ECONOMICS AND GOVERNANCE COMMITTEE

Members present:

Mr LP Power MP (Chair)
Mr ST O'Connor MP
Mr DC Janetzki MP
Ms KE Richards MP
Mr RA Stevens MP

Staff present:

Ms T Struber (Acting Committee Secretary)
Ms M Salisbury (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE MINERAL AND ENERGY RESOURCES (FINANCIAL PROVISIONING) BILL 2018

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 28 MARCH 2018

Brisbane

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The committee met at 10.19 am.

CHAIR: Good morning. I declare open the Economics and Governance Committee's public hearing for the committee's inquiry into the Mineral and Energy Resources (Financial Provisioning) Bill 2018. I would like to acknowledge the traditional owners of the land on which we meet.

My name is Linus Power. I am the member for Logan and chair of the committee. With me here this morning are Ray Stevens, the deputy chair and member for Mermaid Beach; Sam O'Connor, the member for Bonney; and we also welcome our special guest, David Janetzki, the member for Toowoomba South, who is attending in place of Dan Purdie, the member for Ninderry, who is unable to attend the hearing this morning. We also have Kim Richards, the member for Redlands.

On 15 February 2018 the Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships, the Hon. Jackie Trad MP, introduced the Mineral and Energy Resources (Financial Provisioning) Bill 2018 into the parliament. The parliament referred the bill to the Economics and Governance Committee for examination with a reporting date of 20 April 2018. The purpose of this hearing is to hear evidence from stakeholders who made submissions as part of the committee's inquiry.

The hearing is a proceeding of the Queensland parliament and is subject to the standing rules and orders of the parliament. Any person may be excluded from the hearing at my discretion or also by order of the committee. The hearing is being recorded and broadcast live on the parliament's website. Media may be present and will be subject to my direction. The media rules are available from the committee staff, if required. All of those present should note that it is possible that you might be filmed or photographed during the proceedings. I ask everyone to turn off mobile phones or switch them to silent.

Only the committee and invited witnesses may participate in the hearing. Witness are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. I would now like to welcome Andrew Drysdale from NRM Regions Queensland.

DRYSDALE, Mr Andrew, Chief Executive Officer, NRM Regions Queensland

CHAIR: Good morning, Andrew. I invite you to make a short opening statement after which committee members may have some questions for you.

Mr Drysdale: Thank you and thank you for the opportunity to present to the committee. I am representing the 14 natural resource management bodies that straddle the Queensland land mass and islands. Those natural resource management bodies are community based organisations. Through a tool called the regional NRM plans they bring together community aspirations in terms of how they want to see their natural resources and environmental resources managed. We try to marry that with the agendas of all tiers of government—federal, state and local. You could say that we work from a position of bottom up and top down.

We made a submission to this review based not so much on the policy area. We feel that we would like to keep our comments to those areas that we have our expertise in. We will let others comment on some of the key policy areas. In terms of the areas that we feel we have an interest in, as I said, we represent the interests of our communities and their aspirations. Three things that communities around Queensland and Australia—and hopefully around the world—value is clean water to drink, clean food to eat and safe environments to play in. From that perspective, we think we can offer a range of expertise. That expertise sits within communities in Queensland where our officers are. Their expertise, particularly in natural resource management, landscape planning, design, monitoring, evaluation and assessment, is a big aspect of that expertise—whether it is assessing the effectiveness of a particular land management activity, the rehabilitation of a stream bank or, in this case, the rehabilitation of a mining site, although I would have to say that we have been very much limited in that area to date. We see that expertise carrying over into that area.

We value our ability to build partnerships and also to facilitate a partnership approach to natural resource management. Some of these are pretty evident. The Healthy Land and Water annual waterways report on Moreton Bay is an example of that. The Fitzroy partnership is a partnership of

the mining industry and governments. It is hosted by the Fitzroy Basin Association, which is one of our NRM bodies. The Fitzroy Basin Association also hosts the Gladstone Healthy Harbour Partnership. They are examples of real-life partnerships that we work in. We would take the same approach if we were involved in primarily the monitoring and assessment of the rehabilitation of mining areas, not so much the designing of what needs to happen around that rehabilitation.

As I said, our presence is statewide. There is not an inch of the state that our members do not cover in one way or another. We have very robust governance established in our 14 NRM bodies. The boards comprise local people but also expertise where we think it is essential to get good governance. We like to think that we are very independent and we play that middle ground. I often joke that we are not green, we are not brown; we are khaki. That is a colour that we are very comfortable with. We are apolitical. As I said earlier, we are there primarily to represent the interests of our communities. I will leave it at that and thank you for the opportunity to present.

Mr STEVENS: Andrew, if as a group you are not green and you are not brown, by the sounds of it you will camouflage. As a body representing natural resource management regions with the government, the community and the industry, do you see the scheme achieving its stated objectives? In particular, do you have concerns that you may eventually be locked out of outcomes through government control in your areas?

Mr Drysdale: I assume you are talking about mine rehabilitation.

Mr STEVENS: Correct.

Mr Drysdale: No, I do not think we are locked out. It is probably a degree of how much we are involved. I gave examples of the Fitzroy Basin Association, where they saw a role that they would try to drive an objective process. It stemmed from the Ensham mine when the big floods came through there. We are rather comfortable with the role that we played in that case but I think there is an added opportunity, because of our presence, to play a greater role.

Our capacity to participate is because of the ongoing vagaries of diminishing budgets, at both the Commonwealth and a state level. That has meant that, at the moment, our capacity is somewhat limited but we could see that that could increase if funding were made available.

Mr STEVENS: That is to the point of my question. This bill will generate additional funding to rehabilitation across the state, yet there is no guarantee that you might be part of that funding. Is there a concern that, eventually, it will become more of a bureaucratic answer rather than involving the regional people in a solution to the rehabilitation?

Mr Drysdale: I am not sure if it will become bureaucratic, but if you empower communities, whether it is through regional bodies or others, to participate in monitoring and building an environment and a landscape that they want and they are comfortable with and they get that ownership then I think that is great outcome. It is a great outcome for the mining industry, because they see some of their dollars going into communities. It is also a great outcome for the local communities who live in that area.

Mr STEVENS: Thank you.

CHAIR: Your submission on page 2 states—

> There are too many examples where poorly rehabilitated areas have resulted in contamination of surrounding land and water.

That is obviously a concern for your membership and the groups that you represent. Can you further expand on some of those examples? Do you think there are provisions in the bill that will help address these problems of past poor rehabilitation or lack of rehabilitation?

Mr Drysdale: As I said, I would like to keep my comments more to our area, but we do support the bill and our submission says that. I talked about the Ensham mine breakout as an example. There is the Lady Annie mine in north-western Queensland. I chair the Lake Eyre Basin Community Advisory Committee and that mine is at the headwaters of the Georgina, which is at the headwaters of the Lake Eyre Basin. A couple of breakouts there have been a major concern to that group and to the Lake Eyre Basin community. There are examples like that. I know this is not about abandoned mines. We do have major concerns around abandoned mines, but that is another discussion and we will be making a submission on that. I am not going to point to any other particular examples, but through our membership I could provide them, no doubt.

Mr O'CONNOR: How do you think the scheme will affect landholders and the community in terms of environmental management?

Mr Drysdale: If it means that we are going to get improved rehabilitation and therefore less likely extreme events—which climate change says that we are going to get—and that means it is going to be a safer environment or landscape for landholders to generate an income from or communities to live in, then it has to be a good thing.

Mr O'CONNOR: Do you think the bill will achieve that?

Mr Drysdale: From my knowledge of it, it will.

CHAIR: There being no further questions, I thank you very much for your participation, Mr Drysdale. If there is anything to follow up with you, we will.

KLAPPER, Mr Martin, Member, Mining and Resources Law Committee, Queensland Law Society

KRULIN, Ms Vanessa, Senior Policy Solicitor, Queensland Law Society

PLUMB, Mr James, Chair, Mining and Resources Law Committee, Queensland Law Society

CHAIR: Good morning and thank you for attending. I invite you to make a short opening statement after which committee members may have some questions for you.

Mr Plumb: We will make two very short ones. Vanessa generally leads off on behalf of the QLS.

Ms Krulin: Thank you for inviting the Queensland Law Society to appear before you today to discuss the Mineral and Energy Resources (Financial Provisioning) Bill 2018. As you most likely know, the society is an independent, apolitical representative body. We are the peak professional body for the state's legal practitioners, and we represent nearly 13,000 of these that we educate, represent and support.

The society would like to commend the Treasury on the consultation sessions it held with key stakeholders prior to the introduction of the bill in 2017. There was, however, very little notice provided prior to the consultation session at which the draft legislation was to be discussed and then only a matter of days to review and develop a submission on that draft.

We raised this with the committee to escalate our concern with the time frame which has been allowed following the reintroduction of the bill in its current form on 15 February 2018. While it has been said that the bill is 'substantially the same', this is not the case. Close scrutiny has identified some key differences, some of which are set out in our submission and our subject matter experts will speak to in more detail.

The limited time period provided to undertake this review and make submissions does not assist this committee in its endeavour to identify aspects of the bill which require refinement in order to achieve the bill's policy objectives. I will now pass to James, who will take the committee through some of the key issues the society has identified.

Mr Plumb: Good morning and thank you for the opportunity to address this committee on behalf of the QLS. As Vanessa mentioned, I am the chair of the QLS Mining and Resources Law Committee. The members of our committee represent various stakeholders impacted by the new legislation—miners, native title holders and landholders—so our submission and perspective is well informed in this regard.

Generally speaking, we are supportive of the changes to be introduced upon passage of the bill, but there are some areas I would like to address on opening this morning. Firstly, I would like to draw the committee's attention to the broad powers that are to be afforded to the manager of the scheme. The financial provisioning scheme will be administered by a scheme manager, and the QLS is concerned that some of the discretionary aspects of the powers afforded to the scheme manager under the draft bill are overly broad and unfettered at the moment. This has been addressed to some degree by the proposed introduction of the statutory guidelines which are intended to give guidance to the manager and to the industry as to the application of these powers.

