INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

Members present:

Mr J Pearce MP (Chair)
Mr CD Crawford MP
Mrs AM Leahy MP
Mrs BL Lauga MP
Dr MA Robinson MP

Staff present:

Ms M Westcott (Acting Research Director)
Ms K Shalders (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE STRONG AND SUSTAINABLE RESOURCES COMMUNITY BILL 2016

TRANSCRIPT OF PROCEEDINGS

MONDAY, 6 FEBRUARY 2017

Brisbane

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Committee met at 9.30 am

CHAIR: Good morning. I declare open the public hearing for the committee's examination of the Strong and Sustainable Resource Communities Bill 2016. Thank you for your attendance here today. I am Jim Pearce, the member for Mirani and chair of the committee. The other committee members here with me today are: Dr Mark Robinson, deputy chair and member for Cleveland; Mrs Brittany Lauga, member for Keppel; Ms Ann Leahy, member for Warrego; and Mr Craig Crawford, member for Barron River. Mr Shane Knuth, the member for Dalrymple, is unable to attend today.

Those here today should note that these proceedings are being broadcast to the web and transcribed by Hansard. Media may be present, so you may also be filmed or photographed. The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. Witnesses should be guided by schedules 3 and 8 of the standing orders.

The Parliament of Queensland Act 2001 requires the committee to examine the bill to consider the policy to be given effect by the bill and the application of fundamental legislative principles. Today's public hearing will form part of the committee's examination of the bill. I ask that those present switch off mobile devices or put them on silent mode.

PIETZNER, Ms Kirsten, Principal Adviser, Resources and Regional Development, Local Government Association of Queensland

TALBOT, Ms Simone, Manager, Advocate, Infrastructure Economics and Regional Development, Local Government Association of Queensland

CHAIR: Would you like to make an opening statement?

Ms Talbot: Yes, thank you, Mr Chair. Good morning, committee members. On behalf of local government, we congratulate the government on its efforts to end 100 per cent FIFO workforce arrangements; however, we believe that the government needs to rework its proposed FIFO measures so that project proponents are required to take practical and effective measures to employ residents from nearby regional areas. In this way, the needs of resource communities will be directly accounted for in project approvals. The LGAQ strongly supports the bill's objective to ensure that regional communities in Queensland in the vicinity of large resource projects benefit from the operation of those projects. With that said, we believe that more ambitious measures are required to achieve this objective.

We need to take the opportunity presented by this bill to put adaptive management of social impacts at the heart of resources policy and legislation. Currently, Queensland has a front-end loaded assessment process that attempts to foresee all of the social impacts and opportunities of a project and set conditions accordingly. Given resource projects last for decades, it is inevitable that proponents have struggled to manage effectively the impacts as well as the opportunities of their projects on regional communities.

The failure of the current social impact management process becomes even more evident when you consider the cumulative effects of several projects operating in the same region at the same time. While it is mandatory for resource projects to have an environmental authority that sets out requirements for managing project impacts on the environment, there is no equivalent requirement to manage project impacts on residents and communities. This means that project proponents are required to manage their impact on wildlife and flora but not on people.

Under the LGAQ's approach, both current and future projects would be required to have a social impact management plan that is regularly updated to take account of the actual impacts of a project over the life of that project. To achieve this objective, the LGAQ calls on the state government to work with local government, the resources sector and stakeholders to develop a transition plan that ensures that all resource projects have a social impact management plan in place by 31 December 2020.

Let me emphasise that Queensland councils want to work with resource project proponents to better manage the impacts of their projects on communities. Councils are not just another stakeholder. As the democratically elected voice of their community, councils need to be recognised as an essential partner in managing the impacts and opportunities of resource projects on communities.

While the bill makes progress in this area, more needs to be done to achieve a genuine partnership with local government, including requiring better consultation with local government than that currently provided for in the bill, requiring an assessment of the impacts of a resource project on local government assets, services and land use planning schemes, requiring a project proponent to negotiate an infrastructure agreement with local government before the project commences, and requiring a project proponent to fund the reasonable costs of local government participation in social impact management processes including the negotiation of an infrastructure agreement.

Resource projects make substantial demands on council assets and services as well as significantly affect land use in and around towns. Where these costs are not covered by the project proponent they fall on to communities, an outcome that is manifestly unfair. When we asked our members what they needed from this bill, councils strongly emphasised that significant improvements can be made in managing the impacts and opportunities of resource projects if information regarding a project is provided to councils early and agreement is reached on managing these impacts before a project commences.

Once again, the LGAQ congratulates the government on the work it has done to help communities benefit from nearby resource projects. We also welcome the recognition that this bill gives to the role that local government can play in managing the social impacts and opportunities of these projects. However, we urge the government and the parliament to be ambitious. Let us use this bill to transform the future of our resource communities by putting in place a world-leading approach to managing the social impacts as well as the opportunities of resource projects in Queensland.

CHAIR: Thank you very much. You have suggested that a nearby regional community should be defined as 150 kilometres from a project rather than 100 kilometres. The bill enables the Coordinator-General to decide that a place that is more or less than 100 kilometres from a project is a nearby regional community. Do you support the flexibility to take account of differences in each location? Do you see any issues with that approach?

Ms Pietzner: We understand that what the bill is trying to do with that definition is give flexibility about how you define a nearby regional community. In our submission we said that, if you continue to take the approach of defining it by distance within the bill, our preferred measure is 150 kilometres. However, our submission also proffers an alternative, which is effectively to take out the distance measure from the bill itself and say that the Coordinator-General can set the definition of a nearby regional community. It should be done using guidelines. It should include a labour market study to ensure you are not trying to drag out of regional communities when there is not employment available. We do make the very important addition that the legislation should require the Coordinator-General to consult with local government on what that definition is. We think it will be difficult to use a single distance measure, given road conditions, the location of projects and so on. Let us cut to the chase and say that the Coordinator-General should have discretion but that discretion should be exercised according to guidelines and with a legislative requirement for consultation with local government, who can give a perspective from the local community point of view.

CHAIR: Do you think there should be a defined community such as Rockhampton and all places in between? That is not set out clearly in the legislation. Do you have a better way to ensure we cover everybody who should get an opportunity for work?

Ms Pietzner: That is why we think there should be guidelines, so we can go through a systematic approach of analysing what is the best measure for an individual project given the socioeconomic circumstances that exist at the time. That is also why we advocate an adaptive management approach. What might be a very good approach in 2017 for a particular project may not be the appropriate way of managing things in 2027.

If you put in place a process where you do your best analysis at the moment and put in place measures that are appropriate for the stage of that project and for the social and economic conditions at that point in time, you should put in place triggers to review that or put in place a method for knowing when you should review that so you can update those measures. It may be for particular projects at particular times that the Rockhampton sort of measure is the appropriate measure. It may be that at a different place and time there is a different way in which you should be assessing what we are terming the regional employment area. When projects run for 20 and 30 years, we do not think it is

feasible to know what is going to be appropriate for the next 20 or 30 years, given the various phases that projects go through. The legislation should recognise that that is not feasible but put in place a robust method for deciding what is feasible. We think that robust method must include a legislative requirement to consult with local government.

CHAIR: A couple of times in your presentation you mentioned consultation with local government and mining companies. Is there a bit of a problem in that area?

Ms Talbot: Yes. No doubt when you progress the committee hearings you will hear from councils direct examples of where the consultation process, in fairness to industry, works very well and where the councils have established a very productive working relationship with the proponents in their areas. There are also examples where it works very poorly. Our membership talks a lot about consultation fatigue within the community itself, but there is a common theme from our membership and the messages we get back about consultation processes needing to be improved. As part of the LGAQ's submission, we indicate that we would like to see a mandatory code for engagement and consultation with local government. We believe that, if it was treated a bit more seriously and had some statutory basis to it, a lot of the issues could be prevented upfront with early and ongoing dialogue.

Dr ROBINSON: I understand from the department's advice that the ban on the 100 per cent FIFO workforce in the bill is intended to work alongside a workforce management plan that includes a commitment to local and regional recruitment and conditions imposed by the Coordinator-General. Do you have some concerns around that?

Ms Pietzner: I think that is probably consistent with what we are saying: you do an assessment, you figure out the right methods and then you place conditions on a project in relation to what measures they should take to employ people from a regional area. That will differ from project to project and the circumstances that are in place. The bill, however, is not really written in that way. The bill is really written as 'there is a prohibition on 100 per cent FIFO'. It is written in the negative, I guess: 'This is something you are prohibited from doing.' It is not written in the positive: 'This what you need to do in order to meet that prohibition.'

We think it would be better if the bill was worded to say that the Coordinator-General must impose conditions on what a company needs to do to employ people from regional areas and if a company meets those conditions then they have met the prohibition on 100 per cent FIFO. Then it is very clear what a company has to do in order to meet that prohibition. At the moment, the way that it is drafted, we think it is left open to 'you could employ two people and you have met the prohibition on 100 per cent FIFO'. I think companies and regional communities need certainty over what that means. Let us just get to the point and say, 'Let us do the analysis, let us say what the workforce management plan needs to look like, and then we can measure them against the requirements of that workforce management plan. If they meet those requirements they have met the ban on 100 per cent FIFO.' I do not think you can say for each project the percentage of people that needs to be employed from a region and so forth. I think sometimes that is what people want, but I do not think you can put that in the legislation and say that it applies universally across all projects across all time.

Mrs LAUGA: You have proposed that all of the projects be subject to the anti-discrimination amendments and that they apply to all workforce arrangements. Can you expand on how you would see that working in relation to projects which currently operate with a FIFO workforce?

Ms Pietzner: As I understand it, if you are currently employing people with FIFO workforce arrangements it would not interfere with that, but if somebody left and you were re-employing people you could not discriminate in terms of where they came from in terms of that next phase of employment; or if somebody were to move from being a FIFO employee and retain their employment by moving to a regional community and therefore went to commute differently to work, you could not discriminate against that person. As I understand it, if you are currently employed it would not affect your current employment but it would affect anyone who was coming into the company and who chose to change their housing arrangements from what they currently had.

Ms LEAHY: Thank you for coming in today. The LGAQ argue for greater input to the Coordinator-General. I suppose you are well aware of where I come from in the Surat Basin and what we have seen in those areas. If I could have an answer from any company about their workforce requirements and their contractors' requirements, I think local government would be in a much better position to plan for infrastructure and social impact assessments, so there are those unknowns with projects. How do we deal with that? How do we get those mechanisms? It could happen again with gas. If the oil price goes up, gas could suddenly kick in again and we are back to people being displaced in homes, high rents and all those sorts of things.

Ms Talbot: I will broadly touch on that and Kirsten may want to add some more information. That is why our submission is predicated on this adaptive management, because when conditions are set you do not necessarily know what will happen in terms of the long-term economic cycle. The QRC has also made a point in its submission about the uncertainty of economic conditions and the boom-and-bust cycle of this industry. Yes, I think there will be certain things that are unknown or not potentially clear at a point in time, and we say that conditions need to be reviewed on a regular basis over the life of the project because things will change all the time and new information will become available. Conditions are typically set on the best information available at a point in time; however, given the life of projects, when they are set with 30 conditions which are not often changed to reflect current conditions or the current environment, it creates problems.

Ms Pietzner: The only thing I would add is that you can only undertake adaptive management effectively if you have good information and you have the best information at the time. One of the things we are encouraging is a better flow of information from the companies who have knowledge of their plans, or their best knowledge at the time, to local government. The second aspect of it is cumulative impact management. That requires information from multiple companies to really understand the full picture so that when you get a significant change in a particular project you can understand whether that change will be absorbed into existing methods or you are going to have to say, 'That is a tipping point'—in housing or water and sewerage services—'which means that we have to start to upgrade what we are doing in a significant way.'

At the moment, because some companies do it well and some do it poorly, people are using different methods to do different types of assessments, so you cannot compare apples with apples. You are trying to compare apples with oranges. It is a very difficult process for local governments, which are at the centre of it, who cannot even get visibility on what is happening with projects according to what they are doing now let alone what they might be doing over the next five years or so. Getting that improved visibility would help everybody in their planning process, and that is a lot of what we are saying in terms of statutory guidelines around consultation and so on. People need the best information they can get to make the best decisions they can at the time, acknowledging that we cannot know everything that is going to happen and circumstances may change.

Mr CRAWFORD: Simone, you talked about the social impact management plan and the transition plan by December 2020. We are talking about projects that are currently out there?

Ms Talbot: Yes.

Mr CRAWFORD: Obviously a number of your members are very small councils with very limited staff and resources. A picture just popped into my head of a large multinational company doing something, or wanting to do something, in the back yard of a very small council. I have some concerns about how that might run with what you are talking about. What resources would the LGAQ or others be able to provide to help those councils? I think 'overconsulted' was the word you used earlier.

Ms Talbot: Their capacity to participate in the process is certainly a real issue for a number of the smaller rural and remote councils. They are aware of that. A lot of them have been proactive and a lot of them have invested considerable dollars in engaging consultants and experts and likewise drawing on the resources of larger councils in their area to assist them. The LGAQ has also looked at various options and has been in dialogue with government. If local government was to have a greater role, especially upfront in resource community planning, assessment and conditioning processes as well as monitoring, there would need to be a level of support offered.

A number of years ago we proposed some things to government, more so when the current Building our Regions program was the Royalties for Regions program under the former government. We indicated that a small proportion of that funding could be assigned to address capability issues within some of the smaller resource councils to help them participate in the process, and hopefully ultimately out of that they would have a better indication of what projects to submit to such programs as Royalties for Regions, now Building our Regions. Yes, we acknowledge that it is certainly a real issue. It is something that we are well aware of, as the councils are themselves, but I think there are lots of avenues available to assist councils participate more fully, and LGAQ does offer various supports to those councils as well.

Mr CRAWFORD: Are there any examples out there—without naming councils or companies—of issues where things have gone wrong or where there are problems?

Ms Talbot: I think you will get to hear from the councils throughout the course of your hearings. I know that in the Surat Basin some of the councils have really struggled to negotiate infrastructure agreements with key proponents. Again, those negotiations have come well after the project has been commissioned and developed. That causes all sorts of issues. There are issues with transparency,

openness and dialogue with the proponents. You have to understand that the companies are very good at negotiating what is best for the companies. Of course, you would expect them to do that. Sometimes councils struggle to meet those negotiations with their skills and capacity. It is difficult to say without naming councils, but certainly a very big frustration I hear is over the negotiation of infrastructure agreements. That relates to damage and impacts on roads that people were unaware would be occurring and also the ability to deal with a lot of subcontractors who are working on the project.

The classic example we hear all the time is the impact on land use planning. You will often hear real-life examples given that a workers camp is established and within one day the council tip is completely filled up and the council has to immediately respond to that. If they were given prior notice about the intent of the company's planning around when they were moving in or establishing the workers accommodation, they would be able to better plan their service provision around that. I think at the heart of it is the fact that local government is not necessarily held up as a level of government. Quite often they are considered just another stakeholder in the community, without a recognition that local government provides essential services that enable these communities to function.

That being said, local government is very supportive of industry. It is a key employer in these regional towns, so please do not interpret anything we say as local government being anti industry. It is quite the opposite. There is a level of frustration because councils feel that they cannot plan and provide services adequately to support industry growth as well as deal with immediate impacts on the community more generally.

CHAIR: Has any notification come through to the LGAQ from local governments in terms of the impact of declining populations?

Ms Talbot: In terms of—

CHAIR: How that is impacting on their rate base, for example. You hit the nail on the head with some of the things you were just talking about, but how do we fix that?

Ms Talbot: That is certainly a challenging question. That is why we are so keen to work with government and the sector. Where there are declining populations in a lot of regional areas, of course there is an impact on local governments' own-source revenue and therefore their ability to provide services and infrastructure that support regional growth and industry growth. In terms of the information coming through to the LGAQ, we are aware of it and we do capture data from our membership. I think it is a challenge. I certainly do not have a silver bullet solution for you today.

Going back to my previous point, there is an awareness of the importance of industry in the regions. That is why local government is keen to support the region. Declining population rates, which I think is your question, certainly impact councils' ability to provide services and infrastructure.

CHAIR: I personally believe that local government believes in greater stakeholder consultation but, from my observation, it is really hard to get the mining industry to believe in it. For them it is just a grouping of words, as far as I am concerned.

Ms Pietzner: One of the observations we made is that the consultation process we have been through with this bill probably was not the most conducive to providing a solution to the kinds of issues you are raising. That is because the Coordinator-General put out paperwork for us to comment on and there were only short timeframes for some of that commentary to occur in but we did not really have a process—apart from the ministerial round table, which is a good round table to have—or a detailed analysis of the policy framework, for example. Forget about the bill, but what should be the principles around the policy that we are trying to have on sustainable resource communities? That is a discussion not just between the LGAQ and the Coordinator-General's office but also between the LGAQ and the resources sector itself so that we could all sit down and ask, 'What is your perspective?' so that we could hear from each other and collectively develop solutions to these problems.

We do not say that we understand all of the perspectives of the resources sector, but we have a good understanding of the perspective of local government. That is why we have also recommended a better consultation process, where we do have professional officers meeting regularly to try and discuss the issues and come up with solutions. We are also talking about a transition plan. We are not saying that we should change everything overnight, because then you have a mad scramble with companies trying to comply with new legislation which ends up with very poor consultation processes, local governments being overwhelmed and not a particularly good outcome.

If we sat down and we thought it through strategically, if every company had a social impact management plan, would they necessarily do that on an individual basis or are there things that they could do collectively, given that they are all working in the same region, that could end up with social

impact management where they are all required to do their own part but they are not necessarily working as individual companies? That would, I think, be a sea change in the way in which not so much local government works but a sea change in the way in which companies work or projects work—they tend to work on an individual basis—and that is probably not getting either the best results for them or the best results for the communities in which they operate.

