AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

Members present:

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

Staff present:

Mr R Hansen (Research Director)
Mrs M Johns (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE MINERAL AND ENERGY RESOURCES (COMMON PROVISIONS) BILL 2014

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 6 AUGUST 2014

Brisbane

WEDNESDAY, 6 AUGUST 2014

Committee met at 9.00 am

CHAIR: Welcome, ladies and gentlemen. I declare this meeting of the Agriculture, Resources and Environment Committee open. Before we start, could mobile phones please be switched off or put on silent mode. I want to acknowledge the traditional owners of the land on which this meeting is taking place today. I am Ian Rickuss, the member for Lockyer and chair of the committee. Other members of the committee here today are Jackie Trad, the member for South Brisbane and deputy chair; Sam Cox, the member for Thuringowa; Shane Knuth, the member for Dalrymple; Anne Maddern, the member for Maryborough; Jason Costigan, the member for Whitsunday; and Michael Trout, the member for Barron River. Please note that these proceedings are being broadcast live via the Parliament of Queensland's website.

The purpose of the meeting is to assist the committee in its examination of the Mineral and Energy Resources (Common Provisions) Bill 2014. The bill was introduced into the House by the Hon. Andrew Cripps and subsequently referred to the committee on 5 June for reporting in late August. This morning we will hear from a number of submitters about their concerns about the bill. This will be followed at 11 am by a public briefing by officers of the Department of Natural Resources and Mines to address points raised by submitters.

I also want to welcome a delegation from Kenya, the Kajiado delegates: the Hon. Johnson Parmuat Osoi, Speaker of the Assembly; the Hon. George Risa Sunkuiya, Deputy Speaker of the Assembly; the Hon. David Taiko Nkirrimpai, Leader of Majority Party in the Assembly; the Hon. Justus Kile ole Ngossor, Leader of Minority Party in the Assembly; the Hon. Onesmus Ngogoyo Nguro, Chief Whip; the Hon. James Kuya Nina, Minority Whip; Ms Jane Njeri Manyibe, member of the Assembly Service Board; Mr Daniel Owino Konyango, Clerk of the Assembly; and Ms Jemimah Mateu Kilesi, Principal Clerk Assistant.

BRAGG, Ms Jo-Anne, Principal Solicitor, Environmental Defenders Office Queensland

RYAN, Mr Sean, Senior Solicitor, Environmental Defenders Office Queensland

CHAIR: We will hear first from the Environmental Defenders Office. Ms Bragg, thank you again for coming. It is always interesting to have your submissions because they add to the committee's hearing.

Ms Bragg: Thank you, Chair. I will be appearing today with senior solicitor Sean Ryan, so if it is convenient for the committee we will share the presentation between us.

CHAIR: That is okay.

Ms Bragg: Sean would first like to correct a small error in our submission.

Mr Ryan: Thank you, Jo. Chair, it came to our attention in preparing for today's hearing that there was a small error in our submission. In the final dot point of page 14 our submission says that there is no set period for submissions under the EIS for coordinated projects. While there is no set period in the act, there is a set period in the regulations to that act. Section 35 provides for a minimum period of 28 days, so that opening statement is not correct. However, our broader point that there is less opportunity for public submission under the state development act as compared to the Environmental Protection Act EIS process remains.

CHAIR: Thank you.

Mrs MADDERN: Sorry, but was that page 14?

Mr Ryan: Yes, page 14 of our submission. Also on page 12 to annexe 1 of that submission the same error occurs.

CHAIR: Would one of you like to make an opening statement?

Ms Bragg: Certainly. What time had you thought we could have for the opening statement?

CHAIR: Five minutes.

Ms Bragg: Five minutes? Okay. Firstly I would like to request leave to table three documents that will be of assistance.

CHAIR: Leave is granted.

Ms Bragg: I hope we have done enough copies; we have hurried to do so. The first document is a pictorial representation of the severity of the removal of public rights. We thought this might be of assistance to the committee in comparing the existing law to what is proposed. The second document is a list of eight points of severe concern in relation to the bill. These points are, I suggest, of great significance because they are not only the views of our office; at the bottom when I hand it up you will see that we have met with rural groups such as AgForce, Basin Sustainability Alliance, Cotton Australia, Shine Lawyers and the Queensland Farmers Federation and they have authorised me to say that they agree with these eight points. They request regional hearings so regional submitters' views may be heard and they are planning a joint rural groups press release severely critical of this bill. The first four groups I mentioned have also authorised me to express their disappointment that they have not, as yet, been invited to give their view to this committee. So this is basically the eight agreed points and the reference for what I have been authorised to say is down the bottom.

CHAIR: Okay, thank you. Continue on, Jo.

Ms Bragg: The third document which I have tabled is a copy of an Excel spreadsheet. EDO Queensland staff have gone through the submissions and we have tabled what number the submission is from what is available on the website, the postcode, if it is a group or individual and if they predominantly agree or disagree with these proposals in the bill. We had hoped to produce a map to help the committee, but it was just too hard. However, you will be able to see by looking at the document red shows individuals or groups that disagree; green shows groups that agree. There are a few question marks where we could not work it out, but just by flicking through the pages you will see it is basically red, red, red for disagree apart from a tiny handful of industry groups. I will now proceed with the presentation if people have had a chance to get a hold of those.

Firstly, as you will see on the first of those eight points before you, it is basically our general rationale and reasons for our severe concern in relation to aspects of this bill, and we have endeavoured to be as concise as possible. Essentially, mining projects, large or small, can have serious and long-lasting impacts on rural businesses, community, the environment, the public. This bill, if implemented, would strip away key public rights for 90 per cent of mining projects and put the interests of the mining and resources sector far ahead of the broader public interest and the rights of the community at large and the environment. So this bill should be rejected or severe and particular amendments made to avoid a loss of the respect for the interests of individuals and groups, and this is community groups, environmental groups, landholders, neighbours—all those people who might be affected by mining projects or who have a role in representing the general public interest. So that is our general rationale. Throughout the presentation we will refer to other additional rationales such as some of these rights being a valuable safeguard against corruption.

I now turn to points 2 and 3 of the eight points, and I should emphasise that EDO Queensland provides advice to rural and urban members of communities affected by mining. We have run cases in the Land Court. We really understand from a community perspective the impacts of mining and the importance of objection rights. It is our view that all persons and groups should, as they are currently entitled to under the existing law, have the opportunity to have input into a mine and object to the Land Court, if they choose, concerning any proposed mining lease and environmental authority. So those are two aspects that a proposed mine needs—the tenure, the mining lease, and the environmental authority. We need public rights to object to both of those for all mining projects. What is proposed here—and I believe it is not debated; I have heard Minister Cripps on the radio—is to remove those public objection rights for 90 per cent of proposed mining projects which are called non-site specific. We do understand that for what is called site-specific projects the public rights will remain, and we have consistently said this in public and been very clear about what we are talking about. The impacts of a mine do not stop at the boundary of the mine. The mine affects by traffic, by potential impacts on streams and waterways, by impacts on the rural economy surrounding it, by impacts on the environment. The impacts of a mine go far beyond the border and are of general public interest. So that is my first point: keep the existing objection rights that allow any person or group to apply to the Land Court in relation to mining projects, environmental authority and mining lease.

The second issue, which is point 3, is the importance of publicly notifying and letting people know that a mining lease and an environmental authority have been applied for, that they are proposed. Under these changes, you could have people in the community not even aware that

90 per cent of mining projects have been proposed and are being assessed by the government. This is a very serious matter. We really need to know that these projects have been applied for. The environmental impact assessment process is a separate, different and earlier process. I am talking here about rights—rights to be notified as well as earlier and rights to object to the Land Court. These are separate and different rights to have your say on an EIS. I will stop here because I know you do not have much time and pass to Mr Ryan.

Mr Ryan: One of the main justifications for this bill and the removal of public objection rights has been a fear that they will be abused by frivolous and vexatious litigants. There is no evidence to support that fear. As this committee was told on 25 June by the department, there is no evidence of frivolous and vexatious objections in relation to small scale or standard application mining. Also, the Productivity Commission found no evidence of frivolous and vexatious actions in its assessment of major project assessment processes. Certainly our own investigations have found no findings of the Queensland Land Court into an objection being frivolous and vexatious, so we do not see that there is a substantial basis for that concern. In any case the Queensland Land Court already has power to strike out any application that is found to be frivolous and vexatious. It can also award costs against any litigant that is frivolous and vexatious. So we do not see that fear to be a sufficient basis for the removal of the substantive rights of the community. Also, in New South Wales ICAC has found that third-party objection rights provide a protection against corruption and ICAC has been recommending in New South Wales for third-party objection rights to be expanded, not contracted. So I would suggest that the rights we have should be maintained. Jo, did you want to continue?

Ms Bragg: We are trying to be concise, Mr Chair. We could speak for hours, but we know you would not like that.

CHAIR: You have another 10 minutes, Jo.

Ms Bragg: Ten minutes?

CHAIR: Yes.

Ms Bragg: Okay.

Ms TRAD: In terms of the presentation or in terms of questions?

CHAIR: The whole presentation. You can have another five and then we will go to questions.

Ms Bragg: Sure. Thank you, Chair. I guess the next point I wanted to make was just to reiterate the extent of community opposition to these changes, both rural and urban, and draw your attention to that handout—the one that is showing the red for/against and the green for/for. There is widespread community opposition. It may be that members of the committee have not to date been aware of this. This is partly because there has been a very poor process in terms of getting public views and opinions on the process.

In our submission we noted that in the explanatory notes—and the exact page reference, I believe, is in our submission—Minister Cripps expressed the view or, in any event, it was in the explanatory notes that there had been some individuals or environmental groups not happy with the proposals. When the discussion paper came out earlier this year we know that there were 176 submissions lodged with the government. A number of people sent us their submissions. Some 105 of 176 sent the Environmental Defenders Office Queensland copies of their submissions. They were all saying—perhaps not surprisingly—'We do not agree with these changes.'

I looked in the explanatory notes to see whether the extent of community opposition was acknowledged and recognised because we knew that at least 106 of the 176 submissions opposed this. There could have well been more. There was just this vague, waffly statement in the explanatory notes that some people were not happy. The reality is that the majority of people who have taken an interest in this are extremely unhappy. I really want to emphasise that. The process has not been good. We have requested meetings with Minister Cripps on a number of occasions since we first became aware of that issue. On no occasion has he agreed to meet with us and discuss it, and we have been very disappointed about that.

I also wish to refer in terms of the eight points to the restricted land provisions. We are very concerned that the restricted land provisions are being severely weakened and not strengthened, as has been said in public debates. We think it is really important that there is restricted land around infrastructure such as bores and watering points, around houses and other key infrastructure. This has been muddied in the public debate. What is in fact the case is that yes there might be an extension of restricted land, but the minister will have new powers to overrule the protection afforded by restricted land and allow open-cut mining in those restricted land areas.

A point also made by Glen Martin, a rural practitioner with Shine Lawyers, is that for most coal seam gas proposals these new restricted land provisions will not be of any benefit because most of those applications were in before those changes would be of any relevance. I would like to draw the committee's attention to the submission of Shine Lawyers. Glen Martin is a highly respected rural practitioner.

You will note that on the eight pages of agreement from key rural community groups, Shine Lawyers is mentioned. They have done an excellent and detailed submission in relation to restricted land and also a number of other aspects of the bill. I might now pass to Sean for some further points.

Mr Ryan: A key concern for both our clients and those representing landholder groups is the change in the criteria that the Land Court has to consider once a matter comes before it. In particular, it has removed matters such as the past performance of the applicant and the public right and interest.

In our view, it is appropriate for the court to consider the public right and interest when dealing with minerals that are owned by all Queenslanders. This was a key feature in the case in 1975 of Sinclair v Mining Warden of Maryborough. That led to the protection of our iconic Fraser Island. Those provisions have operated without abuse for 40 years and have led to the protection of some significant areas in Queensland. We do not see the basis for those consideration to be now taken away from the Queensland Land Court.