We support the introduction of the guidelines as proposed, but we remain concerned by some of the exceptionally broad powers that are to be granted. For example, under the current drafting, the manager has a general power of entry to premises and that power at the moment is unfettered. In accordance with the fundamental legislative principles, such overarching powers should be limited other than in exceptional circumstances.

The next issue I would like to briefly touch upon today is the uncertainty associated with a number of key provisions included in the draft bill. Key among these that I would like to talk to this morning is the definition of 'financial soundness'. Financial soundness is a factor to be considered by the scheme manager when making decisions about risk category allocations. The bill as drafted does not define or give guidance to financial soundness. The QLS submits that this has the potential to create uncertainty and ultimately lead to inconsistent application by the manager in making decisions regarding risk category allocations. We submit further that it is not appropriate to seek to rectify this issue by inclusion of an appropriate definition in the statutory guidelines, as these are ultimately subordinate to the primary legislation. We do not consider it should be too difficult to include a definition, or at least guiding principles, in the principal legislation.

The last matter I would like to draw to your attention this morning, and perhaps most importantly, is the concern that the QLS has associated with the lack of an appeal process for decisions made by the scheme manager. At the moment, while dissatisfied persons may seek judicial review of various decisions associated with risk category allocations, section 75(2) of the bill effectively means that other decisions of the manager cannot be challenged or appealed unless the decision is infected by jurisdictional error. The QLS considers that this provision is again potentially in breach of the fundamental legislative principle that administrative decisions affecting rights and obligations must be subject to rights of review. We submit that an express avenue for challenge or appeal of decisions made by the scheme manager be included in the draft bill.

I would like to again thank the committee for the invitation to be heard this morning on behalf of the QLS, and I refer the committee back to our full submission dated 8 March. We are happy to take any questions that the committee might have.

CHAIR: Thank you very much.

Mr STEVENS: You raised a matter of particular interest to me about the appeals process, and you have outlined well your concerns in this area. To improve the bill and its acceptability to the wider community, the resource community in particular, what appeal process would be the best to put in place? Who would we appeal to for a fair, balanced and independent decision on a decision that was made by the manager? In other words, should it be an outside-of-government group or judicial review? Who should handle that appeal process?

Mr Plumb: At the committee level we have not gone that far in our considerations. Ordinarily, rights of judicial review would be heard by the Supreme Court as a starting point. I guess the fetter at the moment against judicial review is perhaps inappropriate from our perspective. That would be the starting point. We can come back to you regarding any suggestions we might have.

Mr STEVENS: I think that would greatly assist in the perception of fairness in relation to decisions made by the manager of the scheme. Mr Chair, would it be reasonable for the QLS to come back to us on that?

CHAIR: I think Mr Plumb is indicating that the Mining and Resources Law Committee may not have a fixed opinion on that.

Mr Plumb: No, we may not. It may be a situation where the QLS considers that judicial review is appropriate, but we can come back and confirm that if you would like.

CHAIR: Do you want to take it as a question on notice where you are required to get back to us or just take the option of getting back to us if the committee can meet to make that decision?

Mr Klapper: I observe that the submission talks about internal review. In similar situations in other legislation where decisions are made affecting private sector interests, internal merits review is a preferred mechanism. The Law Society's submission has pointed that out as an option that is appropriate here.

CHAIR: While not formally taking it on notice and giving a set date to return by, we invite you to give any further information on that question and we will take that on board in our proceedings. We may publish that response. Is that acceptable, Mr Deputy Chair?

Mr STEVENS: Yes, absolutely.

Mr O'CONNOR: In your submission you had some concerns in regard to the scheme manager. Could you outline those concerns and some fixes that you think might be appropriate?

Mr Plumb: Again, at the moment I do not think we have gone as far as identifying the particular powers, other than the right of entry. What we are generally concerned about is the unfettered nature of those powers at the moment. The right of entry is something that, other than in exceptional circumstances, should be fettered. Again, if it is something that the committee would like us to do, we are happy to identify other powers in addition to the right of entry that we consider should be fettered.

Mr O'CONNOR: That would be good. Will you take that on notice?

CHAIR: Do you want to take that on notice and get back to us?

Mr Plumb: Sure.

CHAIR: There are differences from the bill put forward in 2017, but often those kinds of differences are presented as amendments due to feedback from the committee. In this case some of those are presented as part of the bill and it goes through the six-week period. Substantively this legislation was put forward after consultation on 25 October 2017, but the QLS still has concerns about the consultation process.

Ms Krulin: Yes. I can expand on that a little.

CHAIR: Yes, if you do not mind.

Ms Krulin: We again commend the Treasury and its associated bodies for the work they did. We know there were workshops regionally. When it came to the draft legislation, there was only a couple of days. The consultation process was very thorough and very wide ranging, but when it came to looking at a draft bill it was provided and then an answer requested within only a couple of days, so it is incredibly difficult. I think this bill is 202 pages long. It was reintroduced with the lapsing of the previous bill, and at the moment there is no mechanism to easily identify the differences. It is a line-by-line exercise.

I think there were 16 bills introduced in the first sitting week, and the Queensland Law Society was looking at all of them. In terms of identifying the nuances, while we recognise that some of the consultation was incorporated, and we commend the government for those changes, there were other key differences and it made it very difficult to refine our response in a way that was able to assist effectively and clearly.

CHAIR: Although it has been out there for the most part from 25 October and there is software that can check the changes between documents, you would prefer if the department made a summary of the line-by-line changes to make it easier for stakeholders to do a comparative analysis of the two documents.

Ms Krulin: Absolutely. I think conversations around that process are happening. I am not sure where those conversations are at, but if there was a track-change copy provided it would be very useful.

CHAIR: Thank you very much. There being no further questions, I thank the Queensland Law Society for both its submission and appearance at the hearing today.

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

POINTON, Ms Revel, Solicitor, Environmental Defenders Office (via teleconference)

CHAIR: I welcome Mr Humphries from the Lock the Gate Alliance and Revel Pointon from the Environmental Defenders Office who we hope will join us via teleconference. I invite you to make an opening statement after which committee members may have some questions for you.

Mr Humphries: Thanks very much for the opportunity to address the committee. Just briefly, Lock the Gate is a national organisation. We have about 90,000 supporters around the country and 240 local groups. A large percentage of our members are affected landholders in rural and regional Australia. We work with a lot of people who are dealing with the impacts of mining and gas that are affecting their livelihoods and businesses across the state, so we come from that perspective. We have been working very closely with the EDO, particularly on the legal nuances around this, so for any detailed questions—our submission is pretty detailed—I would ask the committee to defer to Revel.

In terms of personal experience, I worked with both Rio Tinto and MMG on closure and mine rehabilitation—six years for Rio Tinto and a year for MMG when MMG was closing the Century Mine in north-west Queensland—so I come from some aspect of practical knowledge around rehabilitation and closure. I think the government should be commended for taking on what is a mammoth task given the complexity of financial assurance and all the aspects related to mine closure and rehabilitation. It is long overdue. I will not go into the details of the track record of the industry and the enforcement of what we regard as previously inadequate legislation. The list is long and large, but there is a clear case for improving that to improve the outcomes for Queensland taxpayers and to secure the social licence for the industry going forward as well.

From our perspective, what the industry leaves behind in terms of its long-term legacy is one of the key indicators of the industry's claim for it being a sustainable manager of natural resources. The thing that we really focus on is the outcomes of the legislation, particularly in relation to the final land use, final land forms and the legacy issues particularly related to water and the impacts of acid mine and metalliferous drainage. The government released a policy back in November last year where the intent of the legislation is to require that all land disturbed by mining activities is rehabilitated to a safe and stable land form that does not cause environmental harm and, most importantly, is able to sustain an approved post-mining land use. We support this very strongly and I think the majority of Queenslanders, Australians and indeed the mining industry would support this. Chair, I ask to table a couple of photographs that we could pass on to the committee. Is that possible?

CHAIR: I will just have a look at them first, if that is all right. Mr Humphries, we will have to move a motion about tabling them, but I think we can proceed with that. Is it the wish of the committee that these documents be tabled? There being no objection, the motion is carried.

Mr Humphries: Thank you, Chair and committee. Those stills are of the Ebenezer mine site, which is south-west of Ipswich near the suburb of Willowbank. That is probably the only coalmine that is entering into full closure and relinquishment. The proponent wants to relinquish that site by 2022. I have to say that that is a clear illustration of the failure of the current legislation and an illustration of a potential serious flaw in the proposed legislation in that that final land form has been signed off by the Department of Environment and Science. In terms of the policy goals that all mine disturbed areas should be returned to a useable land use, we would argue—and so would the residents surrounding that area—that that particular site, due to the presence of large pits, pit lakes, eroding dumps and a completely decommissioned tailings dam, is not useable in the foreseeable future. In fact, that area will be largely sterilised in perpetuity if something is not done.

I raise this with the committee because the current legislation provides under section 126D for a thing called a non-use management area, and the non-use management area can be justified by mining companies in the future on the grounds of costs and the grounds that any impacts from non-rehabilitated sites will only be localised. I can assure the committee that the proponent of this mine or the holder of the lease, Zedemar Holdings, is using those issues precisely on the grounds of cost and that the impacts are only localised to justify the condition of that site and indeed the department has accepted that as a valid rationale. My point here is that if that particular clause, 126D, and the whole question of non-use management areas are not substantially tightened then the industry will use, being driven by the interests of their shareholders primarily, the issues of cost and the issues of localised impacts to justify outcomes that have been approved in the past by the department such as Ebenezer.

