AGRICULTURE AND ENVIRONMENT COMMITTEE

Members present:

Mr GJ Butcher MP (Chair)
Mr AJ Perrett MP
Mrs J Gilbert MP
Mr R Katter MP
Mr JE Madden MP
Dr CAC Rowan MP

Staff present:

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

PUBLIC BRIEFING—INQUIRY INTO THE ENVIRONMENTAL PROTECTION (UNDERGROUND WATER MANAGEMENT) AND OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 30 SEPTEMBER 2016

Brisbane

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Committee met at 10.00 am

CHAIR: I declare open the Agriculture and Environment Committee's public briefing in relation to its inquiry into the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016. I would like to begin by acknowledging the traditional owners of the land on which we gather today. My name is Glenn Butcher MP, and I am the committee chair and the member for Gladstone. With me today are: Mr Tony Perrett, the member for Gympie and deputy chair; Mrs Julieanne Gilbert, the member for Mackay; Mr Rob Katter, the member for Mount Isa, who is on his way; and Mr Jim Madden, the member for Ipswich West. Today Dr Christian Rowan, the member for Moggill, is sitting in with us. Dr Rowan has been appointed to the committee for today's hearing under standing order 202 due to the inability of Ted Sorensen, the member for Hervey Bay, to attend.

The bill that we are examining today was introduced into the parliament on 13 September 2016 by the Hon. Steven Miles MP, Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef. The committee is required to report to the parliament on 25 October 2016. The committee's report will help the parliament when it considers whether the bill should be passed. I remind everyone that the bill is not law until it has been passed by the parliament.

I remind those present and watching via the website today that we are calling for submissions on the bill until Friday, 7 October 2016. The submissions which are accepted by the committee will be published on the committee's inquiry web page. I remind those present that these proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard I remind members of the public that under standing orders the public may not participate in proceedings and may be admitted to, or excluded from, the hearing at the discretion of the committee at any time.

Hansard is making a transcript of the proceedings which we intend to make available this afternoon on our website. Those here today should note that the media may be present, so it is possible that you may be filmed or photographed. Today the committee will be briefed by officers from the Department of Environment and Heritage Protection and the Department of Natural Resources and Mines. I welcome Ms Leanne Barbeler, Mr Darren Moor, Mr Saji Joseph, Mr Laurie Hodgman and Ms Deborah Brennan. I invite you to make an opening statement.

BARBELER, Ms Leanne, Acting Executive Director, Water Policy, Policy and Program Support, Department of Natural Resources and Mines

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

CHAMBERS, Ms Catherine, Acting Manager, Heritage, Department of Environment and Heritage Protection

HODGMAN, Mr Laurie, Acting Executive Director, Strategic Environment and Waste Policy, Department of Environment and Heritage Protection

JOSEPH, Mr Saji, Director, Strategic Water Programs, Department of Natural Resources and Mines

MOOR, Mr Darren, Executive Director, Central Region, Department of Natural Resources and Mines

Mr Hodgman: Today I will outline the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016, which I will refer to as the bill, for the committee's consideration. This bill primarily makes changes to the Environmental Protection Act and to the Water Act 2000. My colleagues from the Department of Natural Resources and Mines are here today to answer any questions the committee may have concerning how the bill affects the legislation and procedures administered in their department.

I will begin by providing a brief overview of the bill in the context of relevant water reform legislation that has either not yet commenced or is currently before the House. The bill aims to complement the framework for underground water management that was first amended by the Water Reform and Other Legislation Amendment Act 2014—known as WROLA—then subsequently amended by the Water Legislation Amendment Bill in 2016. During the committee inquiries for the bill for WROLA and the WLA bill, stakeholders raised concerns in relation to the impacts of underground water rights on both the environment and other water users, but primarily agricultural users. Stakeholders also raised concerns in relation to deficiencies in the make-good arrangements under the Water Act, so this bill addresses both of those concerns, with tailored amendments to existing obligations and processes.

In terms of timing, it is desirable that the committee consider the bill before the automatic commencement of the WROLA provisions on 6 December later this year, as the bill makes important amendments to this act. It is intended that the bill be debated in the same sitting as the WLA bill.

The bill has been drafted to allow the government to deliver its policy which reflects the 2015 election commitment. There are essentially three key features. The bill proposes to: better manage environmental impacts of groundwater take by the mining industry; strengthen protection for farmers and other rural landholders in negotiating make-good agreements with the resources industry; and provide for a separate water licensing process for advanced mining projects. I will discuss the first two elements in more detail before handing over to my DNRM colleagues to explain the licensing process for advanced mining projects.

In terms of managing the environmental impacts of groundwater take, the bill proposes to achieve this in two ways. Firstly, the bill amends the Environmental Protection Act to strengthen the assessment undertaken as part of an environmental authority application. The bill inserts a new section 126A to require particular resource activities to provide information about predicted impacts on groundwater environmental values along with strategies for avoiding, mitigating or managing the particular impacts as part of the environmental authority application. The bill inserts an equivalent provision for amendment applications if the proposed amendment involves changes to the exercise of underground water rights. The new information requirements ensure that the environmental impacts of the exercise of underground water rights by mining and petroleum tenure holders are appropriately assessed at the application stage. Secondly, the bill provides for improved environmental oversight during the operational phase of mining operations by drawing a clear link between the underground water impact reports performed under the Water Act and the requirements of the environmental authority.