Another key issue that our colleagues who represent landholders have asked us to emphasise—and this is a point made on page 3 of the submission by Shine Lawyers—that many crucial aspects of the legislation have been removed and relegated to regulations. They are concerned particularly about the details in relation to land access arrangements which concern private property rights. By detailing them in regulations they lack the full scrutiny that would be afforded to those matters if they were in the act itself. They request that a rural hearing allow for landholder representatives to fully articulate these points.

Ms Bragg: I guess we could say a lot more, but we would welcome questions from the committee. Our broad view is that these are very serious problems.

CHAIR: I will start with a question. Of the 106 submissions that were made to the white paper—I assume it was a white paper—

Ms Bragg: Discussion paper.

CHAIR: Were they mostly proforma submissions?

Ms Bragg: Yes.

Ms TRAD: Can you step us through this pictorial representation so that we have a very common understanding of it?

Ms Bragg: Sure. I guess the committee will appreciate that it took us hours to try to get this picture together to assist all of us. In the middle there is the proposed mine. So this diagram is about who would be entitled to object to the Land Court if the bill became law compared to the situation now.

Currently if you are an owner of property and the mining proposal is to be on your property, you can object. That will not change. You are notified that the mine is proposed and you will be able to object. If you are a neighbouring owner you will not have objection rights to 90 per cent of mining proposals unless they need your land for access. Currently there is general public notification and currently the neighbouring owner would be entitled to object to the Land Court. Under the changes, the neighbouring owner will not have the benefit of general public notification and for 90 per cent of projects would not be able to object to the Land Court.

Ms TRAD: Can I ask you on that point—sorry to interrupt you: what if there is a shared watercourse that needs access?

Ms Bragg: No, I do not think that would change what I have said.

Mrs MADDERN: Are the neighbouring owners where the property boundaries adjoin or—

Ms Bragg: Correct.

Mrs MADDERN:—are you saying it is further out than that? On the map you are showing us there are a whole lot of people under neighbouring owner that I would not consider would actually come under that because they are not actually adjoining the mining boundary.

Ms Bragg: It is certainly correct that if they directly adjoin the mining boundary what we say is true. I guess we looked at neighbouring owners in terms of someone down the road or nearby.

Mrs MADDERN: In the current situation it would only be the property owner whose boundary physically adjoins the mining lease application area who would be notified individually?

Ms Bragg: I cannot answer that question. I have talked here about general public notification and who can object. The current law is that there is general public notification to the community by newspaper ads and sometimes online and any person in the community—the direct neighbour, the person down the road—is entitled to object. Under the changes, there would not be that general public notification for 90 per cent of cases. Neighbouring owners, be they directly next door or down the road, would not be able to object to the Land Court.

CHAIR: Where did you get the figure of 90 per cent from, Jo, if you do not mind me asking?

Ms Bragg: Sure. We have detailed that in our submission. I can try to find the page.

CHAIR: I have got it here.

Ms Bragg: It was based on what was in the discussion paper. It is not disputed, as we understand, by Minister Cripps. If you were an occupier of the land but you did not own the land, you would be notified of the proposed mine. But again, you would not have objection rights in 90 per cent of the cases.

If you then go further afield to community groups, residents of the town, people in other parts of Queensland or Australia or whatever, again there is no general public notification and for 90 per cent of mining projects there would be no objection rights. This is trying to graphically show you that it will really only be for 10 per cent of mining projects in the future that there will be general public notification that an environmental authority and mining lease are proposed and only in 10 per cent of cases are their general public objection rights to the Land Court.

At the moment, it is 100 per cent. As Sean has explained, these rights have not been abused. Given the impacts mines, large and small, can have, we say—and the majority of submitters and rural groups are saying—that we should maintain general public notification of all these projects. We should maintain general rights that any person or group can object to the Land Court. There is no reason why that should be changed.

Mr KNUTH: I want to get a good understanding of where you are coming from. This is a very important issue. At Mount Leyshon there was a spill which contaminated the waterway seven kilometres downstream. The landowners were affected. There were birds killed and fish killed, you name it. So those people seven kilometres down from where that spill took place would have no right to have a say or object if they wanted to reopen that mine?

Ms Bragg: When that particular mine was being established—when they were seeking their mining lease or environmental authority—we would have to have a look and see whether or not that is a site specific mine. At the moment, there is a real risk that if that project was not site specific those downstream landholders would never have known the mine was proposed. They might not even know that it was going through its assessment for its lease and environmental authority. They would not have had a chance to have their say about conditions that might have helped prevent contamination of the waterways.

CHAIR: Shane, probably your example was not the best example simply because it is under the old approvals.

Mr KNUTH: I am talking about now. If they were to reopen that mine would landowners seven kilometres downstream have the right to object to that?

Ms Bragg: We would really have to see whether it was an old approval or fresh approval. I think you are also talking about enforcement—that is, who is able to go to court and stop breaches of the law. What we are here about today is whether the mine should go-ahead at all. Landholders, such as you mentioned, would want to be able to object and have their say to get tight conditions to protect that watercourse. Under these proposals, they might not be able to.

Mr COX: Maybe this is a yes-or-no answer; I could be wrong. Looking at it the other way and using your map, if we had leaseholder owner, neighbour owner, community group, and under the current system we are all happy for it to go-ahead someone from outside this community could put a claim in and stop that going ahead. That could happen even though all the neighbours, the leaseholder owner and the town residents were happy for it to go-ahead? Under the current system, can someone from a community group, for example, come in and stop it happening?

Ms Bragg: The first point is that an individual cannot do that. Any person could lodge an objection to the Land Court.

Mr COX: Under the current system, is that a possible scenario? Could that happen? Using your map, if the neighbouring owner, the leaseholder owner and town residents were all happy and no objections had been lodged—so we would presume they are happy—someone could, at the moment, come in put an objection in? Is that yes or no?

Ms Bragg: I will pass to Sean Ryan.

Mr Ryan: Theoretically, any person can object. That objection would be referred to the Land Court. If their claim was frivolous and vexatious the miners could seek to have that matter decided, if it lacked basis.

Mr COX: Could that possible scenario happen? It does not matter whether the claim was frivolous or vexatious, could that scenario happen and stop something going ahead?

Mr Ryan: Any person can object to a mine currently.

Mr COX: So the answer would be yes?

Mr Ryan: Yes, but there are protections against abuse of that.

CHAIR: Thank you very much for your presentation today.

Ms Bragg: If any committee members do have further questions we are very happy to answer them on some other occasion.

CHAIR: Thank you very much.

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

GAWRYCH, Mr Ryan, Solicitor, King Wood & Mallesons, Assisting Queensland Resources Council

MULDER, Ms Katie-Anne, Resources Policy Adviser, Queensland Resources Council

ROCHE, Mr Michael, Chief Executive Officer, Queensland Resources Council

CHAIR: Welcome to the Queensland Resources Council. It is nice to have you here today. Michael, would you like to make a brief opening statement?

Mr Roche: Thank you, Chair, for the opportunity to provide comments on the amendments outlined in this bill. I would like to touch not just on the matter that was extensively covered just now, but also other parts of the bill. I will start with notifications, objections and appeal amendments. It will be no surprise to the committee that QRC is concerned by vexatious litigation which is designed to disrupt and delay resource projects. This unproductive uncertainty is frustrating for resource companies and also for host regional communities. Vexatious litigation is an abuse of Queensland's objections process, which was originally designed to allow genuine landholder and community concerns to be raised and addressed. Your previous witnesses from the Environmental Defenders Office, or EDO, said in their submission to this committee that there are no cases of vexatious objectors. Mr Ryan repeated that in his evidence this morning. Ms Bragg who heads up the office is the same Ms Bragg who was particularly thanked for her contribution to the anti coal movement's strategy document entitled *Stopping the Australian coal export boom*. That document was leaked to the media in March 2012 and I have copies of that document for the committee. I seek leave to table that.

CHAIR: Is everyone happy? Yes.

Mr Roche: In that document, several strategies are outlined to disrupt and delay key projects. The very first strategy outlined is litigation. The document states this—

> We will lodge legal challenges to the approval of all of the major new coal ports, as well as key rail links... the mega-mines and several other mines chosen for strategic campaign purposes.

The document states the budget for this litigation strategy will be $1.35 million and the majority of the budget will be allocated to the EDO Queensland. The committee might ask: is this strategy being executed? I refer the committee to the EDO's website where they set out the cases they have run or have on foot. The EDO represented the so-called Coast and Country Association in its Land Court objection to the Alpha Coal Project, a case that ran for about 15 months. It is representing Coast and Country in the judicial review currently before the Land Court on that Alpha decision. It is also representing Coast and Country on the objection to the Kevin's Corner project.

Who or what is the Coast and Country Association? They are, in fact, a front for the anti coal activist group Friends of the Earth. They have a postcode at West End in inner Brisbane and their spokesperson is Friends of the Earth campaigner Derec Davies. True to the anti coal strategy, EDO is also representing two environmental activist groups in court actions against the Abbot Point port expansion.

Against that background, the QRC supports the amendments in this bill to clarify and streamline the objections process for mining leases—that is, mining tenure—but which do not limit or remove a right to object to the mining project. Rather, these amendments ensure objections are more appropriately considered as part of the project's environmental authority under the Environmental Protection Act. Communities and landholders remain important stakeholders and still retain a genuine opportunity to raise concerns over the project's environmental impacts. I am confused by the EDO's claim that 90 per cent of mining projects would not be subject to Land Court scrutiny. All mining projects require an environmental authority.

The amendments will reduce unnecessary duplication in Queensland's approval processes. To further encourage investment in Queensland's resources sector, the QRC suggests the committee has an opportunity to clarify the appeal process under the Environmental Protection Act by specifying the relevant grounds for objection and appeal. The QRC suggests greater clarity in the act would prevent appeals on grounds that cannot be addressed by the project's environmental authority. This would save time and costs where the appeal is out of scope, a process that in some cases has taken up to two years. I should also point out that all of these activist groups and all

interested members of the community will continue to have the opportunity to comment on the terms of reference for a project's environmental impact statement, or EIS, and also of course on the draft EIS.

I turn now to overlapping tenure amendments. The QRC is very pleased to see amendments in this bill start to implement industry's proposed framework for overlapping coal and coal seam gas tenures in Queensland. As outlined in the QRC's submission, the amendments in this bill relating to overlapping tenure are not perfect. However, they represent the culmination of a close working relationship between industry and government, and I mean government before March 2012 as well as since.

There are three matters I wish to emphasise for the committee in regards to these amendments, all of them relating to transitional arrangements. First of all, I mention the Surat Basin transitional arrangements. Under sections 231 to 233 in regard to specific transitional arrangements for the Surat Basin, I make these comments: the QRC presented the new framework to government without an agreed industry position on transitioning to the new framework. In this bill, the government has proposed an exclusive 15-year notice period for coal to develop from application for a mining lease where there is a petroleum lease and that petroleum lease is granted prior to 31 December 2016. As drafted, this proposal would severely curtail any future coal project in the Surat Basin transitional area. The QRC understands this is not the government's intention. As such, these amendments will need to be redrafted to reflect the intention to provide certainty to projects committed and encourage co-development of resources where possible. There are a number of other material issues with the existing drafting of the transitional arrangements, which are identified in our submission. As such, the QRC recommends these amendments be removed from this bill until sufficient consideration is given to industry's emerging position.

I turn to some bespoke arrangements. The industry proposed framework was designed around the principle that if parties could not agree to co-develop, then a default arrangement would be the statutory backstop. It was always a central industry principle that the default arrangement would encourage those bespoke arrangements. QRC recommends a blanket acknowledgement that the legislative regime does not limit parties from agreeing to alternative arrangements, except to the extent of certain prescribed aspects which are required for the state to discharge its custodian obligations.

I turn to health and safety arrangements. The new framework outlined in this bill was based on a whole-of-package approach to overlapping tenures, where implementation of the entire framework would be in place at the same time. Key areas not included in this bill include safety and health arrangements, a code of practice, as well as a number of other amendments to regulation to give effect to some of the more detailed areas of the framework, such as compensation. QRC will continue to work collaboratively with the department in fleshing out these arrangements.

