AGRICULTURE, RESOURCES AND ENVIRONMENT SUBCOMMITTEE

Members present:

Mr IP Rickuss MP (Chair)
Mr SV Cox MP
Mr S Knuth MP

Staff present:

Ms H Crighton (Acting Research Director)
Mrs M Johns (Principal Research Officer)

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

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 20 AUGUST 2014

Townsville

THURSDAY, 21 AUGUST 2014

Subcommittee met at 3.31 pm

CHAIR: Welcome ladies and gentlemen. I declare this meeting of the Agriculture, Resources and Environment Committee open. I would like to acknowledge the traditional owners of the land on which this meeting is taking place today. I am Ian Rickuss, the member for Lockyer and chair of the committee. I have with me: Sam Cox, the member for Thuringowa; and Shane Knuth, the member for Dalrymple. Today's hearing will be conducted by a subcommittee of the committee. Please note that these proceedings are being transcribed by our parliamentary reporters and a copy of the transcript will be publicly available on the Queensland parliamentary website probably next week.

The purpose of this meeting is to assist the committee in its examination of the Mineral and Energy Resources (Common Provisions) Bill 2014. The bill was introduced by the Hon. Andrew Cripps MP and subsequently referred to the committee on 5 June, with a reporting date of 5 September 2014. The committee's report will help the parliament when it considers whether the bill should be passed. I remind everyone that the bill is not law until it has been passed by the parliament.

This afternoon officers from the Department of Natural Resources and Mines will provide a brief introduction to the aspects of the bill. We will then hear from a number of submitters who have concerns about the bill. Rather than taking a short break at five o'clock, can I ask that we continue the hearing with an open session for anyone who wishes to speak. We can then have a break some time after five for refreshments.

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

NICHOLS, Ms Elisa, Executive Director, Reform and Innovation, Department of Natural Resources and Mines

CHAIR: I welcome representatives from the Department of Natural Resources and Mines. Ms Ditchfield, please proceed.

Ms Ditchfield: Good afternoon committee chair and members. I will provide a short opening statement to the committee which is an overview of the components of the Mineral and Energy Resources (Common Provisions) Bill 2014. My colleague Elisa Nichols will then provide a statement regarding amendments to the Environmental Protection Act 1994 relating to the notification and objection reforms in the bill.

I propose to focus on key aspects of the bill that have attracted the majority of public submissions. Firstly, I will focus on the part of the bill that delivers the first stage of the Modernising Queensland's Resources Acts Program towards the phased development of a single, common resources act for the state's resources sector.

At present, Queensland's current resources legislation is lengthy and overly prescriptive, with common administrative processes duplicated across five separate acts making legislation inefficient and costly for government and industry to administer. The bill implements the first stage in the consolidation process by creating a common provisions act into which harmonised legislation from the Mineral Resources Act 1989, the Petroleum and Gas (Production and Safety) Act 2004, the Petroleum Act 1923, the Geothermal Energy Act 2010 and the Greenhouse Gas Storage Act 2009 will be progressively transferred.

The new act consolidates and harmonises provisions relating to dealings, caveats and associated agreements, private and public land access and other minor provisions. These provisions are largely settled policy issues. The consolidation process has been undertaken in consultation with industry, agricultural bodies and the community through a broad consultation process.

The bill also implements three actions from the government's six-point action plan on reforms to the land access framework relating to private land in the common provisions act. Queensland's land access framework provides a statutory and policy framework for accessing private land to

undertake resource activities and compensating for associated impacts. In 2010 the Queensland land access framework was introduced with the aim of balancing the interests of landholders and resource authority holders through a particular focus on compensation arrangements and the need for good communication and relationships.

In 2011 an independent review of the effectiveness of the framework was undertaken. An independent review panel, the Land Access Review Panel, comprising agriculture and resources sector representatives with an independent chair, Dr David Watson, was established. The purpose of the review was to assess the efficacy of the framework against its original objectives.

