# *INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE*

**Members present:**

Mr J Pearce MP (Chair)
Mr GJ Butcher MP
Mrs BL Lauga MP
Mr LL Millar MP
Mr PT Weir MP

**Staff present:**

Dr J Dewar (Research Director)
Ms M Westcott (Principal Research Officer)

# PUBLIC HEARING—EXAMINATION OF THE WATER LEGISLATION AMENDMENT BILL 2015

## TRANSCRIPT OF PROCEEDINGS

**MONDAY, 15 FEBRUARY 2016**

**Brisbane**

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**Committee met at 8.01 am**

## MURRAY, Mr Michael, General Manager, Operations, Cotton Australia

## JOHNSON, Mr Ian, Water and Energy Policy Advisor, Queensland Farmers' Federation

## WADE, Ms Ruth, Chief Executive Officer, Queensland Farmers' Federation

**CHAIR:** Good morning. I declare open the public hearing for the committee's examination of the Water Legislation Amendment Bill 2015. 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: Mr Glenn Butcher, the member for Gladstone; Mrs Brittany Lauga, the member for Keppel; Mr Shane Knuth, the member for Dalrymple, who will be here later; and Mr Lachlan Millar, the member for Gregory. Mr Pat Weir, the member for Condamine, is here in place of Mr Michael Hart, the member for Burleigh, who is unable to attend. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. I remind witnesses that intentionally misleading the committee is a serious offence. You have previously been provided with a copy of instructions to witnesses, so we will take those as read. Departmental officers should be guided by schedule 8 of the standing orders. I now welcome representatives from Cotton Australia and the Queensland Farmers' Federation. Would you like to make a very short opening statement?

**Ms Wade:** I will make a brief opening statement, but I will defer to my colleagues in terms of any technical detail. The Queensland Farmers' Federation provided a written submission. We are the peak body representing 15 of Queensland's rural industry organisations, predominantly in the intensive agricultural sector and therefore significantly dependent on our water resources and the safe management of our natural resources. We supported changes made to the Water Act in 2014, particularly those related to modernising the regulatory framework, streamlining information and communication, and other business processes for the Department of Natural Resources and Mines—though the Water Legislation Amendment Bill 2015 does not make changes to these important provisions of the act. There are some issues that we would like to address but we support generally the amendments to the act. I will defer to my colleagues but we are happy to take questions.

**CHAIR:** Thanks, Ruth. It is good to see you again. I have not seen you around for a long time. Does anyone else want to make a statement?

**Mr Murray:** No.

**CHAIR:** Can I start by getting an understanding of what you think of when we say 'take of water'? What would be your definition when you see in legislation 'take of water'?

**Mr Johnson:** That stems back from the beginning of the Water Act process in 2000 and also within the federal Water Act. The focus is on the take of water and the relationship of that take to flows in the river both for environmental needs and for consumptive needs. It is a quantity based simplification, and it was necessary because of the complexity of trying to deal with what you might call the wider natural resource management issues of catchments.

I have had that question put to me so many times. At the end of the day, it was much better taking that approach and getting those issues locked down in terms of entitlements, and in terms of pricing under the National Water Initiative, than trying to do a broad-based natural resource management approach. I am not saying that that is not necessary at some stage. The success of the implementation of the Water Act Australia-wide has been on the basis that it has been a quantity based approach but obviously looking towards what flows do for the environment as well as consumptive water.

**CHAIR:** Can you please explain if you have any concerns about the proposed legislation? Is there anything that really stands out that you are not happy about?

**Mr Johnson:** I think there are three main issues from our point of view in terms of the legislation itself. Clearly, we were not opposed to the bringing back of the sustainable development principles. We argued very strongly during the last legislation in 2014 that those principles were embedded in both the federal act and the Queensland act. I think we ensured in the 2014 process that many of those principles were reflected in the purpose statement, but these refinements in this billmake it quite clear that those principles apply.

The issue we have got, however, is to understand the nature of the act. The act is multipurpose. It is in respect of water planning, it is in respect of the millennium drought outcomes for South-East Queensland, it reflects the issue of managing CSG and mining development, and it deals with the operation of water authorities as a critical part of NWI. So it is very hard to ensure when you draft a purpose statement that you reflect those issues. We believe that the current way it is put forward in the 2015 amendment quite clearly covers the purposes in terms of the way it is defined. To try to drive every part of the act through one window of ESD principles—you can still have regard to them—really will work against the multipronged approach of the legislation. So we think the 2015 amendment has got it right. We do not want to tinker too much. We have always said to government that the framework works, do not muck around with it very much. If you need to refine it, you can make it simpler to implement, but basically you have a good bit of legislation so just make it work.

The second issue is obviously the water development option. We were not totally in favour of the water development option as it was put forward in 2014. We believe that the way it was put forward it could override a water plan. A proposal was put forward by the department in the lead-up to 2015 which allowed for a redefined water development option, which allowed for the fact that it needed to take account of a water plan. If there were some provisions that were not taken into account, then the water development option could only go ahead if the water plan was reviewed. A good case and example would be the Gulf Water Plan review. So we are coming back, we are saying the water development option has been taken off the table totally and that is not a good move. We understand that the federal government is coming forward with a number of proposals for dams. This would be an important provision in the Water Act to give a framework for that.

It is not only for the big developers. Part of our reason for the water development option is to make sure that when a large development goes ahead it does not cruel the opportunities for other use. So, for us, the water development option is important. We need to be aware also that the Water Act is seen still a little bit by all other sectors but the agricultural sector as 'Really, it is not for us,' and that is not the case. It is an act where, increasingly because of the tradability of water, it is important that we build that capability and build that understanding. We could have unlimited water resources, so miners, local government and other industries need to move with these planning provisions, and this water development option is a key one in that. We were concerned about the deregulation of watercourses. Clearly, we are not opposed to the move to take that out and we think that was a good move. We do think it is better to make it more transparent where these rivers are, so the planning for designation is a good thing.

Finally, the framework set up under Chapter 3 of the 2014 act, which is not being proposed to be amended this time, we went with that. That was a good approach. It brought mining and CSG under the water planning provisions. That is a key planning issue for us. Again, it fits with this model of water development. All those sorts of things need to be brought under a planning framework. Our concern with submissions I have been reading is that to put this licensing condition at the end of a quite rigorous water planning process, an EIS process—to make a project conditional right at the end of the process to a licence process—is not good regulation. We have already had the QCA review all the CSG regulation. I think that option is not a good option. Something has to be looked at because you cannot make a whole development subject to a licensing decision, which obviously might be a large amount of water for construction but only a very small amount for operation.

**CHAIR:** That was a good response, thank you. Being a country guy myself, I know that farmers have a bit of trouble understanding legislation and what it is all about. Do you think we could have a reaction from the farmers with regard to the changes to this legislation and how it is implemented?

**Mr Johnson:** I do not believe so. I think with 2014 we did do a lot of bedding down of that. We went bush with DNRM and explained what was being attempted. Farmers were saying, 'They're not changing the framework, are they? Is that the risk?' So with the issue of making it simpler and streamlining it and all of that in 2014, farmers basically to a degree expected these changes. I suppose I probably briefed them to the extent that there were going to be changes to this act with the new government. Clearly, the CSG mining issue is the contentious one, and there is a lot of debate out there which needs to be explained. That is the one I think you will find is difficult to understand,

coming off the back of such a long process of discussion about how CSG is handled under different colours of government. So that is the one I would find. I think the chapter 2 provisions would be quite well accepted.

**CHAIR:** Michael, did you want to add to that?

**Mr Murray:** I think likewise talking to the irrigators I do not think there is a lot of concern about either the act as it is or for these changes. Those people who are currently involved in the system understand it and are comfortable with these changes, so I think that is fine. I agree with Ian particularly about the water development option. I am not sure that the last version was right, but I think there needs to be something in place that recognises that with these large-scale developments there is a long lead time for them and there has to be some sort of security there.

I think that it should be very, very clear just what water is available to anyone within the Queensland framework so it is not just a special provision for large developments. Obviously, the water resource plans have various reserves, but it is not necessarily clear when and how they can be released and what sort of process is involved and timing on that. I think more work needs to be done in terms of making it clear what water is available for further development and what is the process for being able to access it.

**Mr Johnson:** In that context, if the committee decides that they do not want to go to a legislative option, I think what Michael is saying is we do need a lot of work on how DNRM bring unallocated water into the market—that transparency of what is available in plans where the science may not have been completed. So they believe they can go back. I think a lot of people think there is no more unallocated water. However, DNRM went back in the gulf and found more. That process needs to be improved so that the market—not just the rural market, but the wider market—understands what water is available.

**Mr MILLAR:** I turn back to the unallocated water. The issue is not only in the cape, but we have it in Central Queensland and certainly in Southern Queensland. What needs to be put in this legislation? What could be a trigger point to be able to identify the unallocated water and make it more of a streamlined process to identify it and to bring it to market? Does this legislation have any capacity to do that for you?

**Mr Johnson:** At this stage in the plans unallocated water is quite specifically defined. So in each of the plans in the catchments that have unallocated water it is explained and it does break unallocated water down to a strategic reserve and general reserve. What we found, however, and we have not understood is that where the science is getting better, there are options to add to that water. I know the GAB, the Great Artesian Basin, plan is under review now. In some catchments it is quite clear there is nothing more. I think there needs to be clarity about that—I do not believe in the legislation; I think the legislation has that in it now except for large developments. I think there is enough in there. It is more in terms of the process the department goes through to make sure that people understand unallocated water. I suppose what we get very concerned about is not just the unallocated water but how reliable that water could be—all those sorts of things so that the nature of development that goes ahead knows about that.

As I say, I think for major developments, if we are looking at things like the new dams, I think we need something in the act on the water development option. Flowing from that, it will mesh nicely with the unallocated provisions already in the act. The unallocated water gives a signal of water availability subject to further planning. The water development option would cater for the larger scale developments, which in some ways is not a bad way of dealing with water because with a better development you can get more reliable water, in other words, supplemented water.

**Mr MILLAR:** You said something. What is it? Does Queensland Farmers Federation or Cotton Australia have a way that we can implement something into the legislation so that—

**Mr Johnson:** I think the model that the department put forward on the water development option in the lead-up to the 2015 review was the option which made sure that the water development option could go ahead only if the plan allowed it or a review of a plan allowed it. That is the option I think. That was already drafted and ready to go and was pulled.

**Mr MILLAR:** It was pulled?

**Mr Johnson:** Yes, on the basis that the department could not get broad based support for it around the water engagement forum, and I can understand them at that stage. It is critical that you look at that. That would be my preference: bring the water development option back into the legislation. Then you have a basis on which you can move forward.

**Mr MILLAR:** Is there a reason it was taken from those forums?

**Mr Johnson:** I think just concern over water development. It has the words around it. I think it was the fact that there were questions about the earlier version of the water development option, that it could override the legislation. I think people were just coming to grips with that. I can understand why it was pulled back midyear. I think it is something that really needs to be put back into the act.

**Mr MILLAR:** What impact do you think it will have on future potential water development, whether it is in the cape or the Fitzroy Basin? I guess I am looking at it from the Fitzroy Basin point of view; that is where I get my understanding.

**Mr Murray:** There are two examples I suppose, and I am not sure what the answer is in terms of what impact. At the moment there is 11,000 megalitres in the general reserve for the Upper Dawson. I have been talking to some growers around Theodore and they say the definition of the Upper Dawson seems to be very vague and they would like to be able to access. I do not necessarily think that requires a change in legislation, but it is probably a conversation to be had with the department as to how that can be best communicated and worked through. Likewise—and it is too early to do anything about this at the moment while Nathan Dam is a live proposal—there is something like 90,000 megalitres in reserve for Nathan Dam. If a decision was made not to proceed with Nathan Dam—and it has only been talked about since 1926—what would be the process of making that water available downstream? Of course, there is a strong argument that the cost of on-farm infrastructure—the building of ring tanks—may well be a more efficient process than actually building a major headwater storage in terms of supplying agriculture. While Cotton Australia is certainly very supportive of the Nathan Dam proposal at this point—as a concept it shows a lot of promise—there also needs to be from now on a serious discussion about the various costs that would be involved, who is going to wear those costs and is it the most efficient way of proceeding? They are just two opportunities where there is water available. I am not too sure that you actually need to change the legislation for it, but I think you need to have the climate where that discussion can be held openly.

**Mr MILLAR:** Would it be fair to say there is frustration? We talk about 90,000 megalitres in reserve for the Upper Dawson. There are also overland flow issues in the Fitzroy Basin area. Do you think the potential for water development in these areas that have unallocated water is sort of very slow at the moment and can be frustrating?

**Ms Wade:** I think it is about confidence. If we are talking about investment, whether it is in major infrastructure or whether it is at an on-farm level, people need confidence. They need a rules based approach that everybody respects and that does not change. We are talking about 20-year investments for an on-farm process. It is about getting a policy framework, whether it is legislative and supported by regulation or whether it relies on the legislation only, so that people have confidence to proceed. That is why I think having the option in the legislation actually then provides that high-level framework. There will be conversations around that. It is about confidence. We hear a lot about that there is going to be all this development. In terms of water, we need the rules around water and future water to be set and not be driven by ad hoc developments all over the place.

**Mr Johnson:** In relation to the other example I have, which is the Downs where surface water is highly unreliable, some of the groundwater resources may be impacted by CSG. The Great Artesian Basin plan, as it presently stands, only identifies quantities of unallocated water in certain aquifers and they have not gone deeper yet. The whole of the Downs is dependent on finding high reliability water for the expansion of the chicken egg industry. That next review of the Great Artesian Basin plan needs to go deeper, needs to take the science deeper. The framework is still good; we just need that framework to be developed as it goes through. Clearly, those rule examples where better information on unallocated water as they proceed will aid the marketplace. If there is not the water there then they will have to look at alternative options. They may have to treat or they may have to go to CSG or alternative sources of water.

**Mr WEIR:** I noticed in amongst Cotton Australia's submission they were talking about relocations of water licences—they seem to be looking for a bit of clarity about that—or transferring surrendered licences.

**Mr Murray:** It is probably not so much where a change needs to be made, but the Queensland uptake of water trading has probably been a bit slower than other states. It is probably a timing thing more than anything else. There are opportunities to move water around and they should be encouraged and made as simple as possible. Just going back to some earlier comments, lately there has been a lot of focus on true northern development. While that has many benefits, I think we also need to make sure that where water is available—and I do not think anyone today really argues about the need to be ecologically sustainable—that still meets that requirement; there is a whole lot of

underutilised infrastructure that is out there that really should be utilised. Whether it is on the Downs or if you go out to St George or Dirranbandi with water taken out from the basin plan or up through Central Queensland, there is a whole lot of opportunity. Whether that is from new water or just making sure that the movement of water licences is as free as possible, there are opportunities to be taken.

**Mr Johnson:** I think the legislation in 2014 basically did a lot to simplify the processes of licensed dealing and trading and those issues. This change does not have any impact on that. In that sense, I agree with Michael that we have a way to go with trading, particularly on temporary markets and permanent markets. It will only come with time and confidence. I think the legislative framework is clearly there. Apart from people getting a better knowledge about what the prices of water are and what is available, I think it will move.

**Mr WEIR:** You made a comment before about different sources of water and you mentioned CSG water on the Downs. How does that fit into a development plan? It is only short term; we do not know the quantity of it.

**Mr Johnson:** The take of CSG water out of Walloon has a big impact on the egg industry because they take about 26 per cent of their water out of Walloon—they treat it obviously. That has to be replaced and that process is going on now: letting them replace that water prior to an impact. That is the nature of the impacts that occur. The planning framework allows that to happen—chapter 3 and chapter 2. That has been working very well and the major egg producers are basically able to go deeper. When they go deeper, they are protected. They are bores—the big, high cost bore that they put in. All of that process is well embedded in the Water Act. Sometimes you have to explain to other departments of government that it is there, but it is there.

**Mr Murray:** Just following on, from the cotton industry's point of view, the biggest risk from CSG development that is at least on the table would be the development of the Arrow area around Cecil Plains. They would be drawing water from below the Condamine alluvium. There is concern that there may be leakage out of the Condamine alluvium, which is a major source for agriculture. We thought that had been covered with the passing of the Regional Planning Interests Act in 2014 because there is a clause in there that recognised the Condamine alluvium as a significant resource and no net impact to the volumes of water would be allowed, which was very positive. Our only concern is—and it depends on how the Arrow development occurs—developments that had reached a certain stage of approval prior to the RPI coming in are exempt from requiring the RPI certificate. There seems to be some evidence to say that the Arrow development may be at that stage. That would be very concerning if that is the case. Just how that pans out probably depends on how closely Arrow sticks to what they applied for or whether they are making any further changes to their development.

**CHAIR:** What are your concerns, Michael, about that?

**Mr Murray:** The concern is that, by the very nature of CSG, you are taking water out of an aquifer, in this case the coal seam gas aquifers which are below the Condamine alluvium; you are changing pressures and certain degrees of connectivity between the various alluviums; and the concern is that there will be a net loss of water out of the Condamine alluvium flowing back into the lower aquifers—so taking away water that is already limited.

Bear in mind that irrigators have seen their access to water halved under the current planning process simply because of trying to meet sustainable yield requirements. They accept that, but they are saying that they do not need any additional pain on top of that caused by CSG. The modelling by Augier has certainly improved the confidence of growers over time, which suggests that on a yearly basis it may not be that great—it may be in the order of 1,000 or 2,000 megalitres—but that is out of a total allowed yield of about 43, so percentage-wise it still significant. The concern is that it may go on for at least 100 years so even if CSG stops in 30 years' time, the impact may take 100 years disappear. They are very keen to make sure that that water is really charged back into the Condamine alluvium probably as either treated CSG water or some sort of substitution arrangement one way or another. It is a major issue that we thought was covered by the RPI, but it may not necessarily be.

**CHAIR:** When you say 'treated' water, do you have confidence that that water is going to be okay to put back into the system?

**Mr Murray:** There is treated water already being used for irrigation, and to my knowledge there are no problems with it. It is a bit of a chemistry balancing act. I am not a technical expert in this area, but my understanding is that they clean it up basically to the same level that human dialysis is done and they have to put salts and minerals back in to get the balance right. But they seem to be able to do that.

**Mrs LAUGA:** In the Queensland Resources Council's submission they said that there has not been sufficient consultation on the timing, application and transitional arrangements of the reforms. Do you share the same view?

**Mr Johnson:** Yes, we do. The 2014 act wrapped up fairly quickly at the end, so we agree with QRC that we have not got into the detail of how the planning roles out in terms of extending the planning and transitioning the western subsurface catchments and bringing the Surat into it. We never got to the detail of that. You could argue that may have been in the subsequent regulatory phase, but it is really important to understand what QRC is saying. It can be complex, but that is the nature of those developments. To extend the planning it is important that we cover that complexity and then build the chapter 3 cumulative management behind it.

**CHAIR:** I find a lot of the time that landowners and graziers have difficulty understanding definitions and some of the wording that is used; for example, 'make good', 'associated water' and 'designated watercourse'. Do you think that we do enough work to make sure that it is easier for people on the land to understand those things? I think that can make a lot of difference because it is all about interpretation.

**Mr Johnson:** Yes, there is no doubt that it is a complex act for the average farmer out there unless it impacts them. Clearly a concern is what does 'make good' mean? In practice it is a difficult one. I suppose it comes back to the balance between the developer and the impacted person. AgForce has some key points to make on that which I think we support in terms of improving the make good process which was reviewed in the 2014 act. But you are right, it is a complex act and most of my time is spent in that place. Usually you will have a core group of farmers who have an understanding and then it moves from there. That is the important part of it.