Turning to the Modernising Queensland Resources Act Program, I would like to record QRC's support for that project. The project aims to deliver a common legislative framework for all resource types in Queensland. The goal is a challenging one, but the Department of Natural Resources and Mines is to be commended for running an exemplary consultation process in engaging closely with stakeholders. The amendments in this bill are an important down payment on historic reform.

Lastly, land access: QRC is broadly supportive of the amendments in this bill implementing the recommendations of the Land Access Implementation Committee. I would be very happy to take questions from the committee.

CHAIR: Thank you very much for that summation of your thoughts, Michael. I represent Willowbank and the New Hope Mine and such places. It is becoming quite a large community right beside the Amberley airbase. With this proposal, what would be the problem with having a two-kilometre buffer around there; people could make submissions in a two-kilometre buffer around a proposed mine site?

Mr Roche: Are you saying about New Hope making a mining lease—

CHAIR: I know it is an old mine, but I know what mines working up beside communities do and how they work. New Hope is a fairly good corporate citizen. It talks to the community and has discussions, and even changes some of its mining practices because of the community. For instance, we were given something from the EDO that I will show you. At the moment, I do not think even adjoining landholders will have the right to a notification. What would be the problem with having a two-kilometre buffer zone, say, around a mining lease, such as that one there; the black that is there?

Mr Roche: Why an arbitrary buffer? What figure is appropriate? Mr Rickuss, you are focused on a particular project that you understand, but is that going to be relevant in remote Queensland? Sometimes, in the case of Alpha—

CHAIR: If anything, it would be a bigger buffer then, wouldn't it? It could be a bigger buffer.

Mr Roche: Is the committee going to get into redrafting the bill with buffers?

CHAIR: No, the committee gives recommendations. What I am asking is: what would be the problem with adjoining landholders, if you want to put it that way?

Mr Roche: Those adjoining landholders will have the opportunity to object to the environmental authority around issues that might be of concern to them: issues to do with air, water, noise and those sorts of issues. They will have their say on those local matters. Can I come back to my opening statement and the issue about vexatious litigation. There was a very good question asked by Mr Cox on the scenario where all the local community is supportive and a community group can come in and object. We have had the experience of the Alpha project where Ms Kathryn Kelly of Chifley, ACT was given standing by the Land Court to argue, over about 15 months, the impact of that project on global climate change.

Mr COSTIGAN: So those wombats from down south will be cut out of it?

CHAIR: Appropriate language, please.

Mr COSTIGAN: Thank you, Chair, for your guidance. Those people from out of town, from interstate, a long way from the Galilee or the Surat or the Bowen basins, who weigh into the debate, will be cut out of the process, and so they should be? That is your view, Mr Roche?

Mr Roche: We have had unfortunate experience of people from outside Queensland buying into objections to the process. At the moment, the process gives them standing. Our experience has been that the Land Court has allowed them to be part of the objections process. That has prolonged the process and denied those communities the jobs and investment.

Mrs MADDERN: This is a question that I was going to ask of EDO, but I will also need it to ask it of you, too: can you give me your understanding of the difference between a site-specific and a non-site-specific mining lease? That seemed to be a focus of the EDO's: 90 per cent was on non-site-specific. I would be interested in your response to that.

Mr Barger: Thank you for the question. It is a good one and it is important because it illustrates that the EDO's diagram is talking about a particular stage in the approval of a mining project that might run for four or five or six years. The point that they make really well is about the proposed outrageous removal of your rights applying at one point of that approval process, which is the tenure process. What the reforms are designed to do is to say, if somebody is concerned about the impact of a project, where is it most productive to have that concern aired? Do you want it aired in court through an expensive process or do you want to bring those processes upfront in the approval process and link it to the impact to the project, so that you can say, to use Sean's point earlier on, if you have downstream people who are concerned about impacts on a waterway, 'Let's look at how you condition the project to manage the impacts.'? What you start to do is you sort the wheat from the chaff. You say, 'Well, somebody has a concern about this project. Is it because they fundamentally do not want to see the project proceed or is it because they are concerned about how it will impact them?' If the impact is going to be noise, dust, environmental, socioeconomic, then there is a process for assessing those impacts and letting people have their say, but it is not at the point of the project where you make a decision about the tenure.

In understanding the EDO's submission, you need to have an understanding of that full, long, drawn-out process through which a minor project is assessed. Going to your question about the specific conditions, they are the conditions on an environmental authority. So the process that the EDO is describing is essentially does this mining proposal fit within the standard operating conditions? Take an example in the Bowen Basin of a coalmine. Does it look like the coalmine down the road? If it does, then it probably sits within that category of whether it can be regulated the same way as those other mines currently are. If you are doing something different, if it is a new technique or people are not familiar with it, then it is going to be non-standard and it gets a higher level of scrutiny and there is a greater opportunity for people to have their say because you need more information. Again, it is a kind of sorting process to say is this something that is fairly familiar, that Queensland has seen a fair bit of or is it something a bit different? If it is a bit different, then it gets placed in a special category where you have a closer look at it.

Ms TRAD: Good morning, Mr Roche et al. Thank you for your opening remarks. As someone with not only one but two 4101 postcodes, I do not condone this at all. This is actually not evidence that the current public notification process is being used vexatiously.

CHAIR: Do you have a question?

Ms TRAD: Yes, I do have a question, Chair. The parliamentary committee has had the Parliamentary Library commission a bit of a review and investigation into vexatious litigation or objections to applications for mining leases. They have been able to determine that there are none. They have found none in their various searches. I am wondering if you could furnish the committee with evidence—actual evidence—of where applications have been vexatiously objected to in the Land Court.

Mr Roche: You will have to re-read my statement. I have drawn the dots between the anti coal movement's strategy, the key players given the roles of executing that strategy and how it is being executed in Queensland using the current processes under the Queensland Land Court that allow groups like Coast and Country Association, a front for Friends of the Earth—and they are just down the road from you. Go and say hello to Derec; I am sure you know Derec. In terms of the definition of what is vexatious, we will have to agree to disagree in terms of a narrow definition. We are talking about the people who are using the Queensland Land Court system to disrupt and delay projects, as was outlined in this strategy. The strategy is real. The strategy is being executed. It is about disrupting and delaying projects.

Ms TRAD: I understand that completely, Mr Roche. As I said, as someone with two 4101 postcodes, I do not condone this. What I am asking for is evidence. This is not evidence that public notification is being used vexatiously. You drawing the dots in this matter actually extinguishes for a whole range of rural leaseholders any ability to be notified publicly of big mining projects that are occurring in their communities. The government is punishing a whole range of rural landowners because of this document where there is no evidence of vexatious litigation in this matter.

Mr Barger: It is important to be clear about what the changes do. They do not extinguish the right of notification. What they do is limit the standing of appeals on the granting of tenure. So it is not—

Ms TRAD: I understand that, Mr Barger. I do understand that. Rural leaseholders are saying, 'We actually want to have a say in the land use—not just in the EIS but in the land use as well.'

Mr Barger: Isn't the land use the subject matter of the environmental assessment and the environmental impact assessment? The tenure is the granting of a property right. So it is one stage in the process of the mining process being assessed. It is really important—and I appreciate you understand it, but for the rest of the committee—that there is a very sharp distinction between notification, being aware that a project is afoot, and how that project is being assessed. The department is doing a lot in terms of moving those processes online. There have been discussions about automatic notification, so that if a tenure application goes in, ratepayers are automatically made aware of that. The notification process is quite distinct from an appeals process.

Going back to Michael's point, where we draw a distinction between a vexatious appeal and a productive one, if you like, what is the intent of the objector? So if the intent, what is set out in that document, is to delay, frustrate, damage the economics of a project, we would say that is vexatious. If it is a landholder that is concerned about an impact on their neighbours or the impact on the local economy, what is the best way of bringing those issues to the fore and giving them an effective voice? I think the Land Court should be the last resort rather than the first resort. There are a couple of things in there: notification verses appeals—that is an important distinction. Vexatious is tough for a Parliamentary Library to wade through because you really need to go to the motivations of the person making the objections—

Ms TRAD:—which is quite subjective.

Mr Barger: It is.

Ms TRAD: I put a lot of stock and faith in the Parliamentary Library. They do an excellent job.

Mr Barger: A fantastic job. I expect, without having seen their advice but having read the EDO's submission, that they applied a similar test, which is: has the Land Court thrown it out for being vexatious? EDO pulled out one example. I guess what we are saying is: if your interest is in the economic development of Queensland, is that the right test to apply? When you are looking at the motivation of somebody making an appeal, is it because they want to effect a change in the project to reduce the impacts on them or the communities they represent, or is it because they are looking to put the handbrake on the project and hope that it falls over?

Ms TRAD: Obviously the QRC has some examples that you are referring to. Just furnish the committee with it; that is all I am asking. If there are cases that you believe have been motivated by vexatious litigants, then we would like to know about them.

Mr Roche: Ms Trad, I outlined one in my opening statement.

CHAIR: The example would be similar to that Alpha one?

Ms TRAD: Was that the only person who had standing against the Alpha coal—

CHAIR: I do not know. That is what I am saying.

Mr Barger: The examples in our submission go to where appeals have been made in the Land Court on the grounds where, after an 18-month to two-year process, the Land Court has found that they do not have standing to determine the matters on which the appeal has been made. From a legal point of view, that looks like somebody shadow-boxing. We are happy to set you out some examples where we would see the dividing line, if that would help, and provide it to the committee.

Ms TRAD: Thank you.

Mr TROUT: My question is to Mr Roche. A lot of times projects are delayed for quite some time, which causes a lot of grief to Queensland. Whenever these proposals occur there is lots of media regarding the nay-sayers. Could you give us examples of the working relationships with landowners, because this affects regional Queensland particularly? It would be great to have some examples of relationships you have with AgForce or landholder groups to move projects forward?

Mr Roche: We do work with AgForce and QFF on a whole range of issues. We have worked together on the land access proposals that are in this bill. Mr Barger would spend quite a lot of his day working with those sorts of stakeholder groups to try to reach an agreement and understanding on how to move these sorts of issues forward. Again, coming back to the Alpha project, there was the case of a company that had dealt successfully with all of its neighbours, but the other objectors were anything between seven and 40 kilometres away. The government and the Coordinator-General have moved ahead with a lot of standardised arrangements around make good arrangements for water, for example. Again, some of the issues that have come up in particular cases are starting to be enshrined in standard conditions and forthcoming legislation.

CHAIR: Thank you, Mr Roche, for that summary and your thoughts. I will now call on the Australian Petroleum Production and Exploration Association. Andrew, if you could get those papers to us.

Mr Barger: When is a reasonable time to get that back to you?

CHAIR: Next week—next Thursday or something like that.

LEMIRE, Mr Nathan, Senior Policy Adviser—Queensland, Australian Petroleum Production and Exploration Association

PAULL, Mr Matthew, Policy Director—Queensland, Australian Petroleum Production and Exploration Association

CHAIR: Welcome, Matthew and Nathan. Thank you very much for coming this morning.

Mr Paull: We have not prepared an opening statement. We are happy to answer any questions on our submission.

CHAIR: Can I get you to state your name when you speak? For the people who are listening, could you please advise what APPEA actually represents?

Mr Paull: I am Matthew Paull, I am the Queensland Policy Director for APPEA. We are the national peak body for the oil and gas industry.

Mr Lemire: Nathan Lemire, Senior Policy Adviser, APPEA.

Mr COX: In your view, is this bill making changes that compromise from the environmental point of view and the landholders' rights point of view? Firstly, from the environment point of view, there are obviously strict regulations for any mining operation, be it coal, under earth or whatever form it is. Do you believe that this bill is going to make changes that compromise with regard to the environmental side? With regard to the landholders, do you think this bill actually might encourage better relationships?

Mr Paull: As the bill relates to petroleum, I do not think it compromises anything environmentally. In relation to the changes that it makes to the land access provisions, we were a part of the land access review that led to those. They can all be characterised as intending to improve the discussion, streamline the discussion with the landholder.

CHAIR: Do you find that the overlapping tenures that are going to be brought into place in this will be advantageous for the gas industry or will it be a detriment?

Mr Paull: We think it is a positive step. As the QRC mentioned, the framework that is being introduced in the bill was the product of quite a long process of negotiation between mining, government and gas. Most of the framework was agreed between coal and gas, and the government made a call on a few other areas.