The review involved in-depth consultation with stakeholders who had direct experience or expressed strong interest in land access arrangements in Queensland. Stakeholders consulted included landholders, community groups, peak bodies, resource authority holders, lawyers and other land professionals from around the state. The review panel held interviews across the state including in Mount Isa, Townsville, Moranbah, Emerald, Roma, Dalby and Brisbane. The panel made 12 recommendations to address the issues which had been identified as well as detailing the optimal process and steps involved in successful land access negotiations.

In February 2013 the government established the Land Access Implementation Committee to advise and oversee the policy development to support implementation of the government's six-point action plan. These reforms, which implement the committee's recommendations, aim to strike a better balance between the interests of landholders and the resource sector in negotiating land access and compensation arrangements.

The amendments in the bill will allow: expanding the jurisdiction of the Land Court to hear matters and make determinations relating to conduct, not just compensation; a resource authority holder must, at their cost, note the existence of an executed conduct and compensation agreement on the relevant property title; and allowing two willing parties to opt-out of entering into a formal conduct and compensation agreement, at the election of the landholder. Industry and community responses to the consultation draft provisions were largely supportive.

I would like to specifically focus on the introduction of opt-out agreements. Submitters to the committee have expressed concerns that the mining companies will coerce landholders into entering into a conduct and compensation agreement. A written opt-out agreement or legal release entered into must provide for the following as a minimum: the landholder acknowledges that the option to opt-out of the land access framework is at the election of the landholder; the landholder or occupier entering the opt-out agreement has the right to do so; the resource authority holder has informed the landholder that they have a right to negotiate a CCA and are not obliged to sign an opt-out agreement; the resource authority holder must comply with the obligations set out in the Land Access Code; the resource authority holder acknowledges that they are not absolved of any compensation liability required under the framework; the resource authority holder must lodge the appropriate information with the registrar of titles to have the agreement noted on the relevant parcel of land; a 10 business day cooling-off period applies from the signing of the written agreement.

I turn now to amendments in the bill relating to restricted land. Currently, different land access rules may apply depending on the resource being accessed. This can be a complex and confusing system for landholders and the resources sector alike. Other than mining leases and claims that require a compensation agreement prior to grant, the 600-metre rule currently applies to all resource activities. This requires resource companies and landholders to negotiate and enter into conduct and compensation agreements for low- or no-impact activities within 600 metres of an occupied residence or school. This does not cover neighbouring landholders.

This bill will introduce a single and consistent restricted land framework to provide certainty for landholders affected by all types of resource activities. A consistent restricted land buffer of 200 metres will be established around homes and businesses within which resource companies must have landholder consent for most resource activities. Submitters to the committee have expressed concern that the restricted land area is being reduced from 600 metres to 200 metres.

Whilst the amendments do mean that a landholder will not have the right to a CCA for preliminary activities between 600 and 200 metres, this is replaced with a much higher level of protection because the CCA framework and 600-metre rule never gave landholders a right to withhold consent for low-impact activities. They will now have this additional and more substantive right.

These consent rights will also extend to neighbouring landholders whose homes or infrastructure are within the 200 metres. This new framework will apply to the petroleum and gas sector for the first time. The intent of the restricted land framework is to provide certainty for landholders near their homes and other critical infrastructure.

There are exemptions that will apply to the restricted land framework, particularly in situations where mining and residential uses cannot co-exist, such as with open-cut mines. In these situations, it is not intended that the landholder 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 not only for the loss of the right of 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 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 any decision.

The bill introduces a new framework to manage overlapping coal and coal seam gas tenures in Queensland under the common provisions act to facilitate co-existence of the two industries. This new framework will provide increased certainty for the grant of production tenures in circumstances where overlapping tenure occurs. The main components of the amendments are: a direct path to grant for both coal and coal seam gas production tenure; the coal tenure holder to have a right of way to develop coal deposits; an ongoing obligation for overlapping coal and coal seam gas tenure holders to exchange relevant information; and proponents will be free to negotiate other arrangements as an alternative to the default. The department has worked and continues to work closely with external stakeholders in the development of this new framework.

I will now ask my colleague Elisa Nichols to provide more detail about the objection and notification amendments.