There are many aspects in our submission and things that we seek to be improved. In terms of the fundamentals, the state really needs to shift the goalposts and send a clear message to the industry that all land has to be returned to a condition that can sustain a final land use and that in terms of the Ebenezers, such as they are—and there are many aspects on many sites around the state that mirror that appalling outcome—we need to move away from that, but that requires strong legislation to give the department the tools to force a shift in industry behaviour and the outcomes which will benefit Queensland taxpayers and the environment in the long term.

CHAIR: Thanks very much, Mr Humphries. In the absence of Ms Pointon, I will open it up to the committee to ask questions, recognising that you made the statement that some of the technical aspects in the joint presentation are within Ms Pointon's domain.

Mr Humphries: Sure.

Mr STEVENS: It is not a legal matter, Rick, that I am asking; it is more towards your submission, where you indicated that 85 per cent of the funds generated should be put towards rehabilitating the existing mine problem. I think we were told that about 15,000 mine sites were across Queensland to be rehabilitated. If we leave 15 per cent for future mine rehabilitation, that might leave a shortfall in the future. Why should so much of the proposed funding be spent on the existing mines?

Mr Humphries: I would have to go back to have a look at the submission. The intent of that was that we felt that 85 per cent of the revenue generated by the new fund should be spent on abandoned mines, because there is a clause in there saying that there is discretion for how that money would be spent, our point being that the order of magnitude of the abandoned mine problem is a multibillion dollar situation. We need to get the majority of the funds generated by that fund to contribute to a revamped abandoned mines program. The scheme itself, on face value, should take care of existing and future mines, but there is very little money in the kitty to really address the question of abandoned mines. I think we are talking $7 million or $8 million at the moment. That is likely to be bumped up by another $25 million or so once the scheme hits its straps. When you look at the question of Mount Morgan, Mount Oxide and Mary Kathleen, we are talking about hundreds of millions of dollars per site, depending on what you are shooting for, and manifestly, although the scheme is a move in the right direction, it is simply not nearly enough to make a material impact on the impacts of the abandoned mine problem in Queensland.

Mr STEVENS: I understand that, but in terms of future mines—and obviously the state is going to have a lot of future mines and a lot of future rehabilitation—there is risk, as we are aware, to some different sized companies et cetera in terms of the people generating future mines. If we spend 85 per cent of the money on history, then there is no guarantee, because very much a primary part of this legislation is for mines going forward to protect the rehabilitation if financial matters prevent a company from doing what it should have been doing in certain areas, and we are all aware of those right across Queensland. That will then leave very little money in the kitty for the future, so how do you deal with that?

Mr Humphries: My understanding from the whole exercise is to prevent any further mines falling into abandonment and to basically force the risk of rehabilitation back onto the companies and the shareholders. On face value, the current reforms as proposed as a package should prevent what has happened historically from occurring into the future. Therefore, the industry will be forced to pay for their clean-up, which is the whole intent of the act. My understanding from that cash flow that would be generated from the fund specifically—the new fund—is that that will be dedicated to research and bolstering the abandoned mines program. If we assume that the current reforms will put the onus back on the industry and that problem essentially will go away and all new mines coming on stream and existing mines will be subject to increased provisions and the outcome will be a much reduced risk for the taxpayer, then we should not be necessarily putting any of those funds from that process back into existing mines. That should be taken care of by the scheme.

Mr STEVENS: All right. Thank you.

CHAIR: I welcome at this point Ms Pointon. We are just asking some questions of Mr Humphries. We might find an opportunity to give you a chance to make an opening statement in a second, Ms Pointon.

Ms RICHARDS: Thank you for your submission, Mr Humphries. In your submission you say that the estimated rehabilitation cost decision could be improved. Could you expand on how you think that could be improved?

Mr Humphries: My experience working in the industry is that the estimation of rehabilitation is more of an art than a science. We believe—and it has been verified by internal government reports—that the current way of estimating the overall cost of mine rehabilitation consistently underestimates

the total cost and that there is a deficit between what the state has access to and the actual cost, and there are notable examples including the Ranger Uranium Mine in the Territory and Century Mine in north-west Queensland. Once you start doing the closure, you inevitably find problems and complexities you had not catered for and the cost generally blows out.

We believe that there needs to be a full review of the financial assurance calculator that better reflects industry best practice but that it must include a contingency as well to make up for those aspects that the industry and all practitioners know are out there—all the unknowns—and we need to refer to standard engineering practice, where contingency is just a stock standard part of big project financial management. We are strongly advocating a complete review of the financial assurance calculator. Our understanding is that that is taking place, but we have received correspondence suggesting that it will be more of a tweak rather than the fundamental review that is required to really protect the taxpayer.

Ms RICHARDS: Thank you.

Mr O'CONNOR: In your submission you talked about loopholes that effectively undermine the entire reform package. Would you be able to elaborate on that and run us through some of the loopholes that you are referring to?

Mr Humphries: What I am referring to was basically in my opening statement—that if the fundamental role of the legislation and the reforms is to ensure all disturbed land is brought back to a condition that is safe, stable and can sustain a post-mining land use then those provisions, those loopholes, under the non-use management area provisions, which allow companies to apply not to fully rehabilitate those areas, are not so loose and able to be applied across all commodities in a range of situations. Given the industry's behaviour in the past and their drive to reduce the cost to their shareholders—again, their track record reflects that shareholders are clearly put well above the interests of the taxpayer—if those loopholes are allowed to stand then our belief is that the industry will continue to use those to convince government that there should be a minimalist approach to rehabilitation, resulting in more Ebenezers.

If we can tighten up that specific area—and we do understand that there may well be rare exceptions, but it needs to be communicated to the industry that the expectation is that all areas, including pit voids, dumps and tailings dams, need to be fully rehabilitated. In exceptional circumstances—they need to be codified in the act—there may be exemptions. The way it is currently worded, those loopholes are big enough to drive a haul truck through and the industry will take full advantage of that to preserve business as usual and the status quo, which defeats the purpose of the legislation.

Mr O'CONNOR: Does that feed into having the payments and financial provisioning made up-front? I think that was another thing that you mentioned.

Mr Humphries: We believe the overall situation is that the whole rehabilitation needs to create risk for the industry. Unless risk is created, the industry generally does not respond. That is the language they use. That is how they respond to things. The new financial assurance provisions are really de-risking that for the industry, and we accept that. On the other side of the equation, unless the state equips the regulators with the legislative tools so that they are able to hold the industry to account and get those outcomes that the policy clearly states is the intent then we will have missed the opportunity and we will be back to business as usual.

CHAIR: I want to put to you the opposite opinion. BHP in its submission said that forcing Queensland mine operators to adhere to rigid rehabilitation areas and time frames will make it considerably more difficult for them to operate in Queensland which in turn could inhibit future investment in Queensland's mining industry. How do we strike that balance correctly in terms of encouraging the use of our resources and the rigid time frames and stricter legislation that you are talking about?

Mr Humphries: I think you need to look at the industry's own business case. They say rhetorically—and, indeed, in my role in Rio Tinto the internal business case was that the more progressive the rehab and the more you invest up-front to actually undertake rehabilitation during the time you have cash flow the more you are de-risking the whole process. You acquire knowledge on the way. You do more progressive rehab so that when the money runs out at a mine you are not going to the CFO and asking for cash that does not exist.

We would always quote back best practice and the industry's own business case to justify greater enforcement. Over the years, with lax regulation and enforcement it has effectively been a self-regulating scheme and it has brought up all those problems that the QGC has identified we need

to correct. BHP is one of the worst offenders, if you look at their coalmines. Their 10 coalmines disturbed 51,000 hectares. Some 4,800 hectares has been progressively rehabilitated. That is 9.4 per cent. Every year they are adding around 2,500 hectares to that deficit. For BHP to start quoting concerns about extra regulation seems a little bit disingenuous, given that on their website they will also adhere to progressive rehabilitation. The point here is that the industry, by its own admission, agrees with progressive rehabilitation.

CHAIR: They make reference to that in their submission as well.

Mr Humphries: That is right. I think the industry has had a fair go. The impacts of poor and declining progressive rehabilitation and abandoned mines give the state a strong rationale to better regulate the industry and, in doing so, in the long term that will be protecting the industry's social licence to operate. If they persist in leaving outcomes like Ebenezer and abandoned mines like Mary Kathleen, there will be more resistance, more political noise and greater ad hoc restrictions on how they operate. The best thing they can do for their shareholders and for taxpayers is to adhere to their own policies and guidance and standards and actually get on with the job of progressively rehabilitating and reducing the long-term risk for their shareholders and taxpayers.

I do not think it is going to scare any investment away. The United States has had a law in place since 1977 that has required the full backfilling of all coalmines in the United States. Since that time the industry over there—current circumstances excepted—has made a healthy profit and a healthy return to shareholders. They can do it. It is just that they take advantage of weak regulation in Queensland particularly and do not undertake the same sort of level of rehabilitation as they are forced to undertake in the United States.

CHAIR: Revel, did you wish to make an opening statement for the committee?

Ms Pointon: Thank you, Chair, and thank you, committee. I am so sorry I cannot be there in person today. I would love to make a short presentation, thank you. We support the government taking action to address the significant flaws around the rehab and financial assurance framework that is in existence. I did want to raise two serious issues with the bill, around access to information and access to justice, that actually will ensure accountability and transparency in the governance of this framework so it truly is improved. It is fantastic that there will be public consultation required on the PRC plans and schedule, but we obviously need to make sure that this consultation is meaningful and has clear requirements around it.

The bill leaves public consultation procedures up to the proponent as to how they want to conduct it and when and how long. It seems anomalous to us. We are not sure why it would not just have been tied into the normal EP Act process for public consultation that would be undertaken on an EIS or an EA, to ensure that there were strict requirements around what the public consultation was. It would also ensure that the PRC plan and schedule would be subject to the normal independent Land Court review. We really question why these important documents would have been exempt from the review of the Land Court.

