AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

Members present:

Mr IP Rickuss MP (Chair)
Mr JN Costigan MP
Mr SV Cox MP
Mr S Knuth MP
Ms MA Maddern MP
Ms J Trad MP
Mr MJ Trout MP

Staff present:

Mr R Hansen (Research Director)
Mr M Gorringe (Principal Research Officer)

INQUIRY INTO THE MINING AND OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 13 FEBRUARY 2013

Brisbane

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Committee met at 8.31 am

ALBION, Mr Graeme, Director, Aurukun Project, Department of State Development, Infrastructure and Planning

BARR, Mr Dean, Program Manager, Streamlining Approvals Project, Department of Natural Resources and Mines

BEARE, Mr Geoff, Director, Business and Stakeholder Solutions, Department of Natural Resources and Mines

GRUNDY, Mr Jim, Executive Director, Mining and Petroleum Operations, Department of Natural Resources and Mines

McKIE, Mr Gerry, Director, Native Title Services, Department of Natural Resources and Mines

McNEVIN, Ms Bernadette, Project Director, Competitive Cash Bidding, Department of Natural Resources and Mines

NICHOLS, Ms Elisa Jane, Executive Director, Reform and Innovation, Department of Environment and Heritage Protection

PIETZNER, Ms Kirsten, Director, Petroleum Gas and Geothermal, Department of Natural Resources and Mines

SKINNER, Mr John, Deputy Director-General, Policy and Program Support, Department of Natural Resources and Mines

SQUIRE, Mr Warwick, Director, Land and Resources Policy, Department of Natural Resources and Mines

CHAIR: Welcome, ladies and gentlemen. I declare the meeting of the Agriculture, Resources and Environment Committee open. I would like to acknowledge the traditional owners of the land on which this meeting is taking place. I am Ian Rickuss, member for Lockyer and chair of the committee. Other members include: Jackie Trad, member for South Brisbane and deputy chair; Jason Costigan, member for Whitsunday; Sam Cox, member for Thuringowa; Shane Knuth, member for Dalrymple; Anne Maddern, member for Maryborough; and Michael Trout, member for Barron River. Please note that these proceedings are being broadcast live via the parliamentary website.

The purpose of this meeting is to assist the committee in our examination of the Mining and Other Legislation Amendment Bill. The bill was introduced by Minister Cripps and subsequently referred to the committee on 28 November for examination with a reporting deadline of 12 March. We hope that the briefing today will give everyone a better understanding of the provisions of the bill.

The briefing today will be led by the Deputy Director-General of the department, Mr John Skinner. I remind honourable members that these officers have given their time to be here to provide factual information. They are not here to give opinions about the merit or otherwise of policies behind the bill or alternative approaches. Any questions about the policies of the government that the bill seeks to implement should be directed in the first instance to the responsible minister, namely Andrew Cripps, Minister for Natural Resources and Mines, not these officers.

Before we start can all phones be switched off or to silent. John, would you like to make a start?

Mr Skinner: Thank you very much, Mr Chairman. I acknowledge the chair of the committee, the honourable member for Lockyer; the deputy chair, the honourable member for South Brisbane; and the committee. Thank you very much for your time today. With your leave, Mr Chair, I propose to provide the committee with the policy context, key amendments and the major issues arising from consultation and drafting of the bill and then answer any questions that the committee may have.

Looking at a summary of the amendments, the four key policy drivers for the bill are (1) red-tape reduction, (2) clarity and consistency, (3) modernising the resource management framework and (4) supporting the four-pillar economy. Some measures of the bill are driven by a combination of these.

Turning specifically to the key amendments, firstly small scale mining, the bill amends mining and environmental legislation to reduce red tape for small scale miners. It modernises the resource management framework and supports the four-pillar economy, particularly local mining economies in places such as Yowah, Quilpie, Emerald and Winton. Amendments to the Mineral Resources Act 1989 allow small scale opal and gemstone miners to transition from mining leases to mining claims to reduce administrative and financial requirements. Eligible miners will be able to apply to convert one or more mining leases to one or two mining claims, each up to 20 hectares in area, and use machinery for mining purposes on the converted or new mining claims as long as the equipment is not prohibited by a restricted area or by regulation. Rent will no longer be payable and mining royalty returns given only if the annual value of production exceeds $100,000. All types of mining claims will benefit from (1) a streamlined application process where only directly affected landholders and local governments may make objections, (2) making optional the issue of a certificate of grant—available at a miner's request—and removing requirement to produce the certificate during tenure maintenance processes and (3) work programs only being submitted on application every five years and on renewal of the claim.

The amendments to the Environmental Protection Act 1994 mean that an environmental authority will not be required for low-risk exploration activities and low-risk opal and gemstone mining activities on a mining claim. Eligible opal and gemstone miners and small scale explorers will no longer have to apply for an environmental authority, pay annual fees or comply with ongoing administrative requirements. The amendments also redefine 'small scale mining activity' to cover these activities and apply criteria to restrict the type of activities available without an environmental authority to low-risk ones which are restricted by size and location. However, operators of small scale mining activities must continue to fulfil their general environmental duty under the Environmental Protection Act and if they do not the enforcement tools of the act are available to remedy any contraventions that arise.

The land of the underlying tenure owners will be protected as requirements for financial assurance and rehabilitation continue through conditions prescribed in the Environmental Protection Regulation. Small scale mining activities operating without an environmental authority will be subject to a small scale mining code made under the Mineral Resources Regulation.

Under these reforms it is estimated that between 700 and 1,200 opal and gemstone mining lease holders and between 500 and 750 existing mining lease environmental authority holders may be eligible to transition to a mining claim. Around 256 existing exploration permit environmental authority holders and up to 1,800 existing mining claim environmental authority holders will benefit administratively from removing environmental authorities. The opal and gemstone miners transitioning into this package would save over $11,000 over 10 years on a 10-hectare mining operation. The regulatory requirements for departmental contact over the 10-year period would be reduced from 30 times across three agencies to twice over 10 years with one agency.

With regard to consultation, a joint government-industry workshop identified reforms, some of which have been developed into the bill. Other reforms proposed by industry, such as for gold and tin alluvial mining, have not been included in this bill as they require further development due to the nature of their operation and locations. Stakeholders including industry groups, agricultural peak bodies, most small scale miners, local government and environmental groups generally support the small scale mining amendments.

I now turn to the subject of fossicking. The Fossicking Act 1994 limits fossicking to the use of hand-held implements, like metal detectors, spades and sieves, and prohibits the sale of fossicking materials for commercial gain, reflecting the nature of fossicking as a relatively low-impact hobbyist activity. The state has reassessed the original interpretation of fossicking used in the Fossicking Act

and has formed the view that fossicking is not mining as defined by the Native Title Act 1993. Consequently, the grant of a fossicker's licence is not a future act conferring a right to mine, as defined by the Native Title Act, on the licensee. Section 24MD of the Native Title Act applies—acts that pass the freehold test—to the grant of a fossicker's licence and gives native title holders and claimants the same procedural rights as landholders. In the Fossicking Act landholders receive no procedural rights in the application and grant process. The licence is conditional upon the holder obtaining prior written consent from owners of occupied land before entering for fossicking. The granting of a fossicker's licence provides the licensee a right to fossick over the whole of the state of Queensland. However, there is no guarantee that when a fossicker seeks approval to enter upon occupied land they will obtain permission to enter and there are no appeal provisions if permission is refused.

The proposed amendments do not require a fossicker's licence holder to enter into any native title negotiations, and the grant of a fossicker's licence does not create an interest in or priority to any land. The state's view is that the owner's consent can only be given or refused by an owner of the land on the basis of a legal precedent set by the Queensland Court of Appeal defined as someone normally able to charge rent for that land. As this definition does not apply to native title parties with non-exclusive rights and interests, fossickers are not required to seek their authority before entering upon land.

Indigenous and native title stakeholders and interest groups were consulted, including the Queensland South Native Title Services, Cape York Land Council, Carpentaria Land Council, North Queensland Land Council and the Queensland Indigenous Working Group. Submissions were received from the Cape York and North Queensland land councils that did not support the amendments and highlighted that the proposals did not provide an alternative mechanism that would provide rights to all native title holders in line with those of freehold landowners. Accordingly, the bill was amended to give native title parties determined to hold rights and interests to the exclusion of all others the right to give or refuse consent to the holder of a fossicker's licence seeking to enter native title land. Land councils also raised concern in relation to cultural heritage. Cultural heritage in Queensland is protected and administered under the Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Cultural Heritage Act 2003. No amendments to or reduction in the protection afforded to cultural heritage by these acts are proposed in this bill.

A number of ancillary amendments are also covered in the amendments. The bill also seeks to amend the Mineral Resources Act to modernise and make consistent statutory officer roles and terminology by transfer of powers and functions of the Mining Registrar to either the chief executive or the minister. The Mineral Resources Act is aligned with other Queensland resources legislation to improve service delivery. The Mining Registrar's day-to-day role of supporting resource development and providing stewardship of existing tenures continues but based on delegated powers rather than as a statutory position.

In addition, during the consideration of the Mines Legislation (Streamlining) Amendment Bill 2012 this committee recommended the legislation clarify that prohibited dealings provisions do not apply to contractual arrangements between parties that grant interest in parts of mining tenements. The bill gives effect to the committee's recommendation.

Consultation with the CSG-LNG industry identified an opportunity for a common-sense reform to also reduce the impact of CSG-LNG projects on landholders and communities and reduce red tape for project proponents. Currently, holders of pipeline licences under the Petroleum and Gas (Production and Safety) Act 2004 are entitled to conduct activities in the area of the licence incidental to the construction and operation of the pipeline. Project proponents are unable to use pipeline licences to co-locate linear infrastructure such as powerlines and telecommunication cables incidental to the authorised activities of other petroleum authorities. There are also restrictions on other activities such as: work camps on one pipeline licence cannot be used for construction of infrastructure on other licences potentially resulting in multiple camps. The amendment allows activities on the pipeline licence that are incidental to a petroleum lease, petroleum facility licence or other pipeline licence to be undertaken once the activities are approved and the safe operation of the pipeline considered.

The bill also amends the definition of 'occupier' in the Mineral Resources Act 1989, the Petroleum and Gas (Production and Safety) Act 2004, the Petroleum Act 1923, the Geothermal Energy Act 2010 and the Greenhouse Gas Storage Act 2009 in response to public concerns about the definition's scope. The amendment definition clarifies the definition of 'occupier' as meaning a person who has a right to occupy land arising under an act such as freehold or leasehold title, or a lease registered under the Land Titles Act. It also clarifies that an occupier is able to confer a right

to occupy to another person or entity and that this right be recognised as a legitimate occupier under the definition and compensation provisions of the resources acts. It recognises business arrangements such as family trusts, partnerships and companies associated with managing rural businesses on both leasehold and freehold land.

The GasFields Commission, Queensland Resources Council, Australian Petroleum Production and Exploration Association, Arrow Energy, Origin Energy, QGC, Santos, Local Government Association of Queensland, AgForce, Queensland Farmers Federation, Queensland Conservation Council and the Environmental Defenders Office were generally supportive of these ancillary amendments. The Queensland Law Society has raised concern in relation to the definition of 'occupier'. The society believes that the amendments proposed may not extend to freehold owners. In this regard the department is confident that the amendment is sound and meets the government's policy objectives.