**Ms Wade:** I think that is a real responsibility for us all. It is complex. We need to have a clear understanding of what it means, and all of the voices need to be able to speak to their communities about what it means because there is only ever going to be a very small percentage of people in any of the communities or stakeholder interests who really understand in detail. We all accept that we have a responsibility to try and help shepherd people through the process and to try to identify where there are real issues and work with government on that, but also try to make sure that, if we are confident that the legislation and the regulatory framework is satisfactory, then we work with our stakeholders to try and support them to understand that. We have a position in our organisation that is funded by government to do exactly that. It is an incredible resource that we have, and we take our responsibility to communicate much more widely than the community that engaged directly with it constructively.

**Mr Murray:** We could go out tomorrow and do a huge campaign and explain all of this and you would only have a small audience listening, but if you target it when, for example, a CSG development is proposed for a particular area then suddenly people are wanting to learn more and they need to understand. So the timing needs to be done well. The work that AgForce was doing—and may still be doing in terms of their seminars around CSG—were really good and very well attended in areas where it was an active issue, and the timing was very important.

**Mr WEIR:** On the definition of 'make good', I know you said that AgForce will speak more about that, but from area to area and aquifer to aquifer is there any rule of thumb as to what that water value is? And if you have a bore that is closed down or whatever—for example, it is awarded as part of compensation—can that be reallocated to another property?

**Mr Murray:** One of the important things that I always like to make sure that people understand is that 'make good' is about providing an alternative supply, and it is really important that people think of it like that. It is not about restoring the resource, and in this debate I am particularly focused on the Condamine alluvium. You could in theory have a 'make good' arrangement that supplied farmer Joe with X amount of water because they lost their access, but at the same time you could completely and utterly stuff that Condamine alluvium forever and the state will have lost that resource entirely. I think it is important that people understand that.

In terms of transferring allocations, that would be an interesting one. Within the GAB, yes, I would imagine that it could; if it is just a stock and domestic bore then no, because there is no allocation attached to it. To be honest, I am not 100 sure but I imagine you could with some of the licences in allocations. But my point about 'make good' is that it is very much about the two parties and it does not really address what is happening to the resource that is owned by the state.

**CHAIR:** Do you think there is enough accountable management in the way that the make good process is managed? I am asking that question from my own experience.

**Mr Murray:** I think the work that Augier has been doing has been really building people's confidence. The good stuff that we are seeing coming out from Augier is that it seems to also be matching the work from other bodies, some of them being the CSG industry and some of them independent universities. They are not all coming up with exactly the same answer, and you would probably be a bit concerned if they did, but they are coming up fairly close. It is always going to be difficult between the landholder and the other people involved determining whether the impact on that particular bore was caused solely by CSG activity in this case. It may well that the bore was ending its useful life as well, and those things need to be worked through. But I think the process is pretty good really.

**CHAIR:** Is there more confidence in the science of water resources than there was 10 or 15 years ago?

**Mr Murray:** Absolutely, but there are still arguments in surface water about science when you can physically see it and measure it on a gauge and whatever, so there is going to be less agreement and more uncertainty about groundwater by its very nature. But there has been a lot of work done—and not just by Augier—that is building people's confidence. I joined this position with Cotton Australia five years ago. I moved up from New South Wales and lived out at Toowoomba and engaged a lot with growers around CSG. Five years ago the majority of the people that I am involved with would have probably almost tied themselves to the bulldozer at the gate. They have shifted, and they have shifted not because they like the CSG industry: they have shifted because they have more confidence in the science and more confidence that their resource—in this case the Condamine alluvium that they rely on—will be protected.

**CHAIR:** Thank you very much. I now welcome the representatives from AgForce.

## MILLER, Dr Dale, Senior Policy Adviser, AgForce

## PHIPPS, Mr Daniel, Coal Seam Gas Project Leader, AgForce

**Dr Miller:** I would like to thank the chair and the committee for the opportunity to address you today. Unlike the QFF, who looks after the intensive industries, AgForce looks after the broadacre agricultural industries within the state: beef, sheep and wool and grain industries. We are really focused on trying to support the growth, competitiveness and profitability of those industries. A key part of that is obviously the reliable access to water that drives agricultural investment, production and income. It has become very clear with the drought over the last few years just how important water is to the overall system. Like the QFF we have supported a review of the Water Act through the last two phases, and we have welcomed the streamlining of regulation and making further water resources available for development in a sustainable way where this does not reduce the security and value of existing entitlements or increase environmental risks.

I will touch on the three elements of the bill. We do not have significant concerns with what is in the bill in terms of the three areas that are focused on around the re-introduction of ecologically sustainable development principles and replacing the term 'responsible and productive' with the term 'sustainable' in relation to water management. Environmental sustainability is a key principle in ensuring that water supplies are reliably available for the use of current and future generations. In our view, you cannot separate those two elements. So responsible use is also sustainable use, and sustainable use supports entitlement reliability and it is all part of finding the balance that we are all seeking to achieve with regard to planning and management of water resources.

In relation to the water development option, we certainly support sustainable growth in agriculture and we see those larger scale agricultural developments as a key plank in achieving that growth overall. While we are supportive of providing greater certainty of access to water for potential developers, we did have some concerns around the final structuring of the water development options in the previous WROLA act, and we outlined that in our submission. We can speak to that in a bit more detail. Like the previous speakers, we are also concerned that if you remove that element from the process it does take away from that key capacity to provide certainty of access to potential developers, and we think there is space to revisit that. We certainly encourage the committee to recommend to government that it look to develop more certain and predictable processes for the release of unallocated water, but done transparently and equitably for existing water users. I think that does involve a greater degree of scientific investigation into unallocated water reserves and what can be released sustainably and making those releases through that process rather than necessarily a separate regulated system.

In relation to the watercourse designations, we certainly support a risk proportionate reduction in regulation where that does not impact on other users and the environment. In relation to that, we think that would involve rules being made around appropriate triggers, involve community and water user consultation on a catchment-by-catchment basis and be combined with appropriate government oversight. There were concerns raised by our membership about what that might mean for users further downstream in the catchment, particularly where they are already pretty heavily allocated. We understood from departmental briefings that that deregulation was likely only to affect a relatively small number of catchments, so we do not necessarily see the foregone cost savings as being too significant.

**Mr Phipps:** Thank you, Dale. As the committee are aware, there was an amendment in the bill that provides the capacity for the chief executive to decide if an overlapping tenure or part of a tenure is part of a cumulative management area and in doing so must have regard to the underground water impacts as well as advice from the Office of Groundwater Impact Assessment, or OGIA, as well as the tenure holder and other entities that the chief executive considers appropriate. AgForce support this position and support using the existing expertise and advice contained within the Office of Groundwater Impact Assessment in making such determinations. We would also call for potentially affected bore owners and landholders to be consulted in such a process to ensure that all impacts are considered. As outlined in the AgForce submission provided earlier, there are two main considerations that we would be seeking to include as part of the bill: first of all as a key outcome would be, firstly, avoidance of impacts through the application of the precautionary principle and a risk management approach to the potentially irreversible negative impacts of extractive resources on landholders be considered; and, secondly, making sure that any unavoidable residual impacts are proactively managed and mitigated through an effective make-good strategy that is applied comprehensively and which would also include predevelopment of baseline assessments, impact records establishing obligations of both parties—government and landholders—as well as monitoring impacts and looking at the acceptable outcomes of make-good arrangements.

AgForce are also seeking further reforms to the make-good framework within chapter 3 of the Water Act to deliver greater confidence, certainty, security and reliability of the current agricultural water use, and these recommendations were provided in the AgForce submission. In making the impact management framework consistent, we also support the removal of the right of the petroleum and gas sector to take non-associated water, as well as the application of beneficial use policy that currently applies to the P&G sector to also apply to the mining sector to address evaporative losses and potential in-stream discharges of mine water as well. That concludes our opening statement. Thank you.

**CHAIR:** Thank you very much. You just talked about avoidance impacts. I just wanted you to go into a little bit more detail on that if you can and explain to the committee what it all means.

**Mr Phipps:** Yes. I guess what we would be looking for, consistent with what Cotton Australia and QFF were talking about, would be as part of the underground impact a water order assessment looking at what are the potential or predicted impacts or possible impacts before the development actually proceeds and making sure that those impacts are consistent with greater resource planning in Queensland—that is, making sure that there is not going to be an overall negative or net negative to existing water users such as landholders and does there reach a point where the negatives outweigh the positives before that project should proceed?

**CHAIR:** With regard to non-associated water, what is your interpretation?

**Mr Phipps:** My interpretation would be that that is water that resource sector industries use and is taken not as part of the operational process to extract the resource. For example, a CSG company sinking a bore to get water for watering a road for dust suppression or other uses in drilling processes, so water that is not actually taken as part of the process to dewater the well for example but water exclusively taken for the purpose of another use.

**CHAIR:** Would it come from another point or from the project itself?

**Mr Phipps:** I am not aware of that situation.

**Dr Miller:** It depends on the activity I think. CSG is a net producer of water, so they would source their local supplies. If you start to talk about shale, my understanding is it has a net requirement for water as an activity but then in terms of the associated activities that go with that. Under a licensing system or even a licence process where it is on a tenure-wide basis there is a potential there for local impacts on other water users because they might set up a camp, say, near somebody's waterhole that they are using for watering their livestock, so that could potentially set up a localised risk. So while it can be managed at a catchment level, I think there is still potential at a local level for some friction between existing users.

**CHAIR:** I agree. What is your overall view of the purpose of the act set out in clause 12 of the bill?

**Dr Miller:** I think Ian covered it reasonably well before. It is effectively looking at an understanding of the available water supplies that are there, ensuring that they are allocated equitably, efficiently and sustainably to deliver on both long-term environmental outcomes as well as the social, cultural and economic aspirations of the people in that region. I think key to water management is understanding the system, so it needs to be based on good quality scientific information to the greatest extent possible, and also understanding the value systems of the individuals in that area and what they see as important for the use and then it is up to government to make that balancing decision ultimately across time.

**CHAIR:** So is the intent of the bill much better now so that everybody is looked after and we do not have downstream water users being impacted on because somebody upstream has a bit of an attitude problem?

**Dr Miller:** Certainly the changes probably do represent a better balance than what we had previously. It is obviously challenging in making that balance. There is different emphasis that different policymakers will put on elements. We think the ecologically sustainable development issue really was captured in the previous purpose statement but maybe not as clearly. We probably do think that with the current statement there is a bit of duplication in there around consideration of the environmental aspects. Within the principles of ESD plus in some of the purpose statements there does tend to be some overlap, so that might be something the committee could look at. From our perspective, the risk is there that that provides a greater weighting towards the environmental considerations, which are agreeably very important, but may be away from some of the opportunities that there might be for sustainable development in the system as well.

**Mr MILLAR:** Just on the water development option, I notice in your submission you have some reservations about the water development options that are omitted by the bill. You also believe there are a number of concerns about the current drafting of the bill that require further consideration by the committee. What do you mean by that?

**Dr Miller:** I think that was in relation to that access process to unallocated water and making sure that there is certainty for potential investors. For example, we had a member up on the Leichhardt River who had made significant investments in preparing their property for an irrigation development but had to wait significant periods of time before there was actually a release of unallocated water within that system. So what we would like to see with the omission of a WDO is what a replacement mechanism might look like to provide people with some greater certainty so that, like Ruth said before, 20 years in advance when they are making these decisions they have an understanding that it is not necessarily at the whim of the government or a particularly obscure internal process and so that people do understand that where there is unallocated water reserves that can be taken sustainably there is also a very clear and transparent process that sits alongside that to make that available to individuals so that when they are making those investment decisions they have confidence that they can go ahead and do that.

There were concerns under the previous structuring of the water development option around smaller existing developments. There might be a number of smaller local irrigators and they are obviously concerned about how a large-scale project might come in, particularly with the WDO, and without appropriate consultation processes their views might be overlooked. There did seem to be more of an emphasis within the framework around mitigation of subsequent impacts rather than that pre-emptive avoidance of impacts in the first instance. I think there were just a number of elements around the structuring of the WDO that caused us concern, so we are not objecting to the removal of those but we would encourage the committee to look at an alternative process which does deliver environmental sustainability and transparency for the local users as well as appropriate consultation processes. There was reference that the EIS might be seen as an appropriate consultation process. Not that I have had much experience with those, but they are pretty heavy and complicated documents and if you are trying to tease out a particular part of that and then look at it from a water planning perspective we did not see that as a one-for-one replacement for a proper consultation process through the Water Act.

**Mr MILLAR:** So do you think with the water development option being omitted from the bill we will see a stall in large-scale developments?

**Dr Miller:** Maybe if there is an existing project that was looking for that sort of security, it might cause them some concern. But in terms more broadly, I think people are looking to operate in a way that the broader population in those areas are happy with and get that social licence to operate. If people have greater confidence by a water allocation or a lease process that is transparent, I think they will be better off in the long term but I do not see a broad stalling of development from the removal of the WDO.

**Mr MILLAR:** Just moving quickly to the Great Artesian Basin that covers Western Queensland, what impact will this bill have on the concerns with regard to the Great Artesian Basin? Does it give it more certainty? Does it give it less certainty?

**Dr Miller:** I guess it is a bit complicated at the moment in that there is a water resource plan review process currently happening for the Great Artesian Basin. With the current legislative agenda happening at the same time, it is a bit uncertain how that will all shake out. I think for our members in the Great Artesian Basin area the key thing for them is liability of access. Quite often they are dependent solely on artesian water for their water supply. We surveyed our members as part of a Western Rivers project about three years ago and I think the figures were about 92 per cent to 96 per cent of those surveyed rated water quality and quantity as the most important natural values and then second to that they all agree that there should be either prohibition or regulation on CSG developments and gas developments in those areas. So I think for those producers in those areas it is probably the elements that this bill does not address that are of greater interest to them. In terms of the greater consistency amongst the resource sector in terms of dealing with water impacts, how does that actually work in practice? I think from the perspective of the petroleum and gas sector, if they are looking at shale developments in those western areas or it is a net user of water, how are they going to access that water in a way that does not impact on those local producers? If there are impacts that cannot be avoided, how do they get addressed? We have done a paper on make good which we prepared towards the beginning of last year and, if we have your permission, we would like to table that for the committee's consideration.

**CHAIR:** The committee has agreed; thank you.

**Dr Miller:** It goes into much greater detail around the improvements to the make-good framework which we think would result in producers having greater confidence, but ultimately they want to see their water resources protected for future generations to use and not come under risk. Where there is some degree of impact that cannot be avoided, then we need to have confidence in the make-good process that those impacts can be managed effectively. At the moment there are a number of elements to that framework which we think need addressing, and that is outlined in that paper and we can talk to that if you like.

**Mr MILLAR:** I have one more question following on from that. Given that the water development option has been omitted from the bill, would that have an impact on that with the Great Artesian Basin giving certainty to not only the development but also the graziers? You mentioned before maybe it should be an EIS process. We need some rigorous process in place to make sure that it is transparent and everybody understands what is going on. Is that right?

**Dr Miller:** There is currently an unallocated water release process happening within the Great Artesian Basin, and I think they have taken a relatively conservative approach to the amount of water that has been released because of the fact that they are reviewing the plan and trying to come up with a better handle on available water supplies. I think there are elements within that which provide opportunity for people. The minimum price currently under the tender will present problems for smaller operators that are looking at developing drought proofing and forage production. I think it is currently $1,420 a megalitre from memory as the minimum base price. So to justify developing up forage production at that as a base cost will probably stretch some people too far given the current drought impacts.

**Mr MILLAR:** But the Great Artesian Basin allocation is more designed for watering stock, not so much for irrigation. Would that be right?

**Dr Miller:** They have included irrigation purposes within that. Not every area of the Great Artesian Basin is suitable for irrigation, and then there is also that interaction with the soil resources as well that need to be considered. So there are quite a number of elements that people had to consider in their tender process to make sure it was sustainable.

**Mr MILLAR:** But $1,400 a meg is a lot of dollars for an irrigation development.

**Dr Miller:** It was based, I understand, on the Surat releases a few years ago. I think there was some water release there which largely went to more intensive users so that they could obviously take that higher price and still make money out of it.

**Mr MILLAR:** Thank you.

**Mr BUTCHER:** I just have a quick question in relation to risk management. In your statement that you have provided you said that currently you believe that you want to the avoid impacts through the application of a precautionary principle and risk management approach. Is there any risk management currently done, particularly with underground water management?

**Dr Miller:** My understanding is that the make-good process involves a UWIR up-front, which models the potential impacts of developments. I think that there needs to be a greater emphasis on how companies go about accessing the resources. Obviously, there are limitations in terms of where the resource is. There is a certain amount of connection with the water resources themselves that is unavoidable. But it is more about understanding what the triggers are that the company will go through, having that clearly understood up-front before the development starts, having all the make-good agreements completed up-front before the development starts so that, as impacts progress over time, there are checkpoints to say, 'Is society prepared to accept this particular water impact for the benefits of accessing the gas or minerals benefits?' So it is that up-front certainty, really. It is that proactivity that primary producers are looking for. It is not about opposing developments of mining and gas operations; it is more about making sure that we have a clear pathway forward that we can manage and preferably avoid impacts before they occur.

**Mr BUTCHER:** So you are not happy with how that it is now currently? There is not a clear path for you now?

**Dr Miller:** Within the current framework of the Water Act I think the framework is there that can provide confidence. It is more about the balance within that in terms of timing of particular elements. For example, when people are going through that initial process of working through what the impacts will be—the make-good conversation, the baseline assessments et cetera—they all happen at the end of that preliminary period. We would rather see them front loaded so that primary producers have confidence that, as soon as there is a hole being dug in the ground, they know what is going to happen and that there are certain triggers that will give them the confidence that that will occur. We address that more in that make-good paper.

**Mr BUTCHER:** Thank you. Just to back that up, I understand that AgForce is a member of the Water Engagement Forum?

**Dr Miller:** That is right.

**Mr BUTCHER:** Have matters relating to the underground water management framework been discussed at any meetings that you have been to?

**Dr Miller:** Fairly consistently, I think, through the process. The actual element of the previous WROLA Act that got most discussion was around more consistency for the resource sector—so the removal of the statutory right to non-associated water for the gas sector as well as bringing the mining sector into the chapter 3 elements of the framework.

There has been some discussion around statutory rights for miners versus a licensing process. We do not have a formal policy position on what is best in that regard. Our focus is on trying to ensure that primary producers' water resources are protected as best they can. Like Ian from QFF indicated earlier, the licensing step, as far as water goes, is right at the end of the process. So it is hard to see how the government would enable or allow a proponent to spend millions of dollars to get to that point and then say, 'No, we are not going to provide you with a water licence.' We really need to take the water impact consideration and front load it at the beginning of the process so that that is happening earlier and, if it does look like there are unacceptable impacts, then we enable the proponent to manage their risks effectively in that regard. That is all I can say.

**Mr BUTCHER:** Thank you.

**Mr WEIR:** On that CSG water again, since the formation of OGIA, has that made a significant difference as to how a make-good is being evaluated and more of an understanding of what the take actually is?

**Mr Phipps:** Yes, I can probably add to that. Part of the project that we have been running for the past five years is running a series of workshops that engage with landholders and community members right across regional Queensland. It is funded in partnership with the Queensland government, APA, QRC and the GasFields Commission. The role that we play is to go into regional communities and advise landholders about the way the coal seam gas works and the mining sector works, their rights and responsibilities—right from the land-access process through to the groundwater modelling process and make-good framework—and how to develop an agreement right through to complaints and resolution.

