations in the drafting of the bill is around the circumstances that the department may face in the future. You cannot necessarily anticipate every circumstance that you would need to issue an environmental protection order for. It is about what is required to bring the operation back into compliance with the environmental obligations that they hold.

Mr BENNETT: But you can issue an EPO now?

Mr Robson: Yes.

Mr BENNETT: How many EPOs have we actually issued under the current legislation that you have sought to enforce over the last five years?

Mr Robson: I would have to take that on notice.

Mr BENNETT: Is it a number?

Mr Robson: I would expect there would be a number.

Mr BENNETT: Is that something that the committee would be interested in: the EPOs under the current Environmental Protection Act that have been issued and the ones you have sought to enforce? I suspect there is a difference between issuing them, people taking up a compliance and then you having to take another step. I do not want you to be bogged down. But how many have you taken the next step on to try to enforce the EPO through the courts? If you would be kind enough to take that on board, thank you.

Mr Cradick: I might just add to Geoff's comments in answer to your question. The ability in the bill to expand what the EPO can require in terms of a security—that security there is to secure the performance by the recipient of the obligations in the EPO. If, for example, you have a paid up, as it were, industry or operator and we had the benefit of the financial assurance as calculated or agreed with them, it would be extremely unlikely for the department to issue an EPO requiring a further security.

In listening to some of the earlier submissions, there might have been a big extrapolation of that small aspect of what additionally an EPO can be given for. Traditionally an EPO is given to prevent something from happening and it puts positive obligations on the recipient. The only material difference in a financial aspect, putting aside the financial assurance provisions where there are none or they are inadequate, is that where there are financial assurance provisions it is only where it is over and above what the recipient has to do to comply with the EA, because we only give an EPO to prevent something from happening. I cannot, in my submission, see it being onerous on the industry in that regard just because they already have the FA sitting there. We would not go and issue an EPO for security for something that we already have a security for, if that makes sense.

Mr BENNETT: I do not think I was confused with that. Another unrelated issue that has been raised around mine sites, or whatever they could be—a high-risk related activity or whatever has been captured here, is the workplace health and safety implications of the proposed changes where the departmental officers now seem to have expanded rights for access. Has that been considered? You now have powers to enter property. I can understand if it is an abandoned mine or you want to get in there, but there seems to be some real concerns about your capacity to go on site. I would seek your comments and some assurance, particularly about the workplace health and safety implications of Environment and Heritage Protection officers going onto a site they are unfamiliar with and sometimes without inductions and other things.

Mr Robson: Perhaps in starting the response to that question I will point out that in terms of high-risk companies the definition is with respect to the financial status of the company. It is not an assessment of the safety risk of the site. When the bill refers to high-risk companies, it is actually drawing upon definitions with respect to the financial situation of the site.

With respect to the safety arrangements and entry onto site by persons from EHP, there are provisions that exist now with respect to entry of site. The bill does try to strengthen those provisions where there is a need for the department to go on site. Adam, do you want to make any reference to the way those operations work and how they actually change the existing provisions?

Mr Cradick: From a practical perspective, officers from EHP undertake inquiries, investigations and site samples from existing sites, and there are processes and protocols that we adhere to to ensure the safety of all of the officers and people assisting the officers. The changes brought about in this bill are to expand when an officer can go onto the site because historically, but for by invitation or agreement, once the EA is no longer applying to a site—for example, if an environmental authority is disclaimed by liquidators—we lose a lot of the general powers in the act to go onto the site and to conduct investigations, short of an emergency. That is what this bill does to the scope of when we can have access. So far as practical access is concerned, it will be safety first, of course, but business as usual.

Mr MADDEN: I want to clarify a few other things. Is the scope of this bill meant to cover gravel quarries, key resource areas or hard rock quarries? Is it possible that the scope of this bill could cover those operations?

Mr Robson: Yes, if they have obligations under the EP Act—and I think in those circumstances there may be an environmental authority in place. Talking about quarries—

Mr MADDEN: Key resource areas I am talking about—hard rock quarries and gravel quarries.