Essentially, the bill modifies the existing underground water impact report process in the Water Act to require the reports to include an assessment of actual against predicted environmental impacts of taking groundwater and, if relevant, to update predictions about future impacts. These modelling exercises are rarely perfect, so the bill allows for adjustments to be made as more accurate information concerning the types of impacts on the volume of water required to be taken becomes available. The amendments also include a power in the EPA Act to amend the conditions of an environmental authority in response to the contents of an underground water impact report. This power is equivalent to the existing EP Act power for petroleum activities and will ensure that there is sufficient information to allow ongoing adaptive management of groundwater impacts from particular mining activities.

With regard to impacts on landholders, the bill amends the make-good framework in chapter 3 to strengthen protection for farmers and other rural landholders and redress an imbalance in negotiating make-good agreements with the resources industry. This was something that was raised in submissions to the parliamentary committee inquiries into both WROLA and the WLA bill. The bill addresses stakeholder concerns by: extending make-good obligations to bores impaired by free gas during coal seam production; clarifying that make-good obligations arise where the exercise of underground water rights is the likely cause of the impairment, even if there is some scientific uncertainty; providing a cooling-off period for make-good arrangements under the Water Act; and finally, requiring resource companies to bear the costs of any alternative dispute resolution process and to pay the landholder's reasonable costs in engaging a hydrogeologist for expert advice in negotiating a make-good agreement.

As I mentioned earlier, the bill provides for a separate water licensing process for advanced mining projects by including transitional arrangements in the Mineral Resources Act and the Water Act. Before I hand over to Leanne to provide more details on that, I will just point out that the bill also makes unrelated amendments to the EP Act to provide consistency in the administrative arrangements for environmental authority applications so that older ongoing EA applications or those commenced prior to 2013 will be handled in the same way as those processed since then.

There are some small amendments to the Queensland Heritage Act to correct an earlier oversight to ensure that local government has the capacity to appoint authorised officers in dealing with their responsibilities for local heritage places under that act. I will now hand over to Leanne, and after that I would be happy to take questions.

Ms Barbeler: Thank you for the opportunity to provide the committee with a briefing this morning on the parts of the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016 that are relevant to the Department of Natural Resources and Mines. I will call that bill EPOLA. With me today are officers who have been involved in the development of the bill. At the table with me is Mr Darren Moor, Executive Director of the Central Region for the Department of Natural Resources and Mines. Darren is also the department's water champion. Also with me is Mr Saji Joseph, Director, Strategic Water Programs from the Department of Natural Resources and Mines. As part of my opening statement I will provide some background to the bill, discuss the components that are relevant to the Department of Natural Resources and Mines, and give an outline of the consultation undertaken to inform these components of the bill.

Firstly, I would like to acknowledge the complexity associated with the EPOLA bill with regard to the parts relevant to the Department of Natural Resources and Mines. The EPOLA bill amends the Water Reform and Other Legislation Amendment Act 2014, which I will call WROLA, which in turns amends the Water Act 2000. The WROLA Act was passed on 26 November 2014 by the previous Queensland parliament and received royal assent on 5 December 2014. The WROLA Act included a framework for managing the underground water impacts of the mining sector. However, these provisions of the WROLA Act have not yet commenced, along with other provisions affecting the allocation, planning and use of water.

The WROLA Act was reviewed for consistency with government policy and election commitments. The outcome of the review was that the government has determined the underground water impact management framework for the mining sector is consistent with government policy and election commitments. However, other aspects of the WROLA Act we considered inconsistent and those inconsistencies led to the introduction of Water Legislation Amendment Bill, which I will call the water bill, introduced in November 2015 by the Minister for State Development and Minister for Natural Resources and Mines, Dr Anthony Lynham.

The water bill does not amend the underground water impact management framework in the WROLA Act other than a relatively minor operational change. The water bill has been considered by the Infrastructure, Planning and Natural Resources Committee, and the committee's report has been tabled. The committee could not agree on whether the water bill should be given passage through parliament. Through the committee process for the water bill it was apparent that stakeholder concerns remain about the limited statutory right provided for in the WROLA Act for mining activities to take associated groundwater without the need for an entitlement. This would occur only in those areas where the take of groundwater is regulated under the Water Act. The amendments to the underground water framework proposed through the EPOLA bill are largely in response to concerns raised during parliamentary examination of the water bill. The government chose not to address these concerns through amendments during consideration in detail of the water bill and instead chose to introduce the EPOLA bill to ensure the proposals within it are scrutinised properly through a parliamentary committee process involving public consultation.

The existing Water Act framework requires a mining company to obtain a water licence for the extraction of groundwater in regulated areas, including for the purpose of dewatering a mine. One of the key amendments contained in the WROLA Act was the creation of a limited statutory right for mining activities to take associated groundwater and consequential removal of the need for a water entitlement for these activities in those areas where the take of groundwater is regulated under the Water Act. As you have heard from my colleagues in the Department of Environment and Heritage Protection, the EPOLA bill builds upon the amendments to the underground water impact management framework proposed under the WROLA Act. The EPOLA bill will ensure that a proper and transparent assessment of the potential groundwater impacts of the mining proposal are assessed up-front as part of the environmental authority process in advance of an environmental authority and a mining lease being granted.