Mr COSTIGAN: Do you think changes in the bill will help foster better relations, broadly speaking, between the resources sector and landholders? I know that Mr Roche took a question on that earlier. What is your view on that, broadly speaking?

Mr Paull: As I said, as they relate to the petroleum industry, we think they will. The package of recommendations that came out of the land access review we saw as quite positive. We were supportive of those. As I say, they were all aimed at improving our relationship between landholders and the resource industry.

Ms TRAD: Just in relation to page 2 of your submission, where you say in the last paragraph—

A draft of the regulation under the Bill has not yet been released which will contain significant details ... APPEA understands the DNRM is currently drafting the regulations and will release them for—

your consideration, I take it—

consultation with industry as this Bill is passed through Parliament.

Is that still the case? Have you been consulted around the regulations to date?

Mr Lemire: I understand that that is currently being drafted, but consultation is yet to proceed.

Ms TRAD: So there has been no prior consultation over the drafting of the regulations to date?

Mr Lemire: Not as of yet.

Ms TRAD: When are you expecting to have the regulations?

Mr Lemire: We would be in contact with DNRM, but we would suggest that would be imminently once the bill is passed.

Ms TRAD: So around the same time.

CHAIR: The submission from Shine Lawyers highlights that—

"private land" provided in the Bill is not the same as that of the Petroleum and Gas (Production and Safety) Act (**P&G Act**). In particular it removes the phrase "including Aboriginal land under the Aboriginal Land Act 1991 and Torres Strait Islander land under the Torres Strait Islander Land Act 1991" ... Even though this is out of our general experience we have concerns that Aboriginal and Torres Straight Islanders may be prejudiced by this amendment ...

Have you taken any note of the amendment? What do you feel it is going to do?

Mr Paull: I do not think that we had focused on that in particular. In general, we did not think the bill had that effect. We could take that on notice and come back to you if you wish.

CHAIR: Thank you. Shine Lawyers make some very detailed points, particularly about petroleum and gas, because they are based in Toowoomba and they have lots to do with it. They also raise some concerns about the entry as prescribed under regulation. Have you had a look at the Shine Lawyers submission?

Mr Paull: I have not read it in detail, no.

CHAIR: It could be worthwhile you having a look at that.

Mr Paull: The land access changes, as I say, they were the product of a fairly extensive review. It was initiated by the previous government and went through into this government and there was an implementation committee set up. So we were on that with the farming groups and the gas commission. It was chaired by Professor Watson. Generally, that group was supportive of the changes. As I say, they were all intent on improving the relationship. We could certainly have a look at those, if you wish.

CHAIR: Yes. Any other questions?

Mr COX: I just have one other one in relation to investors. Obviously, huge investments go into such developments. With that comes the risks that they look at and future profits, maybe. Do you think that this bill may help alleviate some of that risk that investors look at when they look at investing in projects in the future, whether that be a delay in the project or the project even getting the go-ahead? Do you think this would help lower some of the risks that investors would look at?

Mr Paull: It would lower some of them. The overlapping tenure issue in particular, that was something that had the potential to delay development. In some cases it was where the coal party and the gas party were not agreeing for some reason. So the framework that is negotiated here should speed up all of those negotiations and get both coal and gas moving faster.

Mr COX: Just on that, you are talking about two different industries here, not necessarily a community or a landholder. That overlapping happens even within industries and this bill will go a long way in helping with that?

Mr Paull: Yes. We think so, yes.

CHAIR: Part 4—Restricted Land in Shine Lawyers' submission refers to some changes to restricted land. Did that also come out of the working group that you were talking about?

Mr Paull: No, that was separate to the working group. We are not opposed to those changes. The nature of our comments on those was more about just the importance of getting some of the definitions right—having a relatively vague definition of a place of worship, for example, and then saying, 'You can't go within however far of a place of worship.' Without nailing that down a bit, in our experience the potential is that, when a company is dealing with a landholder, there might be disagreement over exactly, 'What is a place of worship?' or, 'What is my residence? Is that where I live? Is it my holiday home?' Both sides having a clear understanding of exactly what it is that the government wishes to protect, I think, is important otherwise there is the potential for argument and that does not improve landholder relations and it does not help industry get going.

CHAIR: Any further questions? Thank you very much. May I suggest that you have a look at the Shine Lawyers submission.

Mr Paull: I will.

CHAIR: Because it highlights a lot of the gas queries and we more than likely will be doing a brief hearing in Toowoomba.

Mr Paull: Okay.

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

CHAIR: Welcome, Bernie. Thank you for coming along this morning.

Mr Hogan: Thank you very much.

CHAIR: Do you have an opening statement?

Mr Hogan: I do.

CHAIR: Okay. Could you just explain what AMEC represents, too, thanks.

Mr Hogan: I certainly will. The Association of Mining and Exploration Companies is the peak national industry body for mineral exploration and mining companies in Australia. The membership of AMEC comprises hundreds of explorers, emerging miners and those companies that service them. Many of them have operations here in Queensland.

In general, AMEC is supportive of not only the current bill that we are discussing but the Modernising Queensland's Resources Act Program that is being undertaken by DNRM. This bill obviously forms a critical part. Much of the policy that this bill seeks to implement is vital to maintain a strong mineral exploration and mining sector in Queensland. However, as with all legislation, we understand that it must be closely scrutinised for those unintended consequences that would decrease its effectiveness. I would like to highlight just three areas in need of particular attention.

The land access framework: as the most basic element for exploration, the access to land is paramount. Without the right and security of a tenement, exploration is non-existent in this state. AMEC also understands the need for a strong and vibrant economy in Queensland to be built on co-existence between several industries. However, as many explorers and mid-tier miners will attest, access to their tenement is often one of the most difficult activities. The framework that is set out in the bill establishes a strong process and protects the landowners and the explorers, although explorers need that incentive as well. As recommended by the Land Access Implementation Committee, which we have heard about earlier, the opportunity to partake in an opt-out agreement between the two willing parties is vital. Many explorers have longstanding agreements with well-informed landholders. AMEC encourages the committee to support this policy and ensure that productive business relationships remain without the need for government intervention in those cases.

Similarly, AMEC is keen to highlight the significant difficulties other mining jurisdictions have created by imposing extra costs and highly prescriptive land access arrangements on explorers. Those states have effectively killed off exploration or increased the cost of operating to such an extent that investment capital simply flows to projects elsewhere. Be under no misapprehension: there is no loyalty in capital. Despite us thinking that Queensland is the greatest place in the world, investment will leave Queensland quickly if there is that perception that government policy is making it too difficult to operate.

Notification of objections: obviously, this has been of great interest this morning. Any amendment to remove duplicative notification periods is regarded as a positive step by AMEC. The repetitive opportunities for any development interest group to attempt to re-examine the authority holder's right to access their land simply reduces Queensland as an investment destination and devalues the issues of truly affected landholders. As such, AMEC supports the amendments in the bill that propose to limit objections to the Land Court directly to the landholders on site-specific environmental applications in very large scale developments. This provides some certainty to small scale mining operations and will save time and costs for the small scale developers in Queensland and still allow those parties truly affected to have a say.

The last point that I would like to highlight is, again, in relation to overlapping tenures, specifically in the Surat Basin. AMEC has significant concerns regarding the amendment sterilising the Surat Basin transition area from mining activities. The consequence of these changes removes any possibility of an exploration company with tenements in this area to raise capital to explore. It is already a dire market for these small-cap operations. They do not need more headwinds. By giving gas companies until 31 December 2016 to have a petroleum lease granted, the government will essentially force all coal companies to abandon projects in the Surat Basin for up to 18 years. AMEC regards this as a retrograde step and recommends that special protections for gas companies are not necessary as there is a strong and complete overlapping tenure process in the bill. At the very least, the bill should be amended to reflect the process that is to operate in the rest of the state and ensure that there is an opportunity to negotiate truncated notification periods, I am happy to take any questions.

CHAIR: All right. Thank you. With the proposal for that overlapping of the Surat Basin, what would AMEC's solution be to that?

Mr Hogan: AMEC understands that the gas basin in Surat is vitally important to those operations that are in place now. However, the overlapping tenure regime that has been spoken of before from the other groups provides a situation where there is a combined development program. At the present time, a notification in the Surat Basin would be 16 years. Without the opportunity to truncate it, to actually have a commercial decision to say, 'Okay, we don't need 16 years,' or, 'Can we shorten that for certain commercial considerations?,' at the present time there is no opportunity to do that. So you have a small coal company, or a small coal explorer—not a company; they have not started anything yet—that cannot negotiate a commercial outcome. They have a tenement. They may have environmental approvals. They cannot have access to the land. Essentially, that is worthless. They cannot go and raise money. These companies do not turn a profit. We are not talking about a mining company. These are explorers who have no other opportunity but to try to explore that land.

CHAIR: Thank you.

Mr COX: Your submission is great. I know that there is some support in areas and there are other areas that you would like to tweak.

Mr Hogan: Certainly.

Mr COX: Incidental coal seam gas, or the legacy boreholes, I understand them. They have been raised before. My question to you today is as I have asked others. In regard to what has happened in the past, which this bill will, hopefully, alleviate, does your organisation find that there are areas where there is general consensus for exploration but you have seen outside influences with no direct connection to that development or even exploration going ahead cause enough of a risk factor that people are deterred from going into such areas to look at them?

Mr Hogan: Undoubtedly. I do not have the laundry list here before me, but you do. A lot of the objection is not necessarily about winning; it is about delay. When you are an exploration company, we should be aware that exploration companies on average raise about $6 million on the ASX and never make any more money until they find something or sell off the project. So if we are talking about a company that may have a life expectancy of somewhere between 10 and 15 years, that is not very much money. So if you can last long enough, they run out of cash, disappear and hand in the project and it is done. So you can kill off exploration companies and that is the process. It is not about winning an objection; it is about delay. So that does happen. You see it in many jurisdictions. In Queensland we have had them.

Mr COX: Can I just draw a parallel in regard to the government's recent uranium policy. That has created more interest, more reason for people to look at investing with possibly—again, not assured—more investment coming into the state through projects.

Mr Hogan: It is a slightly different issue but, yes, it is a great opportunity. But there are many, many factors in investment—world prices—

Mr COX: You want to minimise the risk.

Mr Hogan: We want to minimise the risk, open up the opportunity and, as we look at it, get people to the starting line so that the affected landholders, the community and the government have all been able to assess it and say, 'Yes, this project is acceptable.' If we are talking about exploration, I really want to get people to get the idea that exploration is a precursor to lots of people in reflective gear and big yellow trucks. We are talking about a very transitory, minimal-impact exercise.

Mr COX: Correct. Thank you.

Ms TRAD: Mr Hogan, in relation to your submission—and this is along the same lines as the question I asked Mr Roche from the QRC and you were here, I understand, for that session—you say that repetitive opportunities for antidevelopment interest groups to attempt to re-examine the authority holder results in delays.

Mr Hogan: Certainly.

Ms TRAD: Do you have any examples of where this has happened?

Mr Hogan: Of where this has happened? I can tell you it happens consistently in New South Wales and it is why New South Wales is considered by the exploration industry to be a substantially inferior place to explore. In fact, globally, it is identified at every juncture in the process. It is not just, 'We are going to assess a specific element.' Maybe that is an environmental authority or it is a

development consent. It actually goes right back to the beginning to say, 'Does this person have a right to enter into and have a title granted? Do they have the financial capability?' So at every opportunity it starts again.

That is what we are getting at. We are saying it should be limited to a specific issue that affects a specific project by specific people, not someone who has no contact or connection to the issue. AMEC are completely behind the issue that somebody who is directly affected should have a right to notification and should have a right to have their say but not somebody who is not directly affected. That will basically create a situation where there is huge uncertainty in Queensland and capital will not be here.

Ms TRAD: Mr Hogan, just to clarify, we are not talking about granting more objection rights. We are actually talking about taking away objection rights. So the New South Wales example I do not think is comparable. I guess my point is in Queensland we have had public notification and public objection rights in the Land Court where we have had issues around restricted land access and at the same time we have seen an unprecedented investment boom in the resources industry in Queensland, and that has been well documented. So I do not understand the correlation you are making around how removing these statutory public rights will increase investment where investment has grown and co-existed alongside these rights and where there has been no evidence of vexatious litigation or objections to proposals.