Certainly, since the formation of OGIA, we have certainly seen a greater willingness by landholders to engage in the conversation about groundwater impacts. It certainly has helped to give people a starting point to better understand groundwater systems and how they work and to give greater certainty and confidence in the impacts that are being predicted through the model. But it is certainly a conversation that we need to continue. Like Ian and Dale said, groundwater is a system, or a conversation, that affects landholders daily but they are not necessarily intimately aware of how the system works or how it would work when CSG comes onto the scene. Part of the project that I had up is continuing that engagement with landholders to make sure that they are aware that there is a model, there is a system in place and this is how it affects them. That is greatly supported by the role that OGIA plays as well as the government. It is certainly a question that would be relevant to the mining sector—about developing cumulative management areas to look at the overlapping impact of multiple proponents and making sure that those overlapping impacts are looking at how that would impact individual landholders and then putting in place a very clear strategy about how unexpected impacts might be addressed or how unexpected impacts will be picked up and how that would affect landholders moving into the future. I think that comes back to what Dale was saying about front loading those technical studies and having a greater understanding of the groundwater impacts before the project starts to proceed.

**CHAIR:** Could you give us an example of some unexpected impacts?

**Mr Phipps:** Yes, certainly. When the first groundwater model was developed in 2012, there were, I think, 89 bores that were identified in the immediately affected area, which are bores that are likely to experience an impact within three years. Following the process of the frameworks, once a UWIR is declared, these immediately affected areas are identified and long-term affected areas are identified. The responsible companies are then required to start the consideration with the landholder whose bore has been identified as being impacted to then do a bore assessment and then to develop a subsequent make-good agreement.

Throughout that process there is also a complaints process that exists where landholders, if they believe that their bore is being impacted but their bore was not included in the original model, there is an ability for them to refer a complaint to the groundwater investigation team as part of the

CSG Compliance Unit. They then come out and do a groundwater investigation, or the company is directed to do a groundwater investigation. I think there have been about six or seven of those complaints that have been found to determine that a bore is being impacted or that a bore should have been included in the immediately affected area but, for various reasons, it was omitted. So through that subsequent investigation process that bore is then included into the next iteration of the model, which is expected sometime earlier this year.

**CHAIR:** Thank you. With regard to the resources sector, are you able to identify any real concerns that you consider can be addressed in a better way?

**Mr Phipps:** In response to the make-good process, I think there are some lessons that can be learned over the last five years and some improvements that can be made before we step into a process of copying and replicating the existing framework to the mining sector. Some of that would be around a greater involvement of the department in the make-good process. As we are currently aware, other than when a dispute is included in the process, there is not a lot of engagement or not a lot of work that the department does in that make-good process as well as also keeping a record of the final outcome of that make-good agreement. So if a landholder and a company agreed to make-good measures that include moving the bore from one aquifer to another aquifer, currently, we are not aware that that process is included or reported to the department and that that shifting of a bore is included into greater state resource plans or included in the next iteration of the underground water impact report.

One of the improvements that we would be seeking would be greater departmental involvement in the make-good process as well as providing greater assistance to landholders to seek independent hydrogeological advice as part of that process. Currently, landholders are allowed to seek legal, accounting and valuation advice through the make-good process but the ability for them to seek independent advice about the proposed make-good measure that the company is putting forward currently does not exist. So they do not have the ability to seek that independent advice to confirm the findings of a make-good agreement other than bearing that cost themselves.

**CHAIR:** With the make-good agreement, are you satisfied that stakeholders are moving quickly enough to address some of these concerns?

**Mr Phipps:** We would have liked to have had the current make-good agreement final numbers from the department. Hopefully, they can provide that when they present to you this morning. Since the model was declared in 2012, there were 89 bores that were included in the immediately affected area. Under chapter 3 of the Water Act there is a statutory period for those make-good agreements to be finalised, but the chief executive can extend that period where the landholder and the company cannot come to an agreement.

The last figures that I was aware of were in July last year, where there were still approximately 33 agreements yet to be finalised. That represents quite a significant delay from when the model was finalised to when the next model was due in December last year—almost three years for a number of agreements to be left outstanding. We are not aware of the intimate agreements of that agreement—whether it was the inability of the company to access the bore, or whether there was a roadblock with the negotiations with landholder—but we certainly think that it represents a risk for landholders for agreement negotiations to go for that long without a resolution, or without greater departmental involvement or government involvement to help facilitate the agreement to reach an end before any groundwater impacts start to materialise.

**Dr Miller:** We raised these issues with the department of environment in the middle of last year and also with the new government. The sense we got was that they were keen to bed down this current raft of reforms before looking at that next phase, but we would certainly be very supportive of going into make-good and chapter 3 and see how we can improve that. I think the other element is around that transition process that we talked about before in terms of what is in WROLA and the bill does not address that. But in relation to time frames for bringing the gas guys more into the licensing framework for the non-associated water—how that operates—we have a five-year time frame currently for the Surat. That is the most active area of development. So what proportion of non-associated water use would be left after that period? Understanding those transition processes are important for our members to have confidence in where the reforms are heading as well as overall consistency.

The petroleum and gas sectors operate under a beneficial use policy that the government has, which is really about providing water for make good—making sure that beneficial uses are prioritised through the process. However, we note that there is no suggestion that, although the minerals sector is coming into the framework, they are not looking at necessarily applying the same make-good

requirements to mining. Some of these mines are very large. They will have pretty significant final voids and ongoing evaporation of water that could potentially be used to support make-good elements and also manage mine water discharge risks and those sorts of things. I think it is an element that we have certainly raised previously through the Water Engagement Forum that we would like to see a bit more discussion around.

**CHAIR:** You would have heard earlier that I asked questions around definitions. What are your feelings with regard to a lot of the definitions? Do you think that they are fully understood by people out there on the land?

**Dr Miller:** I would reflect what Ian from QFF said. People really only have an understanding to the extent that it touches on their business and their family—

**CHAIR:** Until it touches them.

**Dr Miller:** Then they go through the process of understanding. I personally do not hear a huge number of problems from our members around the Water Act. We were pretty happy with how the previous Water Act was structured. Yes, there were improvements that could be made but, as long it is not impacting on members' businesses, they just leave that to continue. It is really only when problems arise that they get much more involved. Obviously, when you are talking about something like water, which is so closely and intrinsically related to their business and their family, people get very interested.

**CHAIR:** We may not have touched on anything else that was of concern to you guys with regard to the act. Is there anything that you want to point out to us?

**Dr Miller:** I think we have covered it pretty well. We would just encourage you to have a look through that additional make-good submission. I am happy to take more questions out of session.

**CHAIR:** Thank you very much. Thanks for your time.

## PARRATT, Mr Nigel, QCC proxy for Ministerial Water Engagement, Queensland Conservation

## POINTON, Ms Revel, Solicitor, Environmental Defenders Office

## SEELIG, Dr Tim, Queensland Campaigns Manager, the Wilderness Society

**CHAIR:** Opening statements?

**Dr Seelig:** Firstly, thank you very much for the opportunity to present to the committee here. I would like to acknowledge the traditional owners, the Jagera and Turrbal people, and pay respects to their elders past and present. The Wilderness Society is one of Australia's leading conservation groups and along with the Environmental Defenders Office and Queensland Conservation we have had a long history of engagement and practice in water and environmental policy and legislative development. We certainly paid a lot of attention to the development of WROLA, the Water Reform and Other Legislation Amendment Act, and the more recent development of the current bill.

The Water Act pre 2014 was far from perfect and was certainly ripe for more progressive policy review in our view, but it did represent and still represents an important mechanism for regulating water allocations and water resource management. WROLA represented a radical departure, in our view, for water regulation in Queensland. It removed ecological sustainable development principles from the Water Act, it provided for special treatment for certain irrigators and it provided new water rights for miners. The now Deputy Premier, the honourable Jackie Trad MP, said in 2014 when WROLA was still being debated in parliament 'in essence this is a shameful bill; it is an utter disgrace.' Even the development of WROLA itself was contentious. The then minister for Natural Resources, Andrew Cripps, established the water engagement forum for stakeholders but then instructed the Department of Natural Resources to not include conservation groups. So we were completely shut out of the legislative development process in 2013-14 despite having legitimate views and serious concerns to raise.

As we know, WROLA was passed but not fully commenced and since the last state election the new government has had an opportunity to scrap WROLA and start all over. We think that would have been a much better approach. For reasons beyond our comprehension, the minister and government has chosen to go through a much more convoluted process, amending amendments to the Water Act as well as creating amendments to the Water Act directly. It is our view that this has made matters more messy and more complicated than they should be.

On a positive side though, the last six months have been a much more constructive and engaging time for conservation groups. The new minister and the department should be congratulated for inviting conservation groups into the water engagement forum and the process and for listening and responding positively to many of our concerns. The water development options proposal that was in WROLA has gone and that was very much something we strongly supported, as was the removal of designated watercourses and, of course, putting the principle of ESD back into the Water Act, although only partially so, is an incredibly important point for us.

Ecologically sustainable development is only being applied to limited parts of the Water Act. We believe it should be applied to the whole legislation. It is both a philosophical issue and a practical debate. It is really a choice between applying principles like the precautionary principle or effectively throwing caution to the wind and hoping that things work out okay. The debate though is also about the practical responsibility of not letting development off the hook in terms of ensuring that all industrial and agricultural development, including mining, is forced to be truly ecologically sustainable and to accept that on occasions if a project cannot meet any benchmark of ecological sustainability perhaps it should not go ahead.

Fresh water is a precious and scarce resource. We cannot make any more of it. What fresh water exists on the planet today is the maximum amount of fresh water we will ever have. Seventy per cent of our planet is made up of water but 97.5 of that, of course, is in oceans. Just over two and a half per cent is fresh water and most of that is trapped in the polar regions and in glaciers, although climate change is impacting on that—not in a positive way. So we have little fresh water around. Of course we can continue to reduce the volume of fresh water by pollution or by removal of fresh water systems, but we do so at our peril given how critical water is not just for life itself but for social, economic and ecological wellbeing. We believe that water legislation should be setting the highest of standards and thresholds for the use of water, for the use of that scarce and precious resource.

Whilst we think the Water Legislation Amendment Bill is a step forward, it is not perfect and requires quite a bit of further work in our view around three particular key issues. Firstly, the more comprehensive application of ESD and the repositioning of that around ecological sustainability as a test for development. Secondly, around the issue of statutory rights for water for miners which Revel will run through in a minute and also the impacts on the Great Barrier Reef which Nigel will touch on after that. Thank you again for the opportunity. I am very happy to come back and answer any questions on our submission which hopefully you have had a chance to read. For now though I will hand over to Revel.

**Ms Pointon:** Good morning, Mr Chair and committee members. Thank you for the opportunity to present to you today and thank you to Tim for providing in his introduction a history of the water reform process to date. It is important, in our view, to remember the haste and little consultation that came about in terms of the beginnings of this water reform process that still have repercussions in what we are seeing in the proposed reforms today.

This morning I would like to impress upon the committee two key points. As Tim highlighted, very quickly, the principles of ESD have not been introduced to apply to the whole of the act. There is some confusion around this, I think, in the community. Only some parts of the act are actually relevant to ESD and we really see it as integral that ESD is applied to the whole of the act. The principles of ESD under water resource management legislation are always integral. We cannot pick and choose when we want them to relate to what our decision-making processes are. If our water legislation does not provide for key principles of ESD, such as ensuring that future generations actually have access to water and ensuring that actions which may have a significant impact on our water resources are not undertaken where the scientific uncertainty of this impact does not allow, what is the point of legislating at all if it does not actually provide for these things, especially with our precious water resources? We ask that the committee please recommend that the principles of ESD are applied to the whole of the act to ensure good decision-making.

Secondly, I would like to raise with the committee a very important issue around the statutory rights to associated water being provided to the mining industry under the WROLA as it is known. Associated water, I am sure you are all aware, is water that is necessary for the resource to be accessed. The water licence system as we know it is not perfect. It is far from perfect. It is definitely in need of improvement. We wouldn't doubt that for a second. However, the form and haste with which the WROLA Act intends to make those improvements is not accepted by the conservation movement nor even the resource industry. So WROLA proposes to move the mining industry into the petroleum and gas framework under chapter 3 of the Water Act. Currently a review is being undertaken of the Surat Basin where chapter 3 is applying at the moment and we understand there is also potentially going to be a whole review of the chapter 3 legislative framework undertaken by government in response to this. This review of the Surat Basin has not been finished yet but we understand that it will be finished shortly. There are serious concerns already, and I believe you might have heard from the farming industry this morning, as to how chapter 3 does not adequately protect landholder rights and does not adequately address environmental impacts as it stands today. We are aware that across government departments the EIS framework is being reviewed also so that underground water impacts are better dealt with earlier in the assessment process. These amendments are still being developed as well. It is important that these amendments are brought in prior to the mining industry moving into this chapter 3 framework and the results of all of these reviews of the chapter 3 framework as it currently is applying to the petroleum and gas industry are seen and processed to actually improve our water reform process rather than swiftly moving the mining industry into an uncertain framework.

There are numerous very large mining proponents that have already finished their EIS under the current framework as we know it and are waiting for the statutory right to be granted before they go ahead so that they do not require a licence as currently would be required. For example, one of these is the Alpha coalmine. In 2014 the Land Court actually recommended that the Alpha coalmine not go ahead unless it obtains water licences under the Water Act as we know it and those water licences are granted through application of the precautionary principle. This was due to uncertainties of the impacts to the groundwater basins around the mine site. To our knowledge this mine still has not applied for those water licences. They are just waiting out potentially the changes such that they don't actually have to get this water licence. Many of the Galilee Basin mines have similarly not applied yet to our knowledge. These mines, if they go ahead, will impact a reported amount of 1,770 gigalitres of water—that is 3.5 times Sydney Harbour. That is a lot of water. It is extremely difficult to impossible to ameliorate the impacts of mining on underground water basins. Our water resources are too precious to be slapdash with. We ask the committee to please recommend repeal of part 4 of

the WROLA which introduces the statutory rights to associated water for the mining industry or that the government suspends any further action on WROLA until the review of the Surat Basin Underground Water Impact Report and chapter 3 as a whole are completed.

If the Water Legislation Amendment Bill goes ahead as planned without any effect on the statutory right as proposed under WROLA, the transitional provisions must be added to the Water Legislation Amendment Bill so that those mining proponents that have already completed their EIS, so they are not getting the benefit of these enhanced EIS framework amendments that are currently being considered by the government to better consider groundwater impacts upfront earlier in the assessment, so that these mining proponents are captured under the water licence framework as it exists today, we are potentially putting conditions on them, applying chapter 3 water obligations as they are known so that we get the benefit of some of the changes that this movement to chapter 3 allows for while still getting the benefit of the water licence framework. Queenslanders, current and future, need strong water regulations to ensure that those impacts to our precious underground water basins are regulated in a clear and effective way to properly account for landholder rights and the impacts to ecosystems. Thank you for your time this morning and I look forward to answering any questions you might have.

**Mr Parratt:** QCC very much appreciates the opportunity to appear before you today and I also too acknowledge the traditional owners of the country that we are on. QCC very much welcomes the fulfilment of the government's election commitment through this bill to reintroduce ecologically sustainable development principles, remove water development options and also the provisions to designate watercourses, particularly in regard to the concerns that we have in regard to these issues very much significantly reducing the ability of the Water Act to sustainably manage the state's water resources.

The matter that I particularly want to raise with the committee today is in context to the Great Barrier Reef, particularly in regard to how the Water Act can support achieving the government's commitments under the Reef 2050 Long-Term Sustainability Plan. I am sure the committee is familiar with that document. Essentially what that document is is an agreement between the Queensland and Australian government to implement a series of both policy and on-ground actions that will ensure or that were designed to ensure that UNESCO will not put the Great Barrier Reef on the World Heritage endangered list. As you would be aware, that was a very live issue quite recently, particularly in context to the impact that putting the GBR on the World Heritage endangered list would have on our tourist industry which supports approximately 70,000 jobs and earns about $6 billion per year for the Queensland economy. We are particularly concerned that the Water Legislation Amendment Bill does not introduce what we consider are necessary measures into the Water Act to help achieve those commitments outlined by the Queensland government in the Reef 2050 Long-Term Sustainability Plan particularly in context, in regard to that, the majority of impacts to water quality in the GBR are caused through the application of fertilisers and agricultural chemicals in conjunction with water resources that are managed under the Water Act. So we see it as a very necessary point that the Water Act and other relevant pieces of legislation must contain mechanisms, instruments, provisions—whatever we want to call them—that support achieving those Reef 2050 Long-Term Sustainability Plan commitments.

In QCC's submission and WWF's submission we have highlighted a number of the key commitments that we think the Water Act should actually support achieving, so we would very much encourage the committee to fully consider that the Water Act needs to be amended and contain what we consider to be appropriate mechanisms.

For example, the Water Act used to have a number of mechanisms in it that would have assisted achieve these outcomes, the main one being land and water management plans. For whatever reason, the previous government removed the requirement for water users to develop and implement a land and water management plan when there was the risk of water quality and land degradation occurring as a result of using water for irrigation practices. Along with removing land and water management plan requirements from the act, the previous government also removed a number of other provisions that would have also helped achieve long-term sustainability planning commitments, the other primary one being riverine protection permits. Currently under the Water Act now, a landholder is not required to obtain a permit under the Water Act to destroy in-stream vegetation. That means that there is no provision in the Water Act to basically support maintenance of waterway ecological health.

I will leave it at that, committee. I am happy to answer any further questions. Once again, I urge you to consider how the Water Act can actually support achieving the government's Reef 2050 long-term sustainability commitments.

**CHAIR:** Thank you. Revel, you mentioned the Alpha mine and the impact on—how many megalitres of water?

**Ms Pointon:** That figure I quoted was a total of all of the Galilee mines proposed if they were to go ahead. Over their lifespan it was 1,770 gigalitres of water. That was not discretely for the Alfa, but the Alpha mine is included in that.

**CHAIR:** I thought it came across a little differently. Where do you get those figures from? How do you come to those conclusions?

**Ms Pointon:** Through the EIS material provided on each mine and the approximation of water that they have included in those. I personally did not do the calculation, I have to admit, but I understand it is provided through those figures.

**CHAIR:** I get worried sometimes about the accuracy of figures like that, because people hear those figures and they take it. That is why I thought I would check with you on that one. In your submissions you set out some amendments that you suggest should be made to the purpose of the Water Act. Could you briefly tell us what benefits you would expect to arise from the proposed amendments, if they were adopted?

**Ms Pointon:** There were various amendments put into our submission. Many of those amendments are actually just to reflect the purpose that is, at the moment, for chapter 2 of the Water Act, so that it is brought into the purpose of the whole act. Some elements of the purposes that exist for chapter 2 were not actually integrated into the proposed purpose of the act as the ESD was intended to apply, so some of the amendments were framed around that.

In terms of generally applying the principles of ESD to the whole of the act and the benefits we see might arise from that, each chapter essentially of the Water Act has decision-making processes involved in it at some level and the principles of ESD are designed to guide decision making, so that it holistically considers the impacts that might arise from a decision at any level, be it when determining how appropriate or adequate an impact statement is that has been provided to a decision maker or whether a water licence should be actually provided. By applying the principles of ESD throughout the act, we hope to see better decision making that properly considers the long-term impacts to the environment, society and our economy in a well-balanced manner, so generally better decision making around water regulation and water management.

**CHAIR:** You have no concerns regarding granting mine operators the statutory right to associated water? Before you answer that question in detail, could you give us your interpretation of 'associated water'?

**Ms Pointon:** Water actually necessary for use when you access the resource, so essentially for mining it is the dewatering of an aquifer so that they can actually access a resource.