Further, there are limitations on the normal ability of the public to seek reasons and judicial review of the decisions under this framework—just another check and balance to ensure proper governance around it. Just recently Lock the Gate was refused reasons for a decision of government to allow transfer of the Blair Athol Mine, very nearing end-of-life, to a smaller operator with potentially questionable financial soundness as well as for a decision as to the amount of financial assurance being required of the new operator. These two decisions obviously go to the core of what this bill is attempting to address, yet they were not seen to be of sufficient interest to Lock the Gate, who have clearly been working on this issue for years as a key stakeholder with government and also working with communities affected by abandoned mines or near-end-of-life mines. This bill will do nothing to rectify the issue in the future so that interested persons can seek reasons for decisions that are made under this framework and, if necessary, seek judicial review to ensure that accountability in the framework is met. There is a necessity for an open standing provision in the EP Act to clarify that interested groups do have the ability to seek reasons and potentially to judicially review decisions.

Also we raise in the submission suggestions around the public register being improved so that key documents are available to the community in terms of understanding what decision-makers are considering when they are making these important decisions that will affect Queensland as a whole.

Finally, I want to raise significant concern as to the need to remove section 190 of the EP Act, which this bill amends, to prevent the Coordinator-General from providing conditions which override the department of environment's conditions and also Land Court decisions and recommendations of conditions, even after extensive analysis and expert assistance in assessing what are appropriate

conditions and what are not. The expertise of the department and the independence of the court should never been overridden, and this provision is highly inappropriate and is potentially eroding the quality of our environmental laws in Queensland. I am happy to answer any questions there might be from the committee if there is time.

Mr O'CONNOR: My question can be answered by either the EDO or Lock the Gate. It relates to the transfer of mining leases. Can you run through a few examples of the transfer of mining leases and associated rehabilitation issues where the original proponent may have delegated responsibilities to a smaller company to complete the process of the rehabilitation?

Mr Humphries: The key one that we focus on is Blair Athol. I was involved in the closure planning when I was at Rio Tinto and also involved in the closure cost estimation. The concern there was that TerraCom, the buyer of the Blair Athol site, was basically in a state of financial distress. It had no track record whatsoever in terms of mine rehabilitation. Blair Athol is a very complex site. We sought to unpick the rationale for where the government could actually transfer that lease and were denied any access to any information. We have had to put it under right to information. We are still in that process. The risk there is that a company such as TerraCom may well have gone under and exposed the taxpayer to a significant cost, given the transfer of the site from Rio Tinto to that smaller company.

The site was sold for $1. In addition to that, Rio Tinto provided $80 million as a cash surety to the government to cover the cost of rehabilitation. I am not at liberty to disclose Rio Tinto's calculation of the closure costs, but $80 million is substantially less than it otherwise would have been. The fundamental business driver for Rio Tinto was to basically transfer that risk from Rio Tinto shareholders to TerraCom and to effectively forgo the need to rehabilitate that site.

Mr O'CONNOR: What did the court proceedings around Blair Athol that Lock the Gate initiated conclude?

Mr Humphries: That we did not have standing and we were not an affected person. They narrowly defined that question of affection and we did not fit the bill so we were not able to get a statement of reasons. We have been through a variety of avenues—through direct meetings, correspondence with various ministers, the Supreme Court and the right to information process—to see whether we can unpick exactly what the level of analysis was, what the criteria for analysis was in order to protect the public interest, and we have not been able to achieve those goals at all. We are hoping that through this reform process the transfer process will be opened up and made very public so that the taxpayer, who is the ultimate recipient of poor decisions, is confident that all bases have been covered and that the recipient company has the capacity, financially and technically, to carry out that rehabilitation in the long term. That is all we are asking for.

Mr O'CONNOR: You believe this bill will provide Lock the Gate with greater standing in future?

Mr Humphries: No, and I will defer to Revel. I do not believe it does. Revel?

Ms Pointon: No, it definitely does not. What we are asking for an open standing provision to be put into the Environmental Protection Act—this exists in the Nature Conservation Act and in the federal EPBC Act—that clarifies that interest groups like Lock the Gate definitely have standing to seek reasons and potentially judicially review decisions to ensure there is good accountability for these public interest environment decisions. That is not provided for under the bill at the moment.

CHAIR: Speaking generically, not about any particular circumstances, where the pooling of the financial assurance means that there is greater certainty going forward for when there is a transfer of a future mine from a more robust financial entity to a less robust financial entity, there is greater assurance that the pool of resources will be able to protect the rehabilitation of that mine in the future through this bill; would that be fair to say?

Mr Humphries: I think the mechanism that government has come up with—that pooling facility—gives greater certainty. It certainly gives the industry what it has requested, which is relief from the escalating cost of getting financial assurance. As I said earlier, we are prepared to concede on that because that is a bottom-of-the-cliff sort of mechanism: if all else fails, that mechanism kicks in. What we need to ensure is a series of regulations and obligations that are enforceable on the industry to prevent us from ever having to use the financial assurance. That is the whole tenure of our submission around particularly those non-use management areas.

There are many other aspects of the bill that we support around those progressive rehab and closure plans, the creation of enforceable milestones and targets for progressive rehab, the question of residual risk payments and what have you. There is a whole lot of elements in the bill that are

excellent. Many are yet to be determined in terms of the statutory guidance. We really have to get that up-front compulsion on the industry to change its behaviour or we will end up with a more sophisticated planning process that will get us the same outcomes, which we are all trying to avoid.

CHAIR: Thank you. We have gone a little bit over time. I thank you both very much for your submission and your contribution here today.

PARRATT, Mr Nigel, Water and Catchment Liaison Project Officer, WWF Australia

CHAIR: Good morning. I invite you to make a short opening statement after which committee members may have some questions for you.

Mr Parratt: Thank you very much for the opportunity to appear before the committee. It is much appreciated. Firstly, WWF very much welcomes the reforms to the financial assurance and mine rehabilitation framework contained in the bill because we believe it will significantly improve the mining industry's accountability and performance in rehabilitating mine sites which, to be honest, has been largely inadequate to date. The inadequacy of the current and past approaches to rehabilitating mine sites is clearly demonstrated by the 15,000 abandoned mines across Queensland and also, in more current times, the significant shortfall of funds that the government currently holds to offset the liability of mining companies defaulting on their rehabilitation requirements.

While we support the bill, there are several aspects of it which we believe need to be either removed and/or strengthened to ensure current and future Queenslanders, the Queensland taxpayers and the environment do not bear the brunt of mining companies failing to properly rehabilitate mine sites, which could potentially occur as a result of the way the bill is currently drafted. Of the proposed amendments that we have outlined in our submission, the two that I want to stress and focus on today relate to the non-use management areas, as the previous speaker indicated. We also believe that that is a significant loophole within this current legislation that mining companies will inadvertently exploit as a way to reduce the cost of rehabilitating their mine sites.

According to the bill, a non-use management area is an area of land the subject of a progressive rehabilitation and closure plan that cannot be rehabilitated to a stable condition after all relevant activities for the progressive rehabilitation and closure plan carried out on the land have ended. According to the explanatory notes for the bill, one of the proposed criteria for approving the non-use management area is when rehabilitating the area would pose a greater environmental risk than not rehabilitating the area. I do not quite understand that. Nobody has been able to explain to me a particular scenario where that would apply, where it is a greater risk to fix the issue than not fix it. It just does not seem to make sense in my mind. The second criterion is that the environmental risks for the proposed non-use management area are localised. Once again, that comes down to discretion: to what extent are we talking about within a local area? Is it just within the site that has been fenced off? What about the impacts that occur as a result of that area being unrehabilitated going into the future? Then the cost of rehabilitating the proposed non-use management area would be so excessive that it is not in the public interest to do so. The department has not been able to explain to me just what that means at all.

The criteria as they currently stand in the bill, the explanatory notes to the bill and the consultation that we have had with the department are quite fuzzy, to put it bluntly, around the circumstances in which these non-use management areas will be approved. Very importantly, as these areas will not be rehabilitated, non-use management areas will remain in an unstable condition in perpetuity, which means they will continue to pose a significant risk to Queensland taxpayers, adjacent landholders and the environment forever.

While the Department of Environment and Science has stated that non-use management areas will only be approved under limited circumstances, as I mentioned earlier, there is a significant risk that mining companies will view non-use management areas as a loophole that they can potentially exploit to minimise the cost of rehabilitating mine sites. Along with the ongoing risks to Queensland taxpayers, adjacent landholders and the environment, enabling mining companies to avoid having to fully rehabilitate their mine site utterly undermines the intent of this legislative reform, which, as the previous speaker said, is all about making sure that mine sites are returned to a sustainable and stable post-mining land use. If we are saying on one hand that that is the intent of what we want going forward into the future, that we are allowing this provision in the bill which we are describing as a loophole to remain, the chances are that we will end up with the status quo of the current situation.

The other issue that I would like to touch on, which I mentioned in our submission, is the issue of requiring mining companies to rehabilitate impacts that have occurred to catchment hydrology. Along with modifying land forms, mining activities can also have a substantial impact on catchment hydrology through activities such as diverting rivers and watercourses to access mineral and energy resources, modifying overland flow dynamics as a result of building levees to divert floodwater around and away from mine sites, and modifying groundwater dynamics as a result of digging up aquifers and recharge areas. While one mine can cause a significant impact to catchment hydrology, the situation that we have in Central Queensland, where we have multiple mines in the one area—the Bowen Basin for example—can have a very substantial impact on catchment hydrology and the dynamics of it.

Although the explanatory notes do say that reinstating rivers that have been diverted to access ore bodies will be considered to be reinstated in their original position as part of the PRCP planning process, the impacts that have occurred to groundwater and overland flow are not covered at all. There is no requirement anywhere for the mining companies to consider how those impacts that have occurred to catchment hydrology as a result of that mine activity might be rehabilitated going forward.