Mr Robson: Sure. I know DNRM is also involved in the arrangements for permitting around those activities, so I might just clarify my remarks in discussion with them. The short answer is yes. If there is a general environmental duty or an environmental authority held, the answer is yes, because it is about the obligations that exist under the act.

Mr BENNETT: My understanding is that ERAs could be something like a feedlot with environmental obligations that could be captured. Anything that has an environmental relevant activity is captured here as well. That is my understanding.

Mr Robson: There are ERAs, environmentally relevant activities. EPOs can also be issued with respect to the general environmental duty. In terms of the department's actions and activities, it is generally the case that we would be looking at who is the holder of an environmental authority.

Mr BENNETT: Under a regulated activity though? Everyone that you have issued an environmental relevant activity would need some licence to operate and could be captured under this legislation?

Mr Robson: Yes, where they are a licence holder or an environmental authority holder.

Mr BENNETT: That could be a car yard undertaking spraying activities or something like that—they have ERAs, haven't they?—or where they have a wash-down bay or something. It could be a bad example, but it could be broader than mining.

Mr Robson: I will try to clarify that point with you. That might be helpful. The reason I do not want to be too definitive in answering your question is the extent of activities to which ERAs apply. Let me consider the example you give. I know you were just using it as an example, but it might be helpful if we give a bit more of an explanation to you with respect to its application to EA holders and activities that are considered environmentally relevant activities.

Mr MADDEN: I take this opportunity to deal with two specific situations that were addressed by two of our submitters that do not appear to be caught by section 363AB. I just wanted to confirm that that is the case, that they are not caught by section 363AB. The first one was a submission by Thiess contractors who undertake earthworks for mines but do not own mines. Can I confirm that they are not caught by section 363AB when they are simply acting as a contractor?

Mr Robson: The intent of the bill is not to capture contractors. It goes back to section 363AB(4)(f) where we talk about the extent to which dealings between a person and a company are at arms-length or for the purpose of providing professional advice et cetera. There are considerations that the administering authority would go through in determining that relevant person activity. It is very difficult for the department to give a specific answer. We have not had the chance to review the particular circumstances that the witnesses were referring to earlier. I would point out that the effect of those provisions, particularly where we are talking about the arms-length relationship and for the purpose of providing professional advice like contractors, is that those sorts of considerations become the relevant considerations in making that determination.

Mr MADDEN: What complicates paragraph (f) is that it links back to subsection 4(b)(i) and (ii), which says—

(b) whether the person is an executive officer of—

  (i) the first company; or

  (ii) a holding company or other company with a financial interest in the first company;

It does complicate things. If looks quite clear until you link it back to subsection (4)(b)(i) and (ii). Paragraph (f) begins by saying—

(f) the extent to which dealings between the person and a company mentioned in paragraph (b)(i) or (ii) ...

That is what complicates paragraph (f). The reading of it says that to understand paragraph (f) you have to read subsection (4)(b)(i) and (ii), unless I am misinterpreting—

Mr BENNETT: Significant financial benefit too, I would have thought, would be a consideration.

Mr MADDEN: It just complicates it.

Mr Robson: I can try to explain it. The reference to subsection (4)(b)(i) and (ii) is a reference to the company mentioned there. We are talking about going back to the first company or the holding company. You are talking about whether a person, a contractor, has had dealings with the company in question, if I could put it that way. That might be a helpful plain English way of referring to it. We are saying: who are the dealings with? That is why the provision is drafted in that way. We are talking about whether or not a person has a relevant connection to the company in question that has the environmental obligation. We are talking about the extent to which a person has arms-length dealings

or independent commercial dealings, providing professional advice et cetera—all of those activities in in subparagraphs (i) to (iv). The mention of paragraph (b)(i) or (ii) is who are you referring back to in terms of who the relationship is with.