Ms Talbot: Mr Chair, we certainly have emphasised the need for better engagement and communication with local government. That is a key principle, and it comes out strongly in our submission. I think there have been some really good examples of late, with mandatory codes of conduct for engaging with landholders, that we can draw upon as well as a basis to hopefully help this discussion along in terms of what we would seek and what we request in terms of some form of statutory guideline or code of conduct for consultation with local government.

CHAIR: What was the time frame for responding to the Coordinator-General? Can you remember or could you give that to us? The new policy direction has been around for a long time.

Ms Talbot: I think you would have seen, Mr Chair, in the response from a lot of the submissions—it has been highlighted by various industry groups and peak bodies—some disappointment associated with the initial round of consultation, especially through the ministerial roundtable forum. We were given about two weeks to respond. In fairness to the minister, he did take on that criticism and he extended the consultation period to allow fully informed engagement with our members. I am sure other industry groups felt the same.

CHAIR: Thank you very much for your valuable input. There are no further questions.

Ms Talbot: Thank you for the opportunity.

HUGHES, Mr Mitch, Senior Vice President, Construction, Forestry, Mining and Energy Union

NEWMAN, Mr Chris, Legal Officer, Construction, Forestry, Mining and Energy Union

CHAIR: I now welcome representatives from the Construction, Forestry, Mining and Energy Union. Do you have an opening statement?

Mr Hughes: A very brief one, Chair, and probably just to clear the decks a little. The CFMEU are not against any FIFO or commute arrangements but we are for equality. At the moment we have two mines operating under what we see is not an equal arrangement in terms of employment.

Mr Newman: We have made our submissions to the inquiry and where we see some of the issues resolving with the legislation at the moment. We are here to answer any questions you may have in relation to that. I just want to point out that, as of last week, a mining company in Central Queensland has offered 180 new roles or contractor roles that are 100 per cent FIFO, so this is still a situation that is going on. I was out in that regional community last week. I spoke to several people in the Dysart community. Everybody that I spoke to—everybody—knew somebody who was unemployed and was unable to get a job in that mine as a result of the advertising which was 100 per cent FIFO only out of Townsville. This is an issue that is still going on, it is prevalent, it is serious and that is why the union will persist in its submissions that it needs to be stamped out. As Mr Hughes has said, this union is not against FIFO; we are about choice and we are about ensuring there is a choice for people about where they live and where they wish to commute to work. Thank you very much for the opportunity. If there are any questions in relation to our submission, we would be more than happy to answer them.

CHAIR: Chris, you said something with regard to employees coming out of Townsville?

Mr Newman: Yes.

CHAIR: Was there any call on local workers for the work?

Mr Newman: No.

CHAIR: Any advertising?

Mr Newman: No, there was no advertising. As I said, I spoke to several people in the community. There was no advertising coming out. I spoke to people who rang up the recruitment companies saying, 'I'm living in the local area. I'm actually registered with you. Can I get an interview?' and they said, 'No, you can't.' He said, 'Can I move to Townsville and get an interview?' and they said, 'No, you can't. You must live in Townsville now.' That is what they were told.

CHAIR: Would you be able to get us a copy of that advertisement?

Mr Newman: I have copies of two advertisements that were on Facebook last week. One of them is for Hays recruitment in mining and one of them is for WorkPac.

CHAIR: Members are happy for those to be tabled. Thank you.

Mr Hughes: Just to go a bit further on what Mr Newman said and your question around local advertisement, people we have spoken to about these positions were not made aware of it until there was media in the local papers about how good these jobs were. That is where they found out about those roles.

CHAIR: You suggest a different amendment to the Anti-Discrimination Act listing of a resident of a nearby local community in section 7 as an attribute on which discrimination was prohibited. Can you please explain what you intend this amendment to achieve?

Mr Newman: Just a simplification process, Chair. Whilst the legislation proposed would be effective in terms of putting a discrimination provision in to assist those people who are wishing to change their arrangements or people who would have been discriminated against because they cannot receive an opportunity, it is the CFMEU's view that a simplification process of making it an attribute would make it easy for people to access the legislation. That is simply the position of the union—that is, if it was made an attribute, the legislation would follow in a very simple process as it does if discrimination was on any other grounds such as race, religion or sexual orientation. That is simply the CFMEU's position in that regard.

CHAIR: Mitch, do you want to add anything?

Mr Hughes: No. That answer has covered it.

CHAIR: Do you think there is some confusion out there with regard to the legislation and in particular this area where some feel that there is discrimination against the mining companies that may already have 100 per cent fly-in fly-out? Is there a better way we could word that?

Mr Newman: No, I do not think there is a better way to word it. The union's concern around this is probably more of a technical concern than it is about getting the word out. I think an awareness campaign could be done when and if the legislation is implemented and assented by the parliament. An education campaign to the local people about their rights and legal obligations is certainly something that would be welcomed by the union, but our criticism of the anti-discrimination provisions is more a technical one than a social one.

CHAIR: What is your understanding of the proposed legislation as it is written and two mines in particular—the workforce at Daunia and Caval Ridge? Do you believe that the workforce will be impacted on by the proposed legislation? What is your understanding of that?

Mr Hughes: Our understanding is not clear—I think we have raised this in previous submissions—on how that bill would apply to those existing workforces. In our view it should apply to those existing workforces. With regard to those two mines that operate with 100 per cent FIFO mandate at the moment, the workforce there should be given the choice to live where they want to live and commute to work how they want to commute.

Mr Newman: That is where the education campaign that we spoke about would be of benefit, because it would be only beneficial for new employees and new starters or for employees who are currently working there to seek to change their living arrangements and move to the Moranbah-Dysart area or even the Mackay area, depending what it would be. That would be the only change to that. Of course where it currently stands in terms of the 100 per cent FIFO, if that was to impact the mine my sneaking suggestion is that the mine would have a high local workforce in one small part of the mine and keep the rest of it as FIFO as possible. That is what I suspect a coal company would do.

Dr ROBINSON: Your submission recommends that the prohibition on employing a 100 per cent FIFO workforce could be extended to the construction and demobilisation phases as well. Can you outline your position regarding the power that the Coordinator-General has to decide whether construction workers for a particular project should be captured by those provisions?

Mr Newman: It is our view that it should just be made mandatory and that all construction work should be covered, because that gives surety to the local industry in terms of their ability to gain work through the construction phase. If it was up to the Coordinator-General, that would involve the local businesses having to petition the Coordinator-General and it would set up an excessive regulatory discussion for the purposes for each new project, whereas if it was just made compulsory then those people would have surety that they would get preferences for local work which is what we would consider to be a win for all Queenslanders.

Mrs LAUGA: BMA's submission suggested that the bill should contain some limits on the scope of the Coordinator-General's powers. Do you agree with that suggestion? If so, what types of decision-making considerations or other limits do you consider should be in the bill?

Mr Hughes: I am not sure I agree with BMA's submission, to be honest.

Mr Newman: The Coordinator-General's power should not be limited, in our view, and certainly not limited in the way suggested by BHP.

Mr CRAWFORD: I am looking at one of the documents that you sent us—the Facebook post from Hays Resources and Mining. I am interested in the first dot point, where it says 'flight costs reduced to $130'. Does that look to you like those employees have to pay for their own flights?

Mr Newman: Yes.

Mr CRAWFORD: Is that a normal process for FIFO?

Mr Hughes: It depends on the company.

Mr Newman: It can be. Some companies will pay for the flights; some of them will require the person to make their own arrangements. My understanding from talking to some people about that specific application, and from people who rang them, was that the mine itself was choosing to subsidise the flights and then lock those in. My understanding is that if the person were to gain successful employment they would be given a roster for the year and they would lock in their flights accordingly. Then they would pay a certain amount and the balance of that flight would be subsidised by the company.

Mr CRAWFORD: Are these people likely to be employed directly by the mine or are these contract staff?

Mr Hughes: Contract staff.

Mr Newman: They would be contract staff.

Mr CRAWFORD: What is the benefit to a mining company of having your staff coming in fly-in fly-out? If you are any other industry, hauling your staff in from long distances has to cost a whole lot more than just hiring them from a couple of blocks away. What is in it for mines? Why do we have all this FIFO?

Mr Hughes: They claim it is cost effective for them, especially when they are using a contract workforce that is under a different workplace agreement with lesser rates and conditions.

Mr Newman: They claim the current enterprise agreement for full-time employees would be significantly higher. Alternatively—and another reason for these companies to do that—it is simply a de-unionising strategy, simply put. They ensure that these FIFO people come in from areas that do not have a history of mining, that do not have a history of or an understanding of the terms and conditions that have been hard fought and won by the mining union—and people from those towns understand and respect that. People from outside, with the greatest respect to them, do not have that history so they come in with a 'fresh perspective', which is what the company likes to call it, and then it becomes a recruitment issue for the union. It becomes very difficult for us to get access to these people. It is very difficult to organise to meet with them on camp or meet with them on site. Despite the right-of-entry provisions that are available to us, it is still very difficult for us. Any meetings can be easily monitored by the company and then it is very simple for those people to lose their contract because they are only casuals.

Mr CRAWFORD: I also sit on the Coal Workers' Pneumoconiosis Select Committee and I have interviewed a number of those workers. You were here when the LGAQ ladies were talking about consultation with local government. Have you any sort of feeling or opinion about that? Did you hear any of that testimony?

Mr Hughes: The only comment I would make in regard to the LGAQ sitting before was a point touched on about infrastructure. Obviously with FIFO and commute arrangements workers stay in camps and whatnot. Given the temporary nature to the town or place of residence, often councils will not receive the funding they require to keep up those front-line services, because the workers are not classed as permanent residents of the town. It impacts, then, on hospitals and front-line staff like nurses. I am aware of some issues in Dysart going back probably two or three years now where something simple like the water treatment plant could not keep up because it was not used to that sort of infrastructure so things needed to be put in place under duress there. That is probably the only thing I would touch on in regard to what the LGAQ has said.

Mr CRAWFORD: For example, in terms of the water treatment plant, whereas Dysart might have an ongoing population on census of a couple of thousand or whatever—

Mr Hughes: And all of a sudden it is subject to an influx.

Mr CRAWFORD: Now it is processing a whole lot more.

Mr Hughes: Yes.

CHAIR: Taking a look at these ads, it is quite alarming that the companies have employed WorkPac and another company—

Mr Newman: Hays—and these were the just the ones we could find. I had anecdotal evidence of other ones as well. These were just the ones that were provided to me on Facebook from people who had actually contacted them and tried to gain employment.

CHAIR: The employees they are seeking to engage are saying that they need to live in Townsville. What is wrong with Central Queensland? What is wrong with the 15,000 to 20,000 workers who lost their jobs? Surely there has to be skilled numbers in the area. Do you have any idea what sort of numbers we are looking at?

Mr Hughes: Of skilled workers?

CHAIR: Of skilled workers who could have applied for these jobs.

Mr Hughes: There have been countless redundancies in the area. I have lost count. The most recent one that springs to mind for us is German Creek, where Anglo decided to make 80 positions redundant no more than six months ago. Middlemount, where the workers base themselves, is 45 minutes from that operation. To go out there and say that they need 200 people because they cannot find any local workers—disappointed but not surprised.

CHAIR: We have heard local government talk about consultation. Do you guys talk to the mining companies? Do they consult with you about what they are intending to do?

Mr Hughes: We try. These ads are a perfect example of where our members on the ground have been trying to discuss this decision with the company and we have been told that it is not a matter that needs to be discussed.

Mr Newman: The coal companies like to meet their legal obligations, so if there is a requirement to consult under the Fair Work Act or an enterprise agreement then they will knock on our door. Otherwise we do not hear from them.

CHAIR: Why are these companies employing labour hire companies? They have a long history of employing their own workers.

Mr Newman: That is a question for the coal companies when they come.

CHAIR: You have raised concerns about the reverse onus of proof in discrimination matters. Do you have any suggestions for how that issue could be addressed?

Mr Newman: We are supportive of the reverse onus of proof.

CHAIR: I will call on the next group to answer the question. It is one I wanted to hear an opinion on, anyway. Does the union get a lot of feedback from those workers who are not working at the moment who would fit into some of these jobs with regard to the health of those people, whether they are being impacted on because they cannot get a job?

Mr Hughes: We obviously keep in touch with our members who have been made redundant or are out of work. As we come across an advertisement or something like that we will get in touch with them to make sure they are aware of it. Often—more often than not—and sadly it is becoming more common, a worker who is struggling, who is a member of ours, will give us a call and it is pretty quick for an official to pick up on the tone of the conversation as to how the worker is doing. I suppose the only point I make is that it is becoming more and more common for us to have those conversations and get that help to our members.

CHAIR: Do you have an understanding of how many people in Central Queensland are in a position where they could take some of these jobs that have been advertised for in Townsville? Do you have any numbers?

Mr Hughes: In Dysart alone I could think of 30 to 40 people. That does not count the workers who have recently been made redundant at Middlemount. I know of people in the Mackay area who could have filled these positions. I think the 200 positions they were looking for could have been filled very easily within the Bowen Basin itself.

Mr Newman: Within the week, I would have thought.

CHAIR: Are workers who have been made redundant still living in those towns?

Mr Hughes: In some cases they are. In a few cases it depends on whether their partner is out there working still. Accommodation is the biggest thing. In a lot of these towns the houses are actually owned by the mining companies so once someone is made redundant and not working for that company they also have to vacate the house.

Ms LEAHY: You said you had anecdotal evidence of other instances where there have been 100 per cent FIFO or 100-odd people being recruited. Perhaps you could help me out here in relation to the CFMEU members. With a situation like this one at Townsville, how many of those potential employees would you expect to become CFMEU members down the track?

Mr Hughes: I would like all of them to become members of the CFMEU, but that is up to how we deal with that process on the ground and our organising strategies.

Ms LEAHY: In those two mines that were mentioned that are 100 per cent FIFO, Daunia and Caval Ridge, what would be the percentage, in rough terms, of CFMEU members at those mines? Do you have any rough figures?

Mr Hughes: Not percentage wise, but we have some density at Daunia. We have some members at Caval, too, but Daunia is our strongest presence at this stage.

Ms LEAHY: Are we talking 50 per cent density? Are we talking up? Down?

Mr Hughes: At Daunia we would be getting close to 50 per cent.

Mr Newman: Caval Ridge has not been open as long so obviously that process is taking longer. The union is taking more of a long-term view to these two mines in terms of recruitment. It is slow work, but it is progressing.

Ms LEAHY: Is that roughly the rule of thumb with other mines, membership wise?

Mr Hughes: No.

Ms LEAHY: Would it be higher or lower in others?

Mr Hughes: It depends on the mine and the history of the mine—how long the mine has been open and what our presence has been there.

Ms LEAHY: For the benefit of the committee, could you give a couple of examples?

Mr Hughes: Of our presence in the mining industry?

Ms LEAHY: Yes.

Mr Hughes: Using Saraji as an example, our density is around 80 per cent. That is a mine that has been operating for 30-plus years in the township of Dysart.

Mr Newman: Most of the other BMA mines that we have that are not FIFO would be 80 to 90 per cent. They have a reasonable ability to get contractors as well sometimes, but most of those contractors live in the local area. The FIFO ones are coming in now to those mines and that becomes a lot more difficult because they come in, they stay at the camp and then leave straightaway. They are not in the area. They are not discussing the issues; they are leaving.

Ms LEAHY: That is fine. I am just trying to get that bit of perspective.

CHAIR: Do you have any further comments?

Mr Hughes: We are still of the view that the prohibition on 100 per cent FIFO could still be manipulated. I think Mr Newman was leading to it when he said that, essentially—and I understand it is probably not intended this way—it could mean that a project could employ a handful of people from a local area and still meet their obligations under the 'no 100 per cent FIFO' type arrangement. We would probably ask that there is a bit more attention put in that area.

CHAIR: Fair enough. There being no further questions, we will close this session.

MARTIN, Dr John, Research and Policy Officer, Queensland Council of Unions

McCALLUM, Mr Lance, National Policy Officer, Electrical Trades Union

ONG, Mr Peter, Acting Secretary, Electrical Trades Union, Queensland and Northern Territory

CHAIR: Do you have any opening statements?

Mr Ong: The ETU obviously believes it is fairly important that not only the committee understand but also the bill cover the two different demographics of FIFO in the resources sector. The first one is operations—the coalmines that are looking at 100 per cent FIFO and the impact that has on the local communities. Going from a local employment aspect to 100 per cent FIFO, obviously there is the lack of income coming into the community and also a social impact. The other one is the FIFO construction work of these resource projects and, again, the impacts on the community in terms of infrastructure, the resources impact on front-line services—ambulance, police officers and so forth; the member for Warrego would have seen the impact on infrastructure in the roads alone through the gas resources in the Surat Basin and the projects that have just gone through there—and also the mental health impact on our members certainly in the FIFO construction of the resource sector.

There is definitely a big difference in those two demographics—one being more of an impact on the local community by using FIFO rather than local workers and the other one being that FIFO generally has to happen when it comes to construction projects, because you will only fulfil that workforce to a minor extent locally. The need for FIFO is a real need, but we have to look at the mental health aspects and also the impacts on the local community and resources and infrastructure.

Mr McCallum: Thanks very much for the opportunity to be here today and to make submissions. Obviously we made our written submission, so I will not make too many reflections on that other than to say that, overall, our broad position is that this is a good bill and it should be supported, subject to the outcomes of the consultations such as this and the written submissions.

It is good that there is a bill that is being proactive about meeting this issue. FIFO and how to deal with it has been an issue that various governments and parliaments across the country, as well as federally, have been dealing with for a long time now. You can stretch back to the mid-2000s and see various parliamentary inquiries. Other bills that have been drafted have not come into effect. We are hopeful that this bill will, in fact, go through the parliament, subject to a few tweaks and improvements.