This leaves some mines that have already significantly advanced in their environmental authority approvals and mining tenure approvals and will not be assessed through the strengthened environmental assessment process in the EPOLA bill and also have not yet secured a water licence to authorise the take of groundwater for mine dewatering purposes. Some stakeholders have argued that these advanced mining projects should be required to secure a water licence for the extraction of associated groundwater for their authorised activities in groundwater regulated areas. They argue

that this is required to meet community expectations and that impacts on the environment and other groundwater users would be appropriately assessed in a process which provided the opportunity for public submissions and third-party appeals. To address these concerns the EPOLA bill includes provisions for advanced mining projects which include mines that have already obtained or applied for an environmental authority and a mining tenure to obtain an associated water licence if dewatering will be required in a groundwater regulated area.

I will now provide the committee with a little more detail on the key aspects of these transitional provisions. The EPOLA bill proposes to amend the WROLA Act to provide a separate associated water licensing process for these advanced mining projects in the Mineral Resources Act and the Water Act in which the decision for granting a licence will be set in the context of impact management and assessed against criteria including the impacts on natural ecosystems, existing water entitlements and public submissions. This is consistent with the purpose that applies to chapter 3 of the Water Act, which relates to the management of impacts on underground water by the recourses sector. It differs from the current water licensing process, which is assessed in the context of sustainable management and the relevant water resource plan.

The proposed provisions will adopt the process elements for water licensing, including public submission and rights of appeal, and align it with the policy intent and purpose of the underground water impact management framework under chapter 3 of the Water Act. The associated water licence process will strengthen the assessment framework for advanced mining projects by requiring public notification and allowing submissions on the groundwater impacts associated with these projects by ensuring that a decision-maker could refuse an application if the groundwater take associated with these projects is found to have unacceptable impacts on the environment—for example, natural ecosystems, water bodies and coastal areas—or unacceptable impacts on other water users. It will also provide an opportunity for merit based appeal by third parties and it will provide a transparent process and award an entitlement instrument.

Importantly, without these transitional amendments advanced mining projects would receive a limited statutory right to associated groundwater without a thorough up-front assessment of the consequences. The transitional provisions link to the general make-good obligations under chapter 3 of the Water Act and do not detract from a mining project being called in to the broader requirements of the chapter 3 framework based on impact management considerations. The transitional provisions also do not prevent a cumulative management area from being declared. The associated water licence process provides the opportunity for third-party appeals even if a project is called in to the cumulative management framework. Accordingly, the transitional provisions create a pathway for the mining sector in transitioning from the current framework under chapter 2 of the Water Act into the future arrangements for addressing resource sector impacts on groundwater resources under the WROLA Act.

The department's Water Engagement Forum has been the primary forum for stakeholder consultation on underground water impact management matters for several years now. The forum includes representatives from a range of stakeholder groups covering conservation, mining, petroleum and gas, local government, water service providers, irrigation, agriculture, economic, catchment management and fisheries interests. A forum meeting was held on 6 September 2016 which focused on the proposed policies that ultimately informed the development of the EPOLA bill's provisions for an associated water licensing process. Subsequent discussions were undertaken with conservation, agriculture and resource sector groups as well as some mining companies. Feedback provided through this consultation informed the drafting of the EPOLA bill. An exposure draft of the EPOLA bill relating to the associated water licensing provisions was provided to forum members in advance of the bill's introduction, and further stakeholder feedback during this time was incorporated before introduction. I would like to recognise the commitment of Water Engagement Forum members to engage in discussions about water reform, and I would like to thank the members for their input into the EPOLA bill.

In order to give proper effect to these changes, as Laurie has mentioned earlier, it is intended that the water bill and the EPOLA bill be debated prior to the automatic commencement of the WROLA Act on 6 December 20106 so that the framework for managing underground water impacts of the resources sector is consistent with government policy intent. I am happy to take questions.

CHAIR: Can you explain what dewatering of mines mean? I know that this is all new to a few members. Can you explain dewatering of mines and how it impacts on groundwater?

Ms Barbeler: The proposed chapter 3 framework in WROLA recognises that to operate a mine safely it is required to dewater the aquifers that intersect with the mining operations. That means that the water needs to be removed from those intersecting aquifers for the purposes of extracting the resource.

CHAIR: I recall hearing recently from AgForce in relation to underground gas withdrawal. Does this bill have any impact on distances from farms, properties et cetera, or is that separate to what is contained in WROLA?

Ms Barbeler: This bill does not change any of the vicinity or location requirements.

CHAIR: It does not address any of the distances? I heard in a news story there were concerns that they were still too close to houses and they believed the bill did not go far enough to address that. There are no changes to the distances at all in the bill?

Ms Barbeler: There are no changes in our part of the bill. Certainly for a mine that falls into the associated water licence requirements there will be an appropriate assessment of the impacts of that mining activity which could result in movement of where the extraction activities occur. Certainly it would take vicinity into account. It is not specifically addressed in the provisions, but an associated water licence could look at those matters.

Mr PERRETT: Thank you for coming in today. I have some questions regarding associated water licences and how they interface with existing approvals. Perhaps you could explain how that is going to work where there are existing approvals in place. I assume there would have been a rigorous and robust assessment done for those approvals, so how will this affect the ongoing operations of existing mines?

Ms Barbeler: Do you mean approvals such as an environmental authority or a mining tenure?

Mr PERRETT: Yes.