Mr MADDEN: It complicates it again. A fair reading of paragraph (f) means that those words only apply to a person who is an executive officer of the first company or a holding company. It is a very specific person or a group of people. I presume you mean by 'an executive officer' CEOs and financial officers. Is that the definition of an executive officer? I note it is not mentioned in the definition section what an executive officer is.

Mr Robson: It is defined elsewhere in the act.

Mr MADDEN: I just wanted to mention that that does complicate it relying on paragraph (f), that it seems to be limited to situations where you have paragraph (b)(i) and (ii). This carries over to another submission we received from the Australian Institute of Company Directors. When I asked, 'Where in section 363AB do you think company directors fall?' they seemed to suggest subsection (4)(b).

Mr Robson: Just getting back to that section in paragraph (f) where we talk about paragraph (b)(i) and (ii), it is trying to refer back to the relationship between the person and the company in question. Where we talk about the extent of the dealings between the person and a company, it is the company mentioned in that earlier paragraph. It is just trying to talk about which persons or which parties we are referring to in terms of the nature of the dealings. It is trying to get back to the first company or holding companies with a financial interest in the first company. It is trying to refer to what is that person's relationship to the company in question, if I can put it that way.

Mr MADDEN: The first company obviously is the company who owns the mine. The holding company is potentially a company that is a holding company for the mine. That is a pretty limited group, isn't it? That is just two companies. That does not deal with Thiess. Thiess is not the first company or a holding company.

Mr BENNETT: But their relationship, Jim, would be substantial in their financial arrangements with the holding company, wouldn't it? They basically take on the whole mining operation on behalf of the holding company.

Mr MADDEN: Maybe Thiess is a bad example. Imagine if a refrigeration mechanic, a contractor, comes on board and does some work. He is clearly excluded from section 363AB. I think this section should make it clear that he is excluded from the operation of that. I am having difficulty connecting subsection (4)(b)(i) and (ii) with paragraph (f). I just think the drafting could be clearer.

Mr BENNETT: I agree.

Mr MADDEN: If we are going to rely on that to exclude Thiess potentially, that should be absolutely crystal clear. Thiess had a suggestion with regard to an amendment. The amendment they suggested was that the following words be added—

> ... provided that for the purposes of s 363AB(1), a related person does not include a contractor or service provider engaged by the company or by a related person to provide services or goods to the company or to a related person (including in connection with the relevant activity).

Do you think that some sort of wordsmithing might assist?

Mr Robson: With respect to possible changes to the bill, that is something that government has to consider.

CHAIR: We might stop going backwards and forwards on it. We will include it as part of our recommendation in our report. We could sit here and talk about it all day and help you draft the bill. We will make those recommendations on our say-so.

Mr BENNETT: I want to conclude with this financial assurance. We heard a lot today from different stakeholders about the amount that was held. Is there an amount that is currently held by the department and, if there is, is it site specific and not able to be used as what has been suggested in this Western Australian model of an insurance fund or an industry contributed fund to help fight and combat the fact that mine A here is doing the right thing but mine B gets an EPO and has trouble with that, so we could use that fund. How much money is held in assurances in Queensland? Is the financial assurance site specific?

Mr Robson: It is site specific. With respect to the WA model—obviously I am not an expert on the WA model but I am familiar with it—I would describe it as a pooled fund model. That is not the way financial assurance is applied in Queensland, because it is held for a specific site rather than a pool as such. In terms of what the government holds as financial assurance, in total there is

approximately $7 billion held in financial assurance. Around $5.7 billion is for mining activities and around $1 billion is held for petroleum and gas activities, and there is a small amount, $31 million, for prescribed environmentally relevant activities.

CHAIR: Thank you for assisting us today and for your very informative answers. That brings the time available for the briefing today to a close. I thank you all. For questions that were taken on notice—I think there were a couple that you said you would take on notice—or for any clarifications of answers and comments provided today, we ask that you respond by close of business on 8 April, if possible. We will make the proof transcript of the briefing today available on our website as soon as we are able. I now declare this meeting closed.

Committee adjourned at 3.39 pm