We think that starting with trying to improve the outcomes for local communities as part of FIFO is the right place to start. We acknowledge that the bill as it is drafted also touches on the issues that affect the FIFO workers themselves, such as accommodation et cetera. We think the broad spectrum of FIFO—that is, the workers and the communities—definitely needs to be taken into account.

Echoing some of the representations made by our comrades from the CFMEU previously and also in our written submission, we strongly feel that the construction phase should be taken into account when examining the 100 per cent FIFO prohibition. Normally with these projects, that is where most of the jobs are. You will have 1,000 or 1,500 jobs through the construction phase and that will drop down during the operational phase. Therefore, if the intention of the bill is to drive employment opportunities in local communities, we think that, as a matter of principle and not as a matter of discretion for the Coordinator-General, the construction phase should be taken into account or the 100 per cent prohibition should apply to that.

Other than that, there are a few technical issues that we will make submissions on, but we will probably do that as part of the questioning process or during concluding comments. Thanks very much.

Dr Martin: I think much of what we would have said by way of opening statement has already been traversed by the parties before you this morning, particularly the concern that to avoid being 100 per cent fly-in fly-out might be easily manipulated. The absurd example that is given is that you employ directly one cleaner from the local community and you are no longer 100 per cent. That is a concern. It was interesting the way in which that was worded by the Local Government Association this morning, in that the legislation is drafted in the negative as to what you cannot do rather than what should be done in order to comply with the legislation.

Similarly, on the definition of a local community, we have suggested in our written submission 200 kilometres rather than 100 kilometres. We understand that the legislation is written in such a way as to provide an amount of discretion towards the Coordinator-General, but our preference is more for certainty in terms of those sorts of definitions. Interestingly, the LGA said 150 kilometres, so we probably trumped them by an additional 50 kilometres in that regard.

CHAIR: It is a pretty hard one, isn't it?

Dr Martin: Any distance like that will be. When you have a threshold, you will find an example that will just fall outside, which is what I understand to be the case. I have in my mind 160 kilometres as being a specific example that was brought to our attention. Wherever you draw the line, there will be some concern, I guess.

As has been put to you by the union parties this morning, we believe that construction and decommission should be no different to the operational phase. If there is the capacity for local employment in those phases then it should be no different. You have also heard from the CFMEU with respect to existing workforces. We find it is absurd that you are made to travel away from the mine to an airport to fly back to it. That would make no sense whatsoever.

Those would be our opening submissions. I am happy to field any questions you might have.

CHAIR: Thank you very much. In their submission, the Electoral Trades Union talked about a hierarchy for recruitment of local and regional workers as in the draft social impact assessment guideline and suggested that that should be added to the bill. Can you give us a little more of the rationale for why it should be added to the bill?

Mr McCallum: We would ask that that be taken into consideration simply to expand the scope and intention of the bill. If you accept that local communities should benefit in terms of employment from these large resource projects, it is not a binary proposition of saying we either get people from local communities within 100 kilometres or 150 kilometres, or whatever the boundary will be, and if we cannot get them then it is a free-for-all in terms of where we are going to get those workers. If you apply the same principle and the same logic, we think it leads naturally to a hierarchy of employment to say that if we cannot get anyone from within 100 kilometres, because there might not be the appropriate skills in a local community, then we should look to a regional level such as staying within Central Queensland. If you cannot get them at Dysart, let us look at Rocky et cetera and then go up to the state level. This is born out of what we saw at the height of the boom, where we would have workers from other states down south, such as from Sydney, flying up in and out of places such as Mackay. If this bill is built on the intention to drive employment opportunities in local areas, I think there should be a logical step, so that if workers cannot be found in local communities first then the benefit and the intention should be to find workers at the regional level and then state.

Dr ROBINSON: It is nice to see you, gentlemen.

Mr McCallum: You too.

Dr ROBINSON: In terms of the QCU submission and 200 kilometres defining a nearby regional community and with respect to fatigue management for people driving from outside that range and the suggestion that existing policies would overcome any perceived difficulties with that sort of distance, how could fatigue policies ensure workers' safety? What needs to happen in that space?

Dr Martin: As far as I understand it, the way in which that would operate is that you are told you are not driving. If someone is in a scenario where they should not be driving, they will not be allowed to drive. That is the way in which the fatigue management policies would operate.

When we looked at what are the potential concerns surrounding this, the first one that came to mind was fatigue, because if you are working a 12-hour shift and then being required to drive on top of that, that might be a cause for concern. That was an issue raised in internal discussions with the CFMEU's mining division. The response we received was from Mr Hughes, who was here before us. When we raised that question of the potential concern about occupational health and safety, his response was that the existing fatigue management framework would overcome any concerns that one might reasonably have.

Dr ROBINSON: For the sake of the committee, could you outline your understanding—

Dr Martin: I would have to take that one on notice. I would be happy to provide it—and that would be second-hand, of course, through Mr Hughes. I am happy to provide advice.

Mr McCallum: Certainly in previous reports and inquiries that I have read around FIFO and drive-in drive-out practices, there is a range of opinions out there as to what is a healthy or safe driving time. From that you set the geographical boundary. If you knock off an hour in 60 minutes et cetera, that is about right before fatigue sets in. That is a huge consideration. It is predicated on each worker driving themselves or there being carpooling, for example.

I know this is very speculative, but it goes to the issue of what we are talking about. If you had a town that was 150 or, say, 200 kilometres away but you had 10 or 20 people who were employed at a major project, I would say to the committee that that is a perfect opportunity for there to be a bus service, whether that was operated by somebody in the local community or, as is sometimes the case, provided under some arrangement by the project proponent themselves. I ask that that be kept in mind.

Dr Martin: Perhaps the other suggestion that might be made is that it would be preferable, rather than driving from the mine to a major city, to fly back in terms of what would be a reasonable workplace health and safety standard.

Mr Ong: To add to that, it is also important to note, if you had a changeover of shift, how you roster it on that last day. There is no reason you must have a 12-hour shift for each person on that last day. You could have an overlap on the last day where people are working, say, an eight-hour shift and the overlap picks up the coverage for the operational side, for the company, but also takes into account that two-hour drive that people have to do to get back to Mackay. Those things have to be looked at when people are setting up rosters also, instead of hard and fast: 'This is what works for us and this is what we are going to go with and the workforce will have to fit into that.' We have to look at all these things. We cannot have people dying on our roads. Companies have to be held accountable when setting up their operations that it is not purely driven by profit and the best way for you to operate.

Dr ROBINSON: What would you gentlemen say to examples or cases that I am aware of where workers are driving four or five hours after their last shift to get back to a regional centre?

Mr Ong: That is an absolute disgrace and the companies are not taking their safety obligations seriously when they are allowing that to happen. In fact, I know from my experience in the construction side of things that they will get people on their last day out on the latest flight they can—for instance, from Darwin at the moment it is 4.30 in the afternoon—after working a 10- or 11-hour shift. They sit on a plane for four hours back to Brisbane. They get off the plane at 8.30 and then have to drive another 2½ hours to get home. Those people are awake from four o'clock in the morning, then jump in a car at 8.30 at night after doing a full shift and then they drive another 2½ hours. The company writes off its obligation when it puts them on a plane.

Mr McCallum: That is a really great case study, because it shows that the issue of fatigue is a broad one that affects all types of workers. That is a perfect case study of driving fatigue affecting an actual FIFO worker. It is a broad workplace health and safety issue.

Mrs LAUGA: In your submission you refer to the fact that a 'hierarchy for recruitment of local and regional workers should be added to the bill'. You refer to the draft social impact assessment guideline on page 8. Could you talk me through what that hierarchy is and how you would propose it work in this bill?

Mr McCallum: Following on from my answer to the chair's opening question, one of the other things we advocate for in our submission is a FIFO code of conduct. The way the regulatory framework is set out in the bill, it allows for the Coordinator-General, as part of setting social impact assessments for nominated regional communities, to specify, if there are not going to be jobs from that community, that as part of, say, an enforceable undertaking—that is outlined in the bill—there could be jobs from the regional community or the state community for the reasons that I stated earlier in terms of trying to maximise the employment benefit to the state.

Ms LEAHY: Your submission suggests a distance of 200 kilometres. The LGAQ is talking about 150 kilometres. The bill says 100 kilometres. It sounds to me like there is not a lot of science behind what is the right distance. I am wondering whether distance is actually the measure. Could you comment on that?

Mr McCallum: Which submission was that, could I ask?

Ms LEAHY: You are proposing a distance of 200 kilometres from the project instead of 100 kilometres. The LGAQ, which was here before, is proposing 150 kilometres. The bill proposes 100 kilometres. I am looking at this and looking at the regional variations in Queensland.

Mr McCallum: I think that is your submission, John. It is not a recommendation of ours.

Dr Martin: Quite possibly. The assessment was that 100 kilometres would be insufficient. The assessment that we made was that there would be circumstances in which there would be a local community which would be adequate to provide a workforce for a project that would fall outside that 100-kilometre radius. In terms of why 200 kilometres was chosen, I have in my mind 160 kilometres as an example of the distance away from a project where there would be an adequate local community.

In a regional setting that is probably not that long a drive. That is how you would get around your electorate, for example. It is probably not considered to be that significant. For someone like me that is a considerable drive. In a regional setting it was considered not to be excessive in the circumstances. If the 100 kilometres were set then there would be circumstances in which the principal objects of this legislation would be circumvented. That is the rationale behind it.

Ms LEAHY: I suppose I look at it by looking at my electorate, where 100 kilometres at the eastern end might work well but 500 would be insufficient when we look at the western end. I am looking at the Cooper Basin developments. The other issue we have, which is certainly not being canvassed here, is that some developments run over borders. I note that Mr Ong is the acting secretary for Queensland and the Northern Territory. The Queensland government can only legislate for what happens in Queensland. What if a nearby community is in South Australia—if it is Innamincka or somewhere like that? What is the science behind 100? What is the science behind 200? What is the science behind 150? Where is it?

Dr Martin: The way in which the legislation is currently drafted is that there would be a discretion beyond 100, which is not our preferred position. Our preferred position would be to make it 200 and put it beyond doubt. As I said previously, whenever you set a threshold of any nature you are going to have examples that fall one side or the other of that. Given the rationale behind the bill being introduced in the first place, we would suggest that the 200-kilometre limit would make that more certain than if it remained as drafted.

Mr Ong: I think the way you look at it is that we have talked about the hierarchy, where you look local and then extend out. If we are talking about Moranbah then it would be the Mackay-Rockhampton district. That would then take into account what is a safe distance for people to drive, DIDO, compared to if we were going to enact a FIFO workforce. I think that is basically where it stems from. You would look at 150 or 200 kilometres being a reasonable fatigue management distance that people would drive in and drive out on a regular basis before or after a full day shift. I think that is where that whole issue of the kilometres has been driven.

What we are looking at here is FIFO versus a local workforce, the communities around which a resource is being activated and how far it could be that people could drive in. It would probably be around 200 kilometres. I think that is from where this has been driven. That is what we are looking at—FIFO versus a local workforce. We also have to take into account what a safe distance is for people to drive in and drive out of a project on a regular basis before and after working long hours.

Dr Martin: There was part of your question that I did not answer and that is insofar as the jurisdictional limits. I guess we can only do what we can do. Someone has to start somewhere. It would probably be Queensland and Western Australia where it is most prevalent. It would make sense that Queensland would be a jurisdiction that leads legislation of that nature.

CHAIR: The committee has one issue that we are finding a little hard to deal with. That is around what to do with the workforce at Caval Ridge and Daunia. At the moment it is 100 per cent fly-in fly-out. Should the committee allow that to continue and not ask the company involved to move into this new era—no more 100 per cent fly-in fly-out—because there is some concern that it is somewhat discriminatory to those workers and it underlies existing investment decisions that have been made with relevance to those mines? I am looking for somebody who is not as close to it as a lot of others here. How do you feel about that?

Mr Ong: Obviously you would have exposure to litigation if there is exposure to litigation for the government. I do not think anyone is taking into account the local aspect. There has been discrimination against locals who have wanted to work at those mines. They have been told that the only way they could work at those mines is to move to the Gold Coast and become a FIFO employee. There are people wanting to do that now. I do not know if there is an option to take to the workforce, as was mentioned by our comrades before—that is, their current workforce—that would like to become local residents.

I think this needs to be looked at within the local community and feedback received from people who have tried to gain employment at that mine and what they have been told. It is certainly a hairy one to have to deal with. These things should have been taken into account before they started

operations at that mine. Discrimination certainly should have been taken into account. I do not have a silver bullet for you to fix that issue. When we look at discrimination we see that there has been a whole lot of discrimination against the local workforce that would have liked to be employed at those mines. I have not looked into the legalities of it and whether BMA can come back at the government if they introduce a bill that impacts in that way. There is no easy fix to it, that is for certain.

Mr McCallum: In terms of that, what is set out in the bill is whether or not the 100 per cent prohibition applies, which is clause 6, and advertising, which is clause 8. Both of those clauses go back to 30 June 2009. Mixed in with that is some discretion for the Coordinator-General.

There is a bit of commentary around the place on this, and terms like sovereign risk have been thrown in there. For projects like the ones you are describing I would say a couple of things. Firstly, there has always been, before this bill existed and for all projects of this type, an expectation that there will be an employment benefit to this state. You do not need a bill for that. I think if you apply common sense to it that expectation holds true for local communities. I bring that up to respond to the idea that there is some kind of sovereign risk that is suddenly jumping out as a result of this legislation. I think what is trying to be achieved here with this legislation sits within the normal purview of governments and parliaments going about their business and exercising their duties on behalf of the people of this state. There are no mining leases getting cancelled here, which would be sovereign risk in any sensible definition of it.

It would probably be a long technical conversation about how the act is exactly going to operate. I do think that perhaps some discretion is available to the Coordinator-General in nominating which projects are going to be caught by this legislation that occurred after 30 June 2009 and had their EIS in. As a suggestion to assist with this, it could be the case that for those projects that are operating with a 100 per cent FIFO workforce currently when they have future vacancies they should effectively have to comply with the advertising requirements of clause 8. The Coordinator-General might have the discretion to say that whilst they are bound by the advertising requirements of clause 8 they are not falling foul of clause 6 and provide transitional arrangements. That would be my thinking in trying to assist the committee on these types of projects.

Dr Martin: Whilst I sympathise with the committee in terms of the difficulties in the practical application of that, our position is unequivocal: it should have application to those existing workforces.

CHAIR: What you are saying there is that the new action apply.

Dr Martin: Yes. That would be our preferred policy position, certainly.

CHAIR: You would not target an existing worker and say that they had to change their place of residence. You would leave it until a position became vacant before you applied any of the principles, would you not?

Dr Martin: What if there is someone who is currently driving away from their residence to catch a plane back? That is an absurd scenario. What if that person is incurring a cost, as it turns out perhaps to themselves—which I found a little surprising—and to their employer in pursuit of a 100 per cent fly-in fly-out workforce? To what end? From that point of view, we find that absurd.

CHAIR: We have run out of questions for you.

Mr Ong: Can I finish on one thing? I think this bill is long overdue and it definitely needs to happen. I also want you to take on board that, from what I can see, it is heavily weighted towards the community and the impacts on the local communities. We just need to make sure that we do not forget about the other side, which is the construction workforce when building these resource projects and the impacts on mental health and families involved in that. It is extremely important that we look at the rosters in those construction sectors. For instance, if you have a look on the operations side of an operating coalmine, they are generally one-on one-off or two-on two-off rosters, which are not too bad. For the construction side of things, the standard roster is a four-and-one roster, which is far too long. When you have the patriarch of the family living in a camp and being away for four weeks, he has no input into his own home life and he has no input into any local community where he is living. It does affect them mentally and it certainly has a huge impact on families in that industry at the moment. It is vitally important that we take that on board in any bill going forward.

CHAIR: The history around the construction industry—this is what I have noted myself; please tell me if I am wrong—is that most of the workforce would appear to be gypsies who follow the construction or upgrades of washing plants and things like that. Am I right in my thinking there?

Mr Ong: When I grew up, my old man followed construction and we went with him. We lived in caravan parks next to the job. In this day and age that has stopped happening. They will have a house in Brisbane and they will fly to wherever these projects are. I have some 1,500 members—the

majority of my members—who are based in Brisbane but are now working in Darwin living in a construction camp doing a four-and-one roster. They have left their families back in Brisbane and they work up there for four weeks on and one week off. The same applies to Western Australia. We have many of our members travelling from Brisbane to Western Australia to work on the construction phase of projects for four weeks at a time. It has a huge impact on families. More and more we are seeing the mental health impacts with the increase in suicides of FIFO resource workers.

CHAIR: Do you have anything to add?

Mr McCallum: There are two quick technical issues that we would like to bring to the attention of the committee. One is around the section 8 advertising requirements. On our reading of the bill, the intention is that that advertising should apply to labour hire companies and contractors who are advertising on behalf of the principal of the project proponent. We note that in section 6, where it places the obligation to not have 100 per cent FIFO, subsection (3) effectively says that it applies to agents. If the intention is to remove any doubt that the advertising requirement should also apply to agents, we would suggest that subsection (3) of section 6 also be put into section 8.

Finally, with respect to the definitions in schedule 1, under the definition of 'nearby regional community'—this is lines 20 to 23 for future reference, for when people want to have a closer look at it—it states—

... for a large resource project, means a town, the name of which is published on the department's website under section 13, that has a population of more than 200 people ...

That indicates to us that unless that town is on the website it is not getting caught in this legislation. That is a concern to us. I think that is probably placing too much discretion and is effectively fine print in the legislation. I feel confident in saying that people in communities that might have over 200 people but are not on that list would be very disappointed.

CHAIR: I take your point. Dr John, do you have anything further?

Dr Martin: No. I have nothing further.