Ms Barbeler: The first point I would make is that these associated water licences are only required if a mining company has already applied for or obtained an environmental authority and/or a mining tenure, so we have a mine that already has some of their approvals. What the associated water licence would do is provide a proper robust assessment of the impacts on groundwater of that particular mining operation. The reason for that is that we acknowledge that to varying degrees these mines that fit in this cohort of mines—and they are what we are calling advanced mining proposals—have already been through some of these impact assessments, so we absolutely acknowledge that, but it is to varying degrees and we cannot always be sure that that impact assessment was done in the context of the take of groundwater. The previous impact management assessments have been done under, for example, the Environmental Protection Act, which is a different context. What the interaction would be there is that the mine that may already be part of the way through their approvals process would then apply for an associated water licence and then it would proceed through that process. As I have mentioned, there is a public notice requirement with submissions and potential third-party appeals.

Mr PERRETT: What is the process with those environmental authorities that have been granted? I would assume that they would be fairly rigorous and robust in the first instance and that all available data the department would consider appropriate would be assessed. That is why I am trying to work out where this associated water licence now fits into what ordinarily I believe the department should perhaps have done in the provision of providing that environmental authority.

Ms Barbeler: I might make one comment and then hand to my EHP colleagues to talk about the environmental authority process. In the first instance I will say that any assessment that has been done relating to groundwater impacts as a part of those earlier approvals is very much in the legislation. It is very clear that those environmental assessments will be taken into account as a part of the associated water licence process. We have a very specific criteria that says that, if that assessment has been done, that is to be provided with the licence application so it does not have to be done again. That is my part of the answer. I will see if our colleagues at EHP are able to talk to that.

Mr PERRETT: I am keen to know about the process for the environmental authority being granted.

Ms Brennan: Some of these advanced mining projects have been through an EIS process which has subsequently resulted in an environmental authority or they are part of the way through their application for an environmental authority. The EIS process will have typically included some assessment of the environmental impacts associated with groundwater take, and certainly the environmental authority application includes a variety of impacts on environmental values which can include impacts associated with groundwater take. However, all of those assessments are done under the law as it stands currently, which means they were done on the assumption that a water licence would typically be required for many of these mines if they are located in regulated areas. The assumption was there would be a further assessment of the groundwater take.

The other thing about the Environmental Protection Act is that we focus on environmental impacts. We would not be focusing on impacts on other water users, so we would not be focusing on impacts on other bores and other water users would who rely on that resource.

Mr PERRETT: I assume that generally these sorts of projects go through the Coordinator-General?

Ms Brennan: Some of them would; some of them would go through an EIS under the Environmental Protection Act.

Mr PERRETT: Going back to the associated water licence and the processes that are involved with that, what are the time frames and possibilities for delays? It seems to be a general concern within the mining industry that they get over one hurdle but then there is a further hurdle to try to negotiate. I have some questions regarding time frames and possible delays, and I also want to talk about variations to approvals after they have been granted.

Mr Moor: The most thorough way to answer the question is to pick up on the comment that was made by my colleagues from EHP before around the fact that the law as it stands today requires these companies to go through a water licensing process. When you look at the proposal for an associated water licence relative to that, it is consistent with that. The department will follow exactly the same process in terms of there being a licence, there being third-party submissions and the potential for an appeal process on the back of that. That is a consistent process. We are just tagging that off the chapter 3 impact management provisions rather than off the sustainable management components that are currently in chapter 2.

Mr PERRETT: Is the proposal to approve an associated water licence a fairly quick process or is that determined by the information that is required by the department and then potentially pushed out for months? I am not suggesting years, but does this associated water licence approval possibly delay these projects?

Mr Moor: The key component is the process of seeking submissions and responding to those submissions. Therefore, it is difficult for me to answer your question around whether that process is three months or longer. I think that it would be unusual for it to be shorter than that when you have a statutory process around how long we leave the submission process open for. Then, of course, we need to give thorough consideration to those submissions before we start framing a potential decision. As I said before, that is consistent with the process that is currently in place and operating now.

Mr PERRETT: Assuming that these companies tick all the boxes and get their relevant approvals for that, there is now going to be a provision for further amendments beyond that. Is that what I am picking up in respect of the variations to the associated water licence? In other words, the department may say that there are some factors that they were not aware of at the time that may then provide some challenges to those companies down the track and they make investments based on the information to hand. How are the variations going to work? What is the process that you would undertake to vary a licence?

Ms Barbeler: I can take the first part of that. It is a full and proper assessment of the impacts of the take of groundwater.

Mr PERRETT: That is up-front?

Ms Barbeler: That is part of the associated water licensing process, noting that some assessment based on environmental impacts has been already done in the previous assessments. This associated water licence is a full and proper assessment of the impacts, but it is done in the context of impact management. It recognises that this is an authorisation for the extraction of associated water in recognition that there will be impacts and in recognition that they will be managed as part of the granting of the associated water licence. There might be conditions on the water licence that manage the way that that water is extracted. That could lead to, as we were talking about, vicinity issues and thinking about impacts on surrounding water users, for example.

Mr PERRETT: That is part of the initial approval?

Ms Barbeler: Yes.

Mr PERRETT: I understand that there is the ability to then be able to vary the conditions of a licence further down the track. Is that correct or incorrect?

Mr Hodgman: Do you mean to the environmental authority?

Mr PERRETT: Yes, the environmental authority that links back into the water licence.