I will now turn to the competitive tendering process. The proposed amendments to the Mineral Resources Act 1989 and the Petroleum and Gas (Production and Safety) Act 2004 will modernise the approach to managing resource exploration in Queensland through the competitive tendering framework for petroleum and gas, coal and minerals. Granting exploration rights through a controlled release of land and competitive tendering process will ensure that those most capable of developing the state's resources are given the opportunity to do so. Where appropriate, a cash bid component will be included to ensure the community receives an appropriate return on this access to potentially highly prospective areas based on the inground value of Queensland's resources. Only a few small areas in well-developed basins will be released with a cash bid component. The vast majority of tenements in the state will still be released through the non-cash-bidding process, an area which is important to small explorers.

Since 2005 over 140,000 petroleum and gas subblocks have been released through a competitive tender process without a cash-bidding component. The first round of cash bidding for potentially highly prospective coal seam gas by comparison is releasing some 50 subblocks. After publicly announcing the release of this land for exploration, the current call for tender was made publicly available on the Queensland government's eTender website and the process is commensurate with state government tendering in relation to other major financial decisions.

To maintain the highest level of integrity, the current competitive tender documentation includes all legislative and administrative requirements of the process, including the criteria for evaluating tenders and selecting the preferred tenderer, and the department has in place a comprehensive probity plan with an independent probity adviser to scrutinise the tender evaluation process. The probity report at the end of each competitive cash tender will be made public to ensure transparency.

For each release, potential tenderers will receive the benefit of detailed geological assessment provided by the Geological Survey of Queensland, along with details on any other land uses that a permit holder would need to manage. Tenderers will be assessed on their capability and commitment to deliver a work program based on the geological assessment provided while being sensitive to other land-use constraints.

These amendments will clarify that an exploration permit for coal and potentially minerals can only be obtained through a tender process, albeit non-cash, and align these arrangements with petroleum and gas. In support of Queensland's decision to move to a contemporary land-release process for resource tenure, comparable jurisdictions of New Brunswick and Alberta in Canada currently operate a competitive cash tender regime for exploration permits. Due to the strict requirement of confidentiality, the competitive tendering process and opportunities for consultation were limited. The Queensland Resources Council and the Association of Mining and Exploration Companies raised a number of issues surrounding the justification for a competitive cash tendering process as well as issues of transparency and the impartiality of the government. Independent probity advisers were engaged for the duration of the development and implementation of the competitive tendering project to ensure the highest level of integrity is maintained throughout the process.

I will now turn to the Aurukun bauxite resource project amendments. Since the announcement by the government of new expressions of interest for the development rights of the Aurukun bauxite resource, we have, in collaboration with the Department of State Development, Infrastructure and Planning, been working to identify and resolve any issues that could adversely affect the retender. The proposed amendments remove any doubt that the state may enter into a commercial arrangement with more than one proponent for development of different parts of the

Aurukun bauxite resource; clarify that a mineral development licence and mining lease granted in respect of an Aurukun project may be cancelled where an Aurukun agreement has been terminated—this provision is additional to the normal cancellation provisions under the Mineral Resources Act and addresses a technical issue identified during the cancellation of Chalco's mineral development licence; and remove any doubt that an Aurukun proponent can transport bauxite mined across an adjoining tenement to an export port on the western coast of the cape. It is important to note that while the amendments to the Mineral Resources Act and the consequential amendments to the Wild Rivers Act 2005 support the government's current competitive tender process for the development of the Aurukun bauxite resource, the application of part 6A and part 7AAA is not limited to the current competitive tender process.

The Queensland government, through the Department of State Development, Infrastructure and Planning, has been negotiating closely with the Wik and Wik Way people, who hold native title over the Aurukun bauxite resource, and the Aurukun Shire Council. Negotiations have been conducted through the five elected directors of the Ngan Aak Kunch Aboriginal Corporation, which is the registered native title body corporate under the Native Title Act 1993 for the determinations of native title and which acts as the representative or agent of the Wik and Wik Way people for native title matters. Negotiations with the Aurukun Shire Council have been with the mayor, deputy mayors and councillors and the Wik and Wik Way people through their corporation's directors, and the Aurukun Shire Council have expressed their full support for the timely development of the Aurukun bauxite resource. It should be noted that when the Premier and Deputy Premier announced the retender at the community cabinet meeting in Cairns the mayor of Aurukun, Councillor Dereck Walpo, was in attendance to support the announcement. The Aurukun Shire Council and Ngan Aak Kunch Aboriginal Corporation directors have been meeting regularly with government officials since the announcement in Aurukun and Cairns to discuss all aspects of the retender, including the proposed amendments for the Aurukun project set out in the bill.

In conclusion, the government has committed to reducing red tape and providing regulatory certainty to the small scale mining industry and to investors within the resource sector generally. The Mining and Other Legislation Amendment Bill 2012 is a step towards this commitment. This concludes my opening brief. We are happy to provide additional information should the committee require any.

CHAIR: You quoted some numbers in relation to the amount of small scale miners. You said the ones under $100,000 would be affected by the bill. You were talking about the different types. Are there about 1,000 small scale miners under that bill? What sort of numbers? Can anyone tell me roughly?

Mr Skinner: We have included the numbers.

CHAIR: Someone can work that out for me, if they like.

Mr Skinner: Between 700 and 1,200 opal and gemstone mining lease holders.

CHAIR: Would most of those be under the $100,000 threshold that was quoted?

Mr Grundy: Yes, they would. The majority of the small scale miners that would fit into this package very rarely put in a royalty return to actually claim that amount.

CHAIR: On that, I notice in one of the submissions there was some criticism about the timing of the bill. I realise this cuts both ways. I think it was Ed Lunney who put in his submission that no-one actually would be out at the tenements during the November-December-January period. What is your feeling? Did you feel you had fair consultation with these people? Was there some advice consultation before the bill actually came before the House?

Mr Barr: Yes, the department consulted with five small mining associations during the end of August over two days and subsequently had follow-up consultation during and up to the introduction of the bill

Mr COSTIGAN: Could you advise how much revenue the government expects the competitive tendering process to generate for coal and other minerals and how that figure was derived?

Mr Skinner: There are estimates which have been calculated by Treasury. Bernadette, do you want to comment on that?

Ms McNevin: The estimates were announced in a midyear budget update in January 2012. They were derived by Treasury during a period of a point-in-time analysis of the current status of coal prices and an upswing in the development of the petroleum and gas industry in Queensland.

There will be a tender process that is currently underway. It will be closing tomorrow. So I guess it would be inappropriate to speculate on what kind of cash bids we might get tomorrow at the closing. Obviously at that point we will then be in a position to more closely review those estimates.

Mr Skinner: We will provide those figures. I do not have them with me. As I said, they were calculated by Treasury. We will go back to the documents and are happy to provide what they have published.

CHAIR: As a supplementary question to you, Bernadette: the legislation will stop land banking or tenement banking, is that right, even in the cash tendering process? If one of the major miners decides to spend a lot of money getting the permits, can we stop the land banking where the land just virtually sits there?

Ms McNevin: Previously, for the acquisition of an exploration permit for coal, the proponent could, anywhere across the state, claim an area for an exploration permit just over the counter, paying a small fee. They were still required to undertake their work program commitments, but, having such a large area of the state covered, there were then opportunities for concerns among communities about the extent of exploration permits that were covering their farms and so forth. We are in a position now to say that the exploration permit will still have the same work program commitments. You will be issued a permit in this case, the current tender, for a four-year period. You will be required, over the four years, to work towards the next phase of development of that particular area. After that time the permit will be cancelled, so there is no opportunity to land-bank in this circumstance.

Mr COX: Along the same line of questioning, the QRC expressed concerns with the competitive tender process. The government has made cash reserves overwhelmingly a major factor in determining tender winners, as opposed to prominent capacity and capability. Obviously, those last two are prerequisites before they can enter into a bidding situation, anyway. I guess it is not really overwhelmingly going to be the cash bidding process, is it? If they cannot come up with those capabilities to perform what they are going to do, it should really answer that question—that it is not going to be a major factor, the cash?

Ms McNevin: Yes, that is right. It is basically the criteria against which each tender will be assessed that has been made public through the call-for-tenders documentation. This includes, definitely, the requirement to demonstrate technical capability, a work program that is appropriate for the sites that we are releasing, and the financial capability to fund their work program as much as to fund their cash bid.

Mrs MADDERN: I would like to go back to small mining. The Local Government Association has queried whether there is a capacity for small mining claims to be bulked together and actually become a large claim under a number of names. My question is: if each individual is only allowed two permits, how do you identify the ownership of those permits and whether they are related to other applications to avoid this bulking together? Does that make sense?

Mr Skinner: Yes, I think I understand.

Mr Grundy: The way the current register system works for mining tenements in Queensland, currently a mining claim holder is eligible to hold up to two mining claims. That is as an individual entity. Common practice is, in the small scale mining industry, there will be a number of related people who will hold a number of mining claims. In this suite of amendments, the actual ability now to have machinery onto mining claims up to 20 hectares means that they have a capacity there to enlarge their mining claim operation into a larger business, but at the same time, if they still want to stay within the mining lease regime, they can. I would expect there will be a percentage of miners who will have both mining lease operations and mining claims. As part of our assessment, we look at, through our register and tenure holder details, who has interests in mining tenements.

Mrs MADDERN: You could have half a dozen companies, all of which look different but have the same principal shareholder? That was my question: can you identify that and make sure they do not double-dip?

CHAIR: I would imagine that even families have some of those issues, too, with husbands, wives, children.

Mr Skinner: I take the point, and maybe we need to respond to that point. I will take that on notice.

CHAIR: I have just one point, and I do not know whether it was an oversight on your part. In your brief you said that fossicking now covered all of Queensland. Does that include national parks?

Mr Skinner: Good question. Gerry?

Mr McKie: A fossicker's licence can be granted for the whole of the state, but national parks are excluded from fossicking, anyway. There are certain other exclusions. For a fossicker to access any land, it relies on consent of the owner. We have several designated fossicking lands throughout the state where the owner has previously either sold the land to the state or it has been state land in the first place, native title has been addressed and a fossicker can go onto that designated land. But anywhere else where there is an occupier, consent is required.

CHAIR: So state forests—

Mr McKie: State forests are okay.

CHAIR: The national parks are not?

Mr McKie: National parks, no.

CHAIR: Thank you. I just wanted that clarified.

Mr KNUTH: I am a little bit confused with regard to fossicking. You said that native title has been an issue and they need permission from the landowner, and I think John said something before—and I might be a little confused on this. What you are saying is that the fossicker can go to the landowner and seek permission to fossick on the land but does not have to deal with issues in relation to native title, full stop?

Mr McKie: That is correct, except where there has been a determination by the Federal Court that native title is held by a traditional owner group to the exclusion of all others.

Mr KNUTH: So in that category they would have to obtain that agreement?

Mr McKie: That is correct.

Mr KNUTH: Basically, if it is not pastoral lease and it is native title land then the fossicker has to get permission from the native title holders?

Mr McKie: Perhaps I should clarify the determinations that are handed down by the Federal Court, which might make it clear. A traditional owner group will have a registered claim that is processed by the Federal Court. The court will then hand down a determination that those claimants hold native title, in some cases to the exclusion of all others. In other cases they hold non-exclusive native title rights and interests. However, most determinations are a combination of both and the determination consists of a number of schedules attached to that determination, which lists the parcels of land lot by lot. There are quite exhaustive schedules of land tenures. The majority probably are for non-exclusive rights and interests, so that the native title party cannot normally charge rent for the land and cannot give or refuse consent for entry to the land. The majority of that land would be pastoral leases and grazing leases, where there is already a leaseholder—a landowner if you like—conducting a grazing operation, a cattle operation or whatever.