As water is essential to maintaining the ecological and economic uses of former mine sites, it is absolutely essential that the bill is amended to include provisions which require mining companies to remediate impacts that have occurred to overland flow, rivers and on-ground water when mine sites are being rehabilitated. Mining projects that cause these sorts of impacts to catchment hydrology which cannot be remediated—at least partially remediated—should not be approved, in our opinion.

CHAIR: Are there any questions?

Mr JANETZKI: I have heard a couple of times today the figure of 15,000 mines. Can you break that down a little bit for us? What is the average size of those mines?

Mr Parratt: Off the top of my head I cannot. I know that the Queensland Treasury have done a breakdown on mines that they are now calling historical which goes back to the 1800s.

Mr JANETZKI: Are they underground?

Mr Parratt: All of that sort of stuff. That breakdown is available, but I just cannot give that information off the top of my head.

Mr JANETZKI: I am just interested to understand. Of that 15,000, how many really are impacting a significant land mass?

Mr Parratt: They would all impact the immediate environment around them to greater extents than each other, I suppose, depending on the scale and size of them. A lot of those 15,000 historical mines are old gold shafts that may not necessarily be causing a major environmental problem, but they certainly do pose a public risk problem. It is not just environmental issues; it is also public health that is associated with a lot of these abandoned mines.

CHAIR: If you capped those old mines, is the process that we hold them to in terms of signing off on the final rehabilitation of mines appropriate for those sorts of historical mines where they are abandoned orphan mines? Should there be a more flexible process for signing off on that, or else we will have them as a legacy theoretically forever?

Mr Parratt: We will have them as a historical legacy until they get remediated. A lot of the companies that are responsible for the more historic legacy mines are no longer in existence. We cannot then go back to them and try to hold them responsible. The government basically has to step in and accept responsibility. Going back to what Rick was talking about in terms of the amount of money that is needed to remediate the vast majority of these abandoned mine sites, certainly in the short term we need to put a big whack of money into expanding the abandoned mines program, which basically goes ahead and looks at the risks associated with the abandoned mines and then prioritises where the very small bucket of money that is currently available gets spent. If that bucket of money was increased for a period of time—and it may not be forever—we could get a lot of the existing problems with the abandoned mines fixed within a very short period.

CHAIR: There being no further questions, I thank you very much for your submission and also your contribution here today.

Proceedings suspended from 11.26 am to 11.43 am.

RANGIHAEATA, Ms Rachael, Information Commissioner, Office of the Information Commissioner

SHANLEY, Ms Susan, Acting Assistant Information Commissioner, Office of the Information Commissioner

CHAIR: I welcome you to make a short opening statement after which committee members may have some questions for you.

Ms Rangihaeata: I would like to thank you for your invitation to speak with the committee today about the Mineral and Energy Resources (Financial Provisioning) Bill 2018 and our submission to the committee regarding the proposed amendments to the Right to Information Act 2009.

Our submission sets out the issues we wish to bring to the committee's attention for consideration. Our concern is that the bill as currently drafted appears to be inconsistent with three things: the right to information legislative framework for access to government held information in Queensland; recent government policy about whether to include additional entities and types of documents and the exclusions in exemptions in the Right to Information Act; and the approach taken in the bill itself to protecting confidentiality.

Queensland moved to a push model of access to information in 2009 following a significant review of freedom of information in Queensland which substantially reduced the available exclusions and exemptions. The focus now is on proactive disclosure of information—for example, online publishing and administrative release. The Right to Information Act expressly states that formal applications for documents are only to be used as a last resort. The preamble to the Right to Information Act states—

> It is ... Parliament's intention to provide a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to provide the information.

Despite the strong emphasis on pushing information out into the community under RTI, RTI is equally about balance. The legislative framework is extremely flexible. It enables agency decision-makers to protect sensitive information where disclosure would be, on balance, contrary to the public interest. In some cases, a specific exemption will apply. In others, no exemptions will apply to information at issue, but the sensitivity of the information is reflected in the application of the public interest balancing test and access to information will be refused.

The explanatory notes indicate that the objective of the proposed amendments to the RTI Act is to provide an explicit exclusion from the legislation to allay financial assurance holders' concerns that their confidential corporate and financial documents provided to the scheme manager could otherwise be publicly available. No concern is raised by government about a gap in the legislative framework or recent decisions where the Right to Information Act has failed to enable a decision-maker to appropriately protect such information.

While I appreciate the benefit that such certainty brings, I draw your attention to the comprehensive review of the right to information and information privacy acts, which included public consultation. The recent review report, tabled in parliament in October 2017, did not recommend any new exemptions or exclusions. On the contrary, the government's report recommended one exemption be removed and another exemption include an exception to enable further information to be provided. Importantly, the report concluded that the Right to Information Act already contained sufficient exemptions and exclusions and that the flexible public interest balancing test allows for adequate protection of information where required. To propose exclusions from the operation of the act in this bill to allay concerns about providing required information is, therefore, surprising and appears inconsistent with policy regarding the Right to Information Act.

An alternative option in the event an explicit exemption remains necessary and appropriate is to, instead of the proposed blanket exclusions from the operation of the act as a whole, change the approach such that the protection comes in the form of a specific exemption linking to the secrecy provision already within this bill. This approach is already in place for a number of acts and confidentiality provisions, such as the Witness Protection Act, the Taxation Administration Act, the Child Protection Act, the Auditor-General Act, the Public Interest Disclosure Act and others.

The confidentiality provision in clause 79 of this bill protects: information about a person's commercial, business or financial affairs; information disclosed to, or in the possession or under the control of, the scheme manager under part 3; or information about a contribution paid, or a surety given, under part 3. This excludes information that could not reasonably be expected to result in the

identification of a person to whom it relates or information that is publicly available. The confidentiality provision of clause 79 therefore strikes a balance for sensitive information and is more reasonable and appropriate than a blanket exclusion.

The confidentiality provision could be expected to allay the concerns outlined in the explanatory notes about a holder's confidential corporate and financial documents provided to the scheme manager. This approach would mean that the operation of information access legislation as a whole would not be precluded and documents that are not sensitive—including, for example, policy or procedural information—can be considered appropriately in accordance with right to information obligations for proactive release, for administrative release or for release in response to a formal access application. More globally, this approach affords consistency with the government's commitment to the integrity and accountability framework in Queensland.

I also note that the fact that the bill seeks to protect information more comprehensively under the Right to Information Act than under its own confidentiality provision, which excludes certain information, is inconsistent and would confirm that the blanket exclusion is unnecessary and not appropriate. Ultimately, the Right to Information Act in its current form enables a decision-maker to make the best decision based on an examination and consideration of the documents in issue and the particular circumstances. However, if the parliament considers it necessary to provide an explicit protection, I would suggest care be taken to ensure it only applies to the documents that would on balance be contrary to the public interest to disclose. A specific exemption linked to a confidentiality provision in clause 79 would give this protection.

CHAIR: Thank you. Are there any questions?

Mr STEVENS: In the submission you said it is important that the revised financial provisioning scheme does not have unintended consequences. I think you were trying to explain some of those unintended consequences you saw arising out of that financial provisioning. Could you expand further on what you believe are the unintended consequences that may arise?

Ms Rangihaeata: I have to be careful here because we are not experts on the scheme and the legislation, and we had to come across as much as we could in a short period of time so I was making broader comments—

Mr STEVENS: What about generic unintended consequences rather than specific things?

Ms Rangihaeata: One of the things I pointed out there was the concern that new provisions that may come through this bill would in fact narrow the amount of information that would be made publicly available. Information previously had been made publicly available through public registers or online through annual reporting under the Right to Information Act under our proactive disclosure requirements, but because of the exclusion removing that and the confidentiality provisions it would mean that less information as a result of this bill would now be out in the public domain and that would reduce transparency and accountability. In fact, some of that may be unintended, just as a result of a new scheme coming in and not being aware of all the potential consequences.

I note that it appears that some of the responses from Queensland Treasury indicate that the status quo will continue for what will happen under the Environmental Protection Act with public registers and reporting and so on for environmental authorities. That has given us some reassurance in that regard. Given that we are not across all of the detail, I really am putting that back in the hands of the relevant departments and Queensland Treasury to do a bit of an assessment and reassure themselves that they are not bringing in any unintended consequences through this.

Mr STEVENS: So you have not identified a specific consequence of the exemptions, if you like, provided by the financial provisioning? You do not have a specific matter in mind now, like someone's documents or some financial positions? Do you have anything specific now?

Ms Rangihaeata: Nothing specific in that regard. In making that submission, the particular thing I was really thinking of was the issues that might be on the public registers at the time. That was the sort of thing I was thinking about, plus what would be required in general under the Right to Information Act in terms of proactive disclosure requirements.

In terms of the public registers for environmental authorities, it appears from the Queensland Treasury responses there are no changes to what is required under that legislation. Of course, this is a new piece of legislation with how the scheme will work for financial assurances, so there are some differences in terms of introduction of a new scheme, but as I said we are not entirely across how the scheme works. We were not consulted on this bill so we have not had the opportunity to discuss this with the relevant agencies involved and understand it more thoroughly.

CHAIR: Would it be fair to say that this is very much defending the principles of the Right to Information Act, that the test be applied continually in the way that the Right to Information Act is with public benefit—not any specific piece of information but that the Right to Information Act be applied in all circumstances across government?

Ms Rangihaeata: That is right, because if you have a continual chipping away at the legislation there is a risk that it really reverts to the scheme that came before the Right to Information Act and what the Right to Information Act was really designed to overcome. The Solomon review, which was the review of the Freedom of Information Act, really looked at the exclusions and exemptions and said, We really don't need that many in place. The public interest balancing test that was put in place can consider all of that information more appropriately.