Mr Hogan: Thank you. That was not a question. I understand what you are saying. I understand your opinion, absolutely. However, you are talking about longstanding investment in a completely different world market. We are talking about a situation where there were huge coal prices; there are not now. There was huge opportunity for people to invest because they saw an opportunity to reap rewards; there is not now. So I cannot make that connection for you. I understand that you do not agree with us. I am sorry. I did not get a question out of that, but I understand where you are coming from.

Ms TRAD: I guess your proposition is that, in order to secure Queensland as an investment destination, you need to reduce public rights around standing or objections and also you need to review the restricted land access. Queensland has been an investment destination for the resources sector with these existing rights enshrined in statute. So I just think the history and the evidence bears out something completely different.

Mr Hogan: Thank you. I have not said anything about restricted land, but I understand where you are coming from there. We are not talking about removing all public notification and all public objection rights. We are talking about targeting it to the people who are truly affected.

Mr COSTIGAN: Can I just jump in there. Further to the deputy chair's question in relation to investment, in a nutshell do you believe these reforms will be the catalyst for greater investment in this sector in the state? Would you sum that up very succinctly for me, please?

Mr Hogan: I believe they will definitely improve the situation for investment in the state. It is a positive step we think for people looking to invest in a very, very difficult market for people to raise money. They need an opportunity to see that a project can operate in Queensland.

Mr COSTIGAN: Do you believe, Mr Hogan, that we are losing it to other jurisdictions or will be unless we take corrective action in relation to these matters?

Mr Hogan: Queensland has—and you can see that through the Fraser Institute report, which is published each year—lost out to other jurisdictions. That report actually ranks many, many jurisdictions in the world in terms of what their government policy is and how conducive it is into investment. Queensland has slipped. We are now looking at an opportunity to improve that.

Mr KNUTH: Mr Hogan, you did not give any examples in Queensland in regard to vexatious litigation. Michael Roche mentioned the Alpha project. For landowners, a small body of people who do not have the resources or funding to fight these cases, it is welcome to have a third party to come in and join them when they are up against all the resources and the funding. Have you seen those cases?

Mr Hogan: I go back to your characterisation straightaway of all the resources and the funding. We are talking about, particularly in the first stage, an exploration company. They are not big companies. We are talking about companies that have one, two or three people who operate them, who earn their living from an exploration company. So the characterisation of an exploration company being a big company that brings in 27 lawyers and can scare a landowner is fairly far-fetched. I would also suggest that most landowners in Queensland today do have the opportunity to have their voice heard. There are something like, if I am not mistaken, over 4,000

land access agreements in Queensland at the present time, and there are more negotiated regularly. Some may have had that situation, many may not. I cannot say with any sort of clarity. I am sorry.

Mr KNUTH: You have not shown any examples in Queensland in regard to vexatious litigation, and the one we do have, which was the Alpha Coal Project, involves big companies but small landowners seeking third party support. Obviously you would see that this is a welcoming—

CHAIR: I think Mr Hogan answered that question.

Mr Hogan: As I said before, we cannot necessarily turn around and say this company is big or this company is small et cetera. I think the point that needed to be made was that a claim does not have to be regarded as vexatious to be effective for an antidevelopment organisation. It is not about winning the objection. It is about delay and burning the resources of the company until it becomes unattractive to continue.

Mrs MADDERN: Ultimately at end of it, if we are looking to protect the community in terms of what they really get annoyed about—dust, noise, contamination of rivers, that kind of social environment type of thing—under this regime as we are proposing, those impacts which obviously are the ones that really concern the community are still addressed under the environmental approval process. Would you say that this proposed legislation will have no impact on the capacity to have conditions placed on things that protect the community's social environment—the dust and noise and that sort of thing?

Mr Hogan: I think I understand where you are coming from. I think Andrew Barger answered this quite well. Once we have gone beyond an exploration project and we are looking at developing, any development or any mining activity must have an environmental authority, it must have a valid title and then further on it would have to have development approval. So there are three distinct opportunities for those things to be heard. Environmental issues should be heard under the environmental approval process, and we believe that is the correct place for them. You are looking at development approvals. Again, under an EIS is where people would have the opportunity to discuss any social impacts or economic impacts. This handles the title, which is the third area. I think it is a clean distinction and they should not be muddied, which was the issue I was talking about prior in other states where consistently at any one stage an objection starts all three again.

CHAIR: Thank you very much, Bernie, for your comments today and for appearing before the committee.

Mr Hogan: Thank you very much.

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

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

CHAIR: Matthew and Jeremy, welcome. Would you like to make an opening statement?

Mr Dunn: I will kick off with our opening statement. I thank the committee very much for allowing a group of two lawyers to come before them today to speak on these particular issues. I would just like to note that the society's members represent landowners, industry, local government and community groups. So as an organisation our members are involved in all parts of this particular issue. In particular, our Mining and Resources Committee is not composed to represent any particular industry group but really to be focused on the issues of good law and fundamental legislative principles.

The Law Society has in principle supported the Mineral and Energy Resources (Common Provisions) Bill as a coordinated framework for the resources legislation. Having said that, we draw attention to the society's submission of 10 July which covers a very broad range of issues. It is not possible or efficient to try to deal with all of those particular bits and pieces today. There are, however, three key issues that we would like to bring to your attention and limit our comments to today, if we can. The first one of those is incomplete provisions that deal with overlapping coal and petroleum resource authorities. The second one deals with some lack of appeals and appropriate recourse to the courts. The third one is a couple of issues out of the access rights and agreements. I might ask Mr Jeremy Chenoweth, the Chair of our Mining and Resources Committee, to expand on those three issues, if I can.

Mr Chenoweth: Thank you, Matthew. As Matthew indicated, we are not concerned at the Law Society with the underlying policy of the legislative reforms. We are more concerned with the nuts and bolts of the legislation—how it works, how it is going to work in practice. You will forgive us, then, for our submission and our submission today which is largely around the nuts and bolts and the three in particular that Matthew has identified.

The first issue that is picked up in the society's submissions and which we wish to discuss is the incomplete nature of some of the provisions that deal with overlapping coal and petroleum resource authorities. The society has expressed some concern about chapter 4 and the relevant transitional provisions in chapter 7 of the bill. In particular, it would appear that the provisions are notionally based on the QRC white paper and the reports of subsequent technical working groups, which were the result of many years of consultation by various industry groups.

The positions that were reflected in the white paper, as we understand, were considered to be a complete package of legislative reform. They were acknowledging that aspects of the package were left to government to complete. Obviously it is for government to decide which aspects of the white paper are adopted and to determine the underlying policy of those changes. What does appear to be the case, however, is that the proposed legislation is quite an incomplete package that has been put before various stakeholders for comment. Further structural provisions and regulations are required to be added later to complete the regime, and the government has identified a number of areas that remain to be developed in relation to the new regime including, and very importantly, suitable transitional provisions in key areas—for example, in respect of existing commercial arrangements settled under the existing overlapping tenure regime and some very important issues such as health and safety requirements including codes of practice, the process for determining overlapping concurrent production applications and the treatment of future commercial arrangements. Further, much will depend on the regulations proposed to complete the regime which have not yet been prepared, nor is there a clear idea of the content or direction of the proposed regulations.

While the society encourages the process of clarifying uncertain provisions and completing a legislative regime, we are concerned that such significant matters are being left to future legislative action. It is clearly undesirable for legislation to be introduced with flagged further structural changes and amendments required to reflect a complete policy objective. What it means is that industry, landholders and other key stakeholders are left with a degree of uncertainty in respect of key procedural matters relating to how their rights and obligations are resolved. On that particular point I would reflect briefly on some of the comments made by some of the previous witnesses before this forum, that that uncertainty in itself does drive a lack of confidence in the underlying regime and that, in turn, does, it would appear, more likely lead to reduced confidence in investment. Ideally, the bill or the relevant provisions should have been delayed until these

remaining items were resolved. However, at the very least any further structural provisions and the then available whole regime really needs to be put back for effective consultation with stakeholders before it is settled.

A further concern that has been raised by the society is that the draft legislative framework provides for very broad discretionary powers to allow the minister to alter agreed joint development plans and impose conditions. The nature of the joint development plans are such that what underlies those plans is the desire to have participants in that sector reach agreement on their own terms and as a result of a consultative process. That would appear to be an underlying objective. What the draft provisions propose is that the minister would have a very broad and unfettered discretion to require any amendment to that agreement.

The concern with the drafting is that it is so broad and without direction or coordination or consultation. It also provides no requirement for reasons to be given and no clear process for administrative review. Again, this is a fairly uncertain process for key stakeholders who are engaged in what can be a fairly complex and long process of developing joint agreements. The society has suggested that this broad discretion and lack of certainty in its administration may give rise to sovereign risk. Again it is the issue of confidence in the underlying process and confidence in the certainty of the decision-making process that underlies the confidence that might attach to investment in this sector. There needs to be a clear means of oversight appeal for ministerial power to alter agreed joint development plans. I will touch further upon that shortly.

The society has identified in its submission some areas where appeal avenues and recourse to the court requires reconsideration. This is the second issue that I wanted to touch upon briefly. A couple of examples: the minister is given broad powers with respect to overlapping coal and petroleum tenures, and I have just touched upon one example of those broad powers. There is currently no avenue of appeal or reconsideration for affected entities, which is problematic as the ministerial powers can be exercised at any stage of the project, potentially long after companies have commenced operations under the agreed regime, and could occasion significant disruption or loss without compensation or appeal. So some reasonable time frames need to be placed around this in addition to recourse to the courts.

The other difficulty that we have identified is that the power of the Land Court to decide the terms of an access agreement in proposed section 52 is limited to only where a dispute arises. This is a fairly rudimentary drafting issue. Access to court adjudication may not be available to parties who simply fail to reach terms or reach agreement or where one party refuses to engage in the process. That is always a potential and in practice that might very easily occur. In each of those cases there may technically be no dispute, there is simply a lack of engagement. The society submits that it would be reasonable for section 52(1) to say, in effect, that either party may apply to the Land Court to decide the terms of an access agreement if the parties fail to agree on the terms of an access agreement, the owner or occupier refuse to make that agreement or is taken under section 49(3) to have so refused. That is a fairly simple drafting change that could make it a little bit clearer when a dispute arises or when access to the court is permitted.

The third and final issue that we wanted to raise relates generally to access rights and agreements. The society has made extensive submissions in relation to access arrangements. Again, it is not efficient to speak to all of those submissions here, however, we would like to extract two issues and briefly mention those. Firstly, the proposed amendments introduce the concept of oral agreements and give some legislative credibility to oral agreements in relation to access agreements. The society has consistently expressed the view that access arrangements should only be in writing. This is for several reasons. It is unclear how the compensation provisions apply if an access agreement is made orally. Secondly, oral agreements will be binding on successors in title despite the fact that no evidence that the terms of agreement exist. This is contrary to the longstanding requirements of the Property Law Act 1974. Thirdly, oral agreements could be inconsistent with requirements for a conduct and compensation agreement which must also be in writing. So there is also a great potential for inconsistency in the nature of agreements which are sought to be enforced. As such, it is recommended that section 47(1)(a) be amended to exclude reference to oral agreements.

The final issue which we wish to touch upon was the concept of occupiers where it is used in conjunction with owners in the proposed changes. The extension of the concept of restricted land to an occupier as well as an owner is problematic without further definition, particularly as it will give a complete veto over activities on restricted land to a potentially indeterminate class of persons who may have a very tenuous or transient relationship with the land. The example that I would give is that the concept of an occupier is a legal vacuum in some sense. It could potentially extend to a

mere licensee or somebody who has a less than permanent and sometimes very transient relationship with the land or with a dwelling on the land. The society has recommended that the time period for the obligation to notify should commence only when the previous owner or occupier has given the resource authority written notice that there is a new owner or occupier in order to make it practically possible for the resource authority to comply. One of the difficulties with the current drafting is that there is a lot of onus on the resource companies to not only identify owners and occupiers initially, but to do so on an ongoing basis. That practically may be very difficult for somebody who does not have a permanent connection with the land nor any rights of ownership in respect of the land. Again, there are some fairly simple drafting changes that could assist in making a little clearer how that process was intended to work. They were the three issues that we wanted to touch upon. We are happy to take any questions in relation to those.