CHAIR: There being no further questions, we will now take a short break.

Proceedings suspended from 11.05 am to 11.23 am

BERTRAM, Mrs Judy, Deputy Chief Executive; Director, Community and Safety, Queensland Resources Council

MACFARLANE, Mr Ian, Chief Executive, Queensland Resources Council

MULDER, Ms Katie-Ann, Director, Resources Policy, Queensland Resources Council

CHAIR: I welcome representatives from the Queensland Resources Council. Before you give evidence today I remind you that under the standing rules and orders of the Queensland parliament certain matters that are before the courts cannot be referred to during committee proceedings. If you believe that it is necessary to refer to a matter currently before the courts in order to answer a question today, please advise the committee so that we can arrange with you to take that question on notice or deal with it in some other way. Do you wish to make an opening statement?

Mr Macfarlane: I do. I would like to begin by thanking you, Chair, and the committee for inviting the QRC to appear today to speak on behalf of our members. I will make this quite a short statement. As you know, the QRC is the representative organisation of Queensland resources companies and our membership encompasses gas and mineral businesses operating in the state's regional and remote communities as well as businesses and service operations in those sectors. This bill in its purest form is anticompetitive. It is our submission that the government adopt a practical and pragmatic approach to its implementation to allay concerns that the sector has that it will double up on legislation that is already in place and thus be detrimental to jobs and investment.

You would be hard pressed to find another industry in Queensland or Australia more regulated than the resources sector. There is no question that regulation has its place to protect the environment and to assess the social and economic impacts on local communities, but this bill goes one step further and prescribes workforce arrangements that would limit the flexibility necessary to respond to the cyclical nature of business and in particular the commodity market and its fluctuations. This bill in its absolute form is far too prescriptive and impacts on the flexibility for companies and locals to manage their situation autonomously.

I should draw to the attention of the committee the fact that fly-in fly-out numbers are inflated because they include drive-in drive-out numbers. Chair, you represent some of those drive-in drive-out numbers in your electorate and they come from the areas around Mackay and Rockhampton. The other point I wanted to make was that, for example, BMA—one of the major employers in the Bowen Basin, and it does run FIFO operations—employs over 90 per cent local people. Whilst there are specific examples which I am sure we will talk about today, they are committed to local communities and employing from local workforces. Across all industries the number is about 80 per cent, and those figures can be correlated to the Census data that is available.

The current robust approvals process already has the scope to assess impacts, including social impacts, and apply rigorous conditions to process, so there is a social impact assessment. It is therefore disappointing to see even more red tape added, through the development of a prescriptive bill, to an industry which, as I say, is the most regulated of any industry in Australia that already has a robust environmental impact statement approval process. That process, which takes years, costs millions of dollars and ends up in literally 20,000 or more pages of forensic information about the project, already includes a social impact assessment.

The QRC would also like to draw to the attention of the committee the fact that there was practically no consultation since the SIA guideline was released mid last year, and we would expect to be consulted about that guideline to ensure that its implementation is, as I say, practical. The guideline is part of the legislative framework and must also be implemented in a manner which will not jeopardise investment, either current or future. Significant investment and business decisions have already been made based on conditions approved by previous governments beginning with the Bligh government. Yet again more changes may lead to lower investor confidence which will affect mining investment and mining operations, impact on jobs and potentially cause a loss of royalties to the state government. If you use a sledgehammer to crack a walnut, the losers will be Queenslanders.

We are also aware that the legislation will be enacted—that is, we understand that both sides of the chamber are supporting it—and our sector has already moved to making sure that the relevant changes are already afoot, and we expect some to already be in place. I thank you for the opportunity to appear and will happily answer questions.

CHAIR: First of all, do you mind if I call you Ian?

Mr Macfarlane: Please do. I will try not to call you Jim, Chair.

CHAIR: That is all right with me. I have known you for a while. Congratulations on your appointment. We certainly hope that we can start working in a positive way towards the industry. I find this a little difficult because there are lots of things I would like to say but I have to remember my position and whom I represent as a local member and not as the chair of this committee. One statement you made was that BMA already employs 90 per cent local people. What is a local person?

Ms Bertram: That is generally within the local community, within the resource community they are servicing—where the mine is located.

CHAIR: So you are saying that 90 per cent—

Mr Macfarlane: Across all their operations are deemed local people. That is the number that comes from the surveys that we have done.

CHAIR: Given that that is what you believe, could you please explain to us why our in our communities 60 per cent—and in some places probably more—of houses are vacant and the number of people who would be living in those houses are now living in camps? The numbers have changed certainly but they have gone from the community to camps. They are not local people.

Mr Macfarlane: Well, it is complex. I guess it is a bit like trying to unscramble an egg. If we look at the situation in these regions now, the unemployment figure is around four per cent, from memory.

Ms Bertram: In Moranbah it is about 2.2 per cent in the September quarter.

Mr Macfarlane: I guess we are in furious agreement: yes, there are vacant houses but there aren't people there. This goes back to the cornerstone of this issue: that is, when companies want to employ people there actually has to be local, skilled people there to employ. I have a sister who owns country south of Blackwater. I go into that region regularly. As I have said to you, my son-in-law is from Mackay and my daughter spent four years in Mackay in speech pathology. I know the area well. I was there during the boom times and I have been back since things are not so good. People have actually left the region. They have not just left the town; they have left the region. The issue that you are talking about is towns that are half vacant, to use your words. As you know, that is also the situation in Mackay where there is a lot of vacant housing. Locals are being employed. Where those locals live now is probably different from where those locals lived when you and I were a bit younger—that is, in houses in the communities—but that reflects the cyclical nature of the coal industry.

When this process was originally started under the Bligh government, BMA had 730 vacancies in the region that they were trying to start a new mine in. They went to the Bligh government and had agreement from that government that there were simply not enough local people to fill those positions. On that basis, BMA then invested $220 million building camps. These camps are not dongas. You and I would be happy to live in them for a while. In fact, I have lived in one for a couple of days. They have great amenities but they are not part of the community, I concede that.

The resource industry per se does want to see strong, robust local communities. Whilst the issue that this committee is investigating and the bill that has come as a result of that is a product of a time past, as I say, the industry wants to be pragmatic about this move forward to work out ways that we can have a skilled pool of local people who can fill vacancies.

The problem still exists today. When BMA went out and looked for 200 positions over the last month or so—and I have to say this has only been supplied verbally to me—they advised me that they could fill only 70 of those positions locally and that they would have to fill the balance on a FIFO basis out of Townsville. I think you are aware of that announcement last week. QMEA, which is a subset of QRC, is working with the mining companies to ensure that high school students take an interest in the resource industry. We have some very good statistics showing that the strike rate of that process—the number of high school graduates who go into trades and remain in the resource industry—is doubling, if not trebling. I do not think we can fix all the problems here today in terms of making sure there are local people available when the expansions are on or with this bill, but we should all work together to come up with a solution.

CHAIR: I am interested to hear you say that we should all work together. Let us go back to the issue of employees from Townsville that has come up over the last couple of weeks. There have been advertisements calling for people from Townsville. There was no advertising locally. We believe we can fill those 200 positions quite quickly because we have experienced, highly skilled mineworkers who rang and asked these companies about the positions and they were told, 'No, you have to live in Townsville.' That is just one point about the contribution you just made.

Another point is that the reason there are no people living in these communities is that they do not have a job. They would love to have a job but they have moved out. They have gone elsewhere. It is nice and cosy for the mining companies to throw up a two per cent unemployment rate, but what about the 200 to 300 houses that are empty which could have people living in them if workers were given a choice about where they live on employment? That is not happening.

It is very easy for some of these companies to say that they employ a lot of workers locally. It is just not happening. I have the highest regard for you, Ian. I think your briefing has been fantastic. It has been in line with all the rubbish we have been told over the last four or five years. You talk about wanting to work together. That would be great, but there is only one side that wants to work together. I had better shut up. Mark, do you want to ask a question?

Dr ROBINSON: Yes, thank you. Ian, it is nice to see you again. Good morning, Judy and Katie-Ann. In your submission the QRC raises concern about retrospectivity or retrospectivity impacts. Sovereign risk is one example. Could you provide us with some more information on your understanding of the potential downside of this legislation in that sense?

Mr Macfarlane: There are a number of potential downsides. I am not going to speak on behalf of the company, but they made an investment in excess of $200 million based on an agreement that they had with the state government of this state, the Bligh government. I take the chairman's point about vacant houses. That investment is now not going to return the cost of investment because it will be vacant, because it will not be used to the capacity for which it was designed.

The reality is that, if a company sits down with the sovereign government of a state, signs an agreement and that agreement at some point down the track is broken, that signals to investors more so than the company—but certainly to the company as well—that there is a sovereign risk issue here in Queensland that did not exist five years ago. That is, a government signs an agreement and breaks it. In a world where one of the big multinational mining companies such as BHP or Rio has a choice of which country to invest in—they do not just look at Australia; they look at all the places around the world where they have investments—anything that creates an uncertainty in their investment or sovereign risk profile is detrimental to us attracting that investment here.

Retrospectivity is a separate issue. With respect to the agreement in relation to Daunia and Caval Ridge which was 100 per cent FIFO and which was signed by the government and ratified by the succeeding government, the company is now being asked to unwind that agreement retrospectively. There would be no argument from anyone on this issue were this government to decree that all mining positions issued going forward were to be a mix of local and FIFO.

If I could go back to your comments, Chair, I know that you and I would live in the bush any time soon. Perhaps my wife wouldn't again, although she enjoyed the time she was there. In the survey that we did in 2015, four out of five workers in the resource industry said that they would not change their arrangements even if they could. I am as parochial as you when it comes to getting jobs in Toowoomba, but the reality is that we should not deny Queenslanders the opportunity to work in what I think is a great industry. Yes, it would be great if everyone in your electorate were employed and you had a lower unemployment rate than my old electorate of Groom, but that is just—I almost said selfish—the passion with which you and I represent our electorates.

The reality is that these jobs are jobs for Queenslanders, and a job is a job. We are mindful that the resource industry belongs to the community and that the coal they are mining belongs to Queenslanders. That is why they pay the royalty. They have learnt from this exercise that the long-term strategy to addressing situations like we saw five years ago which are a whole lot different from now is to train up local people and give them the prospect of a local job. It is not just the coal industry doing that. As the member for Warrego knows, it is also the gas industry.

We do have to take a strategic approach to this, but the boom caught people unprepared and labour was short. I know there were people flying from Brisbane to Karratha and there were people flying from Perth to Brisbane to work in different industries. I think it is a bit hard to say, 'This happened five years ago but it is still relevant.' The whole world has changed since then. We should be concentrating on having a situation where we encourage companies to invest locally in their young people, to train those people through apprenticeships and to employ them in their operations in a long-term way.

Mrs LAUGA: The Queensland Resources Council said that employers are not any better off for using FIFO. What does the QRC really believe is the reason mining companies use FIFO?

Mr Macfarlane: To be quite honest, usually there are two people in a family household—not always but quite often—and sometimes there are children. Quite often it suits the partner to remain in a large regional centre or city. They think that education and medical facilities are better and it may

be where their parents are. I was one of the original FIFO workers out of Toowoomba when I joined the Grain Growers Association. Karen was quite prepared to manage the household while I went and did what I had to do initially in Queensland and then nationally and then federally, because it gave her a stable base and meant that she could live in the same house and have the same group of friends, look after her father, know that there was a doctor that she could take her father to, who is now 93, any time she needed to. That facility would not have been available if she lived in Blackwater, say, if I was a coal miner. Quite often those decisions about FIFO are made by people either unemployed or looking for a job anywhere. I admire that attitude, because the best thing you can do for someone is give them a job, especially a highly paid job like these.

Secondly, they are made by people who often say, "Well, I will go and work in Dysart," and the partner says, "Well, that is great but it is better for our kids if they stay in the same school." Unfortunately that is the reality of life. I grew up in a rural community and when I was 12 I alone farmed a property that was farmed by 12 people. Those communities shrink and the opportunity to stay there also decreases. Then those people move into cities but are quite happy to work in regional areas. But perhaps they are married people who have not the same desire to return to the bush.

Mrs LAUGA: But you are saying that mining companies advertise jobs such that workers must live in Townsville, purely on the basis of the lifestyle choices of the workers they like to employ?

Mr Macfarlane: I did not understand that that was the point of your question. I have been advised by BMA that the company they were using to secure these positions—which are not long-term positions because no-one knows what will be the price of coal in 12 months—has a permanent base workforce. They are using flexibility to increase production while prices are high. I have been advised that the company sought these jobs locally and was able to secure around 70 people with the appropriate skills. It cannot just be someone who can drive a tractor like me: they need people who can actually drive large pieces of equipment that are worth tens of millions of dollars. They must have the appropriate skills if they are in particular areas, and some of them have to be tradespeople. They then make a decision about how many they can get locally and how many they need to source externally on FIFO. By sourcing people on FIFO, they then make contractual arrangements with airlines to fly in people. The cheapest way to fly those people in is to fly them all from the one centre on a charter operation with an airline. Secondly, with all respect to the people of Townsville, the pool of unemployed skilled people in Townsville is actually higher than most places in Queensland. The ability to get the people they need is higher, so by going to Townsville they have a single transport arrangement to get them to the mine site.

Mrs LAUGA: I have heard mining companies use that rationale before around booking these charter flights and it being about bums on seats in the plane, to put it frankly. But we see in these advertisements that mining companies now require workers to pay for their own flights. Does that not take away the argument about this being bums on seats anymore, because the mining companies are not paying for it anymore?

Mr Macfarlane: I do not know the total arrangement, but I suspect that the company has negotiated a better rate per seat because all the people travel from one place in a full plane rather than taking 10 from Townsville, 10 from Toowoomba and 10 from Brisbane.

Mrs LAUGA: Is the rationale for hiring FIFO workers purely financial?

Mr Macfarlane: No. The rationale on FIFO is that they have to be able to secure people with the appropriate skills. When these two mines that are the reason for this inquiry were set up, they had 750 unfilled jobs in the region.

Mrs LAUGA: It is about skills and—

Mr Macfarlane: It is about getting people with the right skills. You want people who can walk through the front gate, click their card or whatever they do these days, and walk straight on to the machine and operate it. You do not want to spend a year training them to do it. You do not have that time in a situation where you are trying to fill coal contracts.

Mrs LAUGA: Why are skilled, suitably qualified local people being denied the opportunity to apply for positions?

Mrs Bertram: I do not think that that is correct. We have been told by BMA that locals can still apply but the recruitment agency—

Mr Macfarlane: Before the Chair blows a fuse, can I suggest that where people are denied the opportunity to apply for jobs—I am not saying where they do not secure a job but where they are denied the opportunity to supply a local job—I would ask them to write to me personally. I will give you my email address, which is ianm@qrc.org.au, because I agree with what you are saying. If there

are appropriately skilled local people, they should be given the opportunity to apply for a job. I think that now, distinct from five years ago when I was doing something else, the mining companies support that attitude.

Mrs LAUGA: So you are saying that the rationale is about skills and getting suitably qualified people into these roles?

Mr Macfarlane: It is now.

Mrs LAUGA: But your submission argues that the bill undermines existing investment decisions made on the basis of approvals granted after June 2009. Why go into the argument about investment decisions if it is not a financial issue?

Mr Macfarlane: The answer to that question is quite simple. With 750 vacancies and knowing that the only way to man these two mines was to build camps and bring in FIFO, had the BMA not spent that $200 million we would not have been making that argument; but they have, that is the reality. $200 million is a lot of money where I come from. It is a lot of money where the member for Warrego comes from. Now that investment will not pay for itself. I guess what we are trying to do with this committee, perhaps without putting words in the Chair's mouth, is ensure that we deal with the issue in front of us in a pragmatic way. In parallel to that and in cooperation with the government and the parliamentarians of Queensland, we need to ensure that we upskill local people so that they are there when the mines are expanding and hiring. That is why as the still relatively new chief executive of the Queensland Resources Council I lifted the profile of QMEA from a side office and increased its staff by three people because I see skills, education, STEM and improving the people of—well, I am a bit biased, western Queensland but northern Queensland as well—

Ms LEAHY: The south-west will be fine!

Mr Macfarlane: Western Queensland! They can take advantage of the resources industry and get good jobs. That is one of my priorities along with all the others. I see it as an equal priority to ensuring that we protect the environment and create economic growth in Queensland. It is a passion of mine. I was the Minister for Vocational Education at a federal level.

Ms LEAHY: I hope you are happy if I call you Ian, we have probably known each other for a fair while. Obviously I am not that familiar with some of the mines in central Queensland. Daunia and Caval Ridge were approved as 100 per cent FIFO mines?

Mr Macfarlane: Under an agreement with the Bligh government.

Ms LEAHY: That was then ratified with—

Mr Macfarlane: By the Newman government.

Ms LEAHY: I am not sure if you heard from some of the other people who appeared. The information I have written down here—and I think the transcripts will confirm this—is that the BMA mines have 80 to 90 per cent approximate—

Mr Macfarlane: 92 per cent is the company's figure, but the statistical figure is 80 per cent for all coal mines.

Ms LEAHY: We heard from the CFMEU that about 80-90 per cent have CFMEU membership; however, at Daunia it is more like 50 per cent and at Caval Ridge it would be lower than that. Is there something going on here that perhaps we are not aware of in that there is a strategy to increase union membership and not just deal with some of the issues that communities see in relation to infrastructure and local employment?

Mr Macfarlane: Look, they are questions for the union and the company. You probably need to have them both in the one room at the one time to get some sort of an answer. As I say, this original agreement was set down because they could not get enough appropriately skilled people; in fact, they had 750 vacancies in the coal mining area in central Queensland in the Bowen Basin at the time they were opening two new mines. I do not know. Maybe it concerns someone who lives in Townsville who is less likely to join the union than someone who lives in Dysart. The Chair would have a better answer to that than me.