Mr Hodgman: Yes. I think I mentioned that, if an underground water impact report showed that there were changes in the potential impacts, or in some significant way, then there is the power in the act to amend the conditions of the environmental authority, if it were necessary, to change the

conditions. That is an existing power in the EP Act generally speaking. In this case, it is to specifically recognise that, if that is identified in an underground water report then that is also a ground to—is that correct?

Ms Brennan: That is correct.

Mr PERRETT: Can you give a practical example of that?

Mr Hodgman: I am not really sure, to be honest.

Ms Brennan: As a very speculative example, if the groundwater model that they were relying on initially proved to be somewhat inaccurate and they found themselves to be impacting on springs that they were not potentially expecting to impact the first time around, potentially any of the conditions that relate to how they manage that spring and the water drawdown associated with that spring might be varied requiring them to add water to the springs that they had not anticipated that they would be impacting the first time around. That would be an example.

Mr PERRETT: Thanks.

CHAIR: As a supplementary to Tony's line of questioning, does this make the process less vulnerable to appeals by individual groups? Does it go from three avenues of appeal to two, because the water part of the bill is now being dealt with within the first part of applying for licences? Is that right?

Ms Barbeler: For mining companies that fall into the amendments that the Environmental and Heritage Protection portfolio are leading, yes, it does remove one appeal process and that is because the WROLA sets the statutory right for those ones. For the associated water licence mining companies, there is an appeal right.

CHAIR: For that one?

Ms Barbeler: That continues.

CHAIR: Nothing changes with that?

Ms Barbeler: For those advanced mining companies, yes.

CHAIR: Thank you.

Mrs GILBERT: I come from Mackay and there is a lot of chatter about this bill. I want to be clear when I go back to my community. Some people who are associated with mining leases and who have gone through all of their primary authorisations are saying that they have to start again—that everything that they have done previously is now null and void. From what I was hearing from your presentation, that is not the case.

Ms Barbeler: That is not the case.

Mrs GILBERT: I just needed to clear that up. Thank you.

Mr Moor: I can perhaps build on that, if you like?

Mrs GILBERT: Yes.

Mr Moor: From a really practical perspective, for someone who is in the space of requiring an associated water licence, much of the material that they would either be required to develop for the current framework or supplement with the information that they have already put together for those primary authorities that you have already mentioned is, of course, extremely relevant and we would expect to be seeing that material presented in this context. They will not be required to start again.

Dr ROWAN: I thank the representatives of the Department of Environment and Heritage Protection and the Department Natural Resources and Mines for their presentation. It is greatly appreciated. I wanted to ask about the environmental assessment impact processes and whether these new processes in relation to groundwater are going to be factored into the financial assurance processes in relation to the chain of responsibility legislation. In other words, are these additional requirements that are being assessed from an environmental perspective going to potentially link in to the financial quantum that resources companies have to allocate under the chain of responsibility legislation? That is the first question. The follow-on question is, if that is the case, has a formula been devised by either departments to determine what the financial quantum will be as an additional requirement?

Mr Hodgman: The additional requirements for the environmental authority assessment are about the assessment of that application before the project starts, but the calculation of financial assurance is done in accordance with the calculator, which looks at the specific disturbance that is going to happen on the site. It would depend really on whether the additional assessment indicated that it would affect the amount of disturbance on the site. The calculation of FA is not directly related to the additional assessment; it depends on the design and the layout of the mine as to how the

calculator arrives at the amount of FA. That is also a little bit separate to the chain of responsibility amendments. Those amendments were in relation to the power to issue an environmental protection order. That is quite a specific circumstance. That does not relate to FA, in the broader sense, to most applications.

Dr ROWAN: Depending upon the individual circumstances, there could be the requirement of an additional financial contribution under the current existing calculator structure? There is not an additional factoring in of that as a result of this legislation?

Mr Hodgman: No, not specifically, because the financial assurance calculation relates to the disturbance on the site for areas that would need rehabilitation eventually. This assessment is looking at what the potential impacts on underground water might be. For example, the assessment might change the design of the mine in some way in terms of its layout and footprint. That may affect the calculation, but it would not necessarily be an increase; it might just be a change in the design details of the mine.

Dr ROWAN: In relation to staffing requirements within either the Department of Natural Resources and Mines or the Department of Environment and Heritage Protection, are there any additional staffing requirements in relation to the administration of this bill if it were implemented? Has there been any work done to date on the impacts, or the additional requirements, or can it be handled within the current resourcing allocated in both departments?

Mr Hodgman: We think that it should be able to be absorbed within our existing processes. The Environmental Protection Act assessment process, in fact, already addresses these kinds of impacts, but the amendments will make that assessment. It will be more specific about the information required in an application. It should improve the quality of the assessment, but that assessment always had to take place in any case by staff in the department. It should assist that process, but we do not think that it should—

Mr MADDEN: My question relates to the general public perception that mines have superior rights to groundwater as opposed to graziers and farmers. Is there any basis to that perception? The second question is: what does the bill do to address any superior rights that miners have?

Ms Barbeler: There is a perception of that nature and there is a combination of responses to that. The WROLA provides a statutory right to take water for mines. It is a limited statutory right and is for the purpose of authorising that extraction of associated water in recognition that the mining companies have to create a safe environment for their workers. It is a really important point. It is a very different circumstance. The limited statutory right that is established under WROLA does not seek to allocate water for consumptive purpose; it allows for the extraction to create a safe environment. That is an important distinction.