The further amendment to the Fossicking Act that we are proposing places an extra clause in that act, clause 27D, which requires the holder of a fossicker's licence to seek the written consent of any native title party that has received a determination that they hold rights and interests to the exclusion of all others. Should the legislation be passed, we are able to provide maps to our issuing agents which depict those particular parcels of land.

Mr Skinner: So you would need to get the agreement of that freehold landowner or the leasehold landowner or a native title holder who holds it to the exclusion of—

Mr KNUTH: I am sorry, John; can you repeat that?

Mr Skinner: You would need to get the agreement of the landholder of the freehold land or the leasehold landholder, or a native title holder who holds it to the exclusion of others.

CHAIR: Is there any exemption for Indigenous people? Really, they have been fossickers for a long time, for spearheads and all that sort of stuff. Is there any exemption for Indigenous people on neighbouring native title areas or anything like that? Do they have any exemptions at all?

Mr McKie: No, there is not, but, as you mentioned, Mr Chair, spearheads and the like are cultural heritage items. They are not declared fossicking materials such as opals, gemstones and so on. Also, the Fossicking Act does not apply where a person comes upon a chance find while they are doing something else. It is specific.

Mr Skinner: So in terms particularly of those types of activities, obviously the cultural heritage provisions are quite critical still in this space, in terms of the sorts of things that you could impact upon by fossicking and the retention of those.

Mr COX: With the Aurukun situation and the changes there, is part of that about the on-site operations for the whole area to try to keep a common model, so there are no restrictions with development within that that are going to hold others back? You are talking about going across common areas, being able to transport across areas. Is it more about trying to make sure it is all under the same model with no restrictions?

Mr Skinner: It is making sure that the successful tenderer can move the product across other areas to port, so that it is not restricted in that sense.

Mr COX: I understand some of the feedback maybe you have had from people up that way is that they wanted to go back and start again and look at it individually. If that was the case, it would be hard to do what you just said, I guess. I have no issues with it, but I guess that could be the problem if we do not do this; is that right?

Ms McNevin: My understanding of it is that the current expression-of-interest process is basically looking for a variety of different scales of potential operation over that restricted area. A condition of any operation there would be to be in consideration of what other industries or other operations will be developed within that restricted area.

Mr COX: Thank you.

CHAIR: I have one question. The explanatory notes at page 12 advise that the competitive tendering process will not include direct allocation by the minister, to eliminate any perception that the process of allocation of exploration rights could be corrupted. Could you take us through the minister's role in the competitive tendering process and, also, where it would be likely that he would be direct allocating?

Mr Skinner: As I mentioned before, we have established a steering committee to manage this process and oversight it, including a probity auditor who is auditing and will provide a report on the process. I will invite Bernadette McNevin to add a little more to that.

Ms McNevin: We are fortunate we have a very well regarded probity auditor who is very experienced in the commercial processes that we are undertaking. We have very clearly separated the evaluation process from the decision-making process. We are objective public servants who are looking clearly at the objective data that we receive. We have provided geological data. We receive back work programs that are designed at development, based on that geological data. It is very much a measurable, repeatable process. We then make a recommendation to the minister. The minister ultimately has the decision-making power under the legislation to grant the authority to prospect. Throughout the process the probity adviser is involved, observing and scrutinising. At the end of the process, there will be a probity report that will be made public and any indiscretion would obviously be exposed at that point—not that there will be any, of course. We are very confident about this separation of evaluating and decision making.

CHAIR: Just on the direct allocation, that is involved there, too; isn't it?

Ms McNevin: When we began the process of looking at the best model to use for a competitive tendering process, we obviously looked at Canada, other places in Europe, Africa, America, South America. There are other examples of competitive cash bidding. Of course, we looked at the New South Wales model and saw that they had the option of direct allocation. On balance, looking at how other jurisdictions did it, we decided consciously to not include a direct allocation process.

Mr Skinner: In summary, our probity auditor has advised us that comparisons cannot be made with other areas where clearly there have been some issues, because they are very different processes being applied.

Mrs MADDERN: There have been some comments about the transfer of executive power to the minister from the mining registrar. Could you just go through exactly what the changes are in the role of the mining registrar and how that would impact on the local level?

Mr Skinner: Sure. The mining registrar continues. We are not doing away with mining registrars et cetera. It is really just that their authority comes from a delegated source, rather than a statutory source. Jim, did you want to comment on that?

Mr Grundy: Correct: there have been a number of submissions and concerns in respect of doing away with the title of a mining registrar. The amendments put a consistent head of power within the legislation across all of the resources legislation for either chief executive or minister, but,

in the actual carrying out of the administration of the act, it would be done through delegation from those authority heads in the legislation. So the mining registrars will still be located in regional Queensland, they will still have their mining registrars office and will still be able to service the local small-mining industry.

Mrs MADDERN: So effectively the small-mining industry would actually see no real change to the way the operation is carried out at a local level?

Mr Grundy: Yes, that is correct. At this stage, though, we cannot pre-empt what the minister may do as far as delegations are concerned. So at the moment, with the way it is drafted, approvals would still go through to the minister. There are a number of streamlining measures already in place to make sure that is a straightforward process. We would expect that down the track the minister can designate or delegate to mining registrars at a local level the decision making.

Mr TROUT: I just want to hear your opinion. Why was hard-rock gold mining or panning not included in this amendment? Opals and gemstones were included. Why wasn't gold panning or small hard-rock gold mining included in this amendment?

Mr Skinner: As I indicated in my opening comments, we are working through a series of reforms in the small-mining area. It was one area that was considered would need some further work and discussion and consultation. So we would be looking at working through that in the next six months or so. It is on our agenda. We just felt that it does need some more work.

Mr TROUT: In the Far North it is really stifling many, many small gold operators. Most of them are sitting on claims and not producing anything. It has to be changed.

Mr Skinner: Jim, did you want to comment?

Mr Grundy: If I could just add to that. Within the next six-month action plan we are coming up with a package for the alluvial and the gold. We are actually in North Queensland this week doing the ongoing consultation and negotiation with those producers. I think it is fair to say, though, that the nature of those activities and the processing at times can involve chemical processing. It also involves instream. So there are a number of other significant issues that must be taken into account. But it is the full intention that there will be a package developed for that sector.

Mr Skinner: It is always a balance between how quickly we do these things and getting it right.

CHAIR: That brings this briefing to a close. I thank the departmental officers for the useful information on this bill. I declare the public briefing now closed. We will now commence the public hearing on the bill. I invite the first witnesses from the Queensland Resources Council to the table.

BARGER, Mr Andrew, Director, Resource Policy, Queensland Resources Council

MULDER, Ms Katie-Anne, Resource Industry Adviser, Queensland Resources Council

CHAIR: I ask Andrew Barger, the Director of Resource Policy from the Queensland Resources Council, and Katie-Anne Mulder to comment on their issues.

Mr Barger: Thank you, Chair. I offer apologies for my chief executive, who was going to be here this morning, but there was an opportunity to stand next to a minister talking about a change of shale gas policy, so he has jumped on an aeroplane and headed north. So apologies that you have the monkeys rather than the organ-grinder here this morning. It is often hard not to talk too quickly, particularly in this chamber, but I have one eye on the time because I am popping up in front of another committee shortly to talk about the Gasfields Commission Bill. So I will try to leave some spaces between my words but if I am racing please pull me up.

The other thing, just to frame our comments, was to acknowledge that the last time we appeared before this committee we were talking about some amendments and raised some concerns around the way the prohibited dealings had been framed. We were really pleased to see the way the committee responded and made recommendations and actually secured some improvements in the drafting of that legislation. So I thank the committee for that hearing you gave us and giving some deliberation to the comments we made.

In terms of the Mining and Other Legislation Amendment Bill, it is always a bit difficult to talk about, as the department was earlier, omnibus style legislation where you have a whole lot of different pieces all bolted together. I guess that feeds a slightly odd flavour in our submission because, really, what we were trying to say is that the small-mining amendments are a really good bit of work, and it is terrific to see two departments sitting shoulder to shoulder here today having worked really hard to sit down with a diverse constituency of quite independently minded people and think quite hard about how they interact with the regulatory system and what is appropriate and how you might speed up that process so that you can concentrate the government's scarce resources on the major issues.

The small-mining reforms in the legislation generally we applaud. We think it is a good bit of work. The elements of it that we think are laudable are that spirit of engagement with the industry. They have sat down with stakeholders and had a genuine and frank discussion about how regulation affects their businesses and how the way that that sector interacts with the industry affects the amount of resources needed to regulate. They have actually had some quite innovative ideas in terms of how you might reduce the amount of oversight that is necessary—so really cutting the cloth to fit the task. That is a terrific bit of work, and I look forward to them rolling that forward with the alluvial and gold reforms later in the year.

There was an awful lot of discussion in our submission around the cash-bidding policy. You did not have to read between the lines at all to get the sense that they were uneasy about the policy itself and had lots of concerns about how that might be administered and the consequences of how that might affect the way the industry operates. I do not want to dwell on policy issues in a legislative discussion, but I think there are two critical issues that we sought to raise in our submission. It is still a bit unclear to me, having heard the department talk this morning, whether the intention to apply the cash-bidding process to minerals as well as to coal as well as to coal seam gas was deliberate or whether if it was just sort of ambivalent drafting. So that is something that I think could usefully be clarified.

The other aspect of it that we talked about in a little bit of depth in our submission was the current process to deal with the similar sort of cash-bidding components in the petroleum and gas act which involves providing weightings so that when you are putting in a tender it is very clear to you—it is like a marking guide, essentially. If you imagine doing your homework, you have an idea of what will be paid heed to. So you have a sense of whether the cash bidding is enormously significant or whether they are looking for very interesting technical work in terms of looking for companies who have a high ability to innovate and use the latest technology. We are a bit concerned to see that, where the cash-bidding provisions are being rolled into the Mineral Resources Act, that ability to have weightings to increase the transparency of that bidding process has not been replicated. It has been stripped out.

The final point that I would touch on briefly—which again was mentioned in our submission—is the definition of 'occupier'. There is a long-running public debate about land-access issues and how you give effect to it. The point that we tried to make in our submission was to completely

support the intent of the changes that we have had. Of course, if you have occupiers on the land, you do not want to be making an agreement that excludes some of those. So we completely support the intent of the changes, but we echo the Law Society's concerns in that the way that has been articulated does not necessarily mean that for a resource company looking to negotiate a land-access agreement it is immediately discoverable who those occupiers are. I think the Law Society mapped out a solution of a two-stage process where you say, 'Well, here are the occupiers that are discoverable,' and you have a process of engaging with them and then you have a second round of finding where the occupiers on title who may have then granted other occupying rights can be discovered and brought into the process. That is my whistlestop tour of the QRC's submission.

CHAIR: Katie, would you add anything to round that out?

Ms Mulder: No, not at all.

CHAIR: How do you feel the cash bidding is working in the petroleum and gas industry? It is not as if it is new, is it?

Mr Barger: No. It is not new for the petroleum and gas industry. The point I would make in replying to that is that the dynamics and the economics of exploration in petroleum and gas are very different from particularly mineral exploration but also to an extent from coal exploration. The other thing, too, is that the scale of the tenures is very different. So when you are dealing with petroleum and gas you tend to be dealing with very large amounts of acreage. So that tends to drive exploration companies in the petroleum and gas sector being larger. Often the wells that they are drilling are deeper. They need to be bigger. So it is a more capital-intensive process—that is how I would characterise it—than particularly mineral exploration.