**CHAIR:** What about your concerns with regard to mine operators and statutory right?

**Ms Pointon:** Essentially with the statutory right you are taking away a bit of a check and balance that we have at the moment through a water licensing framework. The water licensing framework at the moment, as I mentioned, is not perfect. It does not even apply to all mines, which is not great. We understand that there are definitely some benefits to the chapter 3 framework, but since we are going through this whole process of trying to improve our water management we really see that chapter 3 is definitely not adequate to look after landholder rights or ecosystems. The key issues we see are that through the water licensing framework we have this check and balance of at least public involvement in the assessment of impacts, especially around, say, the Galilee mines, as I was talking about, where they have already gone through the EIS process. So they have not the benefit of this improved EIS process that we are potentially apparently going to be getting across the board in government that they are looking into, but they would still need a water licence. The modelling that they provide on that water licence application would be open to submissions and then a decision would be made as to whether the water licence should be granted and there would be appeal rights for the community around that. Those appeal rights are to the Land Court. A final decision can be made and often it is just to ensure that the best conditions possible are available and placed on this mine. By the time they have a water licence application going through, it is highly likely that they have other approvals in place and the Land Court will not cause refusal of the whole mine at that stage. We are just getting better decisions out of it through an independent arbiter. Essentially, that is one of the key issues, just better decisions, whereas with the statutory rights in principle we do not know how well it is working in the petroleum and gas industry. As I was saying, we are still waiting on reviews of the Surat Basin underground water impact report, which is going to be coming out at any moment.

It is extremely advisable, in our opinion, that we just allow a bit more time and I believe all stakeholders are saying the same thing. We need a bit more time to really review: how well is this working for the petroleum and gas industry at the moment, and those assessments are underway; is it adequate or what kind of reforms are needed, and there are many suggestions as to good reforms that could be made to make the system really work. It is allowing for that space and then to figure out what is the best way to provide for good water resource management for the mining sector as well and also improvements, obviously, for the petroleum and gas industry, but allowing for those transitional provisions for the mines that already have undertaken their EIS.

**Dr Seelig:** To add to that, the current system is not great either. As Revel has pointed out, if you read through all the submissions there is no great sign of anyone particularly really embracing what has been proposed. I am sure Andrew Barger will explain the QRC's position, but I noted that even in their submission they did not fully embrace the statutory right to water proposal. We would say that the current system is not great and the proposal on the table is not great either. The government has until December at least to develop a much more comprehensive analysis and set of recommendations about this. Perhaps that is something that the committee can help with, by recommending that the government give this further consideration. It is not formally part of the bill at the moment, but it is within the scope of the committee, I would have thought, to suggest to government that it have another look at this and undertake a more comprehensive analysis and come up with a workable proposal that can kind of work as best as possible with everybody, but that guarantees that independent appeal process, which is probably our most fundamental concern.

**CHAIR:** Revel, I think you are the only witness to have used the word 'dewatering'. Just for information gathering, is that the same as associated water?

**Ms Pointon:** Associated water—exactly—would be the water that when you are dewatering a mine—I am not the best to explain this—the water that is dewatered from that mine in accessing the resource is associated water; that is correct. Was that clear?

**CHAIR:** Does anybody else have a comment on dewatering?

**Mr Parratt:** I would agree with that.

**Dr Seelig:** Dewatering is a process that involves associated water. It is not the definition of associated water, but it is certainly a key issue. Dewatering can be both a safety perspective for the mining sector but, from a conservation sector perspective, dewatering can be a euphemism for removing entire aquifer systems, for example. It is not a term that I particularly like. It has a specific meaning; it is not the same as associated water, though.

**Mr MILLAR:** This is just a general question in regard to this bill: do you or do you not believe in the opportunities, certainly with agricultural irrigation and also mining in some areas, for those developments to proceed to provide jobs for Queensland? Do you agree or disagree with the expansion of agricultural enterprises and mining enterprises?

**Dr Seelig:** Certainly the Wilderness Society is not opposed to mining per se and it is not opposed to agricultural development per se. We would say that, firstly, the mechanisms that new projects get up should be required to comply with ecologically sustainable development principles. We cannot see any reason why any industry or any sector of the economy should be exempt—

**Mr MILLAR:** I am not saying they should be exempt, but as a general—

**Dr Seelig:** No. I think if a project can pass the tests of ESD and the precautionary principle and so on, then in principle there is no major issue. Certainly the Wilderness Society has been part of water resource planning processes that implicitly supported the release of water and so on. Things such as the water development options, I think, are a slightly different issue, where that proposed to give exclusive water rights ahead of EIS processes going on connected to an existing project. We think that was both unfair, because it tied up water for other potential bidders, and it was also such an exclusive process that it was anti-competitive.

**Mr MILLAR:** What project was that?

**Dr Seelig:** No, I am saying the process of water development options. If you want an example of where this is playing out in practice then the IFED project in the gulf, the Integrated Food and Energy Development project, essentially has the same deal that it had under both the LNP government and the current government. That essentially gives an in-principle agreement that a large volume of water or its water allocation will be held back. In the case of the Gilbert River, no water has been released through the new water resource plan for the gulf because of that project. I think that is quite unfair on other irrigators, other water users and on the environment, as well, when you give that exclusive right to one particular player through a process that is not particularly transparent.

**Mr MILLAR:** This is just a general comment, but do you think you need some have sort of certainty around these projects to try to encourage investment, to get them off the ground? Is there any latitude in that? Does the Wilderness Society believe that you need to have some requirements around a project to be able to get the finances behind the project to get it off the ground?

**Dr Seelig:** I am sure, from an economic point of view, that may often be the case. I guess the flip side is, should government be backing projects that do not really have a strong business case, that do not have a lot of information about them and, in the case of IFED, for example, are seeking 555,000 megalitres of water from the Gilbert River, which we do not believe is sustainable? Should government be giving imprimatur to a project like that to then allow the project to go off and try to find involvement? Surely they should be doing their groundwork themselves and also going through a proper water allocation application process, either through the water licensing system or through some competitive tendering process?

**Mr MILLAR:** Revel, you were talking about the Alpha coalmine. You said there was no water allocations; am I correct in hearing that?

**Ms Pointon:** I simply said that I was not aware that they had applied for water licenses for their coalmine.

**Mr MILLAR:** My understanding is that they did actually secure water allocations from the Fairbairn Dam. Yes, there was no pipe, but there was an opportunity to try to get some allocations from the Fairbairn Dam. My understanding is that they are looking at the Burdekin Dam with a pipeline down there. Are you aware of that?

**Ms Pointon:** No, I am not.

**Mr MILLAR:** It is certainly not a criticism. It is just information that I have been able to pick up in regard to that.

**Mr BUTCHER:** You mentioned earlier that you have been involved with the government's water engagement forum. What is your view on the consultation that has taken place so far in relation to this bill?

**Mr Parratt:** Excellent, in a word, particularly compared to the previous government where, as Tim explained, the conservation sector was completely and utterly cut out of the process. Because we had no engagement or consultation with the proposed amendments to various pieces of legislation—the Water Act, in particular—the advice that we were giving to our members and the community about those proposed amendments to the Water Act were very, very sketchy. With the change of government, it is a completely different ball game for us. We are very much welcomed back in, as Tim mentioned. As I said, the process has been excellent. We have very good access to departmental people when we require in order to get clarification on certain things. So we are very happy with where things are at right now.

**Ms Pointon:** I echo Nigel's comments, but I also note that in some respects it is a shame that this process is not being used to step back from the WROLA Act as it exists to really try to improve water resource management in a way that all stakeholders will be happy with. We are seeing the same comments coming through in submissions on this bill—that things have moved too fast and we need a bit more time to improve water management. It would be great if this was coming through this consultation forum. But it has been excellent, especially in comparison to the previous government.

**Mr BUTCHER:** What was the feedback that you got from the department and ministers and the like about why they did not go back and start again but rather just put amendments into the act?

**Dr Seelig:** To be perfectly frank—I think the WROLA Act had passed but it had not commenced—from a simplicity point of view the department felt like it would be easier to run with bits of the legislation and tweak what was there. I am sure from an administrative point of view that made perfect sense to them because they were very familiar with the WROLA Act by then. The rest of us were still playing catch-up. As you heard from the earlier presenters, it is a complex piece of legislation in itself, and the current bill now amends part of that amendment act as well as the substantive act. Maybe the bureaucrats thought that was the easiest way and that was the advice they provided to the minister.

Our view and expectation was that the WROLA Act should be scrapped and that they should start all over again. Obviously that advice was not taken. I still think that in time there is a case for the government to do a much more comprehensive job. That said, one of the outcomes of being part of the water engagement forum is that we did raise serious concerns with the water development options, with the designated watercourse issue and with aspects of ESD. I think the government was excellent in not only listening but also responding. We have not had by any means all of the issues

that we raised agreed to. There are many outstanding issues. But the process has been a much more engaging and dynamic one. I think that in time we will need a new Water Act, and starting all over again would be a much better way of doing that than the way we have approached this one.

**CHAIR:** Tim, in your submission you mentioned that several conservation groups have written a joint letter to the Minister for Environment and the Minister for Natural Resources and Mines regarding part 4 of the WROLA Act. Can you tell us which groups signed the letter?

**Dr Seelig:** It was our three groups and I think it was maybe WWF as well.

**Mr Parratt:** I cannot remember.

**Dr Seelig:** I will have to take that on notice but I can confirm that later on this morning. Part 4 of the WROLA Act is essentially around the statutory rights to water and referencing chapters 2 and 3 of the Water Act. We have sent that letter. We have not had a response. It is something on my list to chase up.

**CHAIR:** Is there anything that is not covered in the act that you think should be thought of for the future in terms of amendments to the act with regard to water resource management? What is water resource management and how important is it to the state?

**Ms Pointon:** That is a big question.

**Mr Parratt:** It is critical to the state and particularly to future generations, particularly in the context of climate change and what that means to the availability of water that we can then utilise for consumptive purposes at points in the future. As you have been hearing from my colleagues, we consider water to be an absolutely precious resource, and we must do the best that we can to ensure that we manage it as sustainably as possible in consideration of equity for future generations and environmental values, particularly given that, as I mentioned earlier in my opening address, Queensland's environmental values are not only an incredible environmental asset but also an incredible economic asset, particularly the Great Barrier Reef.

The point of my referencing the Reef 2050 Long-Term Sustainability Plan is that that plan is designed to protect the reef and the jobs it supports and the money that it generates for the economy. Unless we have provisions in other supporting legislation to achieve those commitments, it is a worthless piece of paper. Once again, how water is managed in Great Barrier Reef catchments is critical to the health of the Great Barrier Reef. We need to make sure that the legislation that manages our surface and groundwater resources is up to the job essentially both in the short term and in the long term.

**CHAIR:** How should it be managed?

**Mr Parratt:** Sustainably in accordance with ecologically sustainable development principles. They are very, very clear. They are not onerous. ESD ensures that we are taking a precautionary approach to decision-making, which means that essentially we do not make decisions in the absence of good scientific understanding. It is largely based on ensuring that we do have a good understanding of the resource and how to manage it before we go ahead and allocate water and then, once we have realised there is a problem, try to fix it. The Murray-Darling Basin is a case in point of how we have managed the water resources in that part of the country badly, we have come to the realisation that we have managed it badly, and there are not only a whole range of environmental issues associated with how badly that water has been managed but, equally as important, there are a whole range of economic and social issues associated with that as well. Once again, it is critical that the state's water resources are managed in accordance with sustainability principles to ensure that we do have long-term opportunities for future generations for their prosperity as well as for our current generation.

**CHAIR:** Is the legislation that we have before us at the moment going to manage the water better than it has been managed in the past? I do know of situations where you are spot on with what you have just said about poor management.

**Mr Parratt:** Are you asking whether the amendments to the Water Act introduced through this bill are a step in the right direction?

**CHAIR:** Yes.

**Mr Parratt:** Yes. They do not go far enough.

**Dr Seelig:** That is right. They are a step forward in the sense that they take out some of the extremes of what the WROLA Act was going to provide. Essentially the WROLA Act was going to create a scenario where the Water Act was operating without any reference to the ESD, which we think is quite an extreme perspective. The outstanding issue, as Nigel has just outlined—and I think it is the heart of your question—how significant water resources are to the Queensland economy, to

our way of life, to our environment. They are critical in all of those respects. Water resources are a classic example of the triple bottom line. What we say though is that, whilst the economics and the social aspects are really important, the environment is really important too.

The way that this bill is structured is it brings back ESD but only to one part of the Water Act. Our core point would be that it should apply across the act. It is an anomaly to have any legislation but particularly one dealing with water resources that does not apply the principles of ESD across the whole of the act. That may raise some challenges for certain major projects which will struggle to be truly ecologically sustainable. But let's have that debate rather than say, 'We will shut our eyes and pretend that ESD does not really matter when it comes to mining or when it comes to large-scale irrigation perhaps.'

**CHAIR:** You heard me ask the question earlier with regard to definitions. Do you feel the same about 'make good'? Does everybody understand what 'make good', 'associated water', 'designated watercourse' mean?

**Dr Seelig:** That was one area where the water engagement forum was really good. It allowed us all to have a good discussion about what these terms mean practically and how they intended to be applied. 'Make good' is an interesting concept really. To some people it is to fix up damage that is done. To some people it is more like an offsetting process where you cannot make good. That is our concern. If you are digging up an aquifer, for example, through a major open-cut coalmine, you cannot make good the loss of that aquifer. Perhaps there is some offsetting process that the mining sector could look at, but our preferred position would be to say, 'If you are going to cause that much environmental damage, maybe there should be a question mark over that project going ahead.'

**CHAIR:** Do you have confidence around the science with regard to water resources?

**Dr Seelig:** I think, as someone else earlier said, it is getting better all the time. Certainly CSIRO have been a really important resource as well as the government's own water scientists. I still think there are questions over connectivity and so on underground that we are still really scratching our heads about. I think the science is getting a lot better and our understanding of how much water is available and how much water is required for environmental flow as well as for use is getting better all the time.

**Ms Pointon:** I would agree with Tim. However, there are still a lot of uncertainties, especially around underground interconnectivity between aquifers. That has been highlighted through our work with, for instance, the mines in the Galilee Basin which we have been working on. So we have a lot of understanding in our office of the uncertainties in the modelling provided by the proponents which is constantly shifting because of developments in science. But I think it is a really good example of why it is necessary to undertake as much impact analysis and have as many checks and balances as possible on approvals and licences around these large-scale groundwater impacting proposals prior to the activities being undertaken. The statutory right, for instance, does not adequately provide for that. Also, adaptive management in itself is quite a risky approach. We would love to see more checks and balances. At least, as we were saying, the outcomes of the review of the Surat Basin and how that has been managed over the last few years under the chapter 3 framework should be exposed and questioned and looked into and all of the improvements that can be made to chapter 3 be made before the mining industry is put under that framework as well.

**Mr Parratt:** I want to add a little more about the make good provisions. Tim touched on it. Essentially what they do currently under chapter 3 is make good the economic impact a property owner experiences through their bore being impacted. It does not attempt to make good the actual physical damage that has occurred to the aquifer. You can attempt through negotiations to make good the economic impact that a property owner experiences, but how do you make good an impact to a spring or a groundwater dependent ecosystem that has been affected through that mining or coal seam gas activity? The answer is you cannot. This is where the adaptive management framework has been brought in to a CSG company, and if mining comes across they will also have to comply with this requirement. They have to do some impact assessment on what the likely effect to a spring complex in their production area might be and bring in some management frameworks that try to avoid that impact. But the problem there is that you cannot detect the impact until it occurs—which is a drop in either pressure or level of that aquifer that feeds that spring or groundwater dependent ecosystem. The impact has already occurred. So how do you then go about fixing that? Once again, the answer is nobody knows and in all reality it is probably impossible.

There are some major flaws with the environmental side of the question in regard to make good. It is not at all covered or mentioned in chapter 3 of the Water Act currently. As I said, where it gets picked up is that proponents are required to do a spring impact management strategy. How do

we know that they are going to work? We do not. Once again, if ESD was applied to that part of the Water Act, we would have to be taking a more precautionary approach to those sorts of activities to ensure that, firstly, we have a better understanding of what those impacts are likely to be but, more importantly, how we avoid those impacts in the first place.

**CHAIR:** Thank you very much.

**Proceedings suspended from 9.59 am to 10.15 am**

**BARGER, Mr Andrew, Director, Economic and Infrastructure Policy, Queensland Resources Council**

**MIFFLIN, Mr Andrew, Executive General Manager, Development Projects, GVK Hancock Coal**

**TAYLOR, Mr Paul, Executive General Manager, Infrastructure and Approvals, GVK Hancock Coal**

**CHAIR:** Good morning. I welcome the representatives from Queensland Resources Council and GVK Hancock Coal. Mr Barger, do you have an opening statement?

**Mr Barger:** I would like to thank the committee for the opportunity to appear today. Like previous witnesses appearing before me, I acknowledge the traditional owners on whose country we meet today. I echo some of the statements you heard earlier about two really important things. First, QRC supported the review of the Water Act. It is a really important piece of legislation. It does a really difficult job. It is something that is of intrinsic value to the Queensland economy. The bill is now getting fairly long in the tooth—15 to 16 years old—so clearly it is a good time to open the hood and see if we can improve it. The other thing to acknowledge is what you have heard today consistently: the bill that we are discussing today is incredibly complicated. It not only amends a previous bill but also reaches back to primary legislation. It is fairly eye watering to read, and I do not envy the committee at all in trying to get across that complexity.

Another thing that we would like to acknowledge is the politics, history and differing motivations of the stakeholders who have made submissions on the bill and who appear before you today. It is complex, it is emotive, it has had a chequered history, but it is fundamentally really important. It is something we need to get right. It underpins Queensland's regional economies, but it is something which a range of stakeholders feel very strongly about.

Looking through the submissions you have received, you get a very clear sense of that. There is some very emotional language that talks about 'open slather' and granting industry rights to take as much water as they like. The reality is quite different. It is a bit more complicated than that. That is not the intention of the legislation. Unfortunately, I think some of that politicking and campaigning around water has clouded the issue. It has made it difficult to have a constructive conversation around some of the things that have been discussed in the two phases of the bill. The water development option was a case in point where there does seem to be a need for some sort of mechanism to give certainty, but it got very difficult to bring a proposal forward as part of this bill.

The other thing about this bill is that both it and the bill it amends are very wide ranging. It is a classic omnibus bill. It goes to a lot of change. A lot of those changes are essentially streamlining. They are administrative. They are about tidying up things that could be done more efficiently. In the QRC submission, the first five recommendations essentially echo what you heard from some of the agricultural stakeholders about fairly simple, straightforward administrative changes that make the water process run more smoothly but that we support. The point that we called out specifically was the change to the way the framework would work for the resource industry. It is important to acknowledge there is a hybrid process that has been proposed in both this and the WROLA Act. There are important changes to the way the coal seam gas industry would access water and changes to the way the mining industry would access water.

Consistently our view has been that we understand the principle of a single framework for resources. AgForce have talked with us about that proposal before taking it to government. As a principle, it makes a heap of sense. As a system applying for new proposals moving forward, it is much cleaner for the landholders and we think it is a good idea. The messy reality is what you do with the existing operations. How do you transition them to a sensible process? Like farmers looking for certainty around their investment in a ring tank, a resource operation looking to invest in a well or a compression station or a mine load-out infrastructure, similarly they have certainty around how their operations are going to be affected by the new regulations.

I have always had a fairly cautious approach to the Water Act—incremental change rather than revolutionary change. As you heard Ian Johnson from QFF say this morning, it is mostly not broken. It mostly does a pretty good job of a difficult task fairly well. Over the years of running catchment based water planning, stakeholders have got a pretty good handle on how the Water Act works. No-one is saying it is perfect, but there is a lot of sunk time and investment in understanding how it works, and for the most part it provides certainty for projects to take those investments.

The other point that I wanted to make follows on from some of the other statements. I heard a lot of discussion about ecologically sustainable development and how that might work in the framework of the bill. Like AgForce and QFF, QRC struggled to see why we needed to take those principles or modify the wording of those principles in the first phase of the bill. I think the way they have been put back into the bill now makes sense, although echoes some of the concerns that AgForce had about the way various issues have been spelt out in the purpose which perhaps are duplicative.