The associated water licence provision part of this EPOLA bill recognises that, where a mining company has started a process under the assumption that they have to get a water licence in recognition of that, that is what this continues to do. It meets the community's expectations in terms of ensuring that they get that opportunity to provide a submission around the impact of that groundwater take.

Mr MADDEN: You mentioned dewatering aquifers. Is that the same as depressurising an aquifer?

Mr Joseph: Dewatering is essentially the removal of underground water from, say, an open mine pit, as Leanne has pointed out, to ensure the safe operation of the mine. For all extraction, mineworkers need to work in a safe environment. That is a typical example as it relates to a coalmine. The member touched on depressurising. That is typical of the extraction of coal seam gas, for example. In coal seams, water is being stored under pressure. Unless the petroleum tenure holder depressurises the coal measures, the gas will not come out of the coal seams. That is typical and that is analogous to what is happening in the petroleum world compared to the dewatering of a mine pit in the mining world. Under the WROLA framework, both types of incidental take are incidental to the extraction of the resource and they are classified under the WROLA as associated take.

Mr MADDEN: When they talk about the Liverpool Plains and that the pit proposed there will go below the aquifer and they are saying that that is depressurising the aquifer, they should really talk about dewatering the aquifer. It is a misuse of terminology, isn't it?

Ms Joseph: That is correct.

Mr MADDEN: Thanks for that explanation. That was excellent.

CHAIR: I have a question about gassy wells. Say someone has a bore and a gas company wants to put some holes in the ground. What is the current situation with landowners who have gassy bores or wells compared to going forward with this bill? Is there any change? There was mention of engineers and them being responsible for payment and all of that sort of thing. Can you clarify where that is at?

Ms Brennan: At the moment the right to what is called make good, which is a form of compensation for people who have bores that are impacted by coal seam gas extraction, is limited to impacts based on water drawdowns, so a reduction in the level of water. What we have added in this bill is a right to compensation also due to impacts from what we call free gas. Free gas is what happens when they have depressurised a coal seam for coal seam gas purposes and some of the gas instead of going up the coal seam gas company's production well ends up in somebody's water bore. People with a water bore affected by free gas in that way will have a similar right to negotiate a make-good agreement with the relevant resource company under the amendments proposed in the bill. Obviously there are going to be practical implications around distinguishing between bores that are gassy already and bores that become gassy because of coal seam gas activities, but that will be a matter for the bore assessment, which is also an existing process under the act.

CHAIR: Under this bill, the companies are then responsible for proving that?

Ms Brennan: That is the purpose of the bore assessment in the bill. Under the bill, if the department suspects that a bore is affected by free gas, it will be able to direct a tenure holder to undertake a bore assessment. A bore assessment will look at whether there is gas in the bore, what the history was with the bore—that kind of thing—and determine whether it is affected by free gas which is the result of the coal seam gas activities or whether it is just a naturally gassy bore. That then feeds into the negotiation of the make-good agreement.

CHAIR: Mr Hodgman, you mentioned in your statement about heritage oversight in the previous bill. You mentioned heritage places. Can you explain heritage places as part of what you are looking at as they relate to this bill?

Mr Hodgman: I will try to explain briefly. I might defer to a colleague if I come unstuck. The Queensland Heritage Act has a separate state list and it also provides for heritage listing at a local level by a local government, and local government has responsibility for managing and in a planning sense putting parameters around how those places are dealt with. To do that, the legislation should have the power to delegate to a local government to have authorised officers who, in an enforcement sense, can actually go out and do what they have been given the power to do under the act. That was omitted from the original changes to the Heritage Act. It is really just to correct that. For those responsibilities that local government have in relation to local heritage places, they can have authorised officers that are empowered to do the things under the act rather than the state being involved because those responsibilities rest with local government.

CHAIR: For a simple person, can you explain what a heritage place is?

Mr Hodgman: It is a property or place that has been listed as having recognised heritage values.

CHAIR: Could it be an old cemetery, like a property owner's cemetery or something like that? Is that what you would call a heritage place? I am trying to get my head around what it is.

Mr Hodgman: Is it something you could help with, Catherine?

Ms Chambers: There are state heritage places and they are places entered in the Queensland Heritage Register. Those are places that have been determined by the Queensland Heritage Council to meet the threshold in terms of having state level significance. Local heritage places are in locally significant places. A place is not constrained in terms of what it is—whether it is a structure, a building, a park, a garden, a cemetery.

CHAIR: I am trying to get my head around how this fits in with the water bill. I know what heritage buildings are in cities. I am trying to work out what a heritage place is where a potential mine is to be built and what impact that would have.

Ms Chambers: The changes in the Heritage Act do not have any relationship with the other changes in the bill. They are literally just an opportunity to correct an earlier oversight.

CHAIR: It allows local government—

Ms Chambers: It allows local government to appoint local council or local government employees as authorised persons to then go out and carry out compliance and enforcement activities in relation to local heritage places and the local heritage provisions in the Heritage Act.

CHAIR: Thank you for that feedback.

Mr PERRETT: This question is probably to Ms Barbeler again. This is to deal with the perception between agriculture and mines. Mines having unfettered access to water tends to be the perception that is there. In a broader sense of the regulatory environment around underground water for agriculture—be it irrigation, be it stock water, maybe in relation to the artesian basin and tapping into that—what is the process for licensing requirements generally within the agriculture industry?