CHAIR: Thank you very much for that. It was a fairly comprehensive summation. On page 6 of your submission you go into the application and other documents on mining leases. Some of this has happened over a period of time. There have been papers put out and drafts and that sort of thing. Could you give me a bit of clarity around what you are actually saying about the mining lease applications and the affected persons now being landholders, land occupiers, government bodies, infrastructure. Do you still support that?

Mr Chenoweth: I will just take a moment to re-read the paragraph. The answer is yes. I think in many respects it is a similar comment that has been made in relation to these notification requirements that there is at present, with the blending of some of these new concepts, particularly around occupation, that the notification requirements need to be very clear. I think what we are trying to say in that particular paragraph reflects that.

CHAIR: You talked about the oral concepts. It is very hard to tie down what is an oral agreement. Do you say that would be the case?

Mr Chenoweth: That is precisely the case. That is one of the reasons why in the Property Law Act oral agreements are excluded. They are excluded because it is open to debate what the terms are and also, very importantly in this context, there is a great potential for oral agreements to be led to either undermine or overcome deficiencies in a written agreement or to suggest that a contrary agreement has been entered into. To avoid that inconsistency and provide for certainty, the easiest way to do that is to confine agreements to writing.

Mr Dunn: Could I add to that, with respect to a property conveyancing point of view, that it is very difficult for a prospective buyer of a property to know what the terms are of an oral agreement that a seller has entered into with a company in terms of then trying to decide what effect that has on the property that they are going to buy and so it is very difficult from that point of view to know what it is that you are buying and therefore if there should be any adjustment in the price reasonably to represent those particular aspects of the agreement.

CHAIR: I must admit I would struggle with the Chinese whispers aspect of the oral agreement.

Ms TRAD: I might ask some questions in relation to the minister's discretion around access to restricted land and infrastructure. Mr Chenoweth, you said that the minister's discretion was quite broad and unfettered and that the society had concerns in relation to this and that the minister's final decision was not open to administrative review. Do you want to elaborate on that a little bit further in relation to unintended consequences?

Mr Chenoweth: Sure. Thank you. The specific example that I touched upon was in relation to joint development plans. To give you an example of the breadth of that power, in the proposed section 150 subsection 1 it simply provides that the minister may require a resource authority holder to amend an agreed joint development plan. It does go on to provide the matters that the minister must consider, but it does not provide any limitation or context or even time frame within which that discretion may be exercised. The effect of that potentially is that it provides an enormous scope for change to be directed by a government minister after agreed terms had been reached—some time after those agreed terms had been reached and some time after the underlying commitments had been made in relation to those terms.

The consequence of that I think is two-fold: one is that it does not provide much clarity for participants in that process to understand why decisions might be made and what aspects of joint development plans might be vulnerable to ministerial discretion; the second aspect of it that is problematic is that if a stakeholder was to apply for a review of that decision, and there are mechanisms in which that might occur, it does not give the parties or a tribunal or a court much guidance on the parameters around how that ministerial discretion is to be exercised. It simply

requires that the minister must take certain matters into account. The difficulty with that concept is, from the society's point of view, it is a matter of policy as to whether that discretion should exist and on what terms it should be exercised, but I think it is a matter of clarity as to what expectation stakeholders should have in relation to the exercise of that power. Does that answer your question?

Ms TRAD: It does. Thank you very much.

CHAIR: On page 7 of your submission there are some comments about compensation: The society has consistently argued that for good process and economic reasons compensation for mining leases should be determined. Then you go on that this is in the Mineral Resources Act 1989 and will not be preserved in the MERCP.

Mr Chenoweth: I am afraid that unless Matthew has anything to add, that is probably a question I will need to take on notice.

CHAIR: I was just wondering if there is much compensation paid now. Are there many registered for those sorts of agreements?

Mr Chenoweth: Is the question about the compensation that is paid?

CHAIR: Yes. It is compensation for mining leases. Is there a lot of compensation being paid that will not be transacted now?

Mr Chenoweth: In answer to the first part, there is a lot of compensation that is been paid, but in relation to the second part, that wouldn't be transacted now, I would need to take that question on notice.

Ms TRAD: Mr Dunn, I think you have presented either to this committee or another committee that I have sat on in relation to the growing trend, particularly under this government, to place a lot of statute into regulations—so moving issues from legislation to regulation. There is a lower threshold in terms of how it can be changed and the level of scrutiny and consultation. I am not sure if you have had an opportunity to read Shine Lawyers' submission in relation to this bill, but I notice that they do touch on that, particularly in terms of the drift from legislation to regulation. I am wondering if you have any perspective on that.

Mr Dunn: That is an issue the society has raised on a number of occasions. It is one of the issues that we raised in the consultation process with respect to the formation of this legislation. It is a concerning thing when a large amount of the substance of legislation gets moved into regulation because, as you say, the oversight of that is of a different nature to legislation that is transacted through the parliament. There are disallowance motions that can be effected through the parliament, the only issue is that the disallowance motions are normally some months or some significant time after the point where the regulations actually become in effect. So what you may have is a piece of regulation that can be in place for quite a period of time and affect a number of people which subsequently is disallowed by the parliament.

Upon disallowance, it is a bit unclear as to what is the position of people who may have been prosecuted under that regulation or had to incur costs as a result of that regulation or had to jump through various hoops, for example, with respect to that regulation. So it is a slightly less desirable way to effect legislative change than doing it through the legislative process, where it is much more upfront and there is the scrutiny of these committees in a public forum and those sorts of things.

Also, from a legal practitioner's point of view there is such a volume of subordinate legislation that comes through that it is very difficult to keep on top of all of it all of the time and so things can suddenly change without everyone becoming aware. Whereas the parliament puts a lot of effort—rightly so—into educating the public on legislative reform and change and it is dealt with in the media and such things, the same amount of effort, because of the volume of what comes through, cannot be applied in terms of subordinate legislation. Certainly the society has said on a number of occasions that it is much more appropriate to try to keep the content in the legislation rather than drifting down into the subordinate legislation aspect.

Ms TRAD: Mr Dunn, you said previously that you did raise concerns around this issue when you were consulted in relation to the development of this bill. Are you being consulted in relation to the regulations supporting this legislation?

Mr Dunn: I would hope we would be.

Mr COX: On the original question from the member for South Brisbane, you said it was only slightly less desirable so it is not a big difference. You said there is a lot of subordinate legislation that comes through and it is hard to keep up with, but I guess there could be a lot of good that is happening due to those changes in subordinate legislation; you would recognise that?

Mr Dunn: Absolutely. The legislation can be good or can be ill depending on how it is. The problem is just that there is such a volume of it that it is difficult to keep on top of. Also, the consultation process for forming that legislation can be very different.

CHAIR: Thank you very much for your presentation today.

Proceedings suspended from 10.47 am to 11.00 am

BARR, Mr Dean, Manager, Mining and Petroleum Operations, Department of Natural Resources and Mines

BEARE, Mr Geoff, Director, Business Strategy and Performance, Department of Natural Resources and Mines

COLEMAN, Ms Cecily, Principal Project Officer, Mine Safety and Health, Department of Natural Resources and Mines

DITCHFIELD, Ms Bernadette, Executive Director, Lands and Mines Policy, Department of Natural Resources and Mines

RALPH, Mr Dave, Registrar, Petroleum Assessment Hub, Department of Natural Resources and Mines

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

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

CHAIR: I welcome officers from DNR. I understand that the briefing will be led by you, Bernadette. I remind members that these officers have given up their time today to provide factual information. They are not to give opinions on the merits of the policy. Bernadette, would you like to make some opening comments?

Ms Ditchfield: Good morning, Chair and members. Today I and officers from the department and the Department of Environment and Heritage Projection will respond to submissions made to the committee at today's hearing. More detailed responses to issues raised in written submissions will be forwarded to the committee at a later date. Before I briefly respond to some of the key issues that have been raised today, I would firstly like to acknowledge and thank all those who have made public submissions to the Mineral and Energy Resources (Common Provisions) Bill 2014.

I turn now to key issues that have been raised today, and the first is overlapping tenure. In relation to the overlapping tenure amendments, the resources industry is generally supportive of the proposed changes. Some industry members have sought clarity on a number of different matters in chapters 4 and 7 such as the transitional provisions, ensuring flexibility for bespoke arrangements, the requirements for joint development plans, the incidental coal seam gas regime, compensation and exceptional circumstances. The department has been working very closely with industry to address these matters raised and also to investigate potential amendments which will provide greater clarity for industry with regard to the overlapping tenure regimes. I would also like to reiterate that we will continue to consult with industry on the details that are proposed to be included in the regulations.

I turn now to notification and objections. For the notification and objections amendments, the Environmental Defenders Office have asked in their submission for the exact figures of how many of the 176 submitters to the discussion paper titled 'Mining lease notification and objection initiative' opposed changes to existing objection rights and noted that no summary of public submissions was ever released. The department has recently published the decision regulatory impact statement for notification of objections on the department's website. It will also be posted on the Department of Environment and Heritage Protection website as well as the Office of Best Practice Regulation. We will also be taking steps to advise each submitter of its release. A detailed summary of submissions is provided in the decision RIS. By way of summary, while many landholders and landholder representatives supported streamlining legislation, they were, for the most part, opposed to the proposed changes. Submissions from individuals, community and environmental groups, law firms, the Construction, Forestry, Mining and Energy Union and the Queensland Tourism Industry Council did not support the proposals in the discussion paper.

The purpose of the amendments to the notification and objection processes is to support the government's commitment to reducing red tape for the mining industry. The amendments provide for a notification and objection process that reflects the level of risk and scale of operations and that removes duplication, reduces project delays and lowers costs for industry in general, for low-risk operations especially. While there will be no longer a right to object on some mining leases, the

public right to object has been retained for any application requiring a site-specific application for an environmental authority. The evidence is through a view of over 1,000 applications that these are the applications that the community is most concerned about. For these mining projects, notification and objection rights are preserved under the Environmental Protection Act 1994 or through an environmental impact statement.

The type of mine that requires a site-specific environmental authority generally includes all large scale mining projects, including all coalmining proposals. The majority of mining leases in Queensland carry low environmental risk and, as such, a standard or variation of application will apply. The bill also proposes that notification of mining lease applications under the Mineral Resources Act 1989 is required for directly impacted landholders, occupiers, infrastructure providers and local governments. Landholders and local governments that are directly impacted will continue to be able to lodge an objection to the Land Court on matters that relate to the mining lease application. This provides a risk based approach to notification and objection on the matters relevant to the mining lease application by allowing for those persons directly impacted by the issuing of the mining lease on their rights to use and enjoy the land they own or lease or the services that they own or manage to object to the Land Court with regard to these direct impacts. The cumulative, quantitative and qualitative benefits of the model proposed have been considered against the current regulatory burden and have been determined to provide the greatest net benefit of the options available. As such, the department is of the view that the proposed legislative amendments achieve a balanced approach to notification objections between industry and individual and community interests.

For restricted land, some submitters, including the Environmental Defenders Office, have indicated that they are concerned that the exemption for open-cut mines is a substantial reduction in existing rights for landholders. The purpose of the changes in restricted land for situations such as open-cut mines result from the fact that there are clearly some situations where mining and residential uses cannot co-exist. It is not intended that the residents will remain within the locality of the mine in the event that the Minister for Natural Resources and Mines is of the view that the mine should be approved with full surface rights. Rather, in such situations restricted land would be extinguished and the landholder would be compensated for not only the loss of the right of the consent but also to relocate from their existing residence. This is a significant change to the existing situation and in recognition of this the bill—clause 424 amending section 271 of the Mineral Resources Act 1989—includes a requirement for the minister to have particular regard for any disadvantage that may result to the owner or occupier of the area of restricted land prior to deciding any such mining lease application. I would now welcome any comments or questions that the committee may have, but I would like my colleague Elisa Nichols from the Department of Environment and Heritage Protection to say a few words.