Part of our concern about the structural change in taking something that has been in play in petroleum and gas and applying it to coal and perhaps to minerals as well is that you start to preclude almost the sort of small-mining end of the industry—the really innovative exploration companies. We are seeing some really interesting ones in Queensland at the moment where we have companies wanting to go on to, say, the Mary Kathleen mine, a former uranium mine site, to look for rare earth. The concern we have is that at the moment there is an ability for people to try that idea out and at their own risk discover resources that the state did not necessarily know it had. That is something that I think got a bit lost in the department's discussion of cash bidding. Ultimately, exploration is not production. There is a big public-good component in what they do in that they start off with country that is not necessarily very well characterised geologically. They do some work at their own cost and expense, and often what they do is discover something that creates opportunity not just for them but also for the state and for adjoining teams.

CHAIR: All of that information is discoverable by anyone, isn't it? Most of that information does go into the mining registrar and all that sort of thing.

Mr Barger: Yes. There is a requirement to report and that information is logged so that its future—

CHAIR: As I am sure you are aware, I have some mining tenements around Ebenezer. If you look at a map of Queensland now and at the number of mining leases and mining exploration licences held now compared to what was held in the year 2000, they are totally different maps, aren't they? It has almost created angst in the community—the fact that everyone has just gone out and put four pegs in the ground. It is almost speculative, isn't it? There is a lot of speculative stuff out there in the hope that they can flog off some mines. Do you think this might reduce some of that?

Mr Barger: There are a couple of elements to your question. You are right: there has been an expansion of the coverage of tenure but we have seen that in the past before—the oil shocks in the seventies when the state was blanketed in petroleum tenures.

In terms of community anxiety around exploration, I think that is often due to a misunderstanding about what is entailed. We have seen a lot around the Scenic Rim and Toowoomba where coal exploration tenures have been granted and communities have immediately jumped to the conclusion, 'They are going to find coal, it will be commercial, there will be a mining lease granted, ergo we are going to have an open-cut coalmine in the backyard immediately.' I think part of that is down to the industry doing a better job of explaining what is involved in exploration.

Whether the process of cash bidding reduces the amount of speculation or not, I am not so sure. It will depend a bit on how it is administered. At the moment what you have is essentially an over-the-counter process where, if two parties are interested in the same bit of country, you have a competitive process. It is essentially who has the best claims and who can demonstrate the greatest

capacity to develop the land. If you start to change that equation by adding in a cash component and you already have a dynamic around speculation that is generating cash flows, my concern is that perhaps you start to tip the balance away from the geological towards the financial. I do not know; it will be interesting to see how it plays out.

Mr KNUTH: Do you believe that the Queensland Resources Council would be more comfortable in cash bidding being confined to gas, petroleum and coal rather than mineral development?

Mr Barger: Good question. If I was a benign dictator, I guess my druthers would be that cash bidding at the exploration stage does not fit the cash profile and the risk profile of the industry terribly well across any of the sectors—

Mr KNUTH: Can I switch that around—the cash bidding moved away from the mineral development?

Mr Barger: If you look at the size and number of companies exploring, I think you would see smaller amounts of capitalisation concentrated in minerals. I think the potential distortion is greatest in minerals.

Mr KNUTH: So what does that mean?

Mr Barger: Sorry, I guess what I am saying is that, because of the mechanics of exploring across the three sectors, the sector where you can explore with the least amount of capital and with the least amount of equipment is probably minerals. I would expect, all else being equal, cash bidding to have the greatest impact on mineral exploration.

Mr KNUTH: Would the Resources Council be content with cash bidding in the petroleum and gas sectors but not the mineral sector, or does it want to see cash bidding gone, full stop?

Mr Barger: Recognising that the state needs to earn a return on the industry, I think the problem is that, in the life cycle of cash flows for exploration activities, cash bidding comes right up the front. It is almost guaranteed to create the most impact on a given company, whereas different models could generate the same revenue streams. For example, with a tenure that has been proven up, there may be some really prospective parts that have potential for development. As companies sell those off, there is a cash flow being generated for the company. Is there an ability for the government to say, 'We will have a share of that because part of that resource that is being transferred is ours?' The problem with cash bidding is that you are asking an exploration company that is often cash strapped to put money on the table right at the very time they want to be investing that money in equipment, drilling and geological work. The timing of it is part of the problem.

Mr KNUTH: I see where you are coming from. Obviously if there is a problem with that investment and you want to get the money into the right areas, then the smaller operator obviously is going to suffer even more.

CHAIR: Thank you both very much for your time. Unfortunately, we are pushed for time. Thank you for giving us an explanation of where you are coming from. We had a fair idea from your submission as it was a very detailed submission.

Mr Barger: Thank you for the opportunity.

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

CHAIR: Welcome. Would you like to make a brief opening statement?

Mr Hogan: Certainly. For those of you who are not aware, AMEC has been around for about 35-odd years. It is the peak body for mid-tier miners and explorers. We are a national organisation. As we are not confined to just Queensland, I suppose we have a broad knowledge of policy across Australia. I would like to agree with the previous speaker, Andrew, on some of the issues in the MOLA Bill, particularly the small miners part. Whilst we do not tend to represent those members of the industry, we see it as a strong piece of work and something that the department did keep us well aware of.

There are two main areas that I will pull out of our submission. The first is the cash-bidding component. Our members are coal and minerals explorers. We do not generally have gas explorers as members, so I will not comment on that part of the industry. From looking at the explanatory notes and from the briefings given to us by the department, the underlying objective was what was best for the people of Queensland from the mineral wealth. We do not see a direct connection as part of the industry that cash bidding—adding a cost to an explorer upfront—will encourage them to discover, find more wealth and develop it. There is no logical connection. It shows a misunderstanding of the industry where the explorer takes that risk.

Generally, what would end up happening? We looked at it and thought, 'What is the incentive here?' You look at the cash component upfront. The person who is going to win that, all things being equal, is the person with the largest cash on hand. Historically they are not the ones who will be leading the charge when it comes to being entrepreneurial. They do not have a cash imperative to get out there on the land and actively mine. That is a major concern we have with the current legislation.

The other part of the bill that many of our members found surprising is that, as it is currently drafted, minerals are included. We were always told that it was to be coal only and the most prospective areas. That was always a bit ambiguous—'most prospective'. When we read that it can be any commodity and any area, that just caused more uncertainty. 'Uncertainty' is a word that is thrown around a lot. But when it comes to investment, realistically explorers on average at the moment—those who are listed on the ASX—raise roughly about $7 million. That goes fairly quickly in an exploration program. In that frame, they are the two main areas that we have issues with and we would like to see altered.

CHAIR: Thank you for that summation. You must understand that there is a perception, as I said to the last witness, that a lot more exploration permits are out there. You look at Queensland now and there is not too much that does not have a permit over it at the moment. The perception of the public is that the big, bad miners are making squillions of dollars out of all of Queensland. Reality is perception at times. I can see where the department is coming from and where the minister is coming from in trying to change that perception. Even though you are saying it will stop the smaller entrepreneurs, don't you feel that the big companies still depend on a lot of those entrepreneurs to do the groundwork for them? They are the ones who will still go in and buy that off the smaller operator once they have made the discovery.

Mr Hogan: There are a couple of points I will make. I understand your point about perception. When you talk about explorers, generally these explorers are actively involved in those communities. I struggle to think of many explorers—and we have 370 members—who would turn around and say, 'We have really bad issues with our communities.' Granted, miners may have a different feel on that, but that perception is often changed when you look at an explorer in a particular area because they are providing employment and actively putting money into a local economy. I think you are right: there is a public, overarching perception that miners are doing this. 'Miners' is far too broad a term. Explorers, particularly smaller explorers, are quite different.

The other point is whether a small miner is able to continue on with the mechanics when they discover something and then sell it off. They will not get it in the first place. If it is a known deposit that is highly prospective, they will be outbid and it will be land-banked. They will never get the chance to get onto it.

CHAIR: Do you feel that some of this might end up land-banked?

Mr Hogan: Absolutely we do. If, as we were originally told, this was to be just in the most prospective areas, all things being equal, if it is a known deposit, the applications that would go in now would have to be roughly similar. If it is after the same mineral in the same area with the same geology, the deciding factor becomes cash.

Mr COX: On that point, each person doing cash bidding has to prove their capacity and capability to develop down the track, but is part of the problem that the industry itself deals with future needs? What resources are going to be needed in the future? Also, market forces are probably the more immediate. You just see the fact that with cash bidding we are really rolling the dice here. We are putting money upfront which we may never get a return on because it is putting a bigger bet on the table.

Mr Hogan: I think that is an interesting way of putting it. Returning to the chair's statement before about how a map of Queensland now has exploration permits all over it, market forces will affect that. As the world price of whatever commodity comes off, the attractiveness for investment is going to move. I think you are right about taking a bigger bet. There are many examples in Australia and throughout the world where, even though the cash bid was won, they have not been able to develop. That is not necessarily a technical issue. It may have been tied up on other approval grounds or whatever it may be. I think we also need to look at Queensland as a global competitor for exploration. I will never blame one particular legislative act on changing this; it is the cumulative effect. If cash bidding comes in, it is going to cause certain explorers to take their money elsewhere.

Mr COSTIGAN: Mr Hogan, just on cue there, I note that your job title is 'regional manager, Queensland and Northern Territory'. To cut to the chase, just on the back of your last remarks, do you think we are just going to be promoting the industry in the Top End, as opposed to promoting the industry in Queensland?

Mr Hogan: As AMEC, we look across Australia a whole lot. There is the Fraser Institute report, which comes out of a Canadian institute, that looks at the jurisdictions across the world of how states are rent with regards to their regulation. As a Queenslander—and I am a Queenslander despite the title and I come from up near your area—I would love to be able to say that Queensland is No. 2 or No. 1. No. 1 would be ideal, but it is not. It is in the twenties. Not just your global mining company, but also your small explorer, who I was just speaking of, looks at it and says, 'Where am I most easily going to get on the land? Where will I most easily get the return?' Gold found in Queensland and gold found in South America are both sold on the world market.

Mr KNUTH: I was going to ask if the AMEC was content with this bill, apart from the cash bidding? Another side to it, before I finish that, because it is half contradicted, are reports of small miners in North Queensland regarding paper companies that appear to have the capabilities to work the tenure but in reality do not have that capability. There have been allegations that work reports have been falsified. Is this something that the AMEC has heard and does this bill make that scenario more or less likely?

Mr Hogan: On the first part of your question regarding this current bill, much of it we are very pleased with. The weighting that has been removed is of concern, because, as I mentioned before, if there are very similar applications there is only one answer that wins. With regard to your second question, I can only really speak personally here. Whilst the allegations are of different types of companies, as you say, paper companies or essentially stock market players or real estate companies all being part of that exploration industry, I understand that argument, and that complaint has been around probably since they first found gold in Ballarat. However, to AMEC: I cannot say that we have heard anything direct on that and particularly about the falsification of reports. We have quite a lot of faith in our members and the department at the moment. As I said, I have heard no report of that.

CHAIR: Thank you for that. We can hear where you are coming from. I think it is very similar to the Resources Council statement that was made. I think you would have to agree with that?

Mr Hogan: In many cases we agree quite a lot. We get divergent at times, due to the size of our members, but absolutely.

CHAIR: Thank you very much for that. We have Brett Nutley, the parliamentary Indigenous Liaison Officer, with us today, given that we are going to hear from the Mayor of Aurukun, Dereck Walpo, who will be giving evidence by phone. Brett, welcome to the committee hearing.

WALPO, Mayor Dereck, Aurukun Shire Council

Evidence was taken via teleconference—

CHAIR: Good morning, Dereck. With us we have Brett Nutley, the Indigenous Liaison Officer of the parliament, and two members from the department, Darcy Blackman and Graeme Albion.