CHAIR: In this case, we are setting up a new body that takes a look at the assessment of a company's financials and its potential risks to government, all of which is asking them to reveal private underpinnings of their government, which in any case going through the process of RTI would have some commercial-in-confidence and public benefit tests that perhaps would not—

Ms Rangihaeata: Absolutely.

CHAIR: You feel that is robust enough to deal with this situation. That being said, is there a benefit for companies that enter into those investments in Queensland? Is there a public benefit in the explicit knowledge that they will be treated in a certain way—the information they give forward in that process?

Ms Rangihaeata: Yes, that is the sort of thing that really would be considered through the public interest test and considering establishing the exemption. Really, that is what is before the parliament right now in considering whether to establish an exemption for a specific discrete set of documents. I think the question really is: if you are to provide an explicit exemption, how narrow should that be? I would suggest that the way it is currently framed—as all documents that come before the scheme manager and are created by the scheme manager—a good portion of those documents would not necessarily have that level of sensitivity that would mean that disclosure would on balance be contrary to the public interest. I think it is potentially a bit too broad as currently framed. However, I think most people would also expect that there are documents, certainly within that group, the disclosure of which would be on balance contrary to public interest. It is really about finding that balance. If it needs to be an explicit protection up-front right now, it is about trying to define that in an appropriate way and find that balance.

Mr O'CONNOR: You mention in your submission the Northern Territory, which is obviously a smaller jurisdiction. Does that provide a model that you think Queensland could adopt in that they make publicly available the individual environmental security bond amounts for major mines?

Ms Rangihaeata: We noted that as a recent development because, of course, proactive release of information is always something that is relevant to right to information legislative regimes. That was a development, we understand, that arose after a formal access application had been decided and considered by a tribunal, and then the government actually took action to publish a number of their larger security bonds on the departmental website, I think. They actually have that up—not just the amounts of individual bonds but also what mines they associate with. That is something that I do not think Queensland has done to date. I think there is information about the total bonds that has been released under the Right to Information Act, and that is available on the website under disclosure logs under the legislation. However, it is not something that we have taken the step here in Queensland to do.

It is always interesting to see what is happening in other jurisdictions and what the community is coming to expect. I note that there was some media following that development where some mining company said, Look, the total amount in isolation will not necessarily assist in developing community trust. We actually need to show what the process is in terms of determining what the bond amount is. They were saying that the process and the decision-making process needs to also be made transparent to the community.

Mr O'CONNOR: Is that level of accountability or that level of disclosure something you would like to see in Queensland?

Ms Rangihaeata: I think it is something that needs to be considered. When we look at decisions on external review when we review agency decisions we consider all submissions. We have looked at some very limited—only a couple—decisions in relation to financial assurances and total amounts, and they have not been where the agency has wanted to withhold the information, I must admit; the agencies were willing to provide the information. They were third-party objections

from mining companies. We look at the submissions that are made to us and the relevant public interest arguments that are made to us. It really can depend on what is happening at the time and what all the relevant arguments are that are presented. I think some of those arguments that were made in the Northern Territory are relevant, but the broader picture might actually provide a greater, more informative picture.

Mr O'CONNOR: It is very much a case-by-case basis in terms of disclosure for each of these situations.

Ms Rangihaeata: We do look at it case by case. There are broader principles in play. With a new scheme it would be interesting and important to see what information is provided publicly because you would take into account what is already on the public record as to what is necessary to also disclose. That is something that is always considered in a range of situations, not just in this situation.

CHAIR: Thank you very much for your submission and also for being present today at the hearing.

FROST, Mr Matthew, Vice-President, Risk Finance, BHP

GARRAHY, Mr Mark, Manager, Environment Analysis & Improvement, BHP

NOLAN, Mr Dominic, Head of Corporate Affairs, BHP

CHAIR: I now welcome the witnesses from BHP. Good afternoon. I invite you to make a short opening statement after which committee members may have some questions for you. Mr Nolan, would you like to make a statement?

Mr Nolan: Thank you. My name is Dominic Nolan, I am the head of corporate affairs for BHP's coal operations. Colleagues appearing with me today are Mark Garrahy, Manager, Environment Analysis and Improvement; and Matthew Frost, Vice-President, Risk Finance. We would like to thank you for the opportunity to appear in front of the committee this afternoon and for the opportunity to answer questions following a brief opening statement.

BHP's coal operations in Queensland comprise the BHP Billiton Mitsubishi Alliance, BMA, and BHP Mitsui Coal. We have assets across the Bowen Basin, nine active mines and two in care and maintenance. Rehabilitation is crucial for us to manage the environmental impacts of our operations. Since the middle of last year we have been working very closely and engaging with the Department of Environment and Science and with Queensland Treasury on this financial assurance and rehabilitation reform policy. We are currently working with the Department of Environment and Science on the certification of progressive rehabilitation of around 2,000 hectares across four BMA mine sites. It is a significant piece of work that we are engaged in.

When the latest version of this bill was introduced in mid-February by the Hon. Jackie Trad she identified achieving better environmental performance, better protection of the state's financial risks and also supporting the resource sector's continued presence in Queensland as very high priorities. We support the intent of this bill and that approach as outlined by the Deputy Premier.

BHP engages a workforce of around 10,000 people across Queensland. We are one of the most significant contributors to regional economies and to the Queensland economy and to communities. We have a long-term planning horizon for social, economic and environmental investment in Queensland. All of us will benefit from clear rehabilitation expectations. I would like to make four very brief points and then I am happy to move into a question-and-answer session. I am happy to also take questions on notice if you require further detail, further verification or qualification of information.

The first point I would like to make is that we would submit that participation in the pooled fund should be voluntary. We absolutely accept that financial assurance is a requirement and those obligations should be there, but we would submit that the provision of bank guarantees and insurance bonds should be a viable alternative to compulsory participation in the pooled fund. For a large company with very low financial risks such as BHP, the cost of participating in a pooled fund is unlikely to ever be lower than the cost of market bonds to cover that same risk for us.

If the committee and the government, however, are nonetheless committed to proceeding with this model, one of the things we would like to emphasise is that it needs to be very clearly identified that the capped threshold for participation should be on a group basis. We think that is the policy intent of the bill, but we want to make that absolutely clear in the drafting. We have put forward a proposition around that in our submission.

The second point we want to talk about is the arbitrary time frame to determine that land should commence rehabilitation. In our view, what has been put forward may not be practicably workable. Time frames vary frequently in mining operations, so the 10-year rule would require frequent and continual amendments to the progressive rehabilitation and closure plan. That would not only be burdensome and impractical for industry; it would also be difficult for the regulator. Once again, we have suggested alternatives on page 11 of our submission.

The third point is in relation to the process for major and minor amendments for the PRCP, and this is a really critical point. It is going to be extremely challenging for industry. Mine plans often change. Mine operators would be forced to make frequent amendments to the PRCP schedule. It would require extensive public consultation for so many amendments. It would be costly, burdensome and time consuming. Importantly, we think there would be a loss of public benefit through this consultation overload, if you like. We have suggested a threshold test on page 13 of our submission, a materiality test similar to that which currently applies under the EP Act for consideration.

The fourth point is around requiring mine operators to demonstrate that each post-mining land use area is consistent with community consultation and strategies or plans decided by local government. We are committed to consultation with communities; we are engaged in those sorts of exercises on a regular basis. However, we think that section may, again, present practical difficulties. We have suggested an alternative that we think will achieve the bill's intent of consultation in a more practical manner.

I would like to emphasise that this bill has potentially huge ramifications for Queensland's mining industry. Some of our nervousness in relation to the bill rests with the fact that much of the practical application will come down to the regulatory framework—the regulations associated with it. We have not seen those as yet. We do not yet have enough information to really assess what the full potential costs and implications of this framework are, particularly participation in that compulsory fund. We would encourage the Queensland government to release that necessary information as soon as practicable.

Industry, the Queensland government and communities at large will benefit from an effective, workable and low-risk financial assurance and rehabilitation framework. We are absolutely committed to working with the Queensland government to achieve this end. I am happy to take questions.

CHAIR: Thank you very much. Are there any questions?

Mr STEVENS: Thank you, Mr Nolan, for your presentation. We were advised earlier by departmental officials that the provision of bank bonds et cetera was seen throughout the consultation period as being an expensive way to go. With BHP being one of our major operators, does it concern you at all that the funds you may be putting forward towards this fund may be used to some extent—whether it is 85 per cent, as has been requested—for rehabilitation of previous abandoned mines et cetera across Queensland rather than making sure that all future commitments are met by even some of the smaller miners that may run into trouble at later dates?

Mr Nolan: I am happy to take that question in the first instance and allow my colleague Mark also to provide some comments. From our perspective, we have absolute obligations around rehabilitation and commitments, and we are more than happy to live up to those and to—

Mr STEVENS: For your own mines?

Mr Nolan: For our own mines, absolutely. We do have a concern that compulsory participation in this pooled fund could see some of the larger, lower risk operators potentially subsidising some of the smaller and potentially higher risk operators. That is a genuine concern. I think I would also say that there may well be unintended consequences from a fund of this nature. It may well be the case that if participants feel like their obligations are covered by insurance they may not need to fulfil their rehabilitation obligations that they may otherwise have, because it will be covered by the insurance scheme. That for us would be a very unfortunate unintended consequence of this type of scheme. I am not sure if you have anything else to add there, Mark?

Mr Garrahy: I think it is along similar lines, Dominic, that you have just outlined in terms of supporting some of the others within the fund. By outlining exactly what you have done I think we are reinforcing that. We are actually using the fund as perpetuating 'walking away from your obligations'. That is not what we stand for at all.

Mr STEVENS: Do you believe that the fund may in some way inhibit the future growth of the mining industry throughout Queensland?