I think the point that Tim from the Wilderness Society made around triple bottom line is an excellent one. ESD is not about capital 'E', lower case 's', lower case 'd'. It is balancing the three ends of the triangle. It is about society, it is about economy and it is about ecology. It is always difficult to balance that. Everyone will always have a different view about how well it should be balanced, but those principles set out a framework for judging objectively how close you are getting. I always get a bit cautious when people start talking about one part of it being more important than the other. I think what is presented in the bill at the moment matches other important pieces of legislation such as the Environmental Protection Act and the EPBC Act at the Commonwealth level. I think we have struck the balance about right at the moment with how ESD has been expressed in the bill and the way that is given effect in the bill. We think those sections are an improvement and have been drafted well.

The only other point I would make is that, in questions to the Farmers Federation this morning about the role of educating the community about the complexity of water planning, QFF called out the role that Ian has done as a government funded position to help enhance the ability of the whole agricultural sector to engage with water planning. I think it is also important to acknowledge that in the past the Conservation Council has had a similar position and enabled the conservation sector to engage in a much more constructive and detailed way. Unfortunately, one of the decisions made by the previous government was to defund the Conservation Council's position, and I think that has led to a bit of a lack of capability—that is a bit harsh. It has made it difficult for those groups to engage constructively because they have always got sitting on their shoulder the importance of campaigning, raising members and bringing in funds. It makes it very difficult for them to play the role that I think QFF has been able to consistently do, which is more that public good role of engaging not just with the sector but also the community more broadly.

Reflecting on the committee's questions about what role do groups have in educating the community about water planning, giving them some of that certainty, I think that balance—the symmetry of the funding—has been really important in the past and that was a missed opportunity where we saw the scales tip the wrong way. I wind up my comments there.

**Mr Taylor:** GVK Hancock has committed over $2 billion towards our coal projects in the Galilee Basin. This basin has world-class coal resources that will help bring many millions of people out of poverty. Our coal projects will generate thousands of jobs and over $40 billion in economic benefits, but we are dealing with objections from anticoal activists who want to disrupt the coal industry. Our submission on the Water Legislation Amendment Bill is from the perspective of those dealings.

I have a few comments about our coal projects to give context to our submission. We have spent millions of dollars on approvals from state and federal governments for our projects. Mining leases are yet to be granted. The company has been dealing with objections from anticoal activists since 2013. I am not talking about landowners. Objections against Alpha coalmine have been to the Land Court and two judicial reviews in the Supreme Court. All objections have been dismissed. Objections against Alpha coalmine—

**CHAIR:** Mr Taylor, can we hear more about the bill?

**Mr Taylor:** Yes, we are getting there.

**CHAIR:** That is good.

**Mr Taylor:** Objections against Kevin's Corner coalmine have been to the Land Court as well. Why AM I saying that? I have a few comments about the Water Legislation Amendment Bill specifically. We are concerned that some aspects of the bill will create opportunity for some parties to raise objections and attempt to disrupt our projects and the wider coal industry. Our specific concern is with the term 'ecologically sustainable development'. We believe the term in the manner set out in the bill is insufficiently precise. The term is drafted into the purpose of the act. The application of that term to real world issues will be problematic. An objector can use it to claim a coalmine water licence does not meet the purpose of the act. In such a scenario, the term 'ecologically sustainable development' is ripe for dispute. This contrasts with section 59 of the WROLAA where the purpose of the act was stated in a manner that was largely free of ambiguity.

We must obtain water licences under chapter 2 of the Water Act so we can divert several watercourses around the footprint of the Alpha coalmine and the Kevin's Corner coalmine. We have proven in the cases so far that surface water resources will not be adversely affected, but the Water Act gives opportunity to appeal those chapter 2 water licence applications again. We are concerned our projects will be further delayed by a small number of activists who will use the regulatory system to delay and disrupt, despite the overwhelming evidence so far tested through the courts supporting our projects. My key message here for the committee is that legislative changes—the case I have made today, hopefully—should bring clarity to the industry and not the other way around.

**CHAIR:** Andrew, did you have any contribution to make?

**Mr Mifflin:** No.

**CHAIR:** My first question is to you, Paul. What is your view about miners' statutory right to take associated water?

**Mr Taylor:** In the case of the Alpha coalmine—and my colleague Andrew can talk about Kevin's Corner coalmine—it is an open-cut coalmine. We need to dewater in advance of the coalmine to provide for safe mining. The process of groundwater impacts has been heavily governed by the State Development and Public Works Organisation Act, by the Environmental Protection Act and by the federal EPBC Act. We have to go through rigorous processes—through those three pieces of legislation—to get to a point where we have a Coordinator-General's recommendation to proceed before we can get an environmental authority for the mine and a mining lease, and approval from the federal minister. We have done all of those things. The evidence that we have put together to discuss impacts and mitigations thereof have gone through rigorous processes already. In the case of the Alpha coalmine, that has been tested in the courts and has been upheld. Our process going forward is to make an application for a water licence for dewatering, and that would be under statutory rights in chapter 3 as written in the act.

**CHAIR:** I understand you go through all the proper processes and there are plenty of times that they support what you intend to do, but I am interested in this point that you have to dewater in advance of the development of the mine and that would be on the lease. What studies have you done with regard to the potential impact on water outside the lease?

**Mr Taylor:** That is a good question. In all of the studies that I have mentioned, under the terms of reference there is a need to assess all impacts, including likely impacts. That includes things like being cognisant of the need for addressing the precautionary principle. What was said earlier is not true. The precautionary principle does not require full scientific assessment. The precautionary principle requires that the evidence that has been assessed deals with the uncertainties so that the regulators can make approvals with conditions. That is the case that happened here. In the case of the Alpha coalmine and also the Kevin's Corner coalmine, we did over several years a lot of groundwater monitoring both in water level and water pressure to build up a comprehensive groundwater model to assess the likely impacts inside the mining lease and outside the mining lease as a result of the dewatering. In doing that, we used the precautionary principle—meaning that we assumed the worst-case scenario in terms of impacts—and that is how the industry normally deals with that. For the regulator—be it the Coordinator-General or the minister who grants the mining lease—the process of assessment about what those impacts are has been thoroughly tested already.

**CHAIR:** In your opening comments around economic sustainability I think it was, you made the point that the way it is at the moment would provide opportunities for objectors to raise objections to what you are doing. Could you give us an example of what you mean?

**Mr Taylor:** Yes, I can. First of all, my comments relate to chapter 2 of the Water Act—just chapter 2. In chapter 2, we have to apply for water licences to impact surface water resources. So the as of right statutory rights to remove groundwater is chapter 3; I am only talking chapter 2 here.

In chapter 2, we make an application for a water licence and it goes through the processes as you would expect it to. Under chapter 2, the appeal rights are still in place against a water licence. I guess the point I make is what we have seen so far in the objections that have been made is that where there are provisions in the act that are high level and have a stated purpose, but are stated in general terms, there are attempts to use those to overturn the findings at the detail level, and that is what we find. For example, in the Environmental Protection Act, there have always been principles of ESD. In the EPBC Act, there have always been principles of ESD. There is no issue with any of that. There is no issue with the principles of environmental and ecologically sustainable development. It is the application of how they are used in an assessment—that is the point I am trying to make here.

In chapter 2 of the act, it is possible that if you wanted to cause delay and disruption you could use those provisions to object against the granting of a water licence, and that is our concern. So what we are trying to bring before you today is that it is possible that some parties can use those ESD principles as set out in the Water Act in a way that they were perhaps not intended to be used.

**CHAIR:** So what do you suggest we do with those principles?

**Mr Taylor:** We felt the way that WROLA had redrafted the purpose of the act was appropriate. When you look at the way that was drafted, the principles are largely the same but it was worded in a way to be quite precise as to how to apply that into water resource management. That is the essential difference—ESD as almost like an aspirational statement, whereas what was drafted before was more precise and could be measured and managed, and importantly a decision-maker, the chief executive under the Water Act, has got clear boundaries to make a decision. That is less so now.

**CHAIR:** We have a follow-up question.

**Mrs LAUGA:** Yes, this is to do with ESD. The witnesses this morning have all supported the principle of ESD being integrated into the purpose. Some other witnesses have wanted that to go further throughout the body of the bill. The principle of ESD is the effective integration of economic, environmental, social and equity considerations in effective decision-making. Is that something you do not agree with?

**Mr Taylor:** Not at all. We agree with the principles absolutely. The point I am really making is the application—so from a process point of view, how do you apply those? That is really the point we are making. Here is the point. Most of the legislation in Australia deals with impact assessment. If we want to put a coalmine over there, we have to assess the impacts upon the environment. All of the frameworks in Australia are constructed in that way.

What we have seen in the Alpha coalmine in the Land Court and the Supreme Court is that the objectors are trying to raise the point that we have to demonstrate net benefit against our mining development. That has been found to be completely unfounded, completely wrong. The legislation in Australia—this is state and national—is designed for projects to assess impacts. Therefore, if you have an impact, what are you going to do about it? How do you manage it, how do you mitigate it, how do you offset it? That is the structure at a state and Commonwealth level. We have been through that—we spent years doing that—but that is what it is.

**Mrs LAUGA:** But the impact assessment is to inform the decision-making, and the decision-making is proposed to be on the basis of the principle of ecologically sustainable development, which incorporates economic, social, environmental and equity.

**Mr Taylor:** The question is how that is applied for a decision-maker and how it is tested. I guess we will find out, won't we. How it is tested and how it is applied—that is our issue.

**Mr Mifflin:** If I could just give an example. In the Kevin's Corner case, the National Strategy for Ecologically Sustainable Development was upheld as being the overriding document that should be used to consider MNES in regard to the ecological surveys that were done on Kevin's Corner. That is still to be opinioned on by the member there, but it was really used as being the overarching thing that should be considered in those things. If the same thing were to occur for a legislator or a decision-maker looking at a water licence, then very clearly his decision could be judicially reviewed. We are not talking about ultimately the thing being right or wrong; it is a delay tactic that has been used and has been used very effectively to delay what we consider to be projects that have gone through thorough, very expensive and scientifically at the top end of their process testing to give as much information as possible at that time to allow the decision-makers to come up with a balanced decision at the end of the day.

**Mr Barger:** Can I add to that answer. The other thing that is important in answering your question is that you heard QFF talk this morning about the bill being very broad and that it speaks to a lot of other bits of regulatory decisions. The way the ESD principles have been crafted in the bill currently is they sit very clearly over the water allocation purposes. That is something that all stakeholders support because it goes to the fundamental certainty—that existing water right holders want to have some certainty that decisions taken later are not going to erode those rights.

One of the risks that QFF was talking about was that, if you escalate those ESD principles so that any decision taken under the act has to pay heed to advancing the purpose of the act, suddenly every decision made in the act has to be examined under that microscope of ESD. So you might have a river improvement trust making a decision about buying a photocopier. Has that been considered by ESD? That is not the way the bill is supposed to be constructed. It is supposed to be saying, if I am sitting on a supplemented system or a river system, I am confident that my allocation is secure

because I have been through that process of knowing environmental flows have been considered, I know that flow objectives have been considered and I know that the water that is left available for consumptive use, my share of that, will be there when I need it.

That is how I see the ESD principles being applied—it is that practical process of water allocation. I think it is misconstruing the application of the principles to say, 'No, let's put them up in headlights. Every decision made under the entire act needs to be reconsidered again.' I think what Paul is saying is that then creates an opportunity for appeals. This philosophy that you can somehow litigate yourself to a better decision by running things through the court is terrific if you are a lawyer, but for people in the real world who want to see their projects go ahead, who want to invest in irrigation, agriculture or whatever those activities that the water underpins, that is a very threatening proposition.

So stakeholders support ESD when they see them being applied in practice because they see that balancing happening when they are sitting around the table doing the water planning processes. If you start talking about, 'Do we have to recontest that decision every single time a decision is made?' then that is a very different, litigious, US style system and it is quite different to the way water planning has evolved in Queensland. I am trying to draw a distinction there between the support that you are hearing from most of the stakeholders around the application of ESD based on how they have been historically applied versus a more hypothetical application in the future if you put the ESD principles up there as the singular purpose of the act.

**Mr MILLAR:** Chair, if it is okay, I have probably hogged the limelight so I will pass my questions to the member for Condamine.

**CHAIR:** Certainly.

**Mr WEIR:** I am only filling in on this committee so I have only had a short time to read across this. I notice that you are suggesting that 6 December is too soon. From my background experience, this bill is covering mining extraction and CSG extraction, and those to me are two very different sources of operation. Do you think this legislation is too much of a broad brush? What is your concern?

**Mr Barger:** Thank you for the question. We are very concerned about how as the bill is currently drafted there is an enormous amount of uncertainty if it commenced on 5 December, which is the current timetable when the postponement regulations would expire. The reason is exactly that—it is not entirely clear how an existing mine would be treated as opposed to a proposed mine. We heard this morning discussion about concern from Cotton Australia about what might happen with the Arrow project. So how does a new CSG project get dealt with as opposed to the existing ones?

I guess it goes to the principles of QFF, AgForce and the industry—that people who hold water allocations fundamentally want to see those water rights preserved. If you are dropping them into a different regulatory framework, you are doing it on a very short time frame without the ability to have some certainty that they are going to be able to continue accessing water, that they are not going to have highly agitated stakeholders and neighbours saying, 'Hang on, we now think you're taking our water because you've got this open slather right.' That is not balancing social, environmental and ecological principles.

The end game of moving all resource activities to a consistent set of regulations is supported. It is just that messy reality of how we get from where we are to there. The coal industry has been concerned. CSG has an explicit transition provision—so there are two years outside the Surat management area, five years inside. Whereas it seems as though for the rest of the industry—for coalmining and hard rock metal mining—once the bill commences, you switch into that new world immediately, which does not seem practical.

We had started doing some work in phase 1 of the bill. I think there is a real appetite to roll up the sleeves and continue that work in this phase, but it really needs a pretty sharp attention on how those existing projects are going to be managed. For projects that are running through the approval phase, where do you draw the line to say, 'You're sufficiently far enough through the process that you sit in the old world,' or 'No, you can jump ahead to the new world'? Of course, you also want to have a mechanism where you want that process to run fairly quickly. So if people sitting in the existing framework see an advantage, can they opt into the new framework to start that process of moving projects across?

So you are right; there is a lot of complexity in that. None of those questions have been fully worked through. There has been a start on a lot of them. I think looking through the submissions you have received, there have been some good suggestions about how you could tighten up the make good process to make that work more generally. But at the moment it feels like a one-size-fits-all answer being dropped on the state and being done at a real rush, and that is a source of risk.

**Mr Taylor:** I just have a comment. At the risk of contradicting my colleague from the industry body, the proponents of the Galilee Basin, which is a new coal basin, are developing new projects and have no problems at all. With regard to the timing, the sooner, the better. My colleague is talking about those operators who have existing operations. Concerns of transition—valid point. New projects—no problems. The sooner, the better please.

**CHAIR:** Andrew, in your submission, you recommend the committee seek the department's advice on how the commencement of the groundwater provisions for resources could be delayed until the important administrative and transitional issues have been resolved. Can you explain that a little bit more, please?

**Mr Barger:** Thank you for the question. Paul has touched on it to some extent. Perhaps a way of doing it would be in the same way that we saw with the CSG industry. We said, 'Most of the activities are on the Darling Downs. So let's set up a cumulative management area that straddles those activities.' I cannot see any reason why you would not say, 'Let's set something up on the Galilee. So let's look at where those operations are likely to operate and build a solution based around them.' Similarly, for some of the tight gas and deep gas running out in Western Queensland where the non-associated water is an issue: set up a cumulative management area to deal with those operations but do not try to change the whole state all with the stroke of a pen. Look at where the need is for a solution and work through the department in coming up with a solution that works for those operations rather than trying to leverage everyone into the same square hole.

**CHAIR:** You have heard me ask the question this morning with regard to interpretations and definitions. Have you had any problems with some of those things I have raised?

**Mr Barger:** It is a messy bill. It is a technical bill. We have actually pulled a lot of hair out trying to come up with something. 'Non-associated water; has to be the most stupid label ever but we could not think of anything that was less worse. I think that goes back to your earlier questions about how is the process that is associated with this complexity communicated to stakeholders? I think in the past the Queensland public has been well served by the water planning processes. The department has put a lot of time into those. Some of the outreach operations that have run through the other peak bodies have been important. I think that has helped people get across that complexity. Unfortunately, it is a regulatory instrument. You need some precision in what you are describing. So those definitions do not need to have some legal precision. In terms of the labels that are attached to them, they are probably not the best choice, but that is where we have landed.

**Mrs LAUGA:** In terms of this principle of ecologically sustainable development—and that is in another bill that we are examining at the moment, the planning bills. The purpose of the act incorporates ecologically sustainable development. I am just curious. I think both the QRC and GBK have made submissions in relation to that bill. Can you remind me whether either of you made mention of ecologically sustainable development and made an issue of that in terms of the purpose in that act?

**Mr Taylor:** We did not make an issue of that term in that act. We had other issues that we addressed in our submission.

**Mrs LAUGA:** It is not an issue in the planning bill, but it is an issue in the water bill?

**Mr Taylor:** The planning bill does not have a direct application to the coalmine that we are developing. We are focused on what the industry needs rather than becoming a proponent for every bill that is going through the system.

**Mr Barger:** I would have to have a close look at the QRC submission. From memory, the focus on ESD there was much cleaner because the planning bill as a regulatory instrument is much narrower in terms of what it does. The water bill is really quite broad ranging. The concerns that we tried to articulate this morning and in our submission are not so much that the principles should not be there but that they need to be applied to the right sort of decisions. So trying to run them across something that is impact assessment or impact management is going to be fraught with complexity and uncertainty. In an environment where some stakeholders are looking for opportunities to initiate appeals and judicial reviews, that is not in anyone's best interests.

The planning act is slightly different because of the hierarchy of instruments that sit underneath it. So you have a way for regional planning to cascade down right through to your local area planning system and each of those decisions has a regulatory framework around it. Water has always been more catchment based and so less hierarchical. I think there is less risk around that very structured planning approach than there is around the Water Act.

**Mrs LAUGA:** So the principle of ESD should be applied in neighbourhoods and cities but not in mines?

**Mr Barger:** No, sorry, that is not what I was trying to say at all. My apologies if I came across as saying that. What I was trying to say is the difference is that yes, ESD should be applied in neighbourhoods and, yes, it needs to be applied in mines—as a practical example, as you heard this morning, the idea of running through an EIS process, public consultation, a whole lot of processes and then right at the end of that process you have a water licence application seems like not a very well-structured regulatory process. To find out that you have a fatal flaw on ecological grounds at the end of a long, complex and messy process is in no-one's best interests. We heard this morning from a lot of the other stakeholders, 'Why don't we roll that up into the EIS,' which is the mechanism that the mine uses for having its ecological sustainability assessed. That is where you apply the principle right up-front to say, 'Will it affect the township? Is that good or bad? How do you manage that? Will it affect the environment? Good or bad? How do you manage that? How are you dealing with these things?' You get an integrated decision around how those principles of ecologically sustainable development are applying on the ground. I am not saying that they should not be applied; I am just saying apply them sensibly once in an integrated manner because they balance each other out as opposed to an attenuated process where you might have 35 different decisions and try to make that decision again at each point and at each point you have an opportunity to appeal to a Land Court or a Supreme Court or judicial review. That is not a way of getting the state's economy running. That is a recipe for legal anarchy. The planning system does that integrated process because of the hierarchy of the way it has been set up. It is very clear what the decision being made is and it is a single decision.

The distinction I was trying to make was not subject or exempt but just ESD in its heart is about balancing those three arms of the environment, social and the development. If you try to break it apart too far you start to lose that balance. It is about integrating the whole into one decision rather than having a long, drawn-out sequence of decisions. Sorry, that was a pretty rambling answer.