Mayor Walpo: I have my Acting CEO, Bernie McCarthy, and the GCO, John Buttigieg.

CHAIR: Thank you. Would you like to make a brief opening statement, please, Dereck?

Mayor Walpo: We had some notes made up for this presentation. First of all, I wish to clarify some matters that have come to my attention. The Aurukun Shire Council and the Ngan Aak Kunch directors from the Wik and Wik Way TO clan group have been working together with the state in relation to the development of the Aurukun bauxite resource. We have in place a communication protocol agreement that we put together last year, of course under the previous council. We just followed that through. We have the opportunity to meet regularly and discuss our issues with the staff of the Department of State Development, Infrastructure and Planning and the Ngan Aak Kunch directors in Aurukun, including the development of the Aurukun bauxite resource. This communication protocol agreement has come about because of our endeavour to have an input into the Aurukun bauxite resource developed by the state, so the people of Aurukun can have a real chance of employment and business opportunities that will come out of the bauxite project mine.

The Aurukun Shire Council and the directors want to work together on this project and show others outside our community that we do not want others to speak on our behalf. As the newly elected mayor of this community, I want to see these opportunities for my community and see that the young people have a real future. There are people and organisations outside of my community saying what is good for my community. While we are at it, I want to put on the record that the Wilderness Society, the Queensland Conservation Council or any other person does not have any authority and never will have the authority to speak on behalf of my community, and particularly the shire. I have already spoken to the directors and they also wish to say the same about anyone speaking for them and the Wik and Wik Way native title holders in relation to their traditional lands and interests. We do not appreciate these do-gooders using us and our names in correspondence to government to help push the agendas of the Wilderness Society and the Queensland Conservation Council. We have stated to the Newman government that the Aurukun Shire Council and the native title holders seek to develop the Aurukun project and wish to participate in a meaningful manner to have sustainable benefits flow back into our community and also for the Wik and Wik Way people of this country.

As the mayor and with the cooperation of my councillors, I have been elected to administer and manage the shire of Aurukun. At no time have either the Wilderness Society or the Queensland Conservation Council visited Aurukun and discussed the new Aurukun bauxite resource project currently being put forward by the new state government or any amendments to the wild rivers legislation. We met with members of the state government—namely, Deputy Premier Jeff Seeney and David Edwards, the Director-General of the Department of State Development, Infrastructure and Planning—in Aurukun last year. We voiced our concerns with regard to the Aurukun bauxite resource not being developed in a timely manner to help the economic development and employment opportunities for the community of Aurukun.

Further, it is the Aurukun community's right, and only ours, to say what is good for our people of Aurukun. I do not want to be rude, but we do not want it coming from some whitefellas in an office of the Wilderness Society or the Queensland Conservation Council. We alone will negotiate with the developers and we alone will say what benefits are suitable to us, not members of the Wilderness Society of Queensland, the Queensland Conservation Council or anyone else.

Having said that, as Mayor of Aurukun I feel that if any exemptions are removed from the wild rivers legislation for the development of the Aurukun bauxite resource and any other development, that will restrict our capacity to have real economic development and employment opportunities in the region of western Cape York, and especially the community of Aurukun. I am saying that I and the community of Aurukun want the development of the Aurukun bauxite resource to go ahead so we can have the best opportunities in the future.

CHAIR: Alright, Dereck, so really what you are saying is that you definitely support this opportunity to move this legislation forward?

Mayor Walpo: I cannot hear you. You might need to come closer to the phone.

Mr TROUT: You support this bill?

CHAIR: Does he support it?

Mr TROUT: I am sure he said; he definitely did.

CHAIR: Are there any questions for Dereck from the committee? No. If this moves forward, this should be a good opportunity for your community at Aurukun. We support the good work that you are trying to do up there, Dereck. Thank you for coming on the phone this morning and letting us know what your and your council's feelings were for the project. Thank you.

Mayor Walpo: I just want to add a little bit more. It has been a long time coming. Pechiney sat on it for quite a number of years, Chalco has sat on it and there was nothing out of it. This time, this council wants to do things right for our community, for the benefit of our community and for the benefit of our young people and for the future.

CHAIR: We will let you go, Dereck. Thank you very much.

Mayor Walpo: Thank you, mate.

LUNNEY, Mr Edward, Private capacity

Evidence was taken via teleconference—

CHAIR: Good morning, Ed. How are you going this morning?

Mr Lunney: Good morning. How are you?

CHAIR: Very good thanks. It is Ian Rickuss. Could you give us a brief outline of what your proposals are? We have looked at your submission.

Mr Lunney: I am having a little bit of trouble hearing you, but I will just run through it, okay? Basically the submission was talking about opal miners and their current situation. The situation is that under the discrimination act 1994 if legislation is going to create a new authority to mine called a prescribed tenure for opal and gemstones—other gemstones—then it could be seen to be discriminatory. The legislation should apply to all opal miners in an equal and impartial way. The minister has already stated that the fees have become unwarranted and unnecessary and the changes need to take place. So the biggest concern from my point of view is to make sure that the legislation fits the category that it is supposed to be amending.

The situation that we have got out here in the outback of Queensland is that there has been a decline. That decline has been a result of, yes, regulation and fees but it has also been a natural decline with regard to the worst flooding in five years, the high cost of fuel et cetera, so it is not all down to legislation. We do need a better deal for opal miners and we also need to recognise that opal is our national gemstone and as such it should be treated with the dignity and the respect in legislation that is deserved.

There are some possible areas which I have raised where the legislation can create some problems and this is in the area of organised crime, money laundering and other activities that can take place. I had a look last night. The reprint of the Mineral Resources Act 1989 was on the computer. If we move to an online system whereby a third party can go out and peg a lease then that is going to create major problems for policing and safeguarding as far as terrorism and things like that.

We need to be very careful with legislation as to how it proceeds. From my point of view there are a whole heap of areas that I have listed in the examples. I sent you through a brief of some of those examples where things are ambiguous. However, I am only an opal miner; I am not required to provide a service of excellence. I trust that the committee will be able to sort through and provide a service of excellence.

Some of the concerns that already present with converting to the new tenure are that not all opal miners will be able to convert. There are several reasons that can be illustrated. One is: the existence of permanent structures on mining leases will not be able to convert. Conjoined boundaries will also be an area that will create a problem. There are many other problems there that exist as far as the converting. Also at the interim level, where we convert from the mining lease to the mining tenure, we must surrender our environmental authority which will basically surrender the mining lease and it will operate in an interim situation and if in the event that the application is refused the miner will not have a mining lease to fall back on.

There are other concerns that are now presenting with regard to the rights of discovery. Obviously if an opal miner invests a lot of his life and a lot of his time looking for a discovery of product, he goes out and explores, pegs the ground, develops the resource and then under the streamlining legislation bill and now other amendments within this bill, the right for the government to seize or resume the mining lease, which has been made quite clear through legislation—it is coming through loud and clear that the government wishes to be able to resume a mining lease for whatever reason and the rights to the minerals in the ground are not forthcoming to the explorer or the discoverer. You would have to ask if the confidence in Queensland mining is going to still be there if this becomes legislated to the extent whereby we are just visitors with a time frame to extract minerals. We are no longer holding a miner's right as the rights were in the past.

The loss of the registrar, the stripping of his statutory powers and delegating back delegated powers means we are losing a judicial role for someone who acts as an intermediary to resolve issues between the miner and the landholder and in other cases sometimes the miner and the legislation. I would consider that a massive loss of rights. The amendment that was proposing that an officer could seize on the authority of the act only, that an officer can collect information about a

person with regard to a conviction for non-authorised mining, but also the adding of the word 'non-compliant'—so now the legislation reads 'non-authorised or non-compliant'—opens up a massive grey area with regard to the new proposed legislation because you are suggesting that the miner should self-assess himself at the point of converting to the new tenure. This is a grey area that needs more discussion and cannot be done in 10 minutes.

My main concerns are the possible discrimination, the opportunity for organised crime to get involved in the Queensland mining scene through mines online, through being able to get a third party to go out and peg ground on their behalf without having to actually be present, and they can do this in the form of an adult or a company, and also the other rights that are being lost as far as rights to privacy, rights to have an adequate camp and adequate water supply—adequate things like that.

Basically, I have sent you a fair bit of information, and I appreciate that it is not easy to get through and I appreciate that I can only come to you from the point of view of someone who lives with the legislation every day. I work under the legislation every day. I try to do the best to comply with the legislation every day and to me this is not going to make the matter simpler. The code was out on the computer the other day—the proposed mining code. It brings in a whole lot of areas of storing vegetation, storing seeds, storing topsoil—things that just do not apply in this western region because we are in a desert area.

The definition of small scale mining to not take place in a riverine area, in a watercourse, in a watershed where water pools—I have already spoken to Dr Ross about this. Most of where opal forms is on a fault. A fault forms a creek. There is a watershed of some sort. So the legislation is ambiguous with regard to where these activities can take place. Then finally the use of the words 'termination small scale mining.' The word 'small' does not appear in the Mineral Resources Act, not even in the new reprint. The word 'scale' does not appear and the word 'mining' does not appear except in its association with a mining lease or a mining claim. So we are going to base 22—possibly more than 22—amendments on the words 'small scale mining' which really have no legislative impact as far as their history or their genesis through the legislation. It creates a third tenure. We will end up with mining leases, prescribed mining tenures and mining claims. The people who have mining claims currently granted will be locked into their situation and the people who have mining leases will not be able to convert in some circumstances.

I would ask the committee to look seriously at these issues because they are important as far as discrimination is concerned, as far as the authority is concerned, and also there is nothing to stop somebody from overseas hiring a third party to come in and land-bank areas of ground in Australia. Land banking has been a problem in the past, where people go out and take out huge amounts of exploration which they cannot possibly work and tie up the ground. There has been some attempt in the legislation to correct this by allowing for overlapping tenures, but when the mineral exploration permit is granted for all minerals it excludes all minerals and currently we have 2,000 subblocks pegged from Yowah down to Eulo to the New South Wales border for all minerals. This ground is now shut up. We cannot access it until it is resurrendered. It belongs to a company. This type of scenario is going to continue to happen and it will continue to create problems.

We need our registrar. He does a good job. We need to have our rights intact. We need the right to the discovery. There is no confidence in the industry. If we are going to go out and discover a resource but know in the back of our mind that that resource can be resumed and taken from us, where does that leave us? We might as well not bother.

CHAIR: Thanks for that brief summary, Ed. You have covered a lot of issues there. I think you have given us a lot of questions that we can ask the department and look at to see if we can get some clarification for you.

Mr Lunney: I appreciate that. I have put it in writing to you. It should be there so it should give you a better idea.

CHAIR: We have a question from Michael Trout.

Mr TROUT: I do not know how far you want us to go with this legislation. How do you expect it to rule against crime, illegal money and these sorts of things? I think you are taking it a bit too far.

Mr Lunney: I didn't hear the question, I am sorry. Can you say it slower?

Mr TROUT: How do you expect this legislation to stop crime or laundering of money? That is not part of what this bill or amendments were designed to do.