Ms LEAHY: In your submission you raise some concerns about the reverse onus of proof. Do you have any suggestions on how that can be addressed?

Mr Macfarlane: I understand that you are taking a submission from the Queensland Law Society. I can fix just about anything but one thing I am not is a lawyer, so I tend not to touch it very much.

Mr CRAWFORD: BMA's submission suggested that the bill should limit the scope of the Coordinator-General's powers. Does QIC agree with that?

Mr Macfarlane: I did not get that interpretation. I know in our submission that we were concerned that there was a lack of confidence in the Coordinator-General by the state government by inference by introducing this legislation. I was not aware that BMA had said what you are suggesting. I would have to re-read their submission. We have confidence in the Coordinator-General, so there is no question mark from the QRC in regard to the Coordinator-General on any aspect.

CHAIR: Can I just correct you on a couple of things?

Mr Macfarlane: I would be disappointed if you did not!

CHAIR: In terms of the change of conditions as set for the Caval Ridge and Daunia mines, an application went to the Coordinator-General who ticked off and approved 100 per cent FIFO.

Mr Macfarlane: I stand corrected.

CHAIR: Despite the outcry from people in central Queensland talking about what this was all about.

Mr Macfarlane: I was aware of that.

CHAIR: And being a good local rural member, you know that we are about keeping our towns populated. I just want to clear that point up. I also wanted to make you aware, because I do not know whether or not you got this in your briefing, that there are 32,000 beds in central Queensland in camps. What hope do we have in getting our towns populated back to a level where they are economically viable if we have this great supply of beds ready to be taken over almost any time by an agenda of mining companies to get away from using local people? There are a number of reasons behind that, too, and we can talk about that if you like.

Mr Macfarlane: We should have a cup of tea over that, Chair.

Dr ROBINSON: Are you putting questions to him?

CHAIR: I am about to. I am doing the same as you do, Mark.

Mr Macfarlane: I reckon I have a solution—

CHAIR: I was encouraged by one of your earlier statements, so I am looking forward to that sort of attitude. In terms of unemployed people, are you saying that we in central Queensland do not have significant numbers of skilled people to do these jobs that have become available in the last couple of weeks?

Mr Macfarlane: That is the advice I have received. Let me put it into context in an area I know better than you, namely, Toowoomba. Toowoomba has one of the lowest levels of unemployment in Australia, let alone the state. If someone came along and said that they need 500 people to work in New Acland, they would not find them in Toowoomba right now. They may move there, and that is what I would be doing if I was the local member, which I am sure you would do as well, but the information the government statistician supplied indicated that unemployment is as low as 2.5 per cent in some of these areas. I guess you and I have been around long enough to know that 2.5 per cent really means that people are perhaps less inclined to work in a coal mine or perhaps in other situations as well or they have a disability and they do not qualify for disability pension. That is zero unemployment in real terms.

Secondly, in terms of getting people into these communities, it is about building communities. I do not say this lightly, but my wife would not go back and live at Boondooma yet she lived there for 15 years very happily, unless she was telling me fibs. We had two children while we were there and neither would return to Boondooma. There has been a change in people's expectations. I would be back there in a flash, it is just that these days both partners want to work and both partners want to have a career. A coalminer's partner may be in a job that he or she wants to keep and wants to advance in and that job is not available. There may be a coalminer's job in Dysart but there is not a job for a highly qualified professional or a tradesperson in a specific area.

CHAIR: You mentioned unemployed skilled people. Are you aware that there has been a significant drop-off in training opportunities for apprentices and traineeships? I will give you an example. Last year BMA had 12 apprentices across all of their mines but they would usually have two dozen apprentices at each mine. The whole idea of skilling people up does not exist anymore. I am just trying to work out how I can get through this without having a heart attack, because I do not want to be rude to you and there is no need for that. I sincerely believe that you have been given a brief by people who are consistent in the way they are dealing with us in Central Queensland at the moment, and that is a little bit unfair.

Mr Macfarlane: Chair, I can only respond to that by agreeing with pretty well most of it. I think there needs to be training done with a long-term perspective; that is, you take someone on while they are still at school, you explain to them what a trade as a fitter and turner or welder or boilermaker is, and you encourage them to be part of that. One of my mantras when I was the minister for skills and training in the federal government was that a skill qualification is just as good as a university qualification. I think there has been a skewing of some people's perception about what gets you to the top of the tree. I pay my electrician a hell of a lot more than I pay my engineer, and good luck to him because he is a good electrician. I think we need to change people's perceptions.

The industry and the state government need to work together to improve the level of regional skills training. That is why I say that since I have become chief executive I have lifted the whole profile and more than doubled the resource in the QMEA, and I think it is an area we should do more in. It is, as you probably gather, a passion of mine. I would much rather see strong regional communities because despite the fact that I live in Toowoomba, which is almost regional, I am from a regional community and that is where my heritage is. I think now the world has changed a bit because we went from a boom to a bust. We went from when people could not get enough skilled people to a bust where they could not afford to train apprentices. I think that as things level out the government and the resources industry should work together to improve skills opportunities for young people in regional communities.

CHAIR: On behalf of the QRC could you explain more about the comment in the submission that the bill applies retrospectively and that this increases Queensland's sovereign risk profile? That is a matter which is always very difficult to understand, so for the sake of the committee could you explain how it impacts Queensland's sovereign risk profile?

Mr Macfarlane: The sovereign risk profile is set on the basis of facts, figures and perception. The big investment houses around the world look at countries and they judge political stability, economic stability, economic growth factors and the experience of the companies who have invested there. If you had asked me this question five years ago, Chair, you would have received the same answer. I have travelled the world selling resource projects in Australia. Any time a government changes the rules it changes the risk profile that those investment houses then report to their clients. Secondly, it changes the competitiveness of an investment there and the net present value, or rate of return, of that investment compared to investing in Colombia, Africa, Indonesia or wherever. That change in profile is amplified significantly if the change is made retrospective, and I will take you back to an example of what retrospectivity does. When John Howard's retrospective legislation came in in relation to bottom-of-the-harbour schemes or when Malcolm Turnbull's legislation in relation to superannuation was perceived to be retrospective, there was a major push back from the investment community. Any legislation that has a retrospective aspect to it amplifies any change in the sovereign risk.

CHAIR: How does the employment of a FIFO worker as opposed to a person who lives seven kilometres from the mine impact on the performance of the mine?

Mr Macfarlane: That is not the major part of the sovereign risk issue in relation to this; it is a component. Instead of saying that a company can employ the best skilled, most qualified, most flexible person to do this job and therefore maximise productivity—and therefore return on investment—by taking away that opportunity you take away the potential performance of that whole operation. The real issue is that $200 million has been invested in a mining camp, and that cost has been written back into the overall return that mine is going to make. That cost was based on that camp being full, and if you take away the total utilisation of that camp, and therefore its return into the cost of the operation, and that return becomes lower, it lowers the overall return and it lowers the perception that if I invest $100 I am going to make $12 out of it or whatever rate of return they use. If it becomes $11 because of retrospective legislation, then that is where the big hit on sovereign risk profile comes from. It is the fact that you have made an investment based on one set of rules and you are now being asked to operate that investment under another set of rules.

CHAIR: That is the best explanation, so thank you. Do you have any idea how many cleanskins have been employed on these projects?

Mr Macfarlane: No. I have not asked.

CHAIR: I do not have to say much to you about cleanskins because they can cost you a lot of money.

Mrs Bertram: One benefit that was returned through Caval Ridge and Daunia was the significantly higher proportion of women who were engaged as well as Indigenous people. They now have five per cent Indigenous people working at these mines, which is far higher than across the industry as a whole.

Mr Macfarlane: I think the average is three per cent.

Dr ROBINSON: In terms of some of the drive-in drive-out circumstances out of regions like Rockhampton and the Central Queensland area, where they are driving several hours to work and several hours back to some of the Central Queensland mines, how do you balance the issue of safety for workers who drive back and forth? Some drive several hours back. How do you balance that in terms of the potential impacts of this legislation on those sorts of workers and the need for safety? Does the QRC has a view on how we might do that?

Mr Macfarlane: In the end it is up to individual companies and their workplace health and safety and personnel departments to work out what is the safest way to manage that. The reality is that drive-in drive-out is part of the mix and, as I said earlier, it is actually included in the FIFO numbers, so those people are driving in and out of Mackay and Rockhampton and other regional centres as well. Sometimes people drive a bit further. Technically I am a DIDO. I live in Toowoomba, I have a job in Brisbane, and I can tell you that there is no way I would attempt to drive home to Toowoomba every night and come back again. I only work probably a 12-hour day, but I am working in air conditioning, I am not working on a mine face and I am not being fatigued physically the way these people are.

My experience of driving tractors for 14 hours a day is that you occasionally fall asleep, but in a tractor you do not go very far before you wake up; in a motor car you go a hell of a long way. It is a real risk. I have friends who have unfortunately died at the wheel of a motor car when they have fallen asleep, so it is a very real risk. In a lot of cases the company is responsible for that risk. Under workers compensation it is often deemed that the employee is under the company's care. Judy comes from the workers comp area in the Public Service. The worker is under the company's duty of care until that person returns to their place of permanent residence, so the company has a duty of care—therefore a responsibility; therefore needs to have a say—in how far these people are driving after they have done a full shift.

Dr ROBINSON: Do you think that this legislation could have any impact on those workers? I use the example of cases out in Central Queensland.

Mr Macfarlane: In saying that, I think that people should be allowed to drive for a couple of hours depending on the road, but the distances infer at least an hour and possibly two on roads that are not as good as the road from here to Toowoomba. My instinct would be—and it is only an instinct—that I would not do that if it was me and my wife certainly would not let me. People with experience in workplace health and safety in these areas would be far better qualified to judge that, both in companies and independent views.

Mrs Bertram: The companies take safety issues extremely seriously. They comply with a guidance note for fatigue risk management which is extremely comprehensive. Distances are quite arbitrary. When you say that people can drive 100, 150 or 200 kilometres, in some instances for safety reasons companies will make the decision that they need to bus workers in if it is 20 kilometres. There may be 12-hour shifts, very poor roads, kangaroos or whatever, so they make the decision that even residential workers may need to live in the camps for safety reasons while on shift.

Mr Macfarlane: If I could add to that. Mining companies In Australia spend literally millions of dollars monitoring people's head movements when they are driving their equipment. There are monitors built into the cabs of machinery because people are falling asleep on the job, let alone after they leave the job and try and drive home in a car that may not have any sophisticated equipment in it. When you realise that companies are spending a lot of money protecting the worker while they are in the cab of the machine when they fall asleep—not if: when—you realise the danger of having that person walk out of that job into a 1995 Falcon and driving for two hours in the dark on a narrow country road with wildlife.

Ms LEAHY: Earlier this morning the LGAQ talked about 150 kilometres; the ETU were talking about 200 kilometres; and the bill talks about 100 kilometres. When I look at this nobody seems to be able to agree. Each side has a different view. Should it really be in the legislation? It seems like a simplistic pin in the map to what are complex regional variations across the state. Does the Resources Council have any comment on that?

Mr Macfarlane: Our view is that that distance should be set by experts. It should not be arbitrary. Can I remind you that, if someone works a 12-hour shift and travels 200 kilometres on a narrow country road—and I have done a little bit of that and I suspect you have as well—it is unlikely they will cover that distance in less than 2½ hours. They might if it is a four-lane highway to Toowoomba. They may try to drive it at a higher speed, which again you and I know is very dangerous on those roads. If they were able to drive 200 kilometres in 2½ hours, that is a five-hour round trip on

a 12-hour shift. You do not have to be a math scientist to know that they are not getting eight hours sleep, let alone the time it takes them to get to sleep and get up in the morning. They end up trying to do all of this on as little as four hours sleep, and do you think that is safe the next night? We do need experts to answer this question; we cannot have numbers set arbitrarily.

Ms LEAHY: Does the Resources Council have some sort of suggestion, because it is in the legislation that we have here, about how maybe it can be better handled?

Mr Macfarlane: Our suggestion would be that the distances people are able to drive on a drive-in drive-out basis are set by the companies in consultation with experts in relation to workplace health and safety and workers compensation.

Mrs Bertram: On a case-by-case basis.

Mr Macfarlane: On a case-by-case basis.

Ms LEAHY: Because obviously what works in the Surat Basin is very different to what will work in the Cooper Basin.

Mrs Bertram: Yes.

Ms LEAHY: It is a very different set of circumstances.

Mr Macfarlane: Ironically, it also depends on how heavy the wildlife is. I have driven the road out near Surat to St George at night and you cannot drive more than 20 kilometres an hour some nights because of the kangaroos.

Ms LEAHY: Sometimes we have multiple roadworks as well, so therefore you might look at the map and say, 'It'll only take an hour,' but it will take two because of the roadworks in progress.

Mr Macfarlane: Exactly.

CHAIR: This may have been touched on before, but I want to hit it again. In BMA's submission it was suggested that the bill should contain some limits on the scope of the Coordinator-General's power. Do you agree with this suggestion and, if so, what types of decision-making considerations or other limits do you consider should be in the bill?

Mr Macfarlane: Mr Chairman, I do not understand the background to that comment by BMA and I am prepared to take the question on notice.

CHAIR: Thank you.

Mr CRAWFORD: If I can, Chair, I pulled up BMA's submission before and in relation to that it was part B on the second page where they refer to that.

Mr Macfarlane: Sorry, Mr Chairman, but I would prefer to take it on notice. I do not know the background. Often that one sentence or two sentences has a background of five or six paragraphs.

CHAIR: Yes, I understand. You may consider this question a little bit unfair, but that is the life we live.

Mr Macfarlane: That is all right.

CHAIR: As the CEO, would you prefer to see rural communities doing well and being able to survive rather than have them empty, on their knees and fading simply because of the FIFO situation?

Mr Macfarlane: I do not think that is an unfair question at all, Chair, and I think you probably knew the answer before you asked it. Of course I would prefer to see regional communities grow as a result of the resources industry. One of the reasons I put away a brand-new set of Mizuno golf clubs and a half share in a golf cart to take the chief executive job at the QRC was because I thought that we could do more for regional communities, and that is where I come from and that is where I will always be. I have already conveyed that sentiment to resources companies that they need to use their local communities, and not just in terms of a labour source; they need to use them in terms of local content such as materials that go into the various projects. In the QRC now through Amy Greene, one of our policy people, we monitor local content. We have been involved in encouraging Adani to have high rates of local content and something I did when I was the federal minister was to encourage large gas projects, and I actually administered the scheme that managed local content. It is about making sure that those who live there reap the benefit. I will not be so unkind as to say perhaps governments should also look at the way they reimburse regions with royalties they take from those regions, but perhaps you and I could have that discussion over a cup of tea.

CHAIR: Yes, perhaps we could and talk about other subsidies and grants that the industry gets.

Mr Macfarlane: Absolutely.

Ms LEAHY: I note that the Resources Council in their submission stated that the explicit ban—and this is a bit of a change from FIFO and DIDO—was not supported on the underground coal gasification. Given the issues that have arisen with Carbon Energy, Cougar and also Linc, does the Resources Council have any suggestions about how new and emerging future technologies can be carefully managed and what level of financial assistance bond might be appropriate to ensure that if there is any damage from those emerging technologies the areas can be rehabilitated? I am just looking at what we have learnt from those particular trials and what the industry might see as a path forward for new technologies.

Mr Macfarlane: I think there would be very few industries operating in Australia today that would be operating how they first operated, if you manage to follow that—that is to say, industries that have developed over 100 years. I was just talking the other day with someone about the tannery at Stafford where I used to do naval cadets in the park next door. What they would have discharged back in 1970 compared to the virtually drinkable water that is discharged out of tanneries now is as a result of regulation, cooperation and science. I think to say to an emerging industry, 'We're just going to ban you outright,' fails to use the ingenuity, innovation and scientific depth that Australia has right across-the-board, not just in the resources sector. We the QRC would be the first to acknowledge that some of the early and some of the recent even underground coal gasification operations have not been conducted successfully and there is the full force of the law to be used against those operations. In relation to Linc, I understand the government is considering use of the new CoRA—chain of responsibility—legislation. We are in a detailed discussion and sometimes consultation in relation to financial assurance which relates to ensuring that a bond is held for the rehabilitation of the land after the mining operation is completed.

We believe that, give or take the final consultations, FA will be an improvement on what we currently have and provide the level of assurance that not only governments want but the taxpayers who will pay the bill if the company does not. We believe that in terms of operations, whether they are underground gasification or anything else, we should be applying science, we should be applying ingenuity, we should be applying innovation and we should be holding a bond to make sure we can rectify any damage that is caused. With regard to banning any industry, as I said to someone this morning when we were talking about another industry, that would be like saying at the turn of the century, 'When you drive an automobile along the road, you've got to ring a bell and at night that person's got to be accompanied by someone waving a lantern.' We are almost in autonomous cars that literally drive themselves. I know my daughter's car will basically drive itself within a lane and stop if the car in front of it stops, so that is how far that industry has come. Imagine if we had said at the emergence of the first car, 'We're just going to ban it. We don't like it. We're going to ban it. We're going to stick with horses.' We do have to use science and ingenuity and we do have to learn by our mistakes, and I think the same applies to the resource industry.

Ms LEAHY: As a supplementary question on that, when you are looking at the bond and what a future bond might be obviously there are things to rehabilitate land—and that can quite often be done—but what about water? Are you looking at how you would deal with water and rehabilitating water, because you can have all the land in the world, as you and I both know, but if you had no water that you can use from a quantity and quality perspective the land is worth really nothing?