Ms Barbeler: The process depends whether or not the area is a regulated groundwater area. If it is a regulated groundwater area, that could be regulated through either a water resource plan or the Water Regulation. In the event that it is regulated, then the process would be to either apply for a water licence that meets the requirements of the Water Regulation or the water plan and go through the water licensing process, which means a public notice, submissions and then a decision, and then anyone who is an interested party, someone who has made a submission or the applicant could then take a third-party appeal to the Land Court. That is in the event that there is not an unallocated water framework set up.

In the event that there is an unallocated water framework set up in the water plan, basically at a commercial level it means that, when the unallocated water volume is released by the chief executive of our department and the proposed water user would put a commercial tender in to purchase that water, there is not a public notice, submission or appeal right process. That is actually a commercial process where they competitively bid for the water. In the event that there is no regulation of that groundwater, there is no requirement to apply for a licence.

Mr PERRETT: Unlimited amounts of water can be taken in an unregulated area.

Ms Barbeler: For anyone. It does not matter who the party is. It is unregulated.

Mr PERRETT: Be it agriculture or mining.

Ms Barbeler: Yes, that is right.

Mr PERRETT: They can access that water.

Ms Barbeler: It is consistent.

Mr PERRETT: Thank you for that. I just wanted that clarity. I had some basic understanding around it, but there are always perceptions around these things about who should get water and who should not and the vagaries that go with that.

I will use New Hope as an example. I do not know this 100 per cent, but I understand that they access recycled water primarily for use at their mine at Acland. Will the associated water licence affect a company such as that where they are accessing water that is from a local government area, presumably under an arrangement that they have directly with them? How does that interface with this proposed legislation?

Ms Barbeler: I cannot answer the question in relation to recycled water, but I will talk to how these requirements apply to that particular mine. Certainly an expansion such as what is happening in the new Acland space would be required to apply for an associated water licence. They are caught. That is because they are part way through their approvals process. Already somewhere in there they have applied for or obtained an environmental authority or a mining tenure but they have not got their water licence for that expansion part, so they are caught. That is the first threshold question. I might hand to Darren to see if he can add to that.

Mr Moor: There is probably not a great deal that I can add to that other than to say that your initial question about recycled water is unrelated to the issue around the dewatering question or associated water licence. I do not think I can add a great deal to that. That is accurate around where they are up to.

Mr PERRETT: I was interested to see whether there was any further flow-on effect down the chain with respect to access to recycled water. I know there are certain provisions that govern that. A commercial arrangement is presumably in place in terms of their access to that. Are there any considerations under this bill that would affect that sort of arrangement dealing with a local government?

Mr Moor: No. I cannot see why those two things would interface in any way.

Mr MADDEN: This is probably a question for Ms Brennan. You mentioned before about the problem with free gas in bores. I presume it is a bad thing. The second thing is that you also mentioned make-good agreements. Assuming that one bore is a bad bore and cannot be used, what is a typical make-good agreement?

Ms Brennan: Initially, yes, free gas is a bad thing. It can cause impairment to the bore infrastructure itself or it can cause health and safety risks such as explosion risk depending on the amount of gas that builds up. The current make-good requirement is a negotiation between the parties. Typically they are kept confidential, so I do not necessarily have a lot of information of what might be included. What I hear anecdotally is that it would be things like, for example, the resource company agreeing to drill a new bore for the landholder into a different formation which will not be affected by their activities. It might be providing them with replacement water by trucking it in, for example, if there is no water around. The idea of the framework is that it is quite flexible so that the make-good obligations reflect the actual impact on the landholder of having their bore dry up or otherwise impacted. With free gas, it might be, for example, putting a bore into a formation that is not going to be as affected by gas, but it would be a matter for the parties to decide what was appropriate in the circumstances.

Mr MADDEN: I have a general question for all of you. It is a requirement with all legislation that the bill is consistent with fundamental legislative principles. Could you confirm that this bill is consistent with fundamental legislative principles?

Mr Hodgman: Yes, I can.

Dr ROWAN: I have two further questions. Following on from the member for Ipswich around free gas in bores, who is monitoring, evaluating and reporting on that and is there a sense that there is a prevalence of occurrence happening in Queensland in relation to that?

Ms Brennan: At the moment it is more of an emerging issue, rather than a very prevalent issue. It is something that is expected to become more common as the coal seams become more depressurised as the water is taken out as the CSG activities become more mature. There have been a couple of bore assessments that were done at the direction of the department where it was found that the bores were actually not impacted by water drawdown but were impacted by free gas, but that is a small number of occasions so far.

Dr ROWAN: Given that it is an emerging issue, is there a strategy that has been developed to have a formal monitoring, evaluation and reporting process in relation to that by the department?

Ms Brennan: That is something of a tricky issue. We are talking about it, but we are hearing that baseline assessments, for example, may not be particularly useful for the free gas issue because whether a bore is affected by gas will depend on a number of issues including atmospheric pressure at the time and the amount of water in the particular formation. We are having conversations and the industry has given us some feedback already on how we might approach that in terms of an implementation strategy.

Dr ROWAN: I wanted to come back to the Water Engagement Forum and the associated consultation and discussion. Is it anticipated that that will be an ongoing process? As a supplementary question, which I am sure the Department of Environment and Heritage Protection might be able to answer, how are the environmental outcome metrics of the proposed legislation to be evaluated and reported on?

Ms Barbeler: The Water Engagement Forum is absolutely a forum that will continue and regularly touch base with stakeholders on reform matters.