**Mr Taylor:** If I can make one more comment, ESD principles are already embedded in environmental legislation at state and Commonwealth levels in Australia. The processes that we have gone to that we have mentioned here have already tested those principles.

**Mrs LAUGA:** If it is already embedded, what are you afraid of?

**Mr Taylor:** It is the application of how the act works. That is the difference between the two. In the case of the Water Act, our concern is that it has been drafted into the act in a manner that it could be used in a way that was not intended, which is the difference between the other legislation to where we have come through and it has been used to govern the overall assessment and impact assessment.

**CHAIR:** Thanks, gentlemen. I now welcome Tom Crothers, Jane Hyde and George Houen.

**CROTHERS, Mr Tom, Director, Stellar Advisory Services**

**HOUEN, Mr George, Principal, Landholder Services Pty Ltd**

**HYDE, Ms Jane, Private capacity**

**CHAIR:** Can you state your names and positions?

**Ms Hyde:** My name is Jane Hyde. I am here as a citizen.

**Mr Crothers:** Tom Crothers, Director of Stellar Advisory Services. I offer consultancy services to landholders.

**Mr Houen:** George Houen. My company Landholder Services Pty Ltd is a consultancy advising landholders on all manner of things to do with resource developments and the way the legislation operates. So my perspective is very much as to the practicality of the legislation so that not only is its meaning clear, but it actually works in practice.

**Mr Crothers:** It might be helpful for the committee to know that for the last five years of my career in the Public Service I was the general manager of water allocation planning. So I was responsible for developing a lot of the water resource plans and resource operations plans along with my team. So I have a fair handle on the Water Act.

**CHAIR:** Jane, did you want to contribute something as an opening statement?

**Ms Hyde:** I am here today as a citizen. My comments on this legislation are made from the perspective of what I believe a reasonable person would make of it having researched the subject to the best of her ability. I have a few more comments to add. I would like to make three opening comments. Legislators have a duty of care to language. There is no such thing as 'water rights'. The use of the word in the rhetoric of the mining industry attempts, in my opinion, to make a fact out of a falsity. Say it often enough and it sticks. In Australia—and that includes Queensland—the word has long been used to mean relatively small, unregulated takes of bore water, such as parts of Queensland where I was born. This is a colloquial, not a legal, meaning. The legal meaning of a right is something incapable of alienation, like your right to vote.

The second point I would like to make is that a critical example of unclear language and the effects of that occurred in 2014 when Hancock argued that taking, supplying and interfering with groundwater was somehow different from directing and appropriating it. We all know the consequences of that. This would never have happened if the Water Act 2000 had been more careful with its definitions as required under Queensland legislative standards. The guardians of those standards are yourself. You are the legislators.

The third point I would make is that the legislative standards also require legislators to ensure that legislation is consistent with that in other jurisdictions. I understand that strictly speaking this means that it should be ensured that the act will not be made inoperable due to such inconsistencies. But broadly it also means checking that legislation in another state with the same object, for example, the sensible sharing of groundwater, and the practices and regulations that go with that is looked at when it avoids the reinvention of wheels.

New South Wales has a pretty well-modelled water-sharing system. It has been in place since 2012 relating to groundwater. There is no evidence that I could find that legislation under consideration today was considered from the comparative perspective when it was being written. I personally do not think that these amendments should proceed until that is done.

**Mr Crothers:** Thank you for giving us the opportunity to speak to our submission today. I would like to convey Sarah Moles's apology. She has another appointment in Canberra today and so she cannot be here. It is probably worth saying that the Water Act evolved—and I was listening to the previous speakers—over a number of years as the department dealt with historical issues in bringing this new framework in and as water users were trying to take unfair advantage. We have to deal with that. That is why the Water Act was amended and that is why it became quite a complex document. The WROLA Act regressed some of the Water Act's achievements at least 15 years. Parts of the WROLA Act took us back 15 years in actual fact. As outlined in our submission, we are supportive of the Water Legislation Amendment Bill's provisions which propose to restore ESD principles—and I was interested to hear the discussion here before—proposes to restore the purposes of the Water Act, which I think is very important; proposes to remove the water development option, which would have significantly undermined the integrity of Queensland's water planning framework if you were granting water outside of a water plan; and proposes to remove the provisions for the establishment of designated watercourses. We are supportive of that. That is very good. However, not everything

in the WROLA Act was also unacceptable. Things like requiring miners to measure or estimate their underground water take and report it to government are very important. If we are trying to sustainably manage the water we need to know how much is taken out.

We totally agree with placing petroleum, gas and mining sectors on a consistent framework; it is just the framework that we disagree with. We do not believe that the policy settings and framework are quite right. Introducing a statutory requirement for miners to enter into make good obligations, we think that is good as well but it is the flawed make good framework that we disagree with. The principle of getting them to do that is fine; it is the framework itself which needs some work. We do not believe the water legislation amendment goes far enough, and hence we have submitted a raft of additional amendments that we believe should be included in the bill. We think it is inequitable to grant miners a statutory right to groundwater while other large groundwater users are required to go through chapter 2 of the Water Act to secure water. We are talking about irrigators and large industrial users who are required to go through chapter 2 of the Water Act to get a water license, whereas miners and petroleum and gas operators have a statutory right to access unlimited volumes of underground water for associated water. The definition of associated water and non-associated water we think it raises some issues. It is all water which is being taken out of the underground systems, and hence we think the definition may be confusing and we think it may be problematic.

We contend that the make good arrangements for water users impacted by petroleum, gas and mining operations should be amended to provide fair, equitable and adequate protection to those people who may have their water bores impacted by the resources industry. The department had PricewaterhouseCoopers review Queensland's water planning framework, and as a result of that it introduced a streamlined single planning process. We believe that it is not a reduction of red tape, which is what it is promoted as. Taking it from a two-plan process to a five-instrument process in actual fact is an increase in red tape and complexity. It is confusing, it lacks transparency and it is an ineffective mechanism for outlining what are the planning requirements for water in Queensland.

**Mr Houen:** Mr Chairman and members, thank you for the opportunity to briefly address my written submissions. We are lucky that we have heard the other witnesses so we can get a perspective on all sides of the argument. Firstly I will deal with the change to providing a statutory right to miners to take water for dewatering purposes.

Dewatering strikes fear into the hearts of landholders in the surrounding area of any mine, not necessarily just within the mining lease. For example, one of the expert hydrogeologist's reports for an EIS which has to do with the Galilee Basin project—I cannot remember which one—put the potential radius of drawdown of bores at 30 kilometres. That sounds quite high to me because I suspect that in most cases it is not as far as that, but the point is that it goes way beyond the boundaries of mining leases in a lot of cases. The problem begins with the fact that finally it has been recognised that the existing system is quite dysfunctional. To have all of the process of the applications for a mining lease and for an environmental authority be completed and then subsequently, in a completely disconnected process the miner, if it needs to carry out dewatering, applies for a water licence to authorise that dewatering, that has to be fixed. There were instances recently where it has become clear to the Land Court particularly that its jurisdiction did not extend to impacts such as dewatering, which was seen as a separate process to mining. It could deal with impacts on groundwater from mining but not from dewatering. I guess that is not everybody's view about the Land Court's jurisdiction, but it is contentious and it is a real problem as to how to make the system flow properly and sensibly. So it has to change.

To me, giving a statutory right to take the water is wrong, and it is wrong because you cannot claim to be managing the impacts on the groundwater resource if ultimately the recipient of that statutory right can take whatever volume of water it requires in order to clear the way for its mining. I cannot see how you can have a statutory right that can be properly managed. Once you have granted it, it is granted. You can do all of the baseline monitoring, reporting and assessment that you like, but it will not alter the fact that the holder of that statutory right can continue because you have given it a statutory right to do so. If there is a change, it has to be on the basis that the right to take that water is subject to ongoing management and if the impacts prove to be more significant than was originally assessed, then there has to be a stop to it. Which is going to mean stopping the mine because they cannot say, 'We will only take half as much water for dewatering' without reducing the amount of ore that they are producing in the same way. What is proposed is not acceptable because it cannot allow for proper management of the water resource once the authority is exercised.

My particular speciality is the make-good provisions. Chapter 3 is a pathetic, outdated, dumbed-down attempt. There was a reasonable basis for it when it firstly appeared in the 2004 petroleum and gas act. At that stage it was very rudimentary. It has evolved, but it is still nowhere

near the standard required in terms of its technical and legal adequacy. I have tried to explain both of those issues in my submission. It is pointless for anybody to say to bore owners, be they graziers, farmers, irrigators, town users, residential users or whatever, 'Don't worry if your bore is affected by these authorities that we are giving; you will be protected.' How are you going to be protected? You will be protected by the provisions for a make good agreement.

The agreement as it stands is in drastic need of upgrading, and I have set out in my submission how I suggest it could be done. I have done a substantial number of make good agreements as a consultant between the landholder and the mining company—not ones that are done under the shadow of the petroleum and gas act—that are the real commercial deal. I am happy to provide a sample to the committee if you would like it see it. I want to emphasise that it has to be properly structured. Firstly and fundamentally it has to measure the actual yield of every single bore. The one size fits all water level reduction of five metres in consolidated aquifers is truly technically ridiculous. A five-metre fall in the water level in some bores, particularly the deeper ones, would be insignificant; in others, the bore would be out of water before it got to five metres. You cannot have something as broad as that. The ultimate legal onus for proof that the bore is damaged and what caused it is on the bore owner, and the system has to be one which gathers the appropriate evidence, starting with the baseline, so that from beginning to end should the parties need to resolve the problems then the evidence is there on which to do it in a sensible fashion. I have set that out in the submission, and I would be very pleased if you could look at it carefully because this is fundamental. It is no use talking about 'make good' unless there is technically and legally a sound basis for it because without that, no resource company is going to hand over the money or do all the work that is required for make good. If that problem can be fixed then we will be making progress.

I am concerned that a lot of the material that has emanated from the government overall shows a lack of understanding of how the legislation actually works in practice. These days there do not seem to be people in senior positions in DNRM, for example, who have good practical implementation backgrounds and have actually worked in these areas, and we are getting stuff which simply does not make sense. I received a two-page letter from the minister last week. I have been to see the departmental people who wrote it. I consider that most of the material in it is misconceived, to say the very least, and believe me I will not leave it there. We need to get down to basics, and the people advising you as parliamentarians and the government have to do their jobs a lot better than they have so far.

**CHAIR:** George, thank you for that. You have obviously done a lot of work with the make-good provisions of the legislation. Can you give us a couple of examples? You are a good talker so we have to keep track of time, but can you give us a couple of examples where this has gone horribly wrong and how landowners have been adversely affected?

**Mr Houen:** Yes. There was a farming family near Emerald within the past couple of years who had a make good agreement with the mining company whose activities were expected to affect their groundwater. These people contacted me and I spoke to them, and their problem really was that their agreement was poorly drawn. The company was required, as is always the case, to ensure that there was proper baseline and monitoring testing done, and it had not been done and they did not appear to have any rights to enforce it. So it has to be robust and enforceable.

**CHAIR:** Is this a big concern?

**Mr Houen:** Absolutely. For people who enter into one of these agreements it is absolutely fundamental. It will fail unless it is very, very robust technically and legally.

**CHAIR:** Tom, under cumulative regional groundwater models you recommend urgent development and use of cumulative regional groundwater models as part of the EIS process and before any approvals for large mining projects are granted. Do you want to talk about that a bit more?

**Mr Crothers:** Yes. Of course, one of the issues that concerns the mining industry is that they go through the EIS process for an environmental authority, then they have to go through a Water Act process to get a water licence to extract water, and obviously they are separated. The other issue that concerns them as well is that if people object and appeal to the Land Court on the environmental authority, the finding or direction of the Land Court is nonbinding on government. It is a recommendation. If they object and appeal to the Land Court in a Water Act matter, the findings of the Land Court are binding on government and the minister must comply with those findings. That was a bit of the issue that was driving some of the concerns behind the scenes of the GVK people this morning.

In terms of cumulative impacts, I have worked with a lot of landholders in the Galilee Basin and some of the companies up there have done some cumulative impacts of their mine—with GVK

Hancock, for example, who are proposing the Alpha in Kevin's Corner Mines—but there has been no independent assessment of the cumulative impacts right across all of those proposed nine mines. I have been involved in a report there which just utilised information sourced from EISs and government reports to look at the cumulative take of water. If all nine mines were developed it is potentially between 1,770 and 2,007 gigalitres of water—that is between three and a half and four Sydney Harbours—that could potentially be taken out of the Galilee Basin over of the life of those mines, and that will certainly have impacts on the water supplies for the landholders up there.

We are saying that the cumulative impacts have to be assessed as part of the EIS process and we believe that there does need to be a change to the Water Act so that the Water Act approvals can be granted at the same time as the environmental authority is being assessed and granted. So you have to bring them together. You cannot do them separately. In the environmental authority process EIS the focus is more on the quality of water than the quantum of water being removed and particularly the equality of discharges back into the local streams or how they deal with the water which is extracted. We are saying that it has to be joined together. You have to look at quantity and quality and we believe the Water Act authority still should continue as a Water Act authority, not an automatic right or statutory right to access water.

**CHAIR:** Jane, you are concerned about the unfairness of farmers having to obtain a water licence when miners do not. Do you want to elaborate on that for us?

**Ms Hyde:** That was a preliminary submission I put in on the day of the deadline. I think, if I may have your permission, I would just comment rather in relation to what Tom said.

**CHAIR:** Yes, okay.

**Ms Hyde:** If you look at the system in New South Wales—I am not particularly advocating New South Wales—the fact on your point here is that everything goes through a process based on whether it is considered to be strategic agricultural land or not. The foundation of the system in New South Wales is the strategic land in terms of various decisions. Either way, when the development application comes into the Planning Assessment Commission, at that point the New South Wales Office of Water provides advice based on their aquifer interference policy. That is what they call it and that is why it is so definitionally clever because that concept of aquifer interference, when you look at the way it is defined, captures everything that you might do to groundwater, where and for what purpose. If consent is granted by the Planning Assessment Commission, then the Office of Water, which has already contributed to that assessment, develops conditions for the water access licence and recommends conditions of consent. In other words, what I have done, with permission, is I have some folders here which includes this very helpful FAQ on the New South Wales system. The diagrammatic picture of it is very easy to follow. It also includes a very easy to understand brief by Corrs Chambers Westgarth, who were obviously brought in to develop it for the mining industry. It was introduced in fact by the Liberal government in New South Wales in 2012. I am not for one minute suggesting that there have not been problems getting it to work properly, but listening today there is endless conversation about the convolutions of making your system in Queensland work and the good thing about this is that it has been considered from first principles. So the flow charts and what you do when are quite clear and I would love to be able to hand those around if I may.

**CHAIR:** The committee is happy; thanks, Jane.

**Mr MILLAR:** To George and Tom, all mine dewatering must be authorised by a water licence. How would you put that into the current act? Could you give us an explanation of how that would work for the benefit of the committee?

**Mr Houen:** If I could just say firstly that only in groundwater management areas does that requirement apply. My understanding is that the WROLA Act actually abolishes the licence step and it would not any longer be required.

**Mr Crothers:** Under the current Water Act, miners are required to seek a water licence if they are in an underground water area where there is a water resource plan or there is a moratorium notice or if they are in a declared groundwater area or if they are accessing artesian water. So they are required for miners. In terms of petroleum and gas, they have a statutory right to take water but they do need to get approval—and it is always granted—under the Great Artesian Basin water resource plan to access associated and non-associated water. What we are saying is—what our submission, Sarah Moles and my submission, said—that we believe both petroleum and gas and miners need to be on the same framework as other big groundwater users such as irrigators and industrial users where they do an EIS process and they get a Water Act authority under chapter 2 of the Water Act. So for them to get a water licence, it goes through the EIS process to test the sustainability of it and

also to test the discharge of extracted waters—water quality issues—and the water licence is granted at the same time as the environmental authority. That is what we are saying.

**Mr MILLAR:** So why is that not the case now? Is there any reason for that?

**Mr Crothers:** At the present time what has happened is they are separate processes. They go through, under the Environmental Protection Act, the draft environmental authority to get an environmental authority. If they get approval for the environmental authority, they then start kicking off getting a water licence. If they are in one of those areas—a water resource plan, a moratorium or a declared groundwater area—they then start to get a water licence. If they are outside of those areas, they do not need to get a licence at all. They can access ground water now. What we are saying is let us bring it back to a consistent framework where everybody is on the same framework. That is one of the reasons why we certainly applaud WROLA in terms of introducing measurement or metering or estimation of water use by miners, because if we are looking at sustainably managing Queensland's underground water resources we need to get a handle on how much water is being taken out. In the Great Artesian the Hutton and the Walloon aquifers are connected to the GAB. In the Surat Basin, the CSG industry says it is taking out 75,000 megalitres a year. The Queensland government is saying it is taking, it thinks, about 95,000 megalitres a year. That was never, ever built into the original Great Artesian Basin water resource plan, so that is additional water which is being taken out of the system by the resources industry. If we look at the Eastern Downs, the whole area there is fully allocated and yet Acland stage 3 has been approved to take out another 1,300 megalitres per annum and Toowoomba city council was also approved to take another 2,000 megalitres per annum out of that system which was fully allocated in the GAB water plan.

**Mr MILLAR:** I want to quickly move on to make-good agreements. Are they very ambiguous at the moment? Are they very loose?

**Mr Houen:** What is loose is the provisions in chapter 3 of the Water Act. The problem I find, particularly if I have a client who is affected by coal seam gas development, is that the first thing we say to the company that is proposing to come on to the property for CSG work is, 'One of the things we need you to do, besides telling us all you know about the total development that you're planning to build on this property and so forth, is to enter into this make-good agreement.' They say, 'Forget it. We don't have to because the Water Act only says we're required to do a fraction of those things. We don't have to do baseline testing that tests the yield of the bore because the Water Act doesn't say that we have to do it.' So the looseness is in the provisions of chapter 3 of the Water Act in that it affects any genuine attempts to establish a make-good agreement with coal seam gas producers particularly that is robust and is enforceable.

**Mr Crothers:** If I could make a comment also about make good, because I have a couple of clients. One of them will be impacted by a coalmine up in the Galilee Basin and the make-good agreement offered by the company there was a total confidentiality requirement. They could not discuss it with anybody except their solicitor. They could not even discuss it with other members of the family, so there was total confidentiality for a start. The mining company would determine what baseline assessments were needed to determine whether the landholder's water supplies were going to be impaired or not. There was a force majeure provision in there which said that in the event of adverse weather conditions, drought conditions or extended dry conditions the company was not required to provide alternative sources of water if the landholder was impacted. There were also no provisions in there for supply of water supply post mining. So the landholder obviously said, 'Go away. It's in the sin bin. Not interested,' and so there is a dispute there. I have another client out in the Condamine area who has 27 CSG bores on side one and over 100 CSG bores on the other side and their water has been impacted. They have a road through their property and they have had water supplies on both sides into the Walloon Sandstones impacted. They now need to look at going to the Precipice Sandstones to get a water supply. Origin Energy has said, 'We'll give you one bore. Take it or leave it,' and they are in dispute now with Origin Energy about their water supplies. Impacted? That is what we are dealing with.

**Mr MILLAR:** Just quickly, because we are running out of time, you recommended a make-good agreement commissioner.

**Mr Crothers:** Yes.

**Mr MILLAR:** How is that different to, let us say, the gas commission that we have at the moment? Isn't that already covered, so to speak?

**Mr Crothers:** I have to say to you that the gas commission has no credibility out there at all. It is seen as a joke. It is also seen as an arm of government. What we are suggesting is a make good commission which is independent. Even the ADR process in chapter 3 of the act is an arm of government determining that. What we are saying is let us have an independent organisation which landholders have some confidence in that they are going to get a fair hearing and that that commission have some teeth and if it needs to go further it then it goes to the Land Court. But the gas commission does not have credibility out there, I have to say.