Ms Nichols: The bill also proposes changes to the public notification and objection process for mining leases. These changes are designed so that all major mines continue to be notified broadly, but lower impact mines have reduced notification rights. Under the Mineral Resources Act, all directly affected landholders will be notified, as will infrastructure providers and local governments, in relation to the tenure application. Under the Environmental Protection Act, all site specific mines will be notified. I will explain what that means.

This means that 90 per cent of smaller mines will no longer be notified under the Environmental Protection Act. Having said that, 90 per cent in total numbers is actually 10 to 20 per cent of the surface area disturbance of all mining in Queensland. So 10 per cent of the largest mines make up 80 to 90 per cent of the total site disturbance of mining in Queensland.

So what types of mines will no longer be subject to notification under the Environmental Protection Act? We call those mines standards mines—standard applications. They used to be called level 2 mines. A lot of people know that terminology. Firstly, they can only be certain types of mining. So that is alluvial mining, clay pit mining, dimension stone mining, hard rock mining, opal mining and shallow pit mining. This means a standard application can never apply to a coalmine. It can never apply to a major metal ore mine or to something like uranium. These criteria are, I should also mention, prescribed in the environmental protection regulation.

The size of the mine is also limited. The total disturbed area cannot be greater than 10 hectares, but that includes everything including associated infrastructure, access roads et cetera. Only five hectares of that site can be active mine workings. In reality, the vast majority of standard mines are much smaller than that.

Standard mines are also restricted from operating in or within buffers of environmentally sensitive areas. This includes protected areas, such as national parks and marine parks; areas subject to international conservation conventions, like the World Heritage convention; strategic environmental areas under the Regional Planning Interests Act; the Great Barrier Reef region; and regionally endangered ecosystems.

The mines all operate in accordance with a set of conditions. They have been operating in this way, under these types of conditions, since December 2000 when the first standard conditions were put in place. The department has a very good understanding of how these mines operate. A full set of conditions can be found in the code of environmental compliance for mining lease projects on the EHP website.

While these applications will no longer be publicly notified, we are undertaking a review in the next 12 months of the eligibility criteria which allows a mine to operate under standard conditions and of the standard conditions. This will be a publicly notified process. The eligibility and standard criteria have to be publicly notified. The public will have a chance to have a say further during that process.

I would also like to point out that we did review the types of submissions that were received on mining applications over the last five years. In relation to these standard mines, there were no submissions recorded from the public at large. All submissions on those types of mines were only from the landholders. Landholders will continue to be notified under the proposed changes in the bill.

CHAIR: Thank you very much for that.

LINDSAY, Mr Peter, Chair, Guildford Coal Queensland Development Committee

CHAIR: Peter, please make an opening statement.

Mr Lindsay: Mr Chair and committee members, I want to give you some encouragement today in relation to what the Queensland government is proposing. But, first of all, I will give a quick pen picture of Guildford Coal. We are a small exploration company in Queensland. We have significant tenements, particularly in the North Galilee, but there are other interests right across Queensland. The company does not have an operating coalmine. It undertakes high-risk and costly exploration in Queensland with a view one day to being able to develop an operating mine or mines.

We are a strong supporter of the communities in which we operate. I know that the member for Dalrymple will know that from what we have done in Charters Towers, Hughenden and Pentland in his electorate. We have contributed to flood recovery in a number of cities and towns and sponsored local sporting and other arts and charitable events. We are a major sponsor of the North Queensland Cowboys this year. We are still a bit hopeful we might get in the top four.

Guildford supports very much the thrust of the Modernising Queensland's Resource Acts Program being undertaken by the Department of Natural Resources and Mines, of which this bill forms an integral part. The vast majority of initiatives that this bill seeks to implement are critical to maintaining a strong mineral exploration sector in Queensland. The committee should be very mindful that these provisions are critical. I have seen circumstances where companies have said, 'Look, our capital is fluid and we can move it anywhere in the world'. That is so easy these days. Unless Queensland provides a strong environment in which mining companies can have certainty and landowners can have certainty, then we will see capital move somewhere else in the world. It is just so easy to do.