Mr Macfarlane: I think water is just such a precious resource that it certainly needs to be able to be restored or where it is being used and maybe depleted that that does not affect the water supplies to the farmers or irrigators or whatever stock holders around that, unless that water use can be made good from another source that is sustainable such as re-using sewerage for instance. I think that is very much part of the mix and I have been very pleased with the outcome of the expert scientific panel that was established by, I think, the Gillard government—it might have been Rudd; they change pretty regularly, including ours, but it was some time back then. That scientific panel has done a water assessment on Acland coal and assessed that there is no long-term damage to the official aquifers as a result of that coalmining. What is going to happen there is they are going to take the dirt out and the rock out in the layer and it is going to go back into the pit in the order that it came out and those official aquifers, I understand, will refill or replenish.

Ms LEAHY: Yes, I just think that maybe there is capacity to look at the bond in relation to rehabilitation of water.

Mr Macfarlane: It is my understanding that that is the case, but I would have to check that. If you like I can give you a supplementary answer.

Ms LEAHY: I would be very interested in a supplementary answer in relation to that.

Mr Macfarlane: I will ask our water expert, Frances.

Ms LEAHY: I would be very interested.

Mr Macfarlane: She is doing the FA in the CoRA legislation, so she will be right across it.

CHAIR: There is that response and the one that I asked you before.

Mr Macfarlane: Yes, I have yours.

CHAIR: Is there any chance of having them back by 9 February?

Mr Macfarlane: Absolutely. I might, Mr Chairman, send something on QMEA so that you and I know exactly what we are doing on increasing skills in regional communities. We have a couple of companies that have come to the table to sponsor up in your area, so I will let you know who they are as well.

CHAIR: Thank you very much. Again, we appreciate that this is your first appearance here and we will be getting you back because we liked your input. I am sure people out there who are listening and watching this today will be encouraged about a couple of the comments you have made in a new direction in working with—

Mr Macfarlane: What—about my golf clubs?

CHAIR: We can always go out and have a game of golf. They will be encouraged about some of the comments you have made about working together more with communities and getting communities back where they should be. That is very encouraging and I thank you for that and we will hold you to it.

Mr Macfarlane: Thanks, Chairman. I will be happy to be held to it.

CHAIR: Thank you. There being no further questions, we will now break for lunch. Thank you very much.

Proceedings suspended from 12.26 pm to 1.13 pm

COCKS, Mr Kevin, Anti-Discrimination Commissioner, Anti-Discrimination Commission Queensland.

BALL, Ms Julie, Principal Lawyer, Anti-Discrimination Commission Queensland

CHAIR: I now welcome representatives from the Anti-Discrimination Commission. Do you have any opening statements to make?

Mr Cocks: Yes, I just thought we would make a brief opening statement, Mr Chair, just to say that ADCQ was consulted in the development of the bill and we contributed giving the effect of the policy in relation to discrimination, not forming or influencing the policy. In our submission we have tried to provide information about the provisions and how they might operate. We have read other submissions and also listened in this morning to presenters and note that most of the issues raised about the discrimination provisions we believe are policy issues for government. For instance, in the earlier submission by the Queensland Resources Council there were questions about the recent advertisement for jobs in Townsville. From my understanding of what was presented, and it may or may not be all the facts, but there was a claim that 70 of the local people were employed and the remainder employed from Townsville and that the advertisement was only placed in Townsville and some locals were told they could not apply. It would only be the latter two that would be in conflict with the proposed bill: if it was only advertised in Townsville and that locals were told they could not apply. The bill says you cannot employ 100 per cent of FIFO employees. That is just one example.

One of the other issues I would like to address is the issue of retrospectivity. The bill does not apply to conduct before the legislation commences. It is said to have a retrospective effect because it will apply to future recruitment at projects that were approved for 100 per cent FIFO. Refusing to hire someone because they are local or terminating a worker who wants to live locally will be prohibited once the bill becomes legislation. That gives rights to individuals rather than taking away rights and human rights. I should have said that our mandate is to promote and protect human rights as per the conventions that Australia has ratified. In this context it is particularly relevant to the ILO convention.

The issue for the owners or operators of the relevant project is not a human rights issue. Their rights are protected through other common law civil and commercial law areas. I think most of the issues in the legislation are policy considerations for government and parliament. Thank you.

CHAIR: Certainly the issue around retrospectivity is one that has been hammered home to me quite a fair bit in Central Queensland. Is there a simple way to lay it out so the average person in the street like myself can get across it a lot easier than what we are?

Mr Cocks: I will have a go. Julie is the technical person. If the legislation is passed and it becomes an act what it means from that day, once the act comes into enforcement, where there was once only 100 per cent FIFO workers, if you needed to recruit then that means that future recruitment process has to take into consideration those issues that I outlined before. It is nothing to do with the existing employees. It may on a technical point. If a FIFO worker decided to move to the town, would that apply, Julie?

Ms Ball: Yes. Retrospectivity is generally where a legislation applies to something that has happened in the past, so conduct in the past, whereas this bill, once it commences, will apply to future conduct. The issue that people have concern about is perhaps more an effect rather than true retrospective legislation. It is just this effect that they are saying that certain mines were approved with 100 per cent FIFO. From the commencement of the bill they will have to comply with it in terms of not having a 100 per cent FIFO workforce and their antidiscrimination provisions applying to them.

Mr Cocks: I think also from another perspective, times have changed from when those provisions were made. That is why I say it is more to do with a public policy issue to meet the needs that the social and economic world is delivering right at the moment.

CHAIR: I understand what you have just said and I accept that, but what about the argument that some people are putting that some of these companies are pretty—I won't say smart; they are not very considerate in their thinking. What happens if two people are locally employed and they say, 'Well, we have done it, we have employed somebody locally.' How does that impact on the other 99.3 per cent that they want to employ?

Ms Ball: Technically they would comply with that provision which says they cannot have 100 per cent FIFO. They would still be bound by the discrimination provisions when they do recruitment. When they are recruiting they cannot refuse to recruit someone because they are a local

resident. They can't advertise in a way that will disadvantage local residents, and for someone who is at that time working FIFO who wants to be a local resident, they cannot terminate that person's employment.

CHAIR: Those things have to come into play before they can go back to employing a FIFO worker?

Ms Ball: I do not think it is so much come into play. They can employ whoever they want, they just cannot not employ someone because they are a local resident. They might find that someone else is better qualified or presented better, whatever the very many reasons that are the decisions you make in regard to employment. They are just saying it can't be because that person is a local resident and you must advertise in a way that does not disadvantage local residents.

Mr Cocks: In effect, it is asking for more transparent recruitment processes.

CHAIR: That is where the advertising and location all come into play.

Ms Ball: Yes. If I might add, the other thing is the discrimination provisions are very limited in those three aspects: the advertising, the recruitment and terminating someone who wants to stop being FIFO and become a local resident. It does not extend into the work relationship and the terms of work that a local resident, for example, might be offered. Some of the people who have made submissions, generally the unions and the councils, are saying that it should extend to that. This bill does not do that. It does not prevent a company from using the existing accommodation—requiring the local worker who has been employed to stay on site for the duration of the time that they are on shift.

Mr Cocks: As an example, I grew up in the bush and worked in the shearing sheds in the early days. When you had to go to a shearing shed, quite often they were an hour or two hours away from your local home and you lived in the shearers' quarters and your food was provided and you stayed there for the working week and you went home on the weekend. That was for a whole range of reasons, which would be as Julie has highlighted. That does not stop a company from asking people to stay in their accommodation whilst they are carrying out their week or fortnight roster, whatever their roster may be.

CHAIR: Even if that person is a local person?

Mr Cocks: That is our understanding, yes. If they are an hour or more away, there could be workplace health and safety issues, et cetera.

CHAIR: If there are two people with equal skills, one lives locally, one lives in Brisbane, does the legislation protect the person who lives locally as far as getting the job if their skills are equal?

Ms Ball: There are probably more considerations than just the skills. So long as the reason was not because the person was a local resident.

CHAIR: I understand. Fair enough.

Dr ROBINSON: In terms of the number of complaints that you might receive under the amendments, do you have some sort of estimates of those numbers?

Ms Ball: We found it very difficult to estimate that. We did have a look at how many projects might fall within the relevant definition and might be in the operational stage. We really just are not able to estimate in any accurate way because, of course, there could be resource implications for us. What we will be doing will be monitoring how many complaints we receive and see how that affects our service delivery.

Mr Cocks: The other area where it will have implications is in our training. We provide lots of training to mining companies currently. We would have to develop the respective areas now that will cover off information that would be required once the legislation comes into action. Again that is a resource for us that mining companies pay for, our training. The demand is a bit like how long is a piece of string. We would monitor that and if we needed greater capacity we would have to address that issue then.

Mrs LAUGA: Have you had any complaints or inquiries from jobseekers who have faced this issue by way of being told that they are not eligible to apply?

Ms Ball: I am not aware, but we have regional offices in Rockhampton, Townsville and Cairns. They may well have. It is just not something that I or Kevin have knowledge about.

Mr Cocks: We can take that on notice.

Mrs LAUGA: That would be great.

Mr Cocks: Usually if there is a high influx we are made aware of that and that has not been brought to our attention. I will take that on notice and I will get you an answer one way or another.

Mrs LAUGA: Do you think that a lack of complaints being made by jobseekers might be because they do not see this as a discrimination issue purely? When you think about the wonderful work that the Anti-Discrimination Commission does in the space of gender equality and equitable access, all sorts of different discrimination issues—I think one of the most common complaints you get is in relation to pregnant women in the workplace—do you think it is a case of mining jobseekers going, 'This is not something that the Anti-Discrimination Commission can help me with.'?

Mr Cocks: It could be or they may have rung our inquiries line and would have been told that unless they have evidence that they were discriminated against based on our current mandate then they may not have had an avenue to make a complaint.

Mrs LAUGA: They will in the future, depending on the outcome of this bill?

Mr Cocks: That's right, depending upon the circumstances or evidence but, yes, they will have an avenue then and we would go through our due process that we carry out now when receiving complaints.

Mrs LAUGA: What would the ramifications be if there was an employer who was in conflict with the law? What would then happen?

Mr Cocks: Maybe if I use an example of a process now. We would assess a complaint and if it was assessed to be under our act we would accept it, we would notify the respondents and then a conciliation process would be carried out. We conciliate between 55 and 60 per cent of our accepted complaints. That could range from an apology to training to compensation, depending upon what they may agree. If the parties could not come to an agreement then the complainant would have the option and it would be referred to the QIRC for a matter that would be heard under that commission. If it cannot be conciliated by us, that is usually referred on and it is out of our control, then.

Ms LEAHY: I have no questions.

Mr CRAWFORD: I have no questions.

Mrs LAUGA: I do have another question. If a matter was to go to the QIRC in the past, what form of penalties are there on employees who do break the Anti-Discrimination Commission laws?

Ms Ball: It is not actually a penalty. Because it is a complaint, it is a civil claim that the person who feels that they have been discriminated against makes. It is not a penalty in that respect. If the tribunal is satisfied that there has been discrimination, there is a range of types of orders that the tribunal might make. That is prescribed in the Anti-Discrimination Act, in section 209. The range of outcomes might be ordering an apology, making a direction for them to stop doing something or to do something to redress the discrimination that has occurred or there could be the payment of compensation. Compensation includes humiliation and offense arising from the discrimination.

I have a couple of examples, if you want me to talk to you about them? These are obviously not about this issue, because this issue is currently not prescribed. There are a couple of cases in the recruitment process. One is quite old, it is 1993, Flannery v the Queensland Police Service. Mr Flannery wore glasses. He was not taken on as a police recruit because he wore glasses. The tribunal found that was impairment discrimination. Because of the evidence that the tribunal had heard, it was satisfied that Mr Flannery met all the other criterion in respect of becoming a police cadet. The tribunal ordered in that case for the Police Service to take Mr Flannery on as a police cadet.

Another one which is quite well known is the Virgin Blue case, Hopper and Others v Virgin Blue Airlines. After Ansett collapsed and Virgin Blue started, they were doing a recruitment process for flight attendants. Some former Ansett flight attendants were applying as part of this recruitment process. They were around about the age of 35 and over. They were not offered jobs. They felt that they had been discriminated against because of their age. The matter went to the tribunal. The tribunal found that there had been age discrimination. It was sort of an unconscious bias against their age and a bias towards the younger group. For those flight attendants who took the case on, the tribunal awarded each of them $5,000 in compensation for what is called general damages, that is, the hurt and humiliation, as well as economic loss. They looked at their lost opportunity. The tribunal dealt in percentages of how likely they might have been to be recruited, what percentage of applicants were actually recruited and that these ladies probably had a higher chance of being recruited because of their extensive experience. In that case, the tribunal ordered a sum of money equivalent to a percentage of one year's wage on top of the general damages.

Mrs LAUGA: That is really interesting. I was reading one the submitter's comment with respect of the anti-discrimination provisions only applying to the mining company as opposed to subcontractors; is that the case? If someone was employed through a labour hire company, such as WorkPac or Hays, these laws would not apply to that arrangement?

Ms Ball: It is not that the laws do not apply; it is that the liability rests with the owner or the principal contractor. If any of their agents, which is the labour hire company or recruitment agency, were to discriminate in these ways that are prohibited, only the owner or the principal contractor has the liability.

CHAIR: How would the company get around that so that they do not have to accept responsibility?

Ms Ball: They cannot get around it. What they would do is that they build into their contracts with their agents some sort of indemnity. Hopefully, they would build in provisions requiring the people that they are contracting with to make sure that they comply with anti-discrimination legislation, that they have anti-discrimination training for their staff and the people who are doing the recruitment. Hopefully, there would be then be a cultural effect.

CHAIR: As you can imagine, for us it has been a pretty difficult area to get a good understanding of. I really thank you for the effort that you have put in. It has been great to come up with something. At the beginning we thought it was going to be impossible to achieve, so thank you for the work that you have put in there. Do you have any thoughts about how we could strengthen it in any way? Do you think you have reached the best outcome that we can get? I would like to make sure that we do not leave any holes in it, because you can bet those companies will be sitting there looking for a hole in it.

Mr Cocks: I will leave it to Julie, who is the technical person on this.

Ms Ball: We have tried to work with the department in making sure that the government's policy or the policy that came out of the committee works. It is not our place to—we are just looking at implementing the policy, rather than formulating or influencing policy.

CHAIR: I thought I would try. That is a concern, because these mining companies spend millions and millions of dollars finding holes in these sorts of things. It is an issue that the people in Central Queensland are really worried about.

Ms Ball: Public awareness and the rights that are available to people who are discriminated against in this way that is prohibited, that will be important. Unfortunately, the people have to bring the complaints, so it is an individual based remedy type thing. If people make complaints, it might force change.

CHAIR: The last question is an issue that I find is going to probably cause us the most concern with particular people finding themselves in a position where they think they are covered under the legislation, but they are really not. I was looking to see if you had identified any areas where we could improve it. I understand where you are coming from. Next time we might ask again.

Ms Ball: You could extend it. What is in the bill is the policy decisions that have been made and we will do our best, through our information services, to raise awareness.

Mr Cocks: I suspect, like all legislation, you will have a review process.

CHAIR: Do we have something on notice?

Ms Ball: Yes.

Mr Cocks: Yes, that was the number of complaints.

CHAIR: Can we have that by Thursday, 9 February?

Ms Ball: Yes.

CHAIR: Thank you very much. Given that we do not have any more questions, you can all go home.

Mr Cocks: Thank you very much for the opportunity.

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

SMYTH, President, Queensland Law Society

CHAIR: Do you have an opening statement?

Ms Smyth: Thank you for inviting the Queensland Law Society to appear at this public hearing on the Strong and Sustainable Resource Communities Bill 2016. The Queensland Law Society is the peak professional body for the state's legal practitioners. We have some 10,000 members whom we represent, educate and support. In carrying out our vital work, our central ethos is advocating for good law and good lawyers. The society proffers views that are truly representative of its members. The Queensland Law Society is an independent apolitical representative body on which government and parliament can rely to provide advice that promotes good evidence based law and policy.

The Queensland Law Society has made a detailed submission that sets out our position on the bill. We would like to highlight three issues from our submission and then we would be happy to answer questions the committee may have. These three issues are: one, the retrospective application of the legislation which is in section A of our submission; two, the residence as a ground of discrimination, which is issue B of the submission; and three, the reversal of the onus of proof in issue C of the submission. I have with me Mr Martin Klapper, who leads HopgoodGanim Resources and Energy Practice and is the chair of the Queensland Law Society's Mining and Resources Law Committee to discuss these issues in detail and answer your questions.

CHAIR: You argued that the legislation should impose joint and several liability. Could you tell us more about why you do not think it is appropriate for this to be in legislation and what impact it could have on existing contractual relationships?

Ms Smyth: I will ask Martin to answer these technical questions, because that is his area of expertise with respect to this.

Mr Klapper: Thank you President, Mr Chair and ladies and gentlemen. That is issue D in the matters we raised. The concern is simply this: it sits in the context of a number of the other matters that we mentioned, particularly in relation to the reversal of the onus of proof. Much as we would like the world to be organised otherwise, miners and others in a similar field work through contractors who hire others to do the work for them. We establish those contractual relationships at a point in time on the basis of known facts and on the basis of known laws. The comment we make, and I should add perhaps as an opening comment to assist the committee, is that my committee members represent all aspects of industry: the miners, the contractors and also the landowners. We have a strong employment component. To back up the president's comment here, we come at it purely from a good law perspective. We have no agenda.

To answer the specific question, contracts are in place. Risks, responsibilities and duties are allocated according to the law as it stands. Joint and several liability will cut across that. If I am responsible for something that I have contracted properly in accordance with the existing law for someone else to do, I ought, as a matter of good legislative principle, not be held responsible for that other person's act, to the extent that I have exercised my contractual control. I appreciate that the other side of that coin is that it ought not or it sounds like it could be read as licence to divest myself of responsibility by contract. No legislation will permit that. That is not the intent at all. However if, in fact, I have no control, if I have acted properly and commercially in delegating or having someone else carry out responsibility, I might have no knowledge of these matters. Joint and several responsibility, in circumstances where proper commercial practice in the light of law as it exists before this legislation is, if that action is proper, not something that ought to be unsettled by legislation.