CHAIR: On that, as a supplementary to the doctor's question, do they take minutes from those forums and are they readily available for people to read?

Ms Barbeler: There are outcomes documented. However, many of the matters at the time they are discussed are done in confidence because many of them are preliminary to government consideration and introduction of a bill to parliament. They are subject to some confidential caveats, so they are not made publicly available.

CHAIR: There would be no information that comes from feedback from any of the forums or meetings that they have that the committee could find useful in reviewing this bill?

Ms Barbeler: Certainly, we could have a look at that and get back to the committee, but we would have to filter some of the things that were considered confidential at the time. Certainly, we can report back to the committee if there are some matters that we could share.

CHAIR: As part of the feedback from the forums, is there a person who reports? Do they report to you? Who do they report to? I am just trying to get my head around it. What is the sense of a forum if there is no real information that comes out other than in confidence?

Ms Barbeler: The forum is about the department and other departments as well sharing water related reforms and proposals. We will work with the committee, or the forum at the time, and get feedback through. Feedback can happen from the stakeholders in the moment or, on some

occasions—like on this occasion—we are able to provide a draft bill to the forum in confidence. That feedback came back to the department and that was incorporated into the drafting of the EPOLA bill. When the outcomes are drafted following those meetings, they are shared with the members. It is quite internal, but it is a feedback loop that the department really values and relies upon.

Mr Moor: The department would be quite comfortable to provide the terms of reference to the committee, if that would be of use to the committee.

CHAIR: If you could supply that that would be much appreciated.

Dr ROWAN: Sorry, there was a second part to that question around how the environmental outcome metrics of the proposed Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016 are to be evaluated and reported on.

Mr Hodgman: Do you mean as they relate to the environmental authority application process?

Dr ROWAN: Yes, that is correct.

Mr Hodgman: When an environmental authority is issued, that will generally have conditions associated with it, which may include reporting and monitoring requirements in relation to the operations of the activity. We would generally have a compliance and enforcement strategy that is based on risk assessment, essentially. That would seek to follow up and make sure that operators are complying with their environmental authority. If there are specific environmental issues that are raised in the assessment that are regarded as important from that perspective on an ongoing basis, you would expect that the environmental authority would require reporting back to the department by the proponent to address those matters.

Mr KATTER: You mentioned before whether there were assessments made before and after and the make-good obligations. This is a fairly general question. It always seems to me that, when you drill down, some of the science is inconclusive and the effects are difficult to establish, because there was no baseline, particularly in some virgin areas. Is there some concern that that is going to be hard to achieve? When you say, 'Was there gas before or after?', I am sure that there would be big gaps in the data in terms of making comparisons and make-good obligations, which is a critical element of everything that we are talking about. The cynics could always say that the backdoor way for anyone to exploit this legislation is to say, 'It is inconclusive to prove what was there before.' How do you propose to address that?

Ms Brennan: One of the amendments that we have included in the bill is we have slightly changed the language around when impairment will result in a make-good obligation. Currently, the language is that a make-good obligation will arise where there is an impairment because of the exercise of underground water rights which implies, as you have suggested, a high degree of certainty about what the cause was. We have slightly changed the language in the bill to talk about where the relevant activity is likely to be the cause, or a material contributing factor, to the impairment to the bore, which I think really recognises the fact that there may be some uncertainty or there may be some information gaps when you are trying to determine what the cause was without necessarily having a huge amount of baseline information in some cases.

Mr KATTER: Yes. I think that is important, because the allegation is made that all the power sits on one side when you are trying to negotiate those things and, unless you have the exact science to help your side, it is difficult.

Ms Brennan: Absolutely. One of the other things that we have done in the bill is that we have provided for landholders to have access to assistance from a hydrogeologist if necessary to negotiate a make-good obligation and to have that paid for by the resource company. That should also help them understand the baseline and bore assessments and the implications for their property a bit better without having to be out of pocket for those types of expenses.

Mr KATTER: Probably the best case in point to demonstrate the issue that I wanted to bring up is at Coral Creek. There was an allegation that one of the coalminers cut off the water to the creek, which was vital to the operations of the cattle station at Coral Creek but, because the activity was so far upstream and the cattle station owner was not directly affected, he had no access to compensation. My understanding was that there was no legal mechanism for him to be compensated. Does this legislation address that sort of scenario?

Ms Brennan: I do not believe that it would assist there. At the moment, make-good obligations are for bore owners. That is for other people taking groundwater. They are the ones who have the right to compensation or make-good obligations. However, in the environmental authority application process, part of the information that we will need to get once the bill is in effect will be information about likely connectivity to surface waters and likely implications for surface waters. In that case, the

mine would have needed to have predicted in its environmental authority application that it was going to have that kind of impact on the creek. We could potentially deal with that to some extent in environmental authority conditions. That would not give that person a right to compensation.

Mr KATTER: It becomes a judgement call on behalf of the government when that EIS is submitted?

Ms Brennan: Yes. It would reflect the particular circumstances and the predicted environmental consequences of the flow to the particular creek.

CHAIR: There being no further questions, I thank the officers for coming in today. The questions that you answered were quite thorough, which will definitely help in our consideration of this bill. Are there any questions taken on notice?

Mr Moor: The terms of reference.

CHAIR: If you could supply us with the terms of reference by the close of business on Friday, 7 October, that would be much appreciated. I declare this hearing of the Agriculture and Environment Committee now closed.

Committee adjourned at 11.07 am