Guildford also endorses the government's four-pillar economy and appreciates the need for both primary industry and mining to be viable and sustainable to maintain the ongoing prosperity of all Queenslanders. A sensible company always goes out of its way to maintain excellent relations with the community and with landholders. We have always stated that as our position. We will work with the landholders for the joint benefit of both the industry and the landholders themselves. We support, in general, the proposed changes in this legislation.

More particularly in relation to land access, this has been a prickly issue over the years. I am pleased to see the changes that are proposed in this bill that relate to conduct and compensation. We have made submissions in the past supporting most elements of the land access framework in Queensland. In particular, we support the opt-out agreements. It is really a landmark inclusion in the bill, because that provision acknowledges where good relations exist and sensible and modern companies make sure there are good relations. Where they exist between the landholder and the proponent, unnecessary delays should be kept to a minimum. That is just common sense. That is what this bill does, which is why we are so strongly supportive of it. The opt-out agreements, part 7 subsection 3 of the bill, propose to introduce the requirement for the existence of conduct and compensation agreements and opt-out agreements are to be recorded in the relevant titles register. We endorse this proposal as practical and also providing greater certainty to everybody.

We also support the various amendments making it easier and quicker for access to land for exploration across Queensland without increasing costs or enforcing unwarranted delays. It should be noted that most companies undertaking greenfield exploration in this state are generally small exploration and emerging miners, with very small staffing levels and limited financial resources. You heard evidence from the department a moment ago about the percentage of mining that is big and the percentage that is small. The majority of it is small. These are small companies that are seeking to make a find and develop, and they are a very important part of the economy of this state. Small companies are themselves, in many instances, dealing with large multinational companies that own land or are part of large pastoral groups. To characterise the resource authority hold as the company with the upper hand in negotiations is a stereotype that the committee should understand is not correct. Often, the boot is on the other foot.

Where a dispute arises, the bill allows for an alternative dispute resolution process. We support the Queensland Resources Council's submission regarding ADR. As it stands—and the committee should make a note of this and do something about it, because it is easy—the bill fails to clarify whether the parties must agree on an alternative dispute resolution process when negotiations for a conduct and compensation agreement have failed. The wording in section 86(2)(b) of the bill, like the existing wording in resources legislation, is that a party may call upon the other party to agree to an ADR process. However, there is no clarification as to what happens if the other party refuses to agree. It says that we should do this, but it is not clear what might happen.

There have been some court cases about that and they have been resolved in a very unsatisfactory way. I urge the committee to report back to the government that there should be an amendment to the proposed bill to clarify exactly what the situation is in this circumstance. It is a no brainer and it is easy to do. We do not think that how the bill has turned out was ever the intention and we do not think that the unfair results that could apply from the current bill should be allowed to remain. I think it is sensible to make that change. I hope that the committee sees the sense of that.

In relation to the appeal rights proposal, you should have great confidence that what the bill is proposing is the correct way to go. Currently, there is a parallel process that runs where there is an objection process to a mining lease application and an objection process to an environmental application. They are effectively both the same process. It just doubles the red tape. Guildford is pleased to see that the Queensland government is about cutting red tape and not allowing it to be there. This is a very effective way that does not prejudice the rights of people who might object to a proposal. It does not change their rights in any way. It just cuts out a superfluous process. We are very supportive, indeed, that that is the way that it should go. Our view is that only directly affected landowners and local governments will be able to object to mining leases. Into the future, it is a common-sense initiative that balances the opportunity for committee participation in the granting of a mining lease and EA, while reducing the regulatory burden and simplifying the process. However, the committee knows that much larger mining operations will still require a site-specific environmental authority, generally requiring an EIS, and the public at large is still able to object to the granting of the environmental authority. Of course, a mining lease cannot be obtained without a corresponding environmental authority, so the public is protected. Those interested, for whatever reason, are protected if they want to have input into that process. But there is no point in doing it twice over.