CHAIR: I will have to read that a couple of times.

Mr Klapper: If I properly contract with someone to do something and there is no ulterior motive to it, why should that be upset? Why should legislation interfere? It is a capitalist country, we work on the basis of contracts.

CHAIR: I am finding that mining companies set the conditions for the contractor in terms of the hiring and firing of workers and that sort of thing. Are workers better protected under this sort of arrangement or are they at a disadvantage?

Mr Klapper: Which sort of arrangement? I am sorry, I do not quite follow what you are asking.

CHAIR: Under the set conditions as applied. The mining company sets the conditions for the contractor. We are finding that a lot of workers are losing their jobs with an hour and a half notice. I would think that if we are doing it properly those people would have the same protection as people anywhere else have.

Mr Klapper: It goes to the fundamental contractor-principal relationship. If I hire someone else to employ workers for me and the industrial relations system allows it, I do not see a problem with that, but I do not think that is what we are dealing with here. We are dealing with civil liability created under anti-discrimination legislation, and that is something fundamentally different.

CHAIR: I take your point.

Dr ROBINSON: In your submission—I think I have it right this time—in terms of the scope of the Coordinator-General's powers you are suggesting some guidelines. Can you elaborate on that for us please?

Mr Klapper: I think the submission is comprehensive. I do not think I actually have anything else to add. There were two matters that I think drove my committee to put this forward as a concern. The first is that while the legislation says, 'Look you are going to have responsibility, Mr Coordinator-General, to supervise the social intent of this legislation,' it gives the Coordinator-General no guidelines at all, no idea at all, about how that job is to be performed. Some legislation has specific guidelines which say that the guidelines have the force of law as subordinate legislation for how this is going to happen. We are entering into something that we do not understand. There are no guidelines about how it is going to happen.

The second part—and I do not know if this part comes through well in what we intended to be a quick and brief submission—is that for projects that are not otherwise under the umbrella of a coordinated project, I appreciate the legislation uses different words, but let us stick with the real language, the Coordinator-General is by this legislation given a role. It adds a regulatory agency to a process that otherwise does not have that agency. It is the addition of those layers of process that we were pointing out as creating complexity and creating more cost and we did not really see that it added much to the process.

Mrs LAUGA: In the QLS submission you talk about retrospectivity and that the retrospective operation of amendments to the Anti-Discrimination Act to projects approved since 30 June 2009 will create uncertainty is not justified and it breaches fundamental legislative principles. My understanding is that the Australian Constitution imposes no limitation upon the ability to enact retrospective laws. I want to ask you about an example in comparison.

Environmental conditions change all the time for mining projects because there is an expectation that environmental technology and mitigation methods become available and also that community expectations change. For example, the veneering of coal trains to prevent coal dust on regional communities was not something that was done 10 or 20 years and was not conditioned as part of those mining companies' original approvals, but coal companies are required to do that now because the government recognised and the community's expectations changed with respect to what we consider appropriate and safe for coal trains when moving from mine to port. There was a process incorporated by the government to require that coal train companies veneer all of their coal trains.

Is this not the same situation where community expectations have changed over time and technology has become available to mitigate environmental impacts and the government requires this of the mining company? Is this not similar in that we have identified a social impact that needs to be mitigated and this proposed bill seeks to mitigate the social impacts created by FIFO?

Mr Klapper: I accept the validity of that as a philosophical argument, but I do not think it holds water when you look at the legislation. That is because, whilst you are quite right that we do not have a bill of right, retrospectivity or the presumption against retrospectivity is enshrined in our legislative standards legislation. The parliament can make any law it likes, whether we like it or not, with any effect provided the rationale for it is there and it is clearly expressed. I am sure this issue has been chewed over many times before this committee and in parliament, but let me put this perspective on it from a purely legal perspective.

The legislation is not retroactive. It does not create civil liability in respect of past conduct, but it is retrospective because it changes existing conditions for projects that were based on a certain set of criteria. If you draw that bow long enough, yes you can equate the veneering of coal trains to what parliament intends to do here. The challenge with that is that if that argument were taken to its extreme no change no matter how extreme and no change no matter how small would fail to fall into the same metaphor.

I do not think it is really relevant for this reason. I am not aware of any empirical evidence at all that shows that there is a specific effect on health or rights of fly-in fly-out operations. In fact, fly-in fly-out operations were the way things were intended in 2009. Maybe today that has changed for policy reasons, I cannot comment.

The fundamental principle remains this—and I have heard it said, including today, but also previously. Rights are created and now rights are taken away. What the committee needs to appreciate, if this change is to be made, is that rights do exist—rights in the sense of we have the entitlement, if I speak as a mining company for a moment, to carry out the operation a certain way. Tomorrow that will not be possible. It is not possible to say, 'We will give some rights without taking some rights away from others.'

That is not a balance that can be maintained. Therefore, like it or not, while the legislation is not retroactive it is retrospective. That might be okay if the social and philosophical intend that you describe holds water in parliament's eyes. I have no argument with that. Let us not pretend that there is no retrospectivity.

Mrs LAUGA: Mr Chair, have we received a briefing from the scrutiny of legislation—

CHAIR: Yes, it is in the papers.

Ms LEAHY: You mentioned in your introduction that you had three major concerns. They include the retrospective application and the reverse onus of proof. If those sections of the bill were actually removed are there other ways in which the government can meet the objectives it is trying to achieve?

Mr Klapper: That is an excellent question. I honestly do not know and have not turned my mind to it. We mentioned three, not those two. The other one, and I accept that you were speaking briefly, is the reference to residence as a ground of discrimination. I am not a legislative draftsman, though we deal with legislation enough to know that there are always many parts to one objective.

Our concern is not with the objective. That is a matter for parliament. It is a matter for the parties to work out. That is none of our concern. Our concern is about the path that was chosen. Reversal of onus of proof by itself is a pretty serious step. Creating a new ground of discrimination that has nothing to do with, say, the International Labour Organization's convention on trade union membership, other international conventions or giving effect to them on discrimination based on matters such as age and so on to create a new ground of discrimination for the purpose of seeking a legislative outcome of a specific kind does not sit well in terms of the legislative process from a pure legal perspective.

Retrospectivity can be put in the same category. You have three issues here which, from a purely theoretical legal perspective, are combined to achieve the result. If you are asking me, and I think you are, can that result be achieved in another way, yes, may be. I will put my thinking hat on and have a think about it, but this is the course the legislative draftsman has chosen. It is an unfortunate confluence of three things that are really put together to achieve an objective. None of those three are designed for the purpose.

There is reference in our submission to immutable rights, for example. Do I have a right if I am not heterosexual to be engaged in my profession and be considered for a job? Absolutely. International conventions give me the right to expect certain things. If our domestic law happens to repeat those things then so far so good. That is fine. We have no bill of rights. If we had a bill of rights it would be that much stronger. Residence, I never heard of it as a human right.

Mrs LAUGA: Is not the whole principle of discrimination equal opportunity in employment? That is not limited to any form really; it is about equal opportunity. Where someone is told that they cannot apply for a job because they live in a certain area is that not the same as being told you cannot apply for a job because you are woman? It is about equal opportunity. Why are we talking about contracts and retrospectivity when actually it is about equal opportunity?

Mr Klapper: You are equating the right of residence with the right to be treated equally based on gender. I do not think that is a fair comparison from a purely legal perspective. If there were some empirical principle of law that protected your right to participate equally with anybody else based on your residence I would see some substance in that. I just do not know of anything that says that where you live counts as part of your basic human rights.

You make a perfectly valid point—what is fair? I know of no convention, I know of no law that otherwise says that residence is a basic human right. If you want to create one in legislation for the ulterior motive of bringing about a particular outcome, great I have no problem with that. That is the reality of what is happening in this legislation.

Ms Symth: From a discrimination point of view those aspects of gender, age and race are immutable qualities that you personally cannot change. They are inherent to you. To create a discrimination that is based around where you reside, in this country is a free choice. That is something that can be changed. That is something that can be altered. To our mind there is a distinction there.

Mr Klapper: A good reference here for you might be, if you wanted to look at the legal basis for the submission we make, is to look at the Anti-Discrimination Act and what it says are the grounds or the triggers for the existence of an anti-discriminatory action. It is a list of specific things. Most of those, as my president says, are immutable things. I am born a man therefore there is not much I can do about it. Some are matters of choice. Religious belief is an example of one of those. Trade union membership is another. The point is that in part it is that, in part it is the fact that there are conventions, there is some level of general recognition that this is a human right. I have never heard of it based on residence.

Mrs LAUGA: Does that mean it is not one, though?

Mr Klapper: It is the law. It is whatever you say it is, ladies and gentlemen. You can make it so. What is next?

Dr ROBINSON: Can you sort that out, Mr Chairman?

CHAIR: Thank you very much it is a difficult issue for many of us to understand. I guess people on this committee believe if you are not permitted to have the same opportunities as another group of people you are being discriminated against. Postcode discrimination as we call it in this situation. Are postcodes covered?

Mr Klapper: I honesty cannot tell you.

CHAIR: Thank you very much for your time. We will come back to you if we have any further questions.

BROE, Mr Barry, Coordinator-General, Office of the Coordinator-General, Department of State Development

HINRICHSEN, Mr Lyall, Executive Director, Land and Mines Policy, Department of Natural Resources and Mines

REES, Mr Marcus, Director, Land and Mines Policy, Department of Natural Resources and Mines

CHAIR: I welcome representatives from the Office of the Coordinator-General and the Department of Natural Resources and Mines. Before you give evidence today—you would not have been here earlier; you might have been watching it on TV, sitting there taking notes—

Mr Broe: I was, yes, and I was listening.

CHAIR: I am sure you would have been, Barry. Before you give evidence today, I remind you that under the standing rules and orders of the Queensland parliament certain matters that are before the courts cannot be referred to during committee proceedings. If you believe that it is necessary to refer to a matter currently before the courts in order to answer a question today, please advise the committee so that we can arrange with you to take that question on notice or deal with it in some other way. I am sure you are across that. Do you wish to make an opening statement?

Mr Broe: Thank you very much for the opportunity to quickly address the issues raised in public submissions on this bill. Officers from DNRM are here today. They were very disappointed not to get any questions last time, so they are very keen to answer questions on the UCG today.

We have gone through all of the submissions and the key issues raised. Consistent with previous submissions, there were very diverse views at both ends of the spectrum on this bill. On the one hand, you have local government and trade unions concerned that the provisions in the bill do not go far enough and should go further in legislation against existing FIFO practices. They also believe that the bill should include a wider definition of 'nearby regional community' which would apply to more towns. Thirdly, they want construction and decommissioning phases and workers included. On the other hand, you have industry and related organisations concerned about the perceived retrospectivity of the anti-discrimination provisions and their argument about unnecessary legislation and the prescription of social matters and increased regulatory burden.

I will just comment on the distance issue. As a foundation for the new framework, there has to be a concept defined of what is FIFO versus local or non-FIFO. Therefore, distance in our view is the most logical and practical parameter to adopt. The definition of a 'nearby regional community' is based on towns of more than 200 people within a 100 kilometres of a large resource project. This distance is based on the concept of a natural catchment for the supply of labour and resource community expectations of having an association with the project and benefiting from it. The 100-kilometre distance is not intended to be a threshold related to commuting and fatigue management, although it has been interpreted that way by some people. The Coordinator-General also has the discretion to examine each project on a case-by-case basis and determine whether there are towns outside of the 100 kilometres which should be included.

The concept of distance rather than travel time is considered to be the most measurable and implementable approach. Travel times simply vary too much with road conditions at the time, whereas distance is a measurable point at any particular point in time. The 100 kilometres is a balance and we have tested this by mapping for all of the projects likely to be captured and how many towns would be affected by that provision. On face value it is a judgement call that looks like a reasonable balance of towns that will be affected—not too many and not too few. I would also say that the submissions themselves varied. You have people arguing on the one hand for 50 kilometres or 40 kilometres and on the other hand for 150 kilometres, so the 100 kilometres is a basis to start and with the discretion to look at each case on a case-by-case basis is still valid.

Some people argue that the prohibition of 100 per cent FIFO was not strong enough because you could simply get around that by employing one worker from the local community. The key point here which I have raised before is that the 100 per cent FIFO prohibition is just one of the components of the bill. It works with the social impact assessment guideline and it works with the very strong provision in the Anti-Discrimination Act as a combined element to generate better outcomes that achieve the right balance in each project of what is the right workforce. The bill only applies to operational workers but it does provide flexibility to decide whether construction workers should be included, but that should be done as part of the EIS process.

Industry is concerned about the provisions applying to the future recruitment arrangements for those projects with an EIS approved after 30 June 2009. The impact of FIFO was a prominent issue in that period. That was around the time when contemporary and more extensive social impact assessment came into effect. I would also argue that environmental impacts have always been addressed in detail in the EIS and conditions set. What we are doing here in a conceptual way is bringing up social impacts to the same level. In one sense it is picking up a discrepancy or a gap in the past that social impacts and therefore conditions and monitoring probably were not dealt with to the same extent as environmental impacts, and there is no reason why they should not be.

Many concerns were raised in the submissions about the enhanced requirements to produce social impact assessments and detailed plans like the local industry content. The reality is that they should be looked at as part of the environmental impact assessment. Again, a Coordinator-General cannot make a decision on a project without looking at all the impacts and setting conditions and being able to make a decision on the project as to whether it should proceed. We will also be strengthening our compliance functions in the Office of the Coordinator-General because there will be a big task here to look at in practice how it is going to be monitored. We heard a previous group arguing that there should be a guideline. It will be a task to look at what is actually happening on each project.

Overall I would contend that the bill provides a reasonable regulatory response. It is a balanced response to community concerns about the excessive use of FIFO and the view that benefits of resource projects are simply not being shared widely enough. I do not believe that it places an unreasonable burden on projects if from the start of an EIS up-front they look at the impacts properly and work with stakeholders to get the best outcome.

It is unique and new and complex and multidimensional. I think last time the member for Warrego mentioned a Western Australia example. We are breaking new ground here, so it is new. I think that we should bed it down, assuming it passes, and work through its implementation and communicate what it means and work on each project with the relevant stakeholders to get the right balanced outcome. That concludes my opening statement. I am happy to take any comments.

CHAIR: Are there any other statements?

Mr Hinrichsen: No, Chair. We are happy to take any questions.

CHAIR: Some of the submitters have raised concerns about and I note that you used the words 'perceived retrospectivity'. Can you tell us if their concerns are genuine, realistic or going to cause problems?

Mr Broe: Let me clarify the facts first of all. The 100 per cent FIFO prohibition only applies to future projects that are not approved yet. The new social impact assessment guideline only applies to new projects that are not approved yet. Those two elements are obviously not retrospective. The element they are talking about is the anti-discrimination provision. That only applies to future recruitment—it is not talking about past practices—of operational workers for projects that have been approved since 30 June. I am not a lawyer but I personally do not believe that it is retrospective. It depends on how you define the term. That is just one element of the bill that has an impact on projects already approved. I would add that for those projects their approval conditions are not changing. I am not going back into those projects changing the approval conditions. They are all the same.

Now we have, if it is passed, a new act that has an anti-discrimination provision. You heard the arguments earlier about location being grounds for discrimination. It does not even mean that employers or proponents have to hire a person from the nearby regional community. They just simply have to be given a fair opportunity. They cannot advertise in a way that says, 'You must be from Townsville to apply.' It is not even mandating that they should employ a person. It is simply giving people fair opportunity who live in a nearby regional community, if there is one, to apply for that project. That would be my argument that I put to you.

CHAIR: Just to clear something up with regard to what you have just said, are you telling the committee that future employees at Caval Ridge and Daunia will not be given the opportunity of choice—whether they live locally? Will they be employed under the existing—

Mr Broe: If the bill is passed, Caval Ridge and Daunia do come into play for the Anti-Discrimination Act provisions, because they have been approved since 2009. If that proponent advertises a new job, a new recruitment, the provisions in the bill would say that they cannot discriminate against someone who lives in a nearby regional community, which for that project would be Moranbah, Clermont or Dysart from memory. It is not telling them that they have to give someone

a job. It is saying that they cannot discriminate against and they cannot advertise in a way that precludes people from those towns from applying for a job. They can still choose the best person based on the person they want. That is what it means.

CHAIR: They can apply for the job—

Mr Broe: Yes.

CHAIR:—but may not be successful even if they live 20 kilometres away.

Mr Broe: They may not be. Again, the bill is not saying that employers must employ those people. It is simply saying they must have equal opportunity. It is still the proponent's right to choose based on the demands of the job which person they want. The provision is there that if a person feels that they have been discriminated against—they cannot prove it; that is why the reverse onus of proof is there. They will not have the information that the employer has to prove that they have been discriminated against if they have a case. That is why that is there also to give them an opportunity to appeal if they think that they were the best person for the job and did not get it. That is what it is doing. It is setting up a fair process but not going as far as telling them.

CHAIR: It is a fair process if you are dealing with fair dinkum people. In this situation we have one particular company that is not prepared to budge from what they have in place at the moment. That is what I am concerned about—that nothing is going to change.

Mr Broe: I would prefer not to comment on that company. What we will have is much stronger legislation with a change to the Anti-Discrimination Act where people legally will have a fair right to be able to apply for a job. We will have to work very closely with all proponents to bed this down and implement it to make sure that its spirit and principle is applied in practice. That is where some of the monitoring will come in but also working with proponents and stakeholders.

CHAIR: I guess it is the principle of it all.