Mr Lunney: Currently in America all gemstones are classed as a currency. Anyone who has a turnover of more than US$50,000 in currency has to have an anti-money-laundering program in place. That is only information that I have gleaned from researching on the internet. I have spoken to the Premier about this in a letter. The Premier in December wrote me a letter saying that the Queensland legislation does not recognise hobby mining for the sake of legislation. We know that in the hobby mining sector there are large amounts of cash transfers for cash sales and cash purchases of minerals. There are some considerations within taxation as to what a hobby activity is. When you come back to the fact that we are moving from a system whereby the miner has to go and peg the ground—that is the bottom line: he had to physically put the pegs in the ground and come in and make the application—to the current legislation, which is providing for a third party to do that on their behalf, basically as we move to a mines online system we are moving to a system whereby any entity who can get the right paperwork together can, without showing up in person, go and assert some type of ownership over a mining exploration permit, a mining claim, a mining lease. Now, once these mining leases start to proliferate and start to become more relevant then there is nothing to stop organised crime from feeding money through these entities. I am not saying that I have any evidence of this, but I am saying that I lived in Lightning Ridge for five years. I was aware of the things that went on down there with regard to the opal industry and the cash trading. And I am not talking about small sums of money in those days. In those days we were talking about hundreds of thousands of dollars at any one time.

If you go back through the history of sapphires—and I sent some fairly comprehensive articles to the committee with regard to the history of these types of things in Queensland. I also raised the issue of blood diamonds. In Queensland we have an underdeveloped diamond resource. Our diamond resource is only in its infancy. The fact that you can go and peg a lease or an exploration permit to look for diamonds means there is nothing to stop you producing diamonds. Whether they actually come from the ground or not is an issue that needs to be looked at. What we are talking about here is the fact that there is no limitation in the eligible person category as to who can take out a tenement. In fact, we have free-trade partners but also any tourist can get off the plane and take out a mining claim or a mining lease tomorrow. This is the area that I want to bring to the attention of the committee because once you change the fundamental legislation, which is the Mineral Resources Act 1989, there is no going back because it defines the regulations. That is why it is so important to get it right the first time. Are there any other questions?

CHAIR: No. Thank you. We will move to Kev Phillips, Secretary of the Queensland Small Miners Council.

PHILLIPS, Mr Kevin, Secretary, Queensland Small Miners Council

Evidence was then taken via teleconference –

CHAIR: It is Ian Rickuss. I am the chair of the Agriculture, Resources and Environment Committee. Would you like to give a brief opening statement outlining your feelings about this legislation, please?

Mr Phillips: Firstly, I would like to thank the chairman and the committee for the opportunity and for taking the time today to talk to us. As I wrote in the covering letter of my submission to you, it is a very refreshing change. It is nice to see that we are actually involved in the process. We would also like to thank the department for going out of their way to facilitate the consultation. I was unable to submit my submission on time given that we had not released the codes of compliance for small mining, which we felt may have some impact on how we responded. Unfortunately, that did not come out til 8 December. So I apologise for my late submission. Hopefully you will accept it. If not, what I say today may have some weight and bearing on what happens.

Who is Kev Phillips? I am currently secretary of the Queensland Small Miners Council. The Queensland Small Miners Council is made up of groups from North Queensland, Yowah, Winton and Emerald. They are very small mining groups that are affected by the legislation. They are all well-established bodies and have been around for some time. The Queensland Small Miners Council itself cooperate—when we have problems of the same type we work together so that we are not delving into the same things but can have one voice over it. Not only have we had very good consultation through our members about the legislation that is in front of you now but also we had consultation with all the small-mining groups around this code some two years ago. Our groups have been able to get out and talk to most of the people out there who are interested in the development of their industry.

What we have put forward to you now in this amendment bill is that we are very supportive of the document itself. In principle, most of the policies that we discussed at the meeting are there. We have a few smaller issues with the bill itself but, by and large, we feel that developing this new small-mining claim tenure is a very progressive step by the government. As stated in the document I produced for you, the legislation does not limit any of the small miners from utilising the existing mining lease tenures should they deem that they require the mining lease tenure structure to be a more suitable option in their investment.

What it does do is provide a new type of tenure that will not have such a dramatic impact when it comes to reporting, the application phase or anything like that. Over the last few years, the addition of new mining legislation has become a lot more onerous on small mining to the point where I would have 30 to 40 applications on my desk at this time from people to surrender. This is the way that things have been happening in the past; people are just sick of it and are saying it is all too much and they are getting out of it. Without rambling on too long, are there any questions?

CHAIR: How many small miners do you represent?

Mr Phillips: The numbers are on the decline; the numbers are quite down. Ordinarily—and the number that would still be on the books—it would be around the 1,500 mark. In the opal-mining sector we probably represent over 400 people and in the sapphire sector it would be around 1,100. Ordinarily these numbers would be three times that but, as I said, because people are getting out of it hand over fist the numbers are down. Once this legislation comes into play we would hope to see within five years those numbers back up and moving forward in a positive manner—back on track, so to speak.

Mr KNUTH: When it comes to that $100,000 benchmark before small miners have to pay royalties, would you like to see the small miners picked up in that or the figure increased a little?

Mr Phillips: We fought with the department years ago about the exclusion of that altogether. If you have a dollar you have to pay a dollar. So we would like to see it removed altogether but, in reality, I do not think it is going to go. When the legislation containing that provision came into place we said that we would like to see it CPI-ed but it never was. It was the only dollar figure in the department's regulation or legislation that was not CPI-ed. Everything else was CPI-ed. Over time it has never caught up. Finally, after a lot of kicking in the shins, we got it lifted to $100,000, which by and large means that most people in the small-mining industry can still earn a living and not have to pay the royalty return. It is always painted blackly by the department as `we don't pay royalties; we are horrible people'. But in reality, after all the on-costs to get on the ground, royalties are the last concern we want to pay. Should the cost of living and the cost of production increase, we would like to see it at the very least indexed to the CPI.

Mr KNUTH: Thank you for that. That is good.

Mr COX: I have a quick question. I guess you are happy with the common-sense part of this that small scale operations, which are normally low activity, have been separated from the mainstream leases?

Mr Phillips: Definitely. A man mentioned earlier—and I did not take note of the gentleman's name; it may have been Mr Trout—the progression of the gold and alluvial miners, whom I also look after. We would like to see them advance and we are looking forward to the department doing that posthaste. Remember that we are a cottage type industry; we are not what we were in the eighties, a booming industry. So we have to rebuild. I think at present this is, as I said, a progressive step in the right direction and we support it 100 per cent.

Mr COX: The chairman said to say that we are accepting the submission that you sent through late. So thank you for that.

Mr Phillips: Without wanting to waffle on about the whole of my submission, there are some priority points there. We support also AMEC's and QRC's concerns regarding the land bank. We do not think that is a great idea. We are a bit concerned about the—

Mr COX: Cash bidding?

Mr Phillips:—aspects of this new cash for access. Small scale mining is finding it hard to compete with this type of tenure. I am sure the committee will only refer through legislation that they deem is appropriate. We have faith in you having a look at our submission. Without wanting to waffle on too much, thank you very much for your time. We trust that between you and the department someone will keep us in contact regarding the development of our concerns.

Mr COX: Thank you. On behalf of the committee and the chairman, thanks again for your time and your submission.

Mr Phillips: If anyone runs into the Premier—I sent him a cover letter that you can give to him—I would like to help him blow the froth off a few coldies for his personal intervention to help celebrate this legislation coming into place. Thanks very much.

SEELIG, Dr Tim, Queensland Campaign Manager, The Wilderness Society

TOUCHIE, Ms Karen, Queensland Campaigner, The Wilderness Society

CHAIR: Do you wish to make an opening statement?

Dr Seelig: Yes. I will hand over to my colleague, Karen, to run through what our submission raises. Just for the record, the Wilderness Society is one of Australia's largest and most active environmental campaign organisations. The issues we have raised in our submission go to the heart of some of the key campaigns we have run in the country. I will pass to Karen and she can give you a precis of our submission and I will just make a couple of concluding comments. Before I start, we just want to acknowledge the traditional owners of the land on which we meet today and to thank you for the opportunity to present.

Ms Touchie: Our submission has a very simple and straightforward proposition; namely, that all mining companies should be subject to the same environmental standards and, further, that exemptions to valid environmental standards should not be made simply to make development proposals more attractive to investors. The Wild Rivers Act was designed to strike an appropriate balance between these two things: environmental protection on the one hand and development on the other. As such, the act does not look at land. The act does not stop development. The act simply says that you cannot do certain highly destructive things like strip mining in comparatively small areas around pristine waterways.

The statutory exemption that applies to Aurukun is a historical legacy for which there was little policy justification at the time. This bill certainly provides no rationale for its retention, let alone its extension. While this government has made some very public commitments to revoke specific wild rivers declarations, there has certainly been no announcement about any intention to repeal the act itself. In that context and given a clear, ongoing role for the legislation, we would have expected the government to use this bill to clean up rather than perpetuate the inconsistent application of the act to this particular piece of land.

We have done some internal mapping ourselves, which we can provide to the committee, and the existing Archer River wild river declaration clearly cuts across the very bottom of the mining lease area. The practical implications of that declaration for any future mining activity will obviously depend on where, within the much broader lease area, companies want to mine. There is no reason these mining companies should be exempt from valid environmental regulation including the Archer River declaration. If they cannot comply with the terms of the declaration then the bottom line is that they should not be mining in those areas. Large mining companies like Rio Tinto claim to be environmentally responsible. This is the government's opportunity to make sure that they are.

In short, this bill provides the government with an opportunity to level the playing field and ensure the consistent application of environmental standards across the resource sector. That is our submission in a nutshell. So I will hand back to you.

Dr Seelig: I have just a couple of concluding comments. I wanted to stress the global importance, if you like, of the Wild Rivers Act and of the wild rivers declarations, including the Archer River declaration. This was groundbreaking legislation at the time. My understanding is that it was supported by the Liberal Party; it was acquiesced to by the National Party. So it has been a very important way of protecting some of the last free-flowing, most pristine rivers left on the planet. Queensland is really blessed to have some of those last remaining pristine rivers and it is incumbent on any government to make sure they are properly protected.

The Wild Rivers Act does not affect native title rights but it strikes a balance between sustainable development and conservation. It does not lock up land. It was specifically designed to not create national parks. It was designed to be a regulatory approach that allowed sustainable development but prohibited particular destructive activities. In particular, it does not allow new strip mining, but the anomaly that was created for the Aurukun bauxite mining area stands out as a sore thumb and needs to be corrected. This committee and this parliament have an opportunity to level the playing field and make sure that whoever ends up picking up the mining lease for this Aurukun bauxite area has to play by the same rules that any other mining company would have to play by under the rules of the Wild Rivers Act and the wild rivers declarations.

CHAIR: Thanks very much for that summation of your proposal. I notice in your proposal you say—

In summary, there is nothing in either the Explanatory Notes to the Bill or in the documentation for the current Aurukun EOI process—in terms of either the overall economic benefits of the project or the specific benefits for local Indigenous communities and native title holders—that would justify a continued statutory exemption to valid environmental protection laws.

All I can say to that—and undoubtedly you heard Mayor Dereck before: in nice terms he said that he wanted whitefellas to stay out of their business.

Ms Touchie: We actually missed the mayor's presentation, but I guess—

CHAIR: He actually used those terms.

Dr Seelig: The bottom line is, though, there are a variety of Indigenous views on Cape York, as there are elsewhere, about mining and a variety of views from—

CHAIR: He actually mentioned that he was representing the Wik people who were there, of course, too.

Dr Seelig: He is the mayor of Aurukun, but there are a variety of views. We talked to traditional owners from the Archer River area, including the Wik and Wik Way people, and we heard a variety of views. Some, yes, support mining; many do not support mining. Even those who support mining do not necessarily support mining right up to the edges of what is now national park in their ownership or in pristine rivers near the Archer River itself nor threatening anything that might pollute areas like the Aurukun wetlands.