Ms Nichols: I just wanted to provide a bit of clarification about some of the discussion around site-specific and standard applications that happened this morning, because there seemed to be a little bit of confusion about what the different categories were. For mining for standard applications, I did read in the EDO's submission that there was a comment that we do not know what they are yet. That is not correct. They are already clearly defined in the legislation in schedule 3 of the Environmental Protection Regulation because that has the criteria for what can be a site specific. We discussed it last time at the briefing the departments gave you, so it does include limitations on the type of mining. For example, it has to be small scale, alluvial, hard rock, dimension stone and that sort of thing. For that reason we can clearly say that coalmining is never included in that. Those criteria are going to be reviewed further over the next year. They were put in place over 15 years ago, so it is in fact timely to review those criteria just for good legislation purposes. As we have previously said, they have to be completed by March 2016 and new criteria in place.

There was also some discussion from the QRC representative about, for example, that if a coalmine in the Galilee Basin was similar to an existing mine there it could be a standard. I believe there is some confusion between the term 'standard application' and 'model conditions', which is another type of tool that we have where we work out a set of model conditions that can apply to a site but those model conditions are not legislated like the standard conditions. They are still subject to the full public objection rights and appeal rights, so they are quite different and they may be amended depending on the site-specific nature of the site. So a coalmine that model conditions may apply to will still undergo a full site assessment. I just wanted to make the distinctions clear because the names of the tools can be a bit confusing for those who are not embedded in working with them.

CHAIR: Bernadette, would there be any possibility for the department to have a flow chart to give us some idea of how the process works? I see Elisa nodding her head.

Ms Ditchfield: As I have just stated, the decision RIS has been put up on the department's website and that flow chart, I have been advised, is included in the decision RIS.

Mrs MADDERN: Just to follow on from that, because this is hugely complex when you are not, as you say, embedded in it.

Ms Ditchfield: Yes, understood.

Mrs MADDERN: Will that flow chart then identify the process as it currently is and the process as it will be under the legislation, particularly with clear reference to notification and rights of appeal or objection?

Mr Beare: The decision RIS includes the situation as it currently stands, what was proposed in the discussion paper, what is included within the bill and includes a flow chart with regard to appeal processes resulting from the model recommended in the discussion paper. So there are four flow charts there to assist.

Ms Ditchfield: We can send links to the decision RIS to Rob.

CHAIR: One small area that does encroach on the Lockyer of course is sandstone mining. That is virtually, like you are saying, a small scale operation and so that would be included in some of this legislation, would it not?

Ms Nichols: Yes. I did actually check the Lockyer sandstone mines after the last one and they were all originally subject to standard approvals when they were originally approved, which is quite some years ago now.

CHAIR: Yes. Thank you.

Ms TRAD: Ms Ditchfield, you said that the decision RIS recently went up on the department's website. When was that?

Ms Ditchfield: I believe it went up yesterday afternoon.

Ms TRAD: So just to be clear regarding the submissions made to the discussion paper, there is a summary document that is attached to the RIS; is that right?

Ms Ditchfield: That is my understanding. I will just check with Geoff, but that is my understanding.

Mr Beare: Yes, there are two parts of the decision RIS that deal with the submissions. There is a section on consultation, which has a high-level summary of the submissions that were made and the department's response to those, and then in one of the appendixes to the decision RIS there is a much more detailed summary of the submissions that were made.

Ms TRAD: Ms Ditchfield, you said that you had contacted the submitters to alert them.

Ms Ditchfield: We will. Since it has only just gone up on the website yesterday afternoon, we are endeavouring to contact each of the submitters to advise them that the RIS has gone up and providing a link to it.

Ms TRAD: So does one of the consultation summary documents identify the submitters?

Mr Beare: No.

Ms Ditchfield: Only the content of their submission.

Mr Beare: Yes. For privacy reasons, we are not allowed to publish the names and we are bound by the requirements of the regulatory information.

Ms TRAD: I understand, Mr Beare, but I just want to know that the content of the submissions has been reported in detail as it was submitted.

Mr Beare: Yes.

Ms TRAD: Thank you. Ms Ditchfield, you said in your opening remarks that in relation to the regulations associated with this bill you will continue to consult with industry. Are you consulting with AgForce or landowners or any other stakeholders in relation to the regulations?

Ms Ditchfield: Obviously for certain sections there will be different stakeholders. In relation to overlapping tenure, which is where I think I made that comment, it really has been a focus on industry development because it is very much about co-existence between the two resources. But we commonly talk to AgForce, especially about the MQRA process which includes the notification and objection processes. We will brief them and have them continually involved.

Ms TRAD: So you will brief them. Will you consult with them in relation to the development of the regulations?

Ms Ditchfield: Yes.

Ms TRAD: And when are you expecting to have the regulations ready for consultation?

Ms Ditchfield: That is something for the government yet to consider as to when we will commence these amendments.

Ms TRAD: We have heard from stakeholders and you would have been aware earlier this morning that they are expecting that they will get the regulations as the bill hits the House, so obviously they have been given some commitments from the department.

Ms Ditchfield: Yes. Again, as soon as we have the regulations we can consult with our stakeholders.

Ms TRAD: I have a lot more questions.

CHAIR: I will just ask one quick question: carrying on from there, has there been much community advice? I know you have dealt with AgForce, probably QFF and a couple of those. Have you actually sold this to the general public?

Ms Ditchfield: In relation to what aspect of the bill?

CHAIR: In relation to the land access and appeal rights—those sorts of things?

Ms Ditchfield: I completely agree that this is a very large, complex bill with a myriad of different amendments. Some of them have taken a long time to get to this point in time and they have all undertaken their own policy pathways. For the land access amendments that we have proposed, there has been probably a two-year process where we had a Land Access Implementation Committee formed, which was chaired by David Watson. They did do a review of the Land Access Code. They travelled around Queensland, undertaking that review. That was a very intense consultative process. The committee was made up of resource and ag. sectors as well, to form those amendments that you see in the bill today. With the objection notification amendments, I think we provided advice to you that there were three discussion papers, Geoff, in total?

Mr Beare: Two discussion papers and multiple meetings with QFF, AgForce, LGAQ and other stakeholders.

CHAIR: Geoff, did you receive a large number of submissions to those discussion papers?

Mr Beare: I would have to double check on the original discussion paper—that was not so many—but there were 176 submissions on the second discussion paper. The notification and objection paper, the original discussion paper, covered a range of proposals for alluvial mining, not just for notification objection but for alternatives to pegging, and there were also some policy initiatives in it as well.

CHAIR: Was there somewhere in the vicinity of 106 opposed to the changes? I think that was the figure given this morning.

Mr Beare: It would be fair to say that probably in excess of 160 had some form of an objection in the submission. Not all submitters were opposed to the entire package: some objected to some specific measures; others objected to the whole lot. It is fair to say that the majority of submissions objected in some way.

CHAIR: When did that submission process close, roughly: last year, this year, early this year?

Ms Ditchfield: The consultation was this year.

Mr Beare: End of March, although we accepted submissions into April because a number of submitters advised us that they were unable to lodge it within the time frame, so we accepted those submissions.

Ms TRAD: What was the time frame, Mr Beare?

Mr Beare: It was 30 days, in accordance with the RIS system guidelines.

CHAIR: The department did not feel that there needed to be more information put out to the public? Was there any discussion along those lines?

Ms Ditchfield: That was a decision of government to make.

Mrs MADDERN: I have two quick questions. In respect of the submissions, would you normally expect to get a lot of very positive submissions or would you be really expecting to get submissions where people had issues with it? My idea of this is that if someone is pretty happy with

it they are probably not going to tell you. It is only when they are not happy or they think that something needs changing or they are giving you the opportunity to change something that they would lodge a submission. What is your expectation in that area?

Ms Ditchfield: To be clear, we do not have a general rule about what our expectations are, but I would consider that people who have an opinion and they need to bring forward their opinion would make a submission. Probably I agree with you that if they were not happy with the material they might be more likely to provide a submission.

Mrs MADDERN: Secondly, there have been some fairly lengthy submissions put in by the Law Society and other legal people such as Shine Lawyers. From what I have seen of it, a lot of what they have put seems to be technical in nature, so drafting issues, and obviously the question about oral agreements. Is the department going to look at those individual drafting issues? To me, they do not seem to actually impact on the overall policy framework or the drive of the bill, but are just technicalities that need to be addressed.

Ms Ditchfield: That is just good policy legislative work that we try to do. We will endeavour to go through all the submissions. Where there has been a technical point raised, we will look into that.

Ms TRAD: Ms Ditchfield, in relation to the removal of public objection rights and public notification rights, I understand that part of this, as per the explanatory notes, is about assisting the Land Court to process and determine matters more efficiently. Another argument that has been put up is that, I guess, it excludes vexatious objections to mining applications and resource applications in this state. Does the department hold that view, that there is a need to change the public objection rights, change statute in Queensland law, in order to weed out vexatious objections to mining applications?

Ms Ditchfield: It would be the department's view that that is not our terminology. We have never used the word 'vexatious' ourselves. We have quoted, in the RIS documents, the Productivity Commission which talks about vexatious claims, but that would not be the department's terminology or the words that we would actually use ourselves.

Ms TRAD: But did the Productivity Commission identify in Queensland that there was a problem in relation to vexatious objections being made?

Ms Ditchfield: I will just confirm with the 'in Queensland' component. I know that, in general, they talked about mining developments across-the-board. Geoff, do you recall it being Queensland specific?

Mr Beare: The report quoted by the Environmental Defenders Office includes a statement that data was available for only one jurisdiction and that was the EPBC Act, which is a Commonwealth jurisdiction. It says that there is no data available on vexatious objections or appeals in any other jurisdiction. It is largely silent on that point.

Ms TRAD: I will take this opportunity, Chair, and seek leave to table this list of orders that have been made pursuant to the Vexatious Proceedings Act 2005 in Queensland since 1983, and not one of them relates to an objection to a mining application. I would like to table that for the benefit of the committee. May I table it?

CHAIR: Yes, all right.

Ms TRAD: This has been a contentious issue in relation to the removal of the public objection rights within the bill. I think it is very important that we ground truth whether or not vexatious objections are being put in, in relation to mining applications in this state. The parliamentary committee has asked the parliamentary library to do an investigation. They have been unable to source it and I have provided a list today. Really, the argument that there have been vexatious objections to mining applications in this state does not stand. Is the department aware that there has been any mining company in the Land Court to strike out or seek to strike out an objector's claim on the basis that it has been vexatious or unreasonable? Is the department of aware of that?

Ms Nichols: Speaking on behalf of the Department of Environment and Heritage Protection, we are not aware of any actions to that effect. There have certainly been some cases where, at the end of proceedings, the Land Court has found that the substance of the objections was outside the scope of the legislation, but that is not the same thing.

Ms TRAD: That is right.

Ms Ditchfield: I would also like to clarify that the amendments in relation to the Environmental Protection Act have never been couched in terms of stopping vexatious litigation. It has always been very much about a risk based approach with the lower risk activities with standard conditions that do not change having a different process to the larger site specific.

Ms TRAD: I understand that, Ms Nicholls, but we are not talking about the removal of public notification or objection or consultation around EIS, in relation to it.

Ms Nichols: No.

Ms TRAD: The North Queensland Land Council—and I do not know whether the department has had been opportunity to look at its submission—states at page 3—

... potential native night title claimants may not be aware of activities that could potentially impact on their native title rights and interests so they may not be able to take appropriate action.

I am wondering what steps the department has taken to make sure that any potential impact that may affect native title holders are notified with a mining lease application?

Ms Ditchfield: I am sorry, we have not had the opportunity to read that submission. I would like to take that on notice, just in relation to the context of the discussion. It is a bit difficult taking one sentence out of it.

Ms TRAD: Absolutely, go for it.