**Ms Hyde:** If I could just comment here, and once again I get back to this critical usefulness of good definitions. In New South Wales make-good provisions mean the requirement to ensure third parties have access to an equivalent supply of water through enhanced infrastructure or other means, deepening a bore, funding extra pumping, building a new pipeline. In other words, it is explicit so if there is an argument you at least know what you are talking about.

**Mr WEIR:** I was just going to ask about the role that OGIA plays. You have been very critical of the GasFields Commission.

**Mr Crothers:** The comment I would make is this: to have a cumulative management area I think is a very good process, and that should be extended. Quite frankly, it should be mandatory. If there are multiple mines or multiple extractions of groundwater, particularly if government retains the statutory right for miners, I think it should be mandatory that a cumulative management area is required because you have to manage the cumulative impacts. In terms of OGIA, OGIA has done some good work there, but I have to say that the report which was due out last year in December, which was the second report on the Surat Basin, still is not out and our understanding is that there are some issues there in terms of water levels and some issues also in terms of extractions and estimates of extractions. We understand that the report may not be available until April this year. If we are going to get confidence out there with the landholders, whom I deal with a lot of the time, they need to see transparent and high-integrity data which they have some confidence in. I think OGIA can deliver it. Maybe it has a resourcing problem—I do not know—but it has done some good work in terms of looking at the cumulative impacts. I think there needs to be a lot more work done there. I note also that the Queensland government and the Bureau of Resource Sciences are actually working on a regional cumulative model to look at the groundwater impacts in the Galilee Basin, but I am suggesting that that is like shutting the gate after the horse has bolted.

**Mr WEIR:** How do you think that affects the timing of this bill if those reports are still yet to come?

**Mr Crothers:** I know that some organisations—I also work with landholder organisations—are quite concerned that the report has been delayed. One of those organisations put in a submission on the Great Artesian Basin water resource plan review and they reserved the right to actually put a supplementary submission in after the OGIA underground water impact report comes out because they believe there might be some information in there which they would like to make some further comment on.

**CHAIR:** Tom, you recommended against permitting the statutory right to water for miners because the impacts on existing water users and the environment are unacceptable and unsustainable. Do you want to elaborate on that for us?

**Mr Crothers:** Yes. If we look at the Great Artesian Basin, which was looking at setting sustainable limits of take for each of the 25 management areas there—as I said, if we look at the Eastern Downs management area, which was fully allocated—in the original GAB water resource plan there were provisions in there that no more water was to be allocated from that particular management area.

However, through a legislative amendment in the WROLA, 2,000 megalitres per annum was granted to the Toowoomba Regional Council for its water supply and we have seen the approval of Acland stage 3, where even the environmental reports from Acland and the Coordinator-General's report talks about 1,277 megalitres per annum being taken out of the GAB aquifers. We have a management area and we have an additional 3,277 megalitres per annum taken out of that—potentially taken out of the management area. It has to impact on the other water users. If you are taking out that water, it has to impact on the long-term sustainability of that management area. If we look at the Surat Basin—

**CHAIR:** It has to, or it does, or it will?

**Mr Crothers:** It has to and it will.

**CHAIR:** Do you have the evidence to back that up?

**Mr Crothers:** No, I have not got the evidence there, because the actual extraction has not started as yet. But when the mine starts—and the mine does accept in their reports that there will be impacts and they will be required to enter into make-good arrangements with those impacted or impaired bores—I am looking at the overall long-term sustainability of the resource.

**CHAIR:** Yes.

**Mr Crothers:** Thirty per cent of Queensland's consumptive water comes from underground sources. We are dealing with a really important resource and we really need to protect it for future generations.

**CHAIR:** Okay. Thank you very much. I appreciate your input.

**Mr Crothers:** Thank you.

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

**BURGESS-DEAN, Ms Rachel, Acting Director, Service Delivery Support, Department of Natural Resources and Mines**

**CARPENTER, Mr Justin, Manager, Resource Sector Regulation and Support, Department of Environment and Heritage Protection**

**HOGAN, Ms Steph, Acting Director, Strategic Water Policy, Department of Natural Resources and Mines**

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

**LOVEDAY, Mr Chris, Acting Director, Resource Sector Regulation and Support, Department of Environment and Heritage Protection**

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

**CHAIR:** I now welcome representatives from the Department of Natural Resources and Mines and the Department of Environment and Heritage Protection. Before proceeding, I would like to thank you for the comprehensive response to the submissions and the good work that you put in as a result of our committee asking for further advice from you. I can see by the work that has been presented to us that there has been a lot of effort put in. I want to let you know that we appreciate that. Would the two departments like to make an opening statement?

**Ms Barbeler:** Good morning, Mr Chair, and committee members. I thank the committee for the opportunity to provide an opening statement relating to issues raised in submissions about the Water Legislation Amendment Bill 2015. I would also like to take the opportunity to acknowledge the individuals and groups who took the time to prepare submissions on the bill.

As part of my opening statement I will briefly provide the department's perspective on submitters' support for the bill and issues raised by submitters about the bill. While not part of the bill, I will also touch on issues raised in submissions regarding the underground water impact management framework for the resources sector. Time does not permit me to address all submitter issues raised in my opening statement today. However, the department's responses to all issues are available on the committee's website.

I would firstly like to again acknowledge the complexity associated with this bill. It is a bill that amends the Water Reform and Other Legislation Amendment Act 2014, which in turn amends the Water Act. I will refer to the Water Reform and Other Legislation Amendment Act 2014 as the WROLA Act for the rest of my statement. I would like to table a diagram for the committee to help explain the complexity of this legislation. I have a number of copies here for committee members.

**CHAIR:** Yes, that is fine. Thank you.

**Ms Barbeler:** The government has reviewed the uncommenced provisions of the WROLA Act for their consistency with government policy and commitments. I would initially like to draw your attention on that diagram to the blue box. The provisions listed in the blue box are the provisions of the WROLA that were the subject of the review. The outcome of that review is that some beneficial provisions of the WROLA Act have commenced. These are the provisions in the green box on the diagram. Some WROLA provisions are being amended through this bill and these are the provisions in the red box on that diagram and some, while consistent with government policy, cannot start until the bill has passed as they hold intrinsic links to provisions being amended through bill. These are the provisions in the orange box.

Overall, the submissions indicate that there is general support for the bill and in particular the bill's core components, including explicitly reinstating the principles of ecologically sustainable development, omitting the water development option provisions in their entirety and omitting provisions for the declaration of designated watercourses. These core elements of the bill reflect the action that the government is taking to align the WROLA Act with government policy.

While there was general support for the bill, there were alternatives expressed that I will briefly respond to. I turn firstly to the issue of explicitly reinstating the principles of ecologically sustainable development. As we have heard here this morning, overall, there was general support for the explicit reinstatement of the principles of ecologically sustainable development into the purpose of the Water Act. The bill aims to reinstate the principles in the same way that they currently apply under the Water Act—the allocation, planning and use of water resources. The WROLA Act amendments to remove the principles—these principles—never commenced. So explicitly reinstating these principles ensure that they continue to apply the allocation, planning and use of water resources.

Some submitters are seeking an expansion to the current application of the principles so that they apply to all provisions of the Water Act or to particular parts of the Water Act, such as the underground water impact management framework for the resources sector. There are very clear and distinct functions of the different chapters of the Water Act that warrant a purpose that accurately reflects these different functions. Clause 12 of the bill states the four main purposes of the Water Act, with each main purpose intended to guide the relevant main chapters of the Water Act.

The first main purpose provides a framework for the sustainable management of water resources and quarry material by establishing a system for the planning, allocation and use of water and the allocation of quarry material and riverine protection, which has relevance for chapters 1A and 2. The principles of ecologically sustainable development are directly relevant for these chapters—chapters 1A and 2.

The second main purpose provides for the sustainable and secure water supply and demand management for the South-East Queensland region and other designated regions primarily provided for under chapter 2A. The second purpose relates to the management of water resources to ensure the reliability and security of water supplies once the water has, in fact, already been allocated under chapter 2.

The third main purpose provides a framework for the management of potential impacts on underground water caused by the exercise of underground water rights by the resources sector, which is primarily relevant to chapter 3 of the Water Act.

The impact management framework does not play a role in the allocation or authorisation of the take of underground water by the petroleum and gas industry, or the mining industry. Amendments to the purpose of the Water Act made by the WROLA Act do not change this third main purpose other than to include the mining tenure holders. Therefore, the purpose for chapter 3 is intended to remain as it has since it received assent in 2010.

The fourth main purpose provides a framework for the effective operation of water authorities, which is primarily relevant to chapter 4, dealing with water authorities. This purpose reflects functions in the Water Act relating to operational and administrative arrangements for water authorities and does not relate to the allocation or management of water resources. To apply the principles of ecologically sustainable development to all chapters of the Water Act would be incongruous with the respective chapter purposes and functions and would go beyond the government's election commitments.

I will now talk to the issue of omitting water development option provisions in their entirety. There is broad support for omitting the water development option provisions in their entirety, although some submissions suggested, as we have heard here this morning, that there is a need for greater certainty of access to water for large-scale development. There are existing mechanisms within the current legislation and water planning process that can support large-scale water infrastructure development. For example, some existing water resource plans set aside unallocated water reserves for major water infrastructure projects. In the event that there is insufficient unallocated water set aside in a plan for infrastructure projects, the Water Act includes provisions to enable the minister to review or demand a water plan to accommodate the project if it is appropriate. However, to ensure that the water needs of the environment and existing water users are considered, the minister would exercise this power only if science and consultation support making more water available.

I will now talk to the issue of removing provisions for the declaration of a designated watercourse. Overall, submitters support the bill's removal of provisions in the WROLA Act that allow for the declaration of designated watercourses. However, there was a submitter suggestion that these provisions could remain and any risks of unsustainable development be managed on a case-by-case basis through the water planning framework. To clarify, the WROLA Act provisions relating to the declaration of designated watercourses have no bearing on whether a river or a stream is a watercourse. Instead, the WROLA Act provisions allow part of a watercourse to be declared a

designated watercourse, which would allow water to be taken or interfered with in that reach without the need for a water entitlement or permit. The removal of these WROLA Act provisions will ensure transparency and continue appropriate regulation of water resources within all watercourses.

I will now talk to the issue of providing a framework for managing underground water impacts associated with a resource sector development. The government has determined that the WROLA Act reforms to the groundwater management framework for the resources sector are consistent with government policy and commitments. Therefore, the bill did not include amendments to the framework other than an operational amendment. Given the interests from submitters about the framework, both the Department of Natural Resources and Mines and the Department of Environment and Heritage Protection provided substantial responses to the issues raised in their submissions. These responses are available on the committee's website.

The responses address or clarify misunderstandings about the underground water impact management framework and explain the benefits of the reforms. The reforms to underground water impact management framework provide the following benefits for landholders. The reforms provide a robust and effective framework to manage impacts from mining activities. Landholders will have statutory certainty from the day a tenure is granted as their rights to water will be protected and they will be entitled to have make-good agreements about water bores predicted to be impaired by mining activities. The framework establishes resource company obligations up-front. A dispute resolution process is readily accessible by landholders under the framework.

The reforms ensure that there is an effective framework for managing cumulative impacts where two or more mine operations may affect a bore. Additionally, under the new framework, petroleum and gas operations will need to obtain a water entitlement to take water to use consumptively in their operations in regulated areas consistent with other water users.

The commencement of the reforms will be at a date to be determined by the Minister for State Development and Minister for Natural Resources and Mines and the Minister for Environment and Heritage Protection and the Minister for National Parks and the Great Barrier Reef. We are now happy to take questions from the committee to support its inquiry into the Water Legislation Amendment Bill 2015.

**CHAIR:** Did you have an opening statement?

**Mr Loveday:** No. It was agreed between DNRM and EHP that they would lead the opening statements today.

**CHAIR:** Thank you. That is very good. I understand you have got a good understanding of what has happened in here this morning. Could we get some understanding from the department of your involvement in make good issues?

**Ms Barbeler:** From the Department of Natural Resources and Mines?

**CHAIR:** Yes.

**Ms Barbeler:** The administrative arrangements dictate that chapter 3 is currently administered by the Department of Environment and Heritage Protection so I will pass to that department to answer those questions.

**Mr Carpenter:** The administration, as Leanne has pointed out, is with my minister and that includes making decisions about things that are required under chapter 3 of the Water Act. That includes submissions that tenure holders make to us in regards to things like baseline assessments, as well as underground water impact reports which might be provided by tenure holders or, if it is a cumulative management area, by the Office of Groundwater Impact Assessment. We also share responsibility with colleagues from DNRM in the CSG compliance unit who have certain powers delegated to them to investigate certain matters under chapter 3 of the Water Act.

**CHAIR:** I think what has come out of this morning and reading submissions is that there needs to be a greater involvement from the departments, and from my experience over the years I have seen this as really a little bit of a mess where a lot of buck-passing goes on and there are actually no time frames in place for things to happen. Do you think you have an important role to play there in this process? Whilst it is acceptable and I think people appreciate it, it really does not deliver on what it sets out to do?

**Mr Carpenter:** You are asking us to make observations or comments on your observations about the functioning of chapter 3?

**CHAIR:** I am asking you to make comments on fact.

**Mr Carpenter:** There are time frames. You made the point that there are not any time frames. In regards to doing things like preparing baseline assessment plans or submitting underground water impact reports the act does specify certain time frames for those things to be undertaken. I think, however, there has been a comment about the timeliness of make-good agreements that flow from those things.

**CHAIR:** Yes.

**Mr Carpenter:** It is a comment that we noticed particularly through the submissions that have been made to the committee about this bill even though it is probably more in the purview of the functioning of chapter 3 in the Water Act at the moment. That is part of the reason why in the department's submission back to the committee responding to submissions we have identified that we intend to undertake an operational review of chapter 3 to assess its functioning to work out how well those things are actually performing in terms of meeting what they are intended to meet. There is clearly a diversity of views and it is important that the department has the opportunity to weigh up and approach people to get that feedback. That is probably my initial response to your points.

**CHAIR:** Thank you. With the water development options, it was very clear this morning that we need to have a better understanding of unallocated water. Just so we understand, how does the department determine that and how does it determine the amount of water that it can make available to new projects?

**Ms Barbeler:** In the first instance, unallocated water is reserved through a water planning process which means significant science, significant consultation and a whole range of other assessments are required to, in fact, stipulate those volumes in a water plan and subsequent documents. Going through the next steps, once we are into the implementation phase of a water plan, generally speaking, as part of preparing the water plan, demand assessments will be made to determine what is happening in that region, what is happening in that catchment, which will inform how the reserves are set in the plan. So, for example, if it is clear that there is an emerging agriculture industry through other activities that are going on then certainly unallocated water would be considered for a general reserve which is where the agriculture industry is able to access the water from. Having said that, if there is an opportunity for infrastructure then that would be given consideration in preparation of the plan as well. So stepping into the implementation part of the plan, certainly there are triggers for when and if demand arises, so we have got the water set aside, and then as a part of implementation it becomes clear that the community is ready for that water. Can I hand to you, Darren, to talk to the actual implementation of unallocated water.

**Mr Moor:** It depends, Mr Chair, in terms of the scope of interest that you might have within a catchment. In some catchments we might have the situation where we are blessed with an abundance of water, more than what the community or the industry is seeking at that point in time. In other situations we might be in a situation where it is highly competitive and the type of release process, while at all times we operate in a transparent manner, the style of the release process that we run would be dependent upon which of those situations we were actually in. In some cases it will be a full on tender process whereas in other cases we might be in a position where we have well defined products and well know demand and are blessed with a lot of water. As I said before, we might be able to deal with those people on a one-off basis. The planning process and the way in which that water is released differs across the state depending upon the situation that we find ourselves in—from one extreme to the other.

**CHAIR:** When you finish up with projects and no water is put aside to further develop or give those projects an opportunity to develop—do we have any situations like that around?

**Mr Moor:** Certainly there are situations where we are in catchments where water is in high demand and they have been the catchments and continue to be the catchments where we work through the planning process to get our water into tradable allocations as much as we possibly can. That enables that water to get to the projects and to be used for the purposes that are returning the best economic return to the people of Queensland. I heard comments early this morning about situations where we might have latency, so people who have entitlements who might not be actively using them. Certainly establishing them as tradable water entitlements deals with that situation and allows people to shift water to where it is being used. Obviously when you have a situation where we have allocated all of the resource that we can allocate through the planning process, taking into account the social, environmental and economic needs in that catchment, a trading environment enables us to answer the question you are putting in terms of how should that water be used to get the best outcome for Queensland.

**CHAIR:** I am bouncing around a little bit here. On several occasions this morning there was mention with regard to the development process of a project and the need to put water licensing approvals upfront rather than at the end of the process. Do you have any comment to make with regard to that?

**Ms Barbeler:** Particularly in regard to, for example, the mining sector?

**CHAIR:** Yes, and why is it left to that stage when there may not be any water left at that stage? That is why I allowed that other question. There may not be any water there to allocate so should it not be at the beginning?

**Ms Barbeler:** I might hand to Saji to answer that question.

**Mr Joseph:** Thank you for the question. All mining and petroleum projects are subject to an environmental impact assessment process or an environmental authority approval process under the EP Act and for coordinated projects environmental effects are to be considered as part of the assessment under the State Development and Public Works Organisation Act as well. The terms of reference for all these projects clearly articulate the need for the proponent to clearly identify the impacts of their proposal on groundwater or water resources in general and then, subject to that EP Act approval process, projects are considered on their merits and also conditions are approved in terms of how the project may go forward. The WROLA act, essentially clause 11, proposes an amendment to the Mineral Resources Act to insert a chapter 12A basically granting some limited statutory rights for mining leases and mining development licence holders. These proposed provisions are limited and I will explain why they are limited. It is only available for mining leases and also mineral development licence holders. It is limited in the sense that it is only provided for those projects that have gone through that EP Act approval process. It is limited in terms of the fact that it is water that is produced or taken in the course of the resource sector development or water that is incidental to undertaking that developmental activity and they are limited by that. They would need to have an appropriate monitoring and accounting processes in place and the WROLA Act delivers that.

**CHAIR:** Like I said, I am bouncing around a little bit here. Could you give us a definition of water take?

**Ms Barbeler:** The take of water?

**CHAIR:** Take of water, yes.

**Ms Barbeler:** Under the Water Act we regulate the take of water. We also regulate the interference with water. To focus on the take of water, it would be to remove water from a system for consumptive purposes.

**CHAIR:** What are you talking about when you say a system?

**Ms Barbeler:** A river system or an aquifer.

**CHAIR:** I think most of the comment is relevant to the taking of water from a mine site. Could you give us an explanation of what you mean by that?

**Ms Barbeler:** In relation to potentially take of associated water? Taking of water from a mine site?

**CHAIR:** This is what we are getting around to. There is a little bit of confusion.

**Ms Barbeler:** I will hand to you, Saji, to talk to that.

**Mr Joseph:** Associated water is water that is taken during the course of or as a result of an approved resource activity. For example, for the mining sector, water that is taken to dewater a mine pit to ensure safe operating conditions. In the petroleum and gas sector examples could include water that is taken from the coal measures to depressurise the coal measures so that gas could be released from those coal formations. The WROLA Act proposes that all take of non-associated water, that is water that is not associated, for example, water that may be required by a petroleum tenure holder to undertake hydraulic fracturing or water that they may require for their accommodation camp or for coal washing, dust suppression, they all require an entitlement under chapter 2 of the Water Act and that brings a level playing field for all water users.

**CHAIR:** Thank you. From a lot of questions that I have put to me out there in the rural area I think there is a pretty good understanding of what you mean by the take of water from a mine site which is water that comes into the operating area of a mine where machinery is working and it needs to be taken to maintain safety, but that water has come from outside, it may have come from outside the mining lease, what do you call that water and where does your responsibility come into play with regard to the control of that because that can have a significant impact on the lands outside the lease?