Mr Nolan: In a general context, if it is not the lowest cost option to achieve the policy intent of the bill then it is inefficient and it can potentially stifle innovation and investment. From our perspective, we absolutely agree with the stated policy intent of the bill: better environmental outcomes, mitigating risk for the Queensland government and for taxpayers. What we have put forward in our suggested alternatives we think could achieve the same risk outcomes, the same environmental outcomes, but in a more cost-effective manner and at times with a better outcome than some of the propositions that have been put forward to date.

Mr STEVENS: And more certainty?

Mr Nolan: More certainty, no question.

CHAIR: You mentioned the potential for the execution of the fund creating costs—and I say 'potential' because we have not seen the exact way that it will operate. In that sense, if we allow opting out, we reduce the pool of those who are involved in it, so a lot of the benefit, in terms of assurance to Queenslanders in the social licence and the potential for remediating historical mines, gets reduced if we do that. Is there a loss of public benefit in Queensland and also a loss of social licence for the entire sector?

Mr Nolan: I think they are probably two separate questions. I will take the question around social licence first. That is unquestionably a broad, complex question that each of us, as operators in the Queensland sector, has to face. That is something that as a company BHP is intimately engaged with. We have an obligation to continue to meet community expectations and to work on our social licence across a broad range of social, environmental and economic perspectives. I do not think this fund or this scheme or this bill in and of itself really is a major contributor to that area of social licence, if you like.

In terms of the objectives of the bill around financial assurance and risk mitigation to the Queensland government, from the perspective of a large, low-risk company such as BHP we think we can acquit that financial assurance obligation through a lower cost operation through alternative means. That is what we are putting forward. We understand that some other high-risk and potentially smaller companies may well be supportive of a pooled fund operation, but that should be the choice of the operation. Unquestionably, that financial assurance—that obligation—must be there to ensure that the expectations of the state of Queensland, the taxpayers and the community around financial assurance, rehabilitation and risk mitigation are met.

CHAIR: I note that across the four BMA mines you are talking about you are seeking certification on over 2,000 hectares of land where you believe that you have met your rehabilitation obligations, meaning that if you proceeded and finished with that process, with only 700 hectares signed off you would have the majority of land processed, presumably, if that processing goes through. That means that you are progressively doing rehabilitation and meeting time frames.

Mr Nolan: Yes.

CHAIR: But you did not wish to have harder time frames put into the legislation. We have already heard this morning that people want to move those time frames to be tighter. With the company progressively moving to do that, why is there a concern that time frames are put in place in that way? I hope that you can proceed with that. Indeed, if BMA could make the claim that they had a majority of signed-off, certified land that would be an impressive achievement.

Mr Nolan: Thank you, Mr Chair. I would probably start my answer by saying that mining operations are very large and complex operations. It can sometimes be difficult to get a true sense of the scale and what is involved with a mine site when we are in a room such as this working through a discussion. I think it is a very useful thing for us to work through the discussion. I would like to extend an invitation to the committee to come to one of our mine sites and have a look at some land that has been rehabilitated, some land that has been identified for rehabilitation and the mining operations to try and understand some of the decision-making process that goes into it.

What we are concerned about with putting arbitrary time frames around things is losing the flexibility of decision-making that goes into running a mine. The areas that you mine, when you mine them and how you mine them changes over a period of time according to market conditions, exchange rates and geotechnical considerations. We are not suggesting that we want to walk away from obligations around rehabilitation. What we are absolutely looking for is a practical application so that we are not locked in to rehabilitating certain areas within certain time frames, given that we may well want to mine those areas in five, 10 or 15 years time. Once you have rehabilitated it, if you are then going through and putting spoil on there or other mining operations it takes away from the overall cost efficiency and cost-effectiveness of the mining operation. We are looking for flexibility, not to walk away from the obligation to participate.

Mr O'CONNOR: Is this because you might mine somewhere and then have to go back because you could extract more from the spoil later on?

Mr Nolan: We may mine somewhere this year and then choose to go to a different pit and then come back in 20 years time because of a change in market conditions or because of technology or a whole range of geotechnical/market/economic considerations, absolutely. Mark, do you want to add anything there?

Mr Garrahy: In relation to your question, yes, we do mine multiple seams. There are times that we will take out the top seam and we will come back at a later stage. Those seams have varying qualities, as Dominic has outlined. What the market requests will dictate when we go back into those areas. We have had incidents in the past where we have rehabilitated areas and, unfortunately, we have had to go back over and again remove the topsoil from those areas and mine through rehabilitated areas, and that is not a position we want to be in.

Mr O'CONNOR: You spoke in your submission about how a larger operator like yourself would end up bearing the brunt of it and maybe covering for smaller operators. Can you expand on that?

Mr Nolan: It comes back to one of those earlier comments. We are still to see the full workings of the fund—

CHAIR: Effectively, within the company you have a system of pooled risk across multiple sites.

Mr Nolan: Absolutely. We can get access to market bonds at a cheaper rate than participation in the pooled fund. It may suit other smaller, high-risk operators to participate in that pooled fund.

Mr O'CONNOR: The fairness argument was that you would be basically stumping up for them.

Mr Nolan: We would be paying more to participate in that pooled fund than we otherwise would.

Mr O'CONNOR: Which others have described as paying twice?

Mr Nolan: That is right, yes.

CHAIR: Just on that point, you are effectively taking the benefit of being a large company in the pooled risk you have across successful and unsuccessful sites. Wouldn't that be very similar and you would be participating in an even larger pooled fund in a similar way?

Mr Frost: Yes, we can certainly see the benefit for—

CHAIR: That paying twice thing seems excessive.

Mr Frost: Absolutely. That is portfolio theory: the risks of the many pay for the loss of a few. We understand the principle of the pooled fund and we are not against the pooled fund at all. We are entirely supportive of it. I think where we are coming from is that it is a little bit like how BHP makes its insurance buying decisions. There are insurance companies that you can transfer the risk to. There are self-insurance opportunities for us, and you can even get into catastrophe bonds and that type of thing. You look at a suite of options that are available to you, and you try and make sure that you choose an option that is cost-effective and appropriate to your risk.

What we are saying is that the pooled fund is going to work very well for a number of operators, particularly smaller operators and those that may have a higher risk profile, and therefore the cost of them being in the commercial market for insurance bonds or insurance policies is likely to be higher than perhaps with BHP. With BHP, as a low-risk operator we know that we can obtain insurance bonds or a bank guarantee at a lower rate.

CHAIR: I may not have used the risk terminology correctly. It is pooled rather than portfolio risk, I think you said. We are getting public benefit for the state in that very large corporations such as BHP effectively have a way to manage that risk across the whole portfolio—

Mr Frost: We do.

CHAIR:—and are not worse off necessarily as being part of a different portfolio through the Queensland state's varied and multiple mines.

Mr Frost: We would be worse off by going into the pooled fund. We use our own insurance company to provide those bonds. We are able to mitigate against using bank guarantees or other mechanisms by using our insurance company, which is licensed by APRA and has a Standard & Poor's A-minus rating, just like an AIG or Zurich in this country.

Mr Nolan: I think the point is that it would be more cost-effective for us to operate outside of that pooled fund.

CHAIR: That was potentially, but you are more confident.

Mr Nolan: All of our market expectations would be that it will be more cost-effective outside of the pooled fund. If it is an option for us to participate then I think that would be the most commercial way to approach it.

Ms RICHARDS: Thank you for your presentation. Given the conversation around the dynamic nature of the industry and the flexibility required, we have heard in earlier submissions—and there were some included there—with regard to the estimated rehabilitation costs and the calculations that surround that. I was wondering if you could provide some commentary from BHP's point of view on that calculation and its consideration of contingencies in a flexible and dynamic environment.

Mr Nolan: Sure. Are you happy to start off with that, Matthew?

Mr Frost: I will let you start, but my only concern is where we get into some commercially sensitive data. Your questions would be answered but directed to the committee on a private basis.

CHAIR: I think the question was referring to the new calculators that are being proposed and using the knowledge you have as an extensive mining company, not necessarily about individual projects. It is about the new way this is calculated against risk and possibly giving us advice about it more broadly than the company itself.

Mr Garrahy: Are you talking about the calculation of financial assurance or are you talking about the provision of surety, the percentage that we are—

Ms RICHARDS: Yes, the percentage. The calculation process. It was raised earlier. The system could be improved, and I was wondering if you had any commentary around how that system might be improved.

Mr Frost: We would be happy to provide some commentary on it, but at the moment we are lacking some data in that regard and we have, through consultation, said that we are happy to contribute to that discussion.

Mr Nolan: In terms of how that is going to operate, in effect, under the proposed scheme, that is something that we are not clear on and that is something that we have been seeking further information on. I think a lot of that will be determined through the regulation process, so we are happy to have a further conversation with the committee separately in terms of some of our specific areas. If there is any knowledge or expertise that we can bring in terms of how we do things then we are certainly happy to do that.

Ms RICHARDS: A number of the submissions have touched on non-use management areas and residual voids. Do you have any comment on that aspect of the bill?

Mr Garrahy: I think commentary around the bill allows for unrehabilitated voids. We do not believe that the bill actually allows for unrehabilitated voids to remain. What the bill provides is for non-use management areas. This has probably been outlined before, but I will read this and then get into some further details. It is an area of land 'the subject of a PRC plan that cannot be rehabilitated to a stable condition after all relevant activities for the PRC plan carried out on the land have ended'. The definition of 'stable condition' is that the land is safe and structurally stable and there is no environmental harm being caused by anything on or in the land and the land can sustain a post-mining land use. That last point is key. While a void may not be able to fulfil a post-mining land use—and this could be grazing or native bushland or other—use of any former void as regulated must be rehabilitated to safe, stable and non-polluting. When we do our calculations for our financial assurance, we calculate on the basis that the voids will be safe, stable and non-polluting.

CHAIR: We thank you very much for your detailed submission and also for your appearance here today. We have a lot of committee business, but I would love to take you up on your offer to see some of the rehabilitated land. We will consider that as a committee. We appreciate it very much.