So the mayor clearly has a view. We recognise this is a complex issue. We recognise that there are a variety of views. We do not believe, though, that there is a case for environmental destruction, whoever the landowner is. There is a responsibility for whoever owns land to protect that country. In our experience most traditional owners are very strongly of the view that they wish their country to be properly protected. So the bottom line is that we do not see that anyone, any community, has a right to trash pristine environments. That is precisely why the Wild Rivers Act was put in place in the first place.

Mr COX: Firstly, I do not think using words like the community `trashing' the environment would be the right term to use. You said that most Aboriginal people are of the view that they want to protect their native land. As the mayor, I would take it that he would be probably more representative of the views when he said that the Wilderness Society does not represent them. Do you consider that this Aboriginal community has a right to speak probably more highly than anyone about their land when they want to see production and development on that land for their people? Whether they would like to or not—unfortunately or fortunately—live as they did 40,000 years ago, they need to be part of the modern world and they want to play a big role in the development of this land. Do you think it is important that they should have a major say?

Dr Seelig: There is absolutely no question that the significant and serious social and economic disadvantage that exists in Indigenous communities on Cape York needs to be fundamentally addressed. I think governments of all colours and persuasions—state and federal—have failed that task up until now and that is very much a priority I think for every government from now on.

Does allowing strip mining in a pristine river end up delivering many jobs for local Indigenous people? I am highly sceptical of that. Let me give you an example of why. There is a community called Napranum, which is just on the doorstep of Weipa. Weipa is a huge mining town on the west coast of Cape York—just north of the area we are talking. Napranum is one of the most socially and economically disadvantaged communities in this country. If there was any evidence of trickle-down effect of local jobs and economic benefits flowing from large scale mining activity, Napranum would be one the wealthiest communities in our country. So I am very sceptical.

The Wilderness Society does not believe the hype from mining companies that is often promulgated in Indigenous communities about the numbers of jobs. That is not to say that we do not believe that there is a high priority to create social and economic opportunities for Indigenous communities. That is precisely why we supported the development of the wild rivers declarations in the way they are shaped—so that they allow sustainable development. They are very much tied to a wild river ranger program—or they were called wild river rangers—precisely to create employment

opportunities. That ranger program was committed to deliver 100 rangers. That is the sort of number of Indigenous people who were employed across the mining sector in the whole of Cape York in the last set of reliable figures I looked at. So we absolutely support economic and social development. We absolutely support opportunities for Indigenous communities. We just do not see that allowing mining in a pristine river is going to deliver that.

If we are able to table the map that Karen referred to as a formal piece of evidence for this committee, you will see that the area we are talking about is a very small proportion of the overall mining lease area. It is right at the bottom of the mining lease. It is labelled `restricted area', and the grey squiggly area down the bottom is the high-preservation area that has been created by the Archer River wild river declaration. We are talking about excluding a very small proportion of the overall mining area, but we are talking about protecting one of the last free-flowing rivers left on the planet. So I really do not believe that that would have any economic impact at all.

To answer your other question: should Indigenous communities be consulted and involved in decision making? Absolutely. There was an extensive consultation process on the Archer River wild river declaration proposal and traditional owners were very much involved in putting their comments in and assisting the government at the time in making a final determination. If there are doubts now about the various views of Indigenous communities in the Archer River area or the mining lease area, then I urge the government to go out and do some further consultation with those communities.

Mr COX: Thank you very much.

Ms TRAD: Thank you very much for your evidence today. Can I firstly start by saying that it is really heartening to hear my committee colleagues reinforce the sentiment from the Aurukun mayor in terms of white people keeping their noses out of blackfella business, particularly when you consider what this parliament is considering in the Aboriginal and Torres Strait Islander Land Holding Bill. So I hope that my parliamentary colleagues bring that perspective to the debate as we pick it up later on today.

On a completely different note, we heard submissions earlier today about the competitive tendering process around mining exploration leases. Can I get your views in relation to that? I do not think your submission touched on that, but we heard a lot of information about how this would distort the process to allow for the highest bidder—not necessarily the best bidder—to win the tendering process.

Dr Seelig: We are very concerned that this becomes an auction of the cashed-up mining sector and will not necessarily deliver the best outcome for local people and local communities. With this particular mining area, we are even perplexed as to what exactly the whole process is from here. We are not sure what environmental impact assessment provisions are going to be applying, because of the history of this project and the fact that it has been given very special treatment for some many years. It has gone through various phases of having mining companies take it on with commitments to construct aluminium smelting facilities in Gladstone, not delivering, losing the lease, and it being handed over to someone else who has done the same sort of thing and so on.

The bottom line to your question is that we have extreme concerns. Mining proposal processes tend to be bidding exercises anyway. But if it is all about cash and not about anything else at all, then that is obviously of concern. With this particular mining area, though, there is just such a lack of transparency. Even the mapping that we have conducted took us a little while, because you cannot simply look up a mining lease area in the way that you would normally do; you have to drill down into what the restricted area tenement looks like. There is a lack of transparency over this particular mining area that does not seem to exist in almost any other case that I can think of on Cape York.

CHAIR: Thank you for that, Dr Tim and Karen. We are limited for time so we are going to have to move on. So thank you very much.

Dr Seelig: Thank you very much for the opportunity.

CHENOWETH, Mr Jeremy, Chair, Mining and Resources Law Committee

DUNN, Mr Matthew, Principal Policy Solicitor, Queensland Law Society

CHAIR: I welcome Matthew Dunn and Jeremy Chenoweth from the Queensland Law Society. It is good to have you here. I noticed that one of the points you brought up in your submission was about the occupier and landowners. The department touched on that in its explanation. Did you happen to hear that at all?

Mr Chenoweth: No.

CHAIR: Could you please give us an opening statement and we will ask a few questions at the end.

Mr Dunn: Thank you very much. Firstly, I would like to thank the committee very much for allowing us to come and present to you today on behalf of the Queensland Law Society. As you would probably know, the Law Society is the representative organisation for the solicitors of Queensland. Our members represent all different parties in mining and litigation in all manner of different areas. They represent government, resource companies, landholders and all sorts of things. So we tried very hard to take as balanced a position in the submission as we can.

In particular, we have Mr Jeremy Chenoweth here today, who is the chair of our mining and resources committee. That is a committee of experienced resource practitioners who work in the area of mining and resources on a daily basis with representatives from both the landholder and resource company sides of things and they are particularly familiar with the practical issues of dealing with the particular legislation.

The society's submission that we made to the committee was really focused just on one issue, which was the definition of `occupier'. The reason for that was that that was an issue that our members from both sides and all parties to the transaction have said is creating a degree of uncertainty in working under the legislation and that it needed to be further clarified. It was an issue that we have also debated quite thoroughly. So that is why we have dealt with that particular one.

Just to run through our position on that very briefly if I can, the explanatory notes to the bill say that it is the intention of the bill to basically end that uncertainty and to clear up the definition and to recognise that there are arrangements in agribusinesses where ownership of the land is held by one entity and the operations of the business are held by another entity and there are various arrangements between those two parties. It may be contractual, it might be an unregistered lease, it could be an understanding, but you will have a situation where the owner of the land is not necessarily actually operating the agribusiness there.

The explanatory notes, as far as we could see, actually said that it wanted to address this particular issue in terms of partnerships and in terms of other types of corporate structures, and we applaud that and congratulate that. When we look through the drafting, we support the changes that are being proposed to bring a bit of extra clarity. We think, though, that there just needs to be a small tweak to the drafting in order to be able to deal with or just catch those situations where the owner of the land is one entity and it is a different entity that is actually occupying the land and operating the agribusiness and there is not a formal registered lease between those parties in the circumstances.

The relevant part of the section to look at in the Mineral Resources Act I think is section 78. It talks about a person who under an act has a right to occupy a place or is under a lease registered under the Land Title Act, so if it is a lease there is no problem. That is fine, as long as it is registered. There are a lot of leases that are not registered because they do not need to be.

So our key point was simply that under that legislative drafting a person who is occupying the land with a licence from the owner is not someone who then is caught within that particular definition. The reason for that is that we say that, in order to get to limb A, which is the part that says that a person who has a right to occupy a place under an act then gives this right to another person in limb B—we say that limb A does not quite catch that degree of freehold owner because we say that the right to actually occupy the land does not come from an act; it comes from the common law. So what we say is that the Governor in Council, through legislation, has given the government the right to issue freehold title to people, but it is not that act that gives people the right to occupy and exclude others; it is actually the common law that does that.

So we have suggested that a simple and very minor amendment is made to the second limb of that definition just to clear that up, simply to say that where an owner has given another a right to occupy the place that person should be considered an occupier in the circumstances because we just do not think it quite gets there.

CHAIR: So it takes away that act part of it.

Mr Chenoweth: That change seems to follow naturally from the explanatory memorandum, which sets out quite clearly what that distinction was. But that distinction just does not seem to have been transferred through to the drafting.

Mr Dunn: That is the substance of our submission and, in any event, it makes it just a little clearer that that is the obvious intention of the act and that it will work in that particular way—just so these types of businesses and arrangements that are obviously intended to be captured anyway are actually captured. That was sort of the first thrust of our submission.

The second thrust of the submission is probably something slightly more sort of practical, which is that a number of our members who work in the area have said that there are issues in terms of identifying who occupiers of the land are, because it is not necessarily known to the tenement holders or the exploration permit holders but it is better known to the landholders that there are obligations in the act to actually issue notices to people who are occupiers all at the beginning, but it may be difficult, or in some cases impossible, to know exactly who all of the occupiers are. So our proposal in relation to that, which is something that we have raised with the department and with the minister, is that perhaps there should be consideration of a two-tier approach, where a company might serve notices on everyone that it knows of or that it can find through a public register and it then serves notices on all the people it comes to know of afterwards and brings them all into the process so that everyone comes along together. We think there is just a bit of a technical anomaly there that the obligation on the company is to serve notices on everyone, even people that it does not know exist, and that is just a bit tricky. So that is just an accommodation for that particular point.

Effectively, those are the two main thrusts of our submission which were reasonably sort of legalistic and just related to a small drafting issue in the circumstances. But it is an issue, if I can just say it again, that our members have said is causing some uncertainty in terms of advising landholders, in terms of advising resources companies and in terms of trying to just make the existing system work.

CHAIR: I just have one question. In relation to a permanent subcontractor who happens to be on the land as a maintenance fitter or whatever he is, does he become part of that scheme of occupiers of that land? He is removed from the ownership and the leasing agreements, but he is permanently on there working. Does he become an occupier?

Mr Chenoweth: I would have thought not, subject to any view that Matthew has. Somebody who is working on the land under a contract providing services would not normally be an occupier. There would be duties that would be owed to them, but for the purpose of this definition I would not have thought they should be an occupier to whom notice would be given under the act. That is not to say that the landholder would not have obligations to them if they are working under a contract to provide services.

Mr Dunn: Can I also add that there may also be in that circumstance a compensable effect to that particular individual under the legislation. Being an occupier is one thing, but there is also the issue about whether that person has a compensable effect such that then there needs to be an agreement and compensation and other things dealt with. There are two stages to that process.

CHAIR: That issue was raised by both the QRC and the mineral resources groups. Thank you for the time that the Law Society does put in. I always find your briefs very intelligent and worthwhile following through.

Mr Dunn: Thank you for giving us the opportunity.

CHAIR: That is the conclusion of the hearing. I thank all the witnesses who have given us their time this morning: I now invite the departmental officers to provide a follow-up briefing on issues raised during the hearing.