**Mr Joseph:** Thank you for your question. The WROLA reforms basically strengthen the arrangements in terms of managing impacts on underground water by resource sector development. It provides for statutory certainty for landholders that if their water bore is impacted by a resource sector activity it will be made good. We have got a framework to ensure that the cumulative management of resource sector development is taken on board. I agree with your notion that in some instances the impact may go well beyond their tenures and the framework essentially delivers that. It takes into account impacts that may even go well beyond the tenure, but it provides for certainty for landholders who may be outside the tenure to be certain that if their water supplies are impacted or impaired it will be made good, they are entitled to have made-good agreements in place.

**Mr MILLAR:** Firstly, how many members of the water engagement forum were selected?

**Ms Barbeler:** Selected?

**Mr MILLAR:** Yes. Who was on it? How many did you have?

**Ms Barbeler:** I do not have that number handy, I am sorry.

**Ms Hogan:** I could approximate.

**Ms Barbeler:** Yes, let's go for an approximation.

**Ms Hogan:** Our water engagement forum is probably roughly around 20 members, I would say. I think we have submitted the terms of reference to the committee before, which includes the member organisations to the water engagement forum. It is in that order, I would say. I think more recently we have expanded that membership, maybe around midyear, to include representation from the Wilderness Society, the Environmental Defenders Office and the Queensland Conservation Council and, even more recently, the Queensland Seafood Industry Association to have commercial fishery issues addressed through that forum.

**Mr MILLAR:** Why isn't Cotton Australia on that forum?

**Ms Hogan:** We have had an approach of trying to have membership to the water engagement forum of organisations that have multi-representation. We would suggest—and I think it is in our response, as well—that Cotton Australia does have very close links with other organisations. You would have seen this morning Cotton Australia working closely with the Queensland Farmers Federation in terms of their common issues. The Queensland Farmers Federation is a representative on the water engagement forum.

**Mr MILLAR:** Given that they are probably one of the bigger users of water for irrigation, wouldn't you think that Cotton Australia should be on that engagement forum?

**Ms Hogan:** I guess in terms of trying to keep that reference group manageable and noting that we do have broader processes to engage with the community, we have made sure we have drawn, I guess, a line at those representative groups in the same way, perhaps, the Canegrowers is not a representative on the water engagement forum, as well. Both are significant water users across the country, but they also have very close linkages with the Queensland Farmers Federation.

**Mr MILLAR:** Those two organisations are probably the main water users or irrigation users in Queensland. I would think that they would play a significant role on that engagement forum, if you would put them on there.

**Ms Hogan:** Sure.

**Ms Barbeler:** We thank you for your comment.

**Mr MILLAR:** You have three different groups, from the Conservation Council to the Wilderness Society. You have three different organisations there. Why wouldn't you have organisations such as Cotton Australia and Canegrowers on there?

**Ms Hogan:** In terms of identifying landholder issues within that water engagement forum, we also have AgForce represented on that group. I know that they are not necessarily in the same vein as the irrigators in the Cotton Australia group, but in terms of being able to represent broader parts of different agricultural sectors, that is how we have that covered at the moment.

**Ms Barbeler:** We are happy to give further consideration to the membership of that forum.

**Mr MILLAR:** Why was it decided that the principles of the ESD would only apply to chapter 2 of the act and not to other chapters?

**Ms Barbeler:** The principles of ecologically sustainable development are currently in the Water Act. The WROLA Act reforms to remove those principles never commenced, so that change has not taken effect. What we are essentially doing is reinstating the principles of ecologically sustainable

development as they currently apply in the Water Act which is to chapter 2, which is the water allocation and planning framework. That delivers on the government's commitment to reinstate those principles.

**Mr MILLAR:** So you not looking to implement on other chapters?

**Ms Barbeler:** Not as a part of this initiative and not as a part of this bill, no.

**Mr WEIR:** I was looking at this pamphlet that you handed around. One of the provisions that you are looking at changing is the reversing of the onus of proof. I presume that would be on make-good provisions or identified bores?

**Ms Barbeler:** Those provisions are not related to the make-good provisions. On reversing the onus of proof, the particular provisions mentioned there are in relation to offences for taking of water under a water licence. It is not in relation to the onus of proof in a make-good arrangement scenario. It is in relation to alleged offences under the Water Act for taking or interfering with water.

**Mr WEIR:** That would be a resource company that has gone over and above its allocation or entitlement?

**Ms Barbeler:** That is correct. If a water user has an entitlement and they go over and above their entitlement or if someone takes water and is not authorised to take water, this provision refers to that instance.

**Mr WEIR:** Also in that vein, you made a comment earlier that they can appeal to the minister to have that allocation extended or—

**Ms Barbeler:** Allocated water reserves in a plan, that is right. The minister has triggers in the Water Act that allow him or her at any point to give consideration to reviewing or amending a plan. That can be as a result of new science, new demands emerging, changes in the catchment. Various different things may trigger a need for a plan to be changed. That can include consideration of whether or not there is additional water to be made available for unallocated water.

**Mr WEIR:** That is under the minister's discretion?

**Ms Barbeler:** That is correct. It is not a decision that is taken lightly.

**Mr WEIR:** Is there an example where it has happened before?

**Ms Hogan:** I could probably talk to a couple of examples. There have been a few processes where we have had existing plans in place and there has been identified need for a review of the plan. We have recently done amendments in the gulf, the Fitzroy and the Barron to respond to community feedback. One was in the Barron to do with drivers and demands for more trading in the area and to deal with some historic issues around the Atherton Tablelands. In the gulf, the CSIRO had gone through a very lengthy scientific process that I think spanned a couple of years and triggered a review of the gulf water resource plan, targeted on dealing with that particular science. In the case of the Fitzroy, it was multifaceted in terms of the drivers for that, including expanding water markets and trading within that area, responding to the availability of treated coal seam gas water within the area and providing a way for that to happen. Also, in the process of doing that amendment, we did deal with some aspects in relation to unallocated water and cast an eye over how more available that could be to other catchments in the area.

**Mr MILLAR:** So even though the Fitzroy has a resource operation plan in place, the minister can make a change in regard to that plan?

**Ms Hogan:** That is correct.

**Ms Barbeler:** The resource operations plan is a chief executive document.

**Mr MILLAR:** So it is the DG?

**Ms Barbeler:** That is correct. That water plan is the minister's document and the resource operations plan is the chief executive's document.

**Mr WEIR:** Could that be challenged or if the minister makes that call that is it?

**Ms Barbeler:** Any proposed changes to plans will follow the full amendment process, which includes technical assessments, consultation and a whole range of different interactions with the community. It is very open and transparent in terms of changes to be made. If they go through the process and there is resistance or the science does not support what is being proposed, that amendment would not proceed. Certainly, there is opportunity for the community to be engaged in that space.

**Mr MILLAR:** Under the WROLA Act, why do farmers have to obtain a water licence but miners do not? What is the reasoning behind that?

**Ms Barbeler:** I will hand to Saji in relation to the limited statutory right for mines.

**Mr Joseph:** As I have alluded to before, all mining or petroleum projects are subjected through a rigorous environmental impact assessment process or an approval process under the EP Act, prior to granting an environmental authority. Impacts of their proposed development on water resources, and in particular groundwater, are assessed. The terms of reference for those assessment processes clearly articulate the need for the proponent to identify what the likely impacts of their proposed development are, what are the risks and how they intend to manage and mitigate those impacts.

With the permission of the chair and through Leanne, I would like to table a fact sheet encompassing all the approval processes and also the benefits of the WROLA reforms as they relate to groundwater.

**CHAIR:** That sounds interesting. Does everybody agree? Yes.

**Mr Joseph:** Under the current arrangement, water licences are only required in areas where underground water is regulated. Invariably, on most occasions, those dewatering licences are granted without a volumetric limit. In areas where groundwater is not regulated, there is no need for licences at all. Through the proposed reform, we just want to bring in a consistent approach in terms of how the impacts due to the whole of the resource sector development need to be managed. All the conditions that would normally go into a water licence are provided for statutorily, so it becomes under law an obligation on the proponent to deliver on all those requirements, whether it be monitoring, whether it be the need to make good, reporting, et cetera. It provides for clarity and statutory certainty for landholders and it also protects the landholders' rights to water. That is what this reform will achieve.

**Mrs LAUGA:** I am interested in the principles of ecologically sustainable development. Can you tell us why it was decided that the principles of the EDS would only apply to chapter 2 of the act and not the other chapters?

**Ms Barbeler:** I alluded to the answer to this question earlier. The government's commitment was to reinstate the principles of ecologically sustainable development. As they currently apply in the Water Act, they apply only to chapter 2, which is the water allocation and planning framework. To deliver on the government's commitment is to reinstate those particular provisions. But really importantly, I guess, is that there are four key main purposes in the Water Act and each of those purposes relate to a particular chapter. They have quite clear and distinct functions, those chapters. For us to apply ecologically sustainable development to those different functions would not be consistent with what those functions are delivering on.

**Mrs LAUGA:** Is there a risk of unintended consequences if the ESD was incorporated into other parts of the act?

**Ms Barbeler:** Consideration would have to be given in doing that, yes.

**Mr BUTCHER:** A couple of submitters this morning have suggested that 6 December was too soon to address the complex transitional issues with the WROLA. Can the department provide assistance to stakeholders to assist them to prepare for the commencement of this?

**Ms Barbeler:** I will hand to Saji to talk about the transitional arrangements.

**Mr Joseph:** The WROLA framework provides for transitions for the mineral resources sector and also for the petroleum sector, because the reform encompasses changes to the statutory rights to the petroleum and gas sector, which is currently deemed to be a bit broad, so the reforms will narrow down the scope in terms of their access to associated water. It also provides provisions for the mining sector to transition into the new framework. For example, a new mining lease or mineral development licences, upon commencement of this framework, would need to comply with all the requirements proposed under the underground water framework under the WROLA. But for existing mines, considering that in the groundwater regulated areas they are already subjected through the requirements or the conditions under the dewatering licences, there may be ongoing monitoring that is happening and made-good agreements that are already in place. The reform framework takes into account and considers that and makes provisions for them to continue as is, unless circumstances warrant that those entities or projects could be transitioned into the new framework.

For example, the mining proponent can opt in to move into the new framework by virtue of them developing an underground water impact report through proper consultation with all stakeholders and submitting it to the EHP regulator for approval purposes. It also takes into account

mines that are outside regulated underground water areas. It makes provisions for them also to continue as is unless there is a change in tenure. For example, if an MDL is being transitioned into a mining lease, they are automatically triggered to move into the new framework. Similarly, that proponent can opt in. The WROLAA framework also makes provision for the chief executive to call in or direct a project into the new framework if need be, if circumstances for that warrants the regulator to do so. So it provides a broad range of mechanisms through which it widely recognises the current arrangements and it also makes provisions for transitioning them progressively into the new framework.

**Mr BUTCHER:** So I guess no matter what date you put on it someone is going to be affected and is not going to be happy with it.

**Mr Joseph:** At this stage, as Leanne has pointed out, the commencement of the groundwater framework under the WROLA Act is subject to approval by the Minister for Natural Resources and Mines and also the Minister for Environment and Heritage Protection. It is intended that the Department of Environment and Heritage Protection, with support from DNRM, will work through and develop an appropriate communication strategy and a plan to engage with all relevant stakeholders to assist them to gear up for the transition into the new framework.

**Mr BUTCHER:** I just want to clarify on the make good agreements that companies have with landholders and the like. Can you run through the process of how that works, who runs the agreement and how the consultation works and is it fair? We have heard a few stories this morning—some are really good and some are not so good.

**Ms Barbeler:** I will hand over to my Environment and Heritage Protection colleagues to run through that.

**Mr Carpenter:** If we are talking about the make good agreements under chapter 3 of the Water Act, the primary basis for those agreements being made is when a tenure holder undertakes an underground water impact report and through that report they identify levels of drawdown—so impacted areas. An immediately affected area is an area that is likely within three years to be affected by a decline in water levels that might affect or impair a water user's ability to access a reasonable quality or quantity of water. If bore owners or bores are identified in that immediately affected area, then the tenure holder has an obligation to enter into a make good agreement with the bore owner. That will include things like undertaking a detailed bore assessment. That works out whether that impairment has happened or is likely to happen. If it is either of those things then there could be make good measures.

The act specifies types of make good measures. That could include things like a replacement bore, monetary compensation or an alternative water supply. That is really the mechanism. Chapter 3 sets out the basis for undertaking underground water impact reports. Once that impact report is decided by the chief executive, the tenure holder has 60 business days to undertake a bore assessment for the immediately affected bores. After that, they have 40 business days to enter into a make good agreement. Our experience with that is that those time frames do not always work out. So there is an ability for the chief executive to extend that time frame.

The other thing the underground water impact report does is it identifies a long-term affected area—that is, over the course of time, any bores that might be affected by the tenure holder's statutory right to take that groundwater. The idea is that every three years the underground water impact report is revised. A new version is presented to the chief executive and, with the benefit of better information, modelling and monitoring that is undertaken or required to be undertaken by the tenure holder, it can contribute to a better estimation of groundwater impacts and the identification of people who might be affected so that the tenure holders then undertake this make good work.

**Mr WEIR:** The onus of proof though is on the landholder.

**Mr Carpenter:** The make good agreement is an arrangement between the tenure holder and the water user. It is up to the tenure holder to undertake a baseline assessment and then a bore assessment. So they are the ones who have to undertake those types of assessments in accordance with the act and the statutory guidelines that are made under the act to work out what the current state of play is and what the potential is for impairment. It is really probably up to the tenure holder to do those things. Those assessments essentially have to be certified by an independent third party. That is just a point to note.

**Mr WEIR:** That is not always the case.

**Mr BUTCHER:** What is the process if there is no agreement after consultation? If I have a bore and I am not happy with what they have come up with, what happens then?

**Mr Carpenter:** The act has a couple of options. Either party can elect to go to a dispute resolution process. That might include a mediated meeting that would involve our colleagues from DNRM who have those delegated powers. They could go to an alternative dispute resolution. The final recourse is to the Land Court.

**CHAIR:** That process—and I have had experience in this area—can take years to go through. In the meantime the damage is irreparable. Is there anything that can be done, in particular, within the agreement itself setting out who is responsible for different steps? In the case that I referred to, there was buck-passing. 'No, that is the department's responsibility.' Then the department blamed Natural Resources. Then it would go back to the mining company. That is not good enough. People deserve better than that. Do you have any ideas about how that process could be improved?

**Mr Carpenter:** A lot of it is down to the terms of the make good agreement. Chapter 3 puts in place a statutory basis for requiring those things to be done so that those agreements can be made. Yes, some of those make good agreements under chapter 3 have taken a lot longer than the statutory time frame. For example, in the Surat, where there are 66 identified bores in the immediately affected area, there are probably a few more than 51 bores that are subject to executed make good agreements, with the balance probably relying on the Water Act's dispute resolution processes. So your question is—sorry, I got carried away on a tangent—how would that give the greatest certainty?

**CHAIR:** I have forgotten myself. It was about the time frame. I have seen people lose all of their water supply from bores simply because of the time the process took.

**Mr Carpenter:** That really should not happen under the chapter 3 framework because—

**CHAIR:** It is better.

**Mr Carpenter:** Yes. For example, there is an emergency direction power for the chief executive. The key term is 'impairment'. It does not matter if the underground water impact report did not identify a bore as impaired. If a person has concern about a bore that is being affected, then the chief executive has a basis for directing a bore assessment at that particular location. Once that bore assessment direction notice is given, then the make good agreement flows from that. If people have concerns and there is a substantiated concern about impairment due to a tenure holder taking groundwater, then a bore direction notice can be given and a bore assessment undertaken and then the make good agreement flows from there. If there is an emergency situation, there is the chief executive's power to direct that a water supply be made available to that person.

**CHAIR:** Has that only just come into legislation recently?

**Mr Carpenter:** That has been there since—

**CHAIR:** Ten years or 20 years?

**Mr Carpenter:** I think it was 2010 when the chapter 3 framework came in.

**CHAIR:** It was not around before that.

**Mr Carpenter:** No.

**CHAIR:** Section 3 of the Water Act provides that the act binds all persons but does not apply to the operation of the State Development and Public Works Organisation Act 1971 or the powers of the Coordinator-General under that act. Some submitters are concerned about the exemptions. Can you explain why they were included in the provision?

**Ms Barbeler:** That particular provision has been in the Water Act for some time. It is not a new provision, but it does identify the interaction for coordinated projects and it does certainly recognise the regional significance and the need to recognise those coordinated projects. I am looking to my colleagues to see whether they have any particular examples of how that is implemented.

**Mr Joseph:** Just to add to what Leanne has said, the State Development and Public Works Organisation Act requires that the Coordinator-General should be cognisant and should be consistent with other regulatory frameworks. For example, if the proposal of a coordinated project suggests that it is potentially having an impact on water resources, the Coordinator-General should be considering the potential impact on the relevant water resource plan, for example. He cannot make a recommendation or a direction which is outside or inconsistent with the requirements under other acts. A recent example is the Carmichael mine. There are Coordinator-General conditions which identify the need for monitoring. Also, offset provisions have been identified to mitigate some of the projected or predicted impacts of that mining development on water resources.

**CHAIR:** You would have heard during the proceedings this morning a number of comments with regard to the definitions of 'make good', 'associated water' and 'ecological sustainability'. From what was talked about this morning, have you picked up on the need to more clearly define those particular words or terms?

**Ms Barbeler:** I turn first to the definitions in relation to chapter 3. I hand over to my EHP colleagues to answer that.

**Mr Carpenter:** Briefly, we consider that those aspects of chapter 3 operate well, but we are very cognisant of a diversity of views about those things. That comes back to the notion of an operational review we are proposing later in the year. That is an opportunity for us to further define or seek clarification on those matters.

**CHAIR:** They may operate well, but the problem I have when I am talking to farmers and water users is that they do not understand a lot of the words or phrases. I personally believe that there have to be clearer definitions so that it is a lot easier to understand. I am asking you to take that on board, because I think it is pretty important. Most of the people out there are workers. They focus on their industry. They do not understand a lot of these definitions. I am just asking you to take that on board.

**Ms Barbeler:** We are certainly happy to reflect on those comments.

**Mr Carpenter:** We are proposing to review our supporting materials as part of implementing these changes as well.

**Mr MILLAR:** The chairman is dead right. They are not academics; they work with their hands and their skills. It makes it easier if they have a better understanding of what the words mean. With acronyms and all of that, it becomes confusing.

**CHAIR:** Could you tell us the rationale for the amendments to the River Improvement Trust Act? Why did the provisions need to be clarified?

**Ms Barbeler:** I will hand over to my colleague.

**Ms Burgess-Dean:** The amendments to the River Improvement Trust Act are very much just clarifying provisions to put beyond doubt some of the changes that were made by the WROLA Act, which commenced in December, to ensure that it was very clear how the membership of river improvement trusts were to be established and the provisions and the regulation for setting those up.

There was equally a transitional provision that needed to be included to ensure the establishment of those trusts and the membership, again through the WROLAA provisions that commenced in December, continued to have effect going forward. There was a transitional provision put in to ensure that any of the activities undertaken by those trusts equally were retained as part of this bill. They are very minor in nature, the clarifying provisions, to ensure that the provisions as they were drafted work as they were intended to.

**CHAIR:** So that everybody understands what it is all about; is that what you are saying?

**Ms Burgess-Dean:** Yes.

**CHAIR:** Okay. Thank you very much for your time. The time allocated for the hearing has now expired. I want to thank you all again for your attendance here today. I believe that we have a good working relationship, and it is good to get evidence from you from time to time. All of the written evidence you provide us with has always been of a high standard. I declare the hearing closed.

**Committee adjourned at 12.30 pm**