Mr Broe: Yes, it is the principle of it. It is setting up a principle. We did not have this before. We will now, so it is a starting point.

Dr ROBINSON: In terms of trying to get an understanding of the potential and likely costs of the legislation, has there been any work done around potential impacts to state government costs or the mining industry in terms of potential red tape or any other work around that that might be similar to some sort of RIS process? Excuse me if I have missed that.

Mr Broe: There has been commitment to do a post-implementation regulatory impact statement. I think that is 18 months after the start of the act. We have some idea of the costs for us with some more compliance, but we will try to absorb that. We have not done any specific detailed work on the cost to industry. That is why the agreement with Treasury was to do a post-implementation assessment of the impact after 18 months.

Dr ROBINSON: Is there any general sense of likely cost areas or key cost elements? It would be useful to have some sort of understanding before we pass this legislation.

Mr Broe: I am happy to come back to you. My own personal view is that it depends on what the costs are. For future projects, as I said earlier, they will have requirements at the start to do a thorough social impact assessment similar to previous ones. They will have these requirements. If they plan properly from the start and work out the proper workforce balance, there should not be a need for any extra cost if they do it effectively. I know their argument, but it is up to the industry to demonstrate if they think there is evidence that there are extra costs. It is not as if we are going for, say, 80 per cent FIFO or mandating a specific FIFO limit for each project. It is just a ban on 100 per cent FIFO. I am happy to come back to you, member for Cleveland, if there are any numbers. I have not seen any costs. We have been focused on getting the bill going and doing the post-implementation review.

Dr ROBINSON: Is it possible, through the chair, for the department to provide any information on notice from work that you have been doing on numbers, figures, cost implications? Again, as a member of parliament, I think it is always good up-front to know the likely regulatory impacts and costs so that you make a decision rather than down the track find that there is some other cost burden to a community or an industry and they say, 'Well, you passed the legislation.' It is always better to know.

Mr Broe: Sure. I am happy to come back if there is anything. As I said, industry will have their view on the cost implications for them. We do not see major costs for us. We will have to enhance compliance and monitoring and try to make sure that we have the right resource in that area.

Dr ROBINSON: Even that would be helpful, Mr Broe.

Mr Broe: Previously the Coordinator-General was assessing only coordinator projects. Now the Coordinator-General will have to assess all DEHP projects—so all projects going through an EIS with the environment department—but, again, we think we can manage that very efficiently because we have been working with them in the past and providing advice to them. Now it is a statutory function. If there is anything, I am happy to come back to you.

Dr ROBINSON: Thank you. I would like to take that on notice.

Ms LEAHY: I might give you a rest from FIFO and DIDO. I have a question on underground coal gasification. The departmental officers may be able to assist with this. In relation to the underground coal gasification projects of Carbon, Cougar and Linc, what was the level of financial assurance bond that was held for each of these projects? With each of the projects, what has been the cost to date to taxpayers for the fines and the court actions? I am happy for you to take that on notice.

Mr Hinrichsen: Thank you, member for Warrego. I appreciate the question. I might take you up on your offer to take the question on notice. Those matters are specifically dealt with by the Department of Environment and Heritage Protection, but we can certainly consult with our colleagues in that department and see what information we are able to provide to the committee. Certainly ringing in my ears is the good direction provided by the chair right at the start. As the member for Warrego will know, there are certain matters in relation to one of those parties that are currently before the courts.

Ms LEAHY: I am aware of that, which is why I made the offer to take it on notice.

Mr Hinrichsen: Thanks, member for Warrego.

Mr CRAWFORD: Barry, were you listening to all the evidence that has arisen today from all the various—

Mr Broe: Yes.

Mr CRAWFORD: As you would have heard—and I think you summarised it pretty well before—there are very polarised views. Are there any areas that you think we need to further look into as a committee as we move through this? Has anything come out of either the submissions or evidence today that you think we need to further look into?

Mr Broe: That is a good question, member for Barron River. I am probably a bit biased. I do not want to be seen to be defending the legislation because we developed it. I have challenged myself and the team on whether the 100 kilometres is right, whether it should be something else or whether it should be left completely open. I think there should be a base case of 100 kilometres in there. It is all about a policy judgement on what 'near' means or what the 'vicinity' of a project is. I think it is a good starting point to begin with.

I think there are quite different and polarised views. There are a couple of little things we probably want to clarify or suggest clarification on. There was one small point that came up this morning. If there is a project where there is a nearby regional community that is 50 kilometres away and there are more than 200 people, that is captured. What if there is a person who lives on his own within 20 kilometres? Is that person covered by the Anti-Discrimination Act? I see by the nods you probably think yes. You could interpret it at the moment that it could be either way. It is not covered, because the act is about sustainable communities, not necessarily an individual per se.

There are a few little things like that we would probably suggest clarifying to make sure it is clear as best we can, but I think we just give it a go and start with it. We have looked through all the projects that could be captured. It is going to be quite a task, first of all, to nominate what the regional communities are and to give people a chance to have their say. Let us see what comes out of that. Let stakeholders and proponents have their say and just get it going, test it and work with it. I am sure through all of that we will hopefully get the best outcome.

I am sorry if I am feeling a bit negative and defensive. We did have two inquiries leading into this. We had the chair's inquiry and then Leo's inquiry. There has been a lot of work done in the background. I think it is pretty well placed and pretty balanced. It is one of those things, as you say, that is polarising. It probably means no-one is happy but no-one will be totally unhappy either so we will hopefully get a good outcome.

Mr CRAWFORD: I think the member for Warrego mentioned earlier this morning to somebody the case of a project near a state border. If the state border were 50 kilometres away from the project and on the other side of the state border there was a township within 100 kilometres, is that likely to be an impact or is that something you think you can work with?

Mr Broe: I don't recall seeing any of those in the project so far. Even the Galilee Basin is so far away. I do not think they are quite close enough to the border. We would just have to have a look at it when we map out the projects if there is one. Do we have any legal jurisdiction to deal with the local community? If they were going through an EIS in Queensland, for example, we would want them to be looking at employing locals even if they were not necessarily Queenslanders. If there is a town just on the border 40 kilometres away and they happen to have a tradition of construction workers and operational workers, it just makes practical sense. That is why a lot of this stuff should be good for the proponents if they adopt a common-sense view and try to get the best outcome and a more diverse workforce. We will have a closer look at that particular one to make sure we are not missing anything.

Mr CRAWFORD: We can always shift the borders if we have to.

Mr Broe: Yes, we could probably take on a bit more.

Ms LEAHY: You want to start that argument?

CHAIR: You talked about small communities with fewer than 200 people.

Mr Broe: Yes.

CHAIR: Is that fair to that community? I could think of a couple of communities in Central Queensland where there might be a population of only 60 or 70 people but within that community there might be half a dozen coalmine workers. Are we excluding them if we are saying fewer than 200 people?

Mr Broe: The strict definition proposed now is that the nearby community would be a town of more than 200 people as defined by the ABS, but there is also provision that the Coordinator-General can look at each project. If, for example, there is a town within 100 kilometres or even beyond 100 kilometres which has 70 or 80 people, 10 of whom would be ideal to work in construction or the mine, the Coordinator-General has the discretion to include that town. That cannot be a big impost on industry. You would consult with them. That is why that discretionary ability is there—to make that judgement call. Similarly, there might be towns of 200 people where there are not any workers. Unless the town really wanted to be included and the council made a big case, maybe they should not be included either.

CHAIR: Doesn't that put an extra burden on people who are applying for a job, if they have to test the water before they can make an application?

Mr Broe: We will have to put good information and notice out there of which towns or communities are—sorry, I do not fully understand what you mean, Chair.

CHAIR: I go back to that situation where you have a small community and maybe half a dozen workers. You were saying that is something we would look at at the time.

Mr Broe: Yes.

CHAIR: Why can they not just go through the normal process? It places an extra burden on those people and extra concern about getting a job if they cannot apply along with everybody else.

Mr Broe: I guess they can apply. It is just a question of what this act applies to. This act would not apply to them under its current form because the town has fewer than 200 people—unless the CG decided, 'This town is now captured,' and then notified on the website and notified the relevant people that they are protected by this. If you feel that you haven't been able to apply or you saw an advertisement in the local paper saying, 'People from town X need not apply,' or 'You must fly into Mackay,' then, yes, there will need to be a lot of communication about making sure people know that they are covered by this, not just the towns that have 200 or more people.

CHAIR: I am looking forward to some of your decisions when the process starts because it will be monitored very closely.

Mr Broe: Yes, absolutely, as it should.

CHAIR: I wanted to ask you about your powers with regard to monitoring the changes.

Mr Broe: Yes.

CHAIR: Is that going to be made public?

Mr Broe: In terms of a guideline, I am trying not to create too many guidelines and bureaucratic processes, but there will certainly be knowledge in each project with the local government. There will be a role built in for local government as a proponent about how things are monitored. It is all going to start with the conditions. To be honest, with some projects in the past the conditions have not been

very prescriptive. As you know from Red Hill, which I think you commented on in your report, they only had to provide an annual report. It is going to start with much stricter conditions that allow us to implement this and then the monitoring will be regular reporting from the proponent probably putting it on their website. We will have to get information out there on how the project is going. We will have to be open to taking complaints or reviews from people saying, 'We don't think that has been done properly.'

I take on board the suggestion that there should be a guideline. There will certainly have to be some definition of the process and we will look at the best way of articulating that—probably on our website. It may not be a guideline but at least 'this is the new state of play', because once the act is introduced, assuming it is, people will want to know that and what our role is. There will also potentially be cross-agency reference groups set up under the social impact assessment guideline to look at impacts across regions. That will also be an opportunity for not just us to be monitoring. We want it to be self-complying and self-monitoring by local government and individuals to the extent it can be as well.

Dr ROBINSON: I have a question to clarify aspects of retrospectivity. The QRC raised the issue of perceived retrospectivity and sovereign risk possibilities to the industry and used an example of a $200-plus million investment of one particular company into camps and other infrastructure. It raised some questions around that as an example and if there is some moving of the goal posts caused by the bill that there could be some risk or impact on our sovereign risk in Queensland. In what way does the bill protect the industry from sovereign risk?

Mr Broe: I was listening to the argument. I guess I would repeat what I said earlier. In terms of the accommodation camp they have built, we have not changed the approval conditions. The 100 per cent FIFO prohibitions do not apply to them because they have never really been through an approval. The new social impact assessment guideline does not apply to them. The only thing that applies to them is the new Anti-Discrimination Act provision which says that on those projects if they recruit for a new worker—a new recruitment—they must not discriminate against locals. It is not even telling them they have to employ a local. Assuming that all of a sudden the camp is empty and we cannot fill it, I think it would have to be borne out by evidence that we had to advertise locally. We are not forcing them to employ that person. It is just giving them equal opportunity. I think the facts and evidence would have to be put forward to demonstrate the case of why they think that investment is all of a sudden not maximised.

Ms LEAHY: I just want to get this clear. I have the Resources Council submission in front of me. Under part 2, section 8 it states—

> Prohibition on discrimination against residents in nearby regional communities in recruiting for large resource projects and limiting where workers live.

The QRC contends that the words 'after 30 June 2009' be amended to read 'from assent of this act'.

Mr Broe: Yes.

Ms LEAHY: Let me get this right: what you are telling us is that in relation to Daunia and Caval Ridge it will be from the act forward, not from 2009; is that right?

Mr Broe: June 2009 refers to when a project was approved. Daunia and Caval Ridge have had an EIS approved since June 2009. For any project that has had an EIS approved since June 2009, once the bill is assented the Anti-Discrimination Act provision will apply to them. What they want is only projects approved after the bill is passed to be subject to the Anti-Discrimination Act. Daunia and Caval Ridge have been approved since June 2009. Once the bill is passed, if it is, the Anti-Discrimination Act provision will apply to them. From the time of assent, if they then recruit for a new worker or put an ad in the paper saying they want to employ two operational workers to replace them on Daunia or Caval Ridge, they cannot discriminate against locals. They cannot advertise in a way that says, 'If you live at Dysart or Clermont, you can't apply.' That is what it is saying.

Ms LEAHY: How many other projects are there that have had an EIS approved since 2009?

Mr Broe: There are about 40.

Ms LEAHY: About 40 projects?

Mr Broe: Yes. There are about 15 coordinator projects and about 30 in EHP. The task I have is to go through each of those once the bill passes and work out which are the regional communities of interest and then notify proponents, notify local governments, allow people natural justice to put in a submission that, no, that town shouldn't apply. If Daunia and Caval Ridge did not have a nearby regional community, it would not be an issue but they do. That is the whole purpose of the act: that projects in the vicinity of large resource projects should benefit from them. That is why that

Anti-Discrimination Act provision is there. Someone who lives within that radius should have a fair chance to put in for a job. It is not saying they have to get it. The 100 per cent FIFO prohibition does not apply to them; just that Anti-Discrimination Act requirement.

Ms LEAHY: When talking about 40-odd projects going back to 2009, is that not barely retrospective?

Mr Broe: We earlier had a debate about whether it is retrospective. The new Anti-Discrimination Act provision would apply to them for future recruitment, not past recruitment. I do not want to debate whether or not that is retrospective. I am just pointing out the facts of what it means, because I think people assume as it applies to last projects it is retrospective. It is your interpretation of what that means.

Ms LEAHY: I think we are splitting hairs on the word 'retrospective'?

Mr Broe: It means that for future recruitment on projects that have had an EIS approved since June 2009, the new Anti-Discrimination Act provision would apply, if the bill passes.

Ms LEAHY: Can I put it to you like this? A company back in 2009 would have got their EIS approval, they would then have said, "Well, okay, if we need to raise more capital or whatever we need to do." They would have looked at those goal posts and said, "That is the goal posts that we actually have. That is what we go to the market with and if we want to raise more capital." Now this legislation says, "Well, no, hang on, you have to actually gain your workforce in a different way, you have to look at your workforce differently." Is that really not shifting the goalposts?

Mr Broe: I do not believe it is saying that they have to gain the workforce differently. It is simply saying that they cannot discriminate against locals who might apply. It is not even telling them they have to recruit them: it is just saying that they should give you a fair chance to apply. They should not be precluded from applying. If there is a job going, they should not be allowed to at least put in, that is all.

Ms LEAHY: Does it not open them, though, to a greater range of appeal, because in 2009 when they got their EIS they could recruit in the manner that they saw fit. Now they are being told, "Well, you must first of all do this recruitment and here is this other piece in the anti-discrimination legislation that could be appealed against." You have opened up the appeals to which they could be subject.

Mr Broe: I understand what you are saying, but it is about advertising, not the actual recruitment. It is about the fair opportunities. It may be a legal argument given proponents and QRC are saying there will be costs and it is retrospective. We are getting our own legal advice as to what extent it would be or would be interpreted as that.

Ms LEAHY: I would relate this back to public liability insurance. As you and I both know, as soon as the legislative profile with public liability insurance changes, therefore the ability to fund that insurance changes. Is this probably not a little bit similar to that?

Mr Broe: I am not a legal person and therefore would not want to comment. I am pointing out the facts of the magnitude of the issue we are talking about. Is it a massive issue that affects projects? I would question that, really. A lot of those projects already have their operational workforce in place. They may not be doing any new recruitment, but if they were recruiting new it is simply saying that a person from a nearby regional community, if there is one, should be allowed to bid for the job, that is all. If by chance they have chosen the best person for the job, it has to be better for the company. That just should not affect your sovereign risk or bottom line: it should be better for them.

Ms LEAHY: You referred earlier to a map where you have done some mapping, are you able to provide the committee with that map?

Mr Broe: We have mapped every project because we have to go through every project and map. If you want to see them, we are certainly willing to provide them.

Dr ROBINSON: Can we get that on notice, Mr Chair?

Mr Broe: I cannot guarantee that in the next couple of days, because we have done some of them but not all of them. When would you like them?

CHAIR: Whenever you are happy.

Mr Broe: Okay.

Dr ROBINSON: Yesterday!

Mr Broe: I can do a lot of things. I cannot go back in time.

Ms LEAHY: It gives the committee the bigger view of Queensland.

Mr Broe: They are very useful maps. They allow me to see that there are quite a few towns captured by these projects. The legislation is going to work pretty well but there are not too many, because then you are overregulating.

CHAIR: Will you as the Coordinator-General monitor Daunia and Caval Ridge to ensure that, whilst the advertising might be right, workers who apply still get a fair go, because I know who you are dealing with and they will be looking for any hole in the legislation to still do central Queensland over. I do not want your comment about them, but I would like to know that you as the Coordinator-General will ensure that people not abuse it?

Mr Broe: The ability and the power will be there for the Coordinator-General to do whatever monitoring is required. On face value, the principle would be to treat all projects the same and look at how we monitor all of them but also create the opportunity. Discrimination is a personal thing. If someone feels they have been discriminated against, it would be up to that individual to go to the anti-discrimination commission. They will probably make it public and it will probably come to me anyway somehow if there is a complaint or a suspicion, and I would be required to investigate it. It is not as if we would be sitting back in Brisbane while the world goes by. We will be expected to perform some role but not to the extent that we are monitoring every aspect of every proponent. It will have to be a balanced approach, I think.

CHAIR: I think you are straight enough person such that if there were a pattern developing you would act against that?

Mr Broe: Absolutely. There is an enhanced role for local government in all of this. They would be the eyes and ears on the ground as well as the local communities. Initially, it will be our job to communicate out there what this means. You have done a great job trying to get it going and listening to all the hearings, but it is a complex piece of legislation in its implementation. We must get the communications right, get it out there as best as possible and what it means. Then it will be out there in the market, people will know what it means, information will come back if people feel it is not working and we will act on it.

CHAIR: Thank you very much.

Mr Broe: We will come back with the maps and anything on cost implementation.

CHAIR: I declare the meeting closed.

Committee adjourned at 2.40 pm