Mr COX: Going with the question of the member for South Brisbane and deputy chair about frivolous and vexatious matters, you have answered my question already, I guess, that it is not the aim of this bill and nor was it ever intended, and you mentioned it is to do with risk. To bring it back to what the committee probably should be asking about, rather than going off on some particular line of questioning, I think this should be more about what you are saying the bill is trying to do. Would I be right in saying that some of those risks would be things such as disrupting and delaying infrastructure happening, constraining the space a mining company might be able to work in, increasing investor risk which we have heard about here several times already this morning, increasing costs to operations and developments, withdrawing the social licence of industries that certain groups that do not have a direct attachment to may have used and trying to stop that? Is that more about where you think the bill is about, that it is more about risk and not about aiming at those vexatious and frivolous claims?

Ms Nichols: From the Environmental Protection Act perspective, we are focused very much on the environmental risk side of things. They may be flow-on benefits, the sort of things that you have articulated. What we very much looked at was a lower environmental risk where there have never been high levels of community concern. As has already been stated, we have never actually received a community objection for those standard applications since 2009.

Mr COX: Which is correct. So your department is still focusing on any operation, whatever sort of mining it is, that certain regulations are followed, that the environment is considered and that it is working within that framework. To the Department of Natural Resources and Mines, I would ask the same question: is the bill more about lowering the risk and letting development happen in a more friendly environment, rather than aiming at people trying to stop it for no reason?

Ms Ditchfield: Clearly it is about red-tape reduction and trying to make a streamlined process, as we have worked very closely with the Department of Environment and Heritage Protection.

Mr COX: Thank you.

Mr KNUTH: On this question, I do not think I would get this answer from the Environmental Defenders Office or the Resource Council, but in regards to removing public objection rights and vexatious or frivolous claims, I want your explanation: I am in a situation where we are likely to have a uranium mine, the Ben Lomond Mine, in the development stage probably for the next five years. Charters Towers is about 70 kilometres away, as the crow flies. However, we will be impacted in regards to our drinking water supply. Have we public objection rights, even though we are 60 or 70 kilometres away?

Ms Ditchfield: In relation to uranium mines in general in Queensland, they will be going through a Coordinator-General process that will require an environmental impact statement. Therefore, Elisa, I think I am correct to say that this will not apply to them.

Mr KNUTH: I need to go back to my community to say that this legislation will come through, but will they have the right to put in an objection to this or won't they have a right to put in an objection to it, because it is going to affect their water supply even though it is 60 kilometres away?

Ms Nichols: As Bernadette said, it will, in fact, be under the Coordinator-General's EIS process. Yes, it will be fully publicly notified and it will have objection rights to it. There will also be an environmental authority under the Environmental Protection Act. They are definitely not standard applications, so the public rights that have been maintained through this bill will still continue to

apply to any objection. It does not matter where they are located. However, in relation to the mining tenure itself, under this bill that will be related to the tenure side itself. For those water impacts that you are talking about, objection rights will be preserved through the legislation before the parliament at the moment.

Ms TRAD: I have a question. Ms Ditchfield, you may not have had an opportunity to have a look at the submissions but Ergon Energy has made a submission to the committee. It has basically asked that they should be afforded rights of objection in the same manner as a landowner or local government where it has infrastructure or an easement within an area of tenure application. Would you be prepared to take on notice that issue and come back to the committee in relation to that?

Ms Ditchfield: Yes, we will. That is fine.

Ms TRAD: Thank you.

CHAIR: The Queensland Law Society in its submission on page 7 states—

The Society has consistently argued that for good process and economic reasons, compensation for mining leases should be determined in accordance with a method and process that is consistent with the existing process in chapter 6 of the Mineral Resources Act 1989 ... Unless that exception is made for mining leases, rights and entitlements existing under the Mineral Resources Act 1989 in respect of compensation for and rights of entry under mining leases will not be preserved by the MERCP Bill.

Can I also get you to have a look at that for me, please?

Ms Ditchfield: Sure. Unless someone can speak to that here, we will have to take that on notice. We will take that on notice. Thank you.

Ms TRAD: Ms Ditchfield, I will also just draw your attention to the fact that the North Queensland Land Council also talked about places of worship, burial sites et cetera in their submission. They have suggested that the distances that have been detailed in the bill are not sufficient. So can I also ask you to have a look at that?

Ms Ditchfield: Sure. Is that just for restricted land?

Ms TRAD: Yes.

CHAIR: In relation to that, I think one of the resource groups made inquiries about what is defined as a place of worship. I do not know—

Ms TRAD: I think the issue was they were saying that it was too broad.

CHAIR: Yes. Could we also get some response back on whether there is an actual definition for a place of worship or how it is going to be defined and all of those sorts of things?

Ms Ditchfield: Actually, I think Dean might be able to answer that.

Mr Barr: The restricted land framework that is proposed in the bill applies to places of worship. Under clause 68(3) 'place of worship' is defined as—

A place used for the public religious activities of a religious association, including, for example, the charitable, educational and social activities of the association.

Notably, the restricted land framework under the current Mineral Resources Act also includes places of worship, which is not defined. So this bill provides a more detailed definition of that term.

CHAIR: Will that take in a bora ring in an Indigenous community or something along those lines? Would that be classed—

Mr Barr: I am not sure. I would imagine that Aboriginal cultural heritage activities would be protected under different legislation. It will depend on whether it would fit under that definition. So I would not be able to give you an answer to that.

Ms TRAD: Yes, I am just a little bit concerned about that. I am not necessarily sure that traditional owners would be classed as an association under the definition of associations if it is religious associations that you are referring to. I just think that there is a big hole that you could drive a truck through. There are significant concerns here, because I know that there are a whole range of cultural heritage sites that are in the database but have not been transferred on to the register. So they would not make it in terms of being a place of worship. I think we might just take that on notice.

CHAIR: Could we take that as a question on notice and look at those sorts of issues and also whether it includes even some of the Sikh type of worship areas or some of the Muslim type of areas? There is a broad spectrum of people who worship in Queensland. The Law Society also brought up the fact of an oral agreement for access. I realise that that could be very difficult. Do you have any reason for that being in the bill? Was that in a previous bill?

Mr Barr: I believe the submission from the Law Society that you are referring to relates to what is called in the bill an access agreement. It relates only to land that is crossed to access the area of a resource authority. So we are not talking about the land that the resource activity itself is being undertaken on; it is land that is being crossed to access that land. In that context, resources legislation other than the Mineral Resources Act currently has an existing framework for that type of scenario—where oral agreements were an option to negotiate access to that land. The bill maintains the status quo in that respect and is likely to cover scenarios where the type of access does not lend itself to a formal written agreement. It could be short-term, low-impact access and it may not necessarily require a written agreement. So it gives the parties flexibility to adopt the agreement that they wish to enter into. However, if it was something more long term—higher impact—then, certainly, it would be in the interests of both parties to enter into written agreements. So just to clarify, it is not about the actual land that the resource activities are being undertaken.

CHAIR: Is that highlighted in the bill—that this should be used only for a short-term type of agreement?

Mr Barr: No.

CHAIR: Let us face it: we are in a different world of litigation than we were 30 or 40 years ago.

Mr Barr: No, the bill does not go into that detail. It maintains the status quo that is provided under the existing resources acts other than the Mineral Resources Act.

Mr COX: I have two questions in relation to worship and Indigenous and Torres Strait Islander people. Does native title come into this somewhere as it does with a lot of other mining legislation? If something has been determined, certain Indigenous groups would have already been through a process of knowing that there is worship on lands or land that is of significant heritage value. Am I right in saying that that is probably a safeguard in the bill anyway? Is there any connection with native title when it comes to those sorts of things through worship and land?

CHAIR: Sam, they have taken it on notice. I think we might leave it at that.

Mr COX: Okay. I have another question with regard to pastoral leases and rural properties. I guess the bill does not intend to make things worse for them. In regard to these restricted areas where someone has a cattle yard or they have a water bore, there is always that threat of having to shift it. I presume that this bill—even though there is going to be a change in their processes in some cases or their daily operations—will not leave them worse off. Or can you give me an explanation how this bill will ensure that they will be better off in regard to buildings or certain significant infrastructure?

Ms Ditchfield: Dean, you are the contact expert for restricted land.

Mr Barr: The changes that you are talking about are to the definition of what 'restricted land' applies to. Unlike the current Mineral Resources Act framework for restricted land, it will not include dams, stockyards, water bores and other infrastructure in the definition of 'restricted land'. In the view of providing a common framework, the bill proposes to align the treatment of that infrastructure with how it is currently managed under the land access framework for the petroleum and gas industry. So potential impacts on anything around those types of infrastructure will be covered by a notice of entry and conduct and compensation agreements.

Mr COX: Okay. So it is really about bringing it in line. Thank you.

Ms TRAD: Ms Ditchfield, in relation to the restricted land framework, the last paragraph on page 6 of the explanatory notes state—

> The simplicity of the new restricted land framework will also benefit the resources industry, by removing the regulatory burden associated with determining which rules apply to a particular resource authority and the individual activities under those authorities.

You also talk about creating a new single restricted land framework for all resource types. Are you able to provide a table documenting the new restricted land access framework compared to what currently exists under legislation and with some commentary around the differences?

Ms Ditchfield: Yes, we can provide that.

Ms TRAD: That would be great. Also, the prescribed distance for resource activities from a place of residence, will that be under the regulation?

Ms Ditchfield: It will be under the regulation.

Ms TRAD: Okay. So given that it does relate to infrastructure—schools, things that are occurring in communities in urban areas—are communities going to be consulted on this in any way?

Mr Barr: The development of the regulations has not commenced.

Ms TRAD: Sorry, the development has not commenced? The development of the regulations?

Mr Barr: The drafting of the regulations has not commenced.

Ms TRAD: Right.

Mr Barr: Once those draft regulations are in a position to be consulted on, the general practice of the department is to consult widely on regulations to legislation. So that is probably all that I can comment on at this stage.

Ms TRAD: So you are going to be consulting widely?

Mr Barr: The Modernising Queensland's Resources Acts Program to date has had a broad consultation program. Certainly, I have no understanding that that is intending to change in the future.

Ms TRAD: Okay. Thank you.

CHAIR: In the meantime, will the regulations from the previous legislation apply? They will not be superseded? Will this bill be expected to go through the House later this year prior to the regulations or will the regulations be implemented at the same time?

Ms Ditchfield: The bill will need to commence and then we will do the regulations.

CHAIR: Will the previous regulations still exist until they are superseded?

Ms Ditchfield: Until the bill commences, the status quo continues until the bill is commenced.

Ms TRAD: But if the bill commences without regulations, what happens to all of the content?

Mr Barr: The bill will not be able to commence until the regulations are ready.

Ms TRAD: Okay.

Mr COX: Thank you for that clarification, Dean. That was great.

Ms TRAD: And what is the anticipation around the regulations? March next year?

Ms Ditchfield: No, as I said briefly before, we have not had the opportunity to talk to government about that. So when we have a decision by government, then we can give you an informed comment about the timing.

CHAIR: I thought someone said March.

Ms Ditchfield: No.

Mr COSTIGAN: Just to assist the committee to reconcile the transfer of the existing provisions, is it possible that the department could furnish us with some sort of table that details what the current provisions are that will be dropped—the comings and goings, if you like—and what new provisions are proposed? It might perhaps be beneficial for all of us if we could have some sort of document.

Ms Ditchfield: Is it relating to the whole of the bill or just certain elements of the bill?

Mr COSTIGAN: I think, given that you are combining provisions across five resource acts into one common set of provisions, I think having some sort of matrix or graph might be beneficial to get our head around that a bit better.

Ms Ditchfield: Yes. Sorry, just for clarity, is it just regarding those elements that we are bringing together under a common resources act?

Mr COSTIGAN: I think so. It is a narrow cast. Yes, please.

Ms Ditchfield: Okay.

CHAIR: Thank you very much for those questions. If you could get the answers to those questions taken on notice back by early next week, if possible, or something like that? Thank you very much. It has been an interesting process. My own thoughts are that the community could have been a little bit better informed about this. Whether the white papers and that sort of thing are informing the committee or they are just looking at them as draft documents and not realising that at some stage they are going to be part of legislation, I do not know. Thank you very much.

Ms Ditchfield: Thank you.

Committee adjourned at 11.44 am