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

KAVANAGH, Ms Chelsea, Policy Manager, Environment, Queensland Resources Council

MACFARLANE, Mr Ian, Chief Executive, Queensland Resources Council

CHAIR: I invite you to make a short opening statement after which some of the committee members may have questions for you.

Mr Macfarlane: The Queensland Resources Council welcomes the opportunity to appear before the Economics and Governance Committee on the Minerals and Energy Resources (Financial Provisioning) Bill 2018. I am joined by my colleagues Frances Hayter, Policy Director of Environment, and Chelsea Kavanagh, Policy Manager of Environment, who have led the QRC's work on the rehabilitation components of this bill.

The bill proposes a new regulatory framework for the resources sector which is the biggest suite of changes since the regulation of the sector was moved to the environment department from the mines department in 2001. Given the significance of this reform, we request your full consideration of the major issues we present today and the recommendations in our submission. We also support the presentation by QRC's member company BHP and that this be utilised by the committee as a real-life example of the potential impact of the scheme unless there are some important amendments made to the bill.

As our submission to the committee states, we do not oppose the key policy concepts that are the basis for the bill. The resources sector understands the community and government interests in ensuring there is sufficient financial assurance held so that the government does not carry the cost of companies who fail to meet their rehabilitation commitment and the value placed on the whole-of-life mine planning for rehabilitation. However, we cannot support the bill as drafted given that it fails to deliver practical law for the purpose of achieving the government's intent while still affording flexibility to allow the mining sector to respond to external change and remain competitive. This is in addition to the government's full consideration of our workable proposals to support the reform.

Our submission extensively details the resource sector's concerns, and today we would like to re-emphasise those of greatest significance. At this stage and in the interests of keeping this statement to time, we would seek the leave of the committee to table the supplementary correspondence which delves further into the matters raised in the government response to the submissions provided to the committee on 16 March 2018 and related components of the submission to the bill.

CHAIR: In keeping with practice, we will take a copy and have a glance at it and move to table it later. I take your assurance that there will not be anything salacious in it.

Mr Macfarlane: No, there will not be anything salacious in it. I will pass to my policy director, Frances Hayter, to go through the technical detail.

Ms Hayter: As Ian said, we have four key matters that we would like to emphasise. The first one is—and you have already heard this today from QLS—that we have significant concerns with the very short time lines, particularly for making submissions to the committee itself on the bill. Secondly, and compounding this again as BHP has already mentioned, there are ongoing difficulties for the sector because we have been unable to evaluate the true impact of the bill when we are missing some of the underpinning details of the scheme such as the final rates and the categorisation system. We understand that this information will not be available until April which means that it will also potentially miss out on your deliberations.

However, based on the information that we know so far and as confirmed in the government's response to submissions to the committee, we truly feel there is the real potential for some companies, including those with low-risk profiles, to pay more, again as BHP has just set out. This creates a disincentive and conflicts with the objectives of the reform—one of which was that the new system should not be a disincentive to industry.

There are a couple of other key issues. We believe there is confusion in the drafting of the estimated rehabilitation cost in terms of what can be spent on in its calculation; the government resistance to a merits review process—and QLS has already pointed that out; and lack of adequate consideration of rehabilitation performance when determining a company's risk profile and the category it sits in in the scheme which, of course, makes a difference to how much it pays into the

scheme. The state's financial risk and on-ground rehabilitation efforts go hand in hand, and not considering rehabilitation would appear to conflict with that premise. The act currently says 'may' and we are suggesting, and have suggested for a long time, that it should be 'must'.

Again, the framework has not been adequately addressed in the bill. This is particularly in relation to the PRC plans. We feel that it is underdeveloped at the moment, and we have not been able to get significant changes to that, and it does not address the operational needs of the mining sector. Again, this goes to the limited flexibility to amend such plans in a routine way without automatically being subject to the full public notification or right to submissions. Our aim is to be as accurate as possible—this cannot be done 20 years out. We would like a regular process of review that is done with the department only. It is not about where there are major changes; it is about tidying up of time frames and maybe details of rehabilitation.

Lastly, while the government's response to the submission clarifies the department's intent on many occasions, it does not commit to making any amendments in the bill. This particularly pertains to the retrospectivity issues and the transitional issues. Without clear amendments, we do not feel the government will have to consider issues for existing mines, particularly the potential for retrospective enforcement. Again, we have heard a bit about that today, about mines in the past being able to go forward with limited rehabilitation. We would like to emphasise that we do not support that in any way going forward, but there must still be acknowledgement that those mines were operating under conditions of the time and that the Queensland government and community have enjoyed the returns from those operations.

We are asking the committee to seek recommendations and clarifications from the government and to make those recommendations regarding amendments to the bill in the interests of implementing an effective financial provisioning and rehabilitation framework that not only gives confidence to the community and the government but just as importantly is workable and equitable for the sector. We would welcome any questions.

Mr STEVENS: In relation to the QRC's submission, you raised concerns about the estimated rehabilitation cost and that process. Could you identify a better wording of that legislation? Is it possible that you are mostly concerned about the devil in the detail that is yet to come through regulations and rates et cetera which will come further down the track?

Mr Macfarlane: One of the problems is that we have not seen a lot of the detail and we are flying blind in that regard. The consultation process has been very short in terms of this bill. I will ask Frances to go through the specific example.

Ms Hayter: In terms of the estimated rehabilitation cost, do you mean the calculation of the starting number and then how it would be translated into the actual payment?

Mr STEVENS: Correct.

Ms Hayter: I am not sure that we said we had huge issues with that, per se. We do have concerns that it is not flexible enough. There are current calculators. The government is reviewing those at the moment. There will be a process for looking at the refined versions. Our position has been that they are not flexible enough in terms of the actual costings applied in those calculators. I will give a specific example: it is predicated on a particular type of dozer which costs a particular amount. The companies may for a range of reasons use smaller, cheaper, alternative ways with alternative outcomes. The calculators are quite high level now, but they have removed company owned calculators and the discount system. We are looking for as good a refinement with as low a margin of error as possible in those calculators. The government is going to have to put some work into that now because of the change in the system.

Mr STEVENS: We have one of your big members of the Queensland Resources Council here—BHP. I assume that you have a lot of smaller members in your membership as well. How does this legislation particularly not discriminate in favour of the larger resource players through the calculation of rates over the smaller players in your industry? Doesn't this discrimination form a negative part to fundamental legislative principles?

Ms Hayter: It is interesting that you should ask that. We touched on that issue in our submission. In fact, the companies that are most likely to benefit from the new scheme are the mid-tier to smaller companies because they will not have cash locked up anymore and potentially the rates that they will get—that is based on how they are categorised—will be lower than they can achieve now from financial institutions.

Mr STEVENS: You are actually saying it is discriminating against the larger operators?

Ms Hayter: That is the real potential, because they can access much lower rates—

Mr STEVENS: In the bank guarantee sector.

Ms Hayter: Correct, yes, as per the current set-up.

CHAIR: I am obviously not a financial risk calculator when it comes to the portfolio of mines. That is not my expertise.

Ms Hayter: Nor mine.

CHAIR: I would have understood that large companies have a variety of mines with a variety of different ore bodies or resources. They spread that risk across the portfolio that they have. Effectively, this scheme allows small and mid-tier miners to share some of that portfolio, admittedly only within the Queensland mining environment. It probably does, in the words of the esteemed deputy chair, discriminate against those who can do that through their own very large operations. Would that be fair to say or am I misunderstanding the position that large companies will be in?

Ms Hayter: Just to clarify, is the suggestion that smaller companies potentially stand to benefit earlier but you are asking me about whether in fact there is a quasi-penalty for all the larger companies going into the scheme?

CHAIR: Larger companies obviously have a benefit. If you are a small company and you are exploring one particular ore body and it does not work out in the way you had anticipated and made your investments, you can suffer, whereas a larger company running a variety of mines might have that happen in one mine but they can spread—

Ms Hayter: They can definitely socialise that risk across their sites.

CHAIR: In a similar way that we will be doing for Queensland mines in general, collectively.

Ms Hayter: Yes, collectively.

CHAIR: I am not sure about the word 'socialise'.

Ms RICHARDS: Equalise.

CHAIR: They can balance that risk.

Ms Hayter: They do not have that moral hazard issue where they are paying for poorer operators because they are working within their own system.

Mr O'CONNOR: I have a broad question on the feedback you have from your members on the proposed changes to the model. Would you be able to comment on that?

Ms Hayter: As I mentioned in my introductory statement and in our submission, the general position of our members is that they understand why the proposals are coming in. Heaven knows, we have been fiddling around with the financial assurance system for about 15 years, so there is definitely a desire for certainty. Nobody has given us any indication they oppose the principles and the reasons for doing it. As I outlined, there are some very specific concerns about the flexibility, the refinement of the system and where those larger companies, or lower risk companies to be precise, may incur extra cost. The really big one that I must emphasise is with the removal of the plan of operations—which was based on a regular review and being able to put forward to the state how things will change or may change because we are mining over there now or our rehabilitation might not have been as good there because we had a drought or fire or any of the above—they are now locked into certain numbers and certain processes.

CHAIR: There being no further questions, thank you for your earlier submission and for your contribution here today. Thank you to all the witnesses who have participated today. Thank you to the Hansard reporters. A transcript of the hearing will be available on the committee's parliamentary web page in due course. We have had some questions taken on notice. The required time for answers will be 5 pm on Tuesday, 3 April so that we can include them in our deliberations. The deputy chair has reminded me that we have not formally accepted as tabled the Queensland Resources Council extra submission. The deputy chair has moved that it be tabled, seconded by the member for Redlands. There being no objection, it is so carried. I declare the public hearing for the committee's inquiry into the Mineral and Energy Resources (Financial Provisioning) Bill 2018 closed.

The committee adjourned at 12.44 pm.