ALBION, Mr Graeme, Director, Aurukun Project, Department of State Development, Infrastructure and Planning

BARR, Mr Dean, Program Manager, Streamlining Approvals Project, Department of Natural Resources and Mines

BEARE, Mr Geoff, Director, Business and Stakeholder Solutions, Department of Natural Resources and Mines

GRUNDY, Mr Jim, Executive Director, Mining and Petroleum Operations, Department of Natural Resources and Mines

McKIE, Mr Gerry, Director, Native Title Services, Department of Natural Resources and Mines

McNEVIN, Ms Bernadette, Project Director, Competitive Cash Bidding, Department of Natural Resources and Mines

NICHOLS, Ms Elisa, Executive Director, Reform and Innovation, Department of Environment and Heritage Protection

PIETZNER, Ms Kirsten, Director, Petroleum Gas and Geothermal, Department of Natural Resources and Mines

SKINNER, Mr John, Deputy Director-General, Policy and Program Support, Department of Natural Resources and Mines

SQUIRE, Mr Warwick, Director, Land and Resources Policy, Department of Natural Resources and Mines

CHAIR: I welcome back the officers from the department. As you probably heard, there was a broad range of opinions given during the public hearing. Would you like to work through some of those queries that you feel are relevant that require answering immediately and flag others that you might like to get back to us on?

Mr Skinner: Thank you, Mr Chairman. I will work through some of the issues. Obviously there were a lot of issues raised in those presentations. I will do my best to work through a number of those and then the committee can raise those ones that they saw particularly from their perspective and we can talk further about that, if that sounds okay.

I refer to the earlier representations in relation to the cash-bidding process. Clearly small entrepreneurs and small miners are important and remain important in this state. That is one of the reasons amendments are being put forward, particularly in relation to small miners. Small explorers who go out there and traverse large areas and explore are critical in that they are the ones doing the cutting-edge exploration that then becomes of interest subsequently to other players in that space, unless they grow themselves. The state values their contribution—it is very important—and we would be looking to maintain a strong small-explorer activity and presence.

Competitive tender now applies to gas. I mentioned before that, since 2005, 140,000 petroleum and gas subblocks have been released through a competitive tender process. There is a competitive application process for coal. Exploration permits for minerals are currently over-the-counter. The legislation enables us to bring an alignment of processes across the various areas and, as I mentioned earlier, the majority will continue to have a process which does not involve a cash component. Where there is a cash component, this will involve an open and transparent process and particularly underpinned by areas that the Geological Survey of Queensland has identified as being of high prospectivity and therefore of interest to industry and obviously in terms of return to the state.

Clearly, in administration of these arrangements we are very conscious of keeping the balance right, maximising the development of the resource and providing the community with an appropriate return on the access to potentially prospective areas based on the inground value of Queensland's resources. I want to reassure that there is balance in the administration of the process surrounding this in terms of the balance between the junior, the mid-level and the major

players in our very active resource sector. How we are seen in this is important. The perceptions are important. Certainly the provinces in Canada which do have these arrangements in place are also, in fact, rated very highly in how they are seen as an industry administering their resource industry. There are many ingredients that are in that space.

The other area I will touch on is certainly the issue raised around occupiers. The department is satisfied that a freehold owner would be covered by the definition. We have consulted on this point. The issue of occupier and trust et cetera was raised previously. That is why we went back and revisited it. It is always a challenge that industry raises about land access and the process that sits around that—again, as was mentioned, who is known and who is not known et cetera—and certainly keeping that balance in terms of the expectations of an explorer who wants to undertake activity versus keeping landholder rights. That is why we recently had a land-access review. We now have a working group looking at some of these particular issues surrounding land access to ensure we continue to keep that balance right between encouraging exploration and respecting landholder rights.

I have just one other comment. A review of wild rivers is not subject to this bill. I think there were a range of issues raised that were out of scope of the matters we are attempting to deal with in what we are talking about this morning. Perhaps I will stop there because there are obviously issues of importance to members of the committee that they may wish to explore in more detail.

CHAIR: Thank you for that brief comment. I do have a couple of questions. On the issue of occupier, the two mineral resources representative groups also raised that and so did the Law Society. Have you got any crown law advice on that? I do not expect you to release it, but I am wondering if you have crown law advice on that at all.

Mr Skinner: Yes, we did seek crown law advice on this matter. Obviously I cannot go into the substance of that advice. I can only confirm, in response to your question, that we did seek crown law advice and that we are satisfied that a freehold owner would be covered by the definition.

CHAIR: You probably heard Ed Lunney speak. He has also put in quite a detailed submission. He was bringing up some issues that were probably outside the bill about discrimination, lease tenures, infrastructure and that sort of thing. Do you have any comment to make about those sorts of things?

Mr Skinner: I will invite Jim Grundy to make a few comments in relation to that.

Mr Grundy: Yes, we have gone through Ed Lunney's submission. Ed has given quite a bit of feedback and information to the department. In terms of the process of looking at the option of a mining leaseholder converting to a mining claim that he has spoken about, the aspects that any holder will take into account are the criteria under which the mining claim tenure will apply. So they will take account of permanent structures they might have on a mining lease, the nature of the area, the nature of the activity. We look at that on a case-by-case basis as far as the assessment is concerned. The department works with the proponent and through this process will look at all of the issues that may be appropriate to them. All of the other matters as far as the controlling of the ownership and/or the sale are concerned, as Ed rightly pointed out, are taxation matters. Those matters are outside the scope of our jurisdiction.

CHAIR: He was quite adamant about the discrimination part of it. It was a bit hard to pick up what he was talking about.

Mr Grundy: In terms of the discrimination, the way that I heard that and the way that I took that was that he was saying that this was not covering all opal miners. While he did not say it—and I will check with my colleague—there are certain areas of the Quilpie mining district and the Winton mining district, such as Opalton and Yowah, that are small, concentrated areas where they have underground shafts, so they are around one hectare in size. We are not proposing to change or interfere with any of the entitlements there, but we will be looking at options for them as to how appropriate those restricted areas are on that small, concentrated scale. I expect that is what he is talking about. Otherwise, all opal miners are covered by the proposed amendments.

CHAIR: Are there any other questions?

Mr TROUT: Ed Lunney talked about the fact that through a third party there could be land grabs. Do you have any major issues with this in the MOLA Bill?

Mr Grundy: In terms of the comment about third parties, as far as I can tell there is no difference to the way that the current framework works now. Lots of miners work through agents and they work through third parties. It is up to the individual. They will be accountable. They will be the legal entity that takes their name on the actual tenure. As far as third parties getting involved is

concerned, from my perspective you have to have that prior or what we call a prerequisite right to be able to get there. So you must already have ownership of that tenure. We will not entertain any third party that is not on the register or does not have a legal right.

Mr COSTIGAN: The issue of land banking was certainly raised by Bernie Hogan from AMEC. He seemed very concerned about that. What is your response to that?

Mr Skinner: The statements around land banking are nothing new. Obviously there is a range of processes that we have in place to provide for turnover of tenements and release and to actually discourage land banking. Certainly in the cash-bidding process and in any competitive tender process you are really looking at the undertakings that the applicant is providing in terms of what they are going to do and in what time span et cetera. Looking at cash-bidding applications, the criteria, as I mentioned earlier, are not purely about cash. It is about what you are going to do with it and how you are going to develop that resource.

At any point in time there are requirements across all areas for proponents to actually develop the resource. The system in fact attempts to encourage people to move forward to further develop through a production arrangement and not to land-bank. But, clearly, when you have a high level of interest across a whole range of areas, there will often be claims, even for some considerable time, of land banking and then on-selling—people staking out large areas to land-bank and on-sell at a profit.

Mr COX: On the back of all that, these are commercial transactions—people are investing. So in some ways maybe what is wrong if they are land banking, because they do have strict criteria that they have to fulfil and they have to prove their capacity and capability. This process is now happening, so we need to ensure there are going to be stronger people coming forward who really do have the capacity and capability to take it forward. Given the investment and given that they want to do something with it down the track, do you think that could actually work against them?

Mr Skinner: I think that is a good point, actually. You cannot point to a specific, evidence based response at this point in time. But I would suggest that, given the investment that is being put forward, given that we are talking about a combination of investment and high prospectivity, the proponents who participate in this process are going to have a high probability of further developing it. The drivers are not there necessarily to be as involved in this process, I would suggest. I think the probability of development is in fact higher.

Mr COX: They even pointed out that people get it wrong the way it is now and that down the track something you thought was prospective was not.

Mr Skinner: Exactly. You can pay an application fee and if you get it wrong the amount of investment is not that great necessarily, whereas this is certainly a much more substantial commitment across the board. Again, it is early days because our tender process closes tomorrow. I think you would say on probability that it does support that that would occur, with reasonable expectations.

Mrs MADDERN: I have two questions. With the cash-bidding process, there is going to be a limited amount of cash bidding and there will be non-cash bidding for other areas.

Mr Skinner: Correct.

Mrs MADDERN: The implication seems to be that everything is cash bidding. What I am reading from the explanatory notes is that that will only be a small segment of the overall process.

Mr Skinner: Correct.

Mrs MADDERN: That is the first question. The second is that in the cash-bidding process it would really come down to economics. If mining companies did not think it was economic to bid a large amount for a particular tenure, they would not be doing it. It seems to me that economics is going to drive what the bidding process is ultimately.

Mr Skinner: Business drivers will drive it. They will make decisions from a business perspective, I would envisage, and then they will bid accordingly. That will be determined by a range of factors—location of the leases, location vis-a-vis other types of activities that are going on et cetera in terms of the value of the resource. I imagine each company would go through and make their own individual commercial decisions. We will see what that looks like when we move through the process.

Mrs MADDERN: It just seems to me that if, as the Resources Council and others are saying, it is a hindrance to development they just will not bid. They will just walk away and say it is not viable.

Mr Skinner: It has been an issue raised by the resources sector, particularly the junior explorers. Obviously, if they are interested, some of them could move upstream a little bit in terms of their size. They may talk to their financiers. They may talk to some others with mutual interest in putting something forward. As I said earlier, the majority of areas will not come within this category. So there is still going to be plenty of opportunity out there for them in terms of the vast areas of the state in which to carry on with their activities. Obviously they can participate in this process the same as anybody else can. We will know more when we move through the process, as I indicated.

Mr COSTIGAN: Mr Skinner, what is the minister's role in the competitive tendering process? Do you have any concerns there, full stop—any concerns whatsoever, particularly given what we are hearing from other states at this point in time?

Mr Skinner: As I mentioned before, obviously we read newspapers as well. As I said, I have consulted our probity auditor. His response was that they are different processes. Therefore, we are running a different process here in this state. The probity auditor, who has been auditing continuously what we have been doing right throughout the whole process, will write a report on the process at the end of it as an independent probity auditor and it will be made public. As I said, in any major exercise where government is making decisions where it has tenderers, not just in these sorts of processes, you have probity auditors. The probity auditor's advice is that the process is completely different here to other places. Therefore, we are confident that this will comply with full probity processes, including the role of the minister.

CHAIR: Thank you very much, John, for bringing the department back to answer some of our questions. There might be a few that shake out in the wash.

Mr Skinner: Send us any others.

CHAIR: I think we have had a fairly comprehensive hearing this morning. We have examined some of the issues. Some of the issues are probably misinterpretations by people who are not used to reading legislation. That is not an issue. Most of the issues, I think, are fairly well covered. There seem to be some fairly positive comments about the legislation in general. People always have issues that affect them directly. But otherwise it is a fairly good piece of legislation that will be well received by the community. I thank the department for doing such good work.

Mr Skinner: I thank the committee.

Committee adjourned at 11.13 am