Reducing red tape and increasing the certainty for investors in small-scale projects in the mineral and exploration mining sector is critical. It has been raised in the Productivity Commission—I am not sure whether you are aware of this—that there has been a number of project objections, and we have seen this across Queensland, based on philosophical objection to a particular industry project and, more worryingly, those objections may be aimed at just delaying and disrupting projects. Nobody wants that. It is not in the interests of anybody. It is not in the interests of the landowner or the mining company or the people of Queensland. People's agendas that exist just to delay or disrupt projects for vexatious reasons should not be allowed to happen. Both the Productivity Commission, in its final report in May 2013, and industry peak bodies have raised those concerns. The example that the Productivity Commission quotes is the stated strategy of the Australian anti-coal movement, which is to, '... 'disrupt and delay' key projects and infrastructure while gradually eroding public and political support for the industry and continually building the power of the movement to win more'. That is the strategy of this group and they use the current opportunities to do that. That creates uncertainty, it creates huge extra costs and it creates huge delays when a project might be quite properly finally approved. While courts have the opportunity to deal with any misuse of the objection or appeal process, what is happening is that someone will put in an objection and, right at the last minute, immediately before the scheduled hearing, it will be withdrawn as a tactic. That then delays the system up to several years. That is not fair. This has to be addressed. The existing opportunity in the current arrangements to lodge simultaneous objections on environmental grounds, under both the MRA and the EP Act, exacerbates this potential for objections to be lodged simply to delay an application. The committee might like to look at Xstrata Coal Queensland Pty Ltd & Ors v Friends of the Earth Xstrata 2013. This bill addresses that particular issue and Guildford Coal is certainly very supportive in that regard.

It is reasonable that there should be a forum in which broad philosophical issues can be discussed, and generally these days that is called an election. An example of that is uranium mining where the community can have a debate during an election process and then the government gets on with whatever it is that the community sees as being sensible. However, it is completely unreasonable to expect individual applicants to be put through the delays and uncertainty associated with a prolonged legal campaign to debate whether an industry or mining sector is appropriate, rather than the specifics of the individual proposal.

Guildford Coal welcomes the provisions of this bill. We encourage you to make the changes that I have referred to and we strongly support the government's view that we should proceed in relation to this legislation.

CHAIR: Thank you very much, Peter, for those remarks. I have a couple of questions. There is provision for minor access rights to be verbal agreements. What would Guildford Coal's thoughts be on that?

Mr Lindsay: It is easy to make an agreement with a landholder. I see that we have a solicitor appearing next and he might give you some advice on that. Guildford would rather have a formal agreement, because then there is no doubt about where it sits, and making those agreements is simple: if a landholder and a company are in agreement, making a formal agreement is a simple process and not a costly process.

CHAIR: So even the fact of the exchange of letters or emails or something along those lines?

Mr Lindsay: Yes, so long as it is in writing it is fine.

CHAIR: The problem is, of course, people move on and then Chinese whispers start to happen.

Mr Lindsay: Correct.

Mr COX: Mr Lindsay, I noted you were talking about companies such as yours being good supporters of the community through charities and so on, which is good. While some people might see that as cynical, obviously if you are developing a project you would be looking at the economic benefit to that community through jobs and whatever else it brings, let alone the benefits to the state. Let us say that the community or landholder is happy with a certain development. Maybe people are getting access to that development and the local council is really excited about it, as is the community as a whole. Do you believe it is fair, not just to your company but to that community, that one group with no association with the development can try to block it? Do you see that happening? I guess we could call it a ginger group. They may come in and say, 'We don't believe this should be going ahead', yet the community is really supportive of it for all the right reasons.

Mr Lindsay: Mr Cox, let me take you back to what you said in the initial part of the question. You referred to perhaps people might see it as cynical that companies get involved in giving money to the community. In Guildford's case that is not the case. We strongly believe that if you have the community with you and the landowners with you then you will get a much better outcome than if you just come in and say we are going to do this. So our investment in the community is about making sure the community is with us. Guildford has been able to do that very successfully in North Queensland.

In regard to the latter part of your question, it is clearly wrong that if a community is supportive of a particular project an outside organisation, a third-party, for philosophical reasons can come along and run an objection process that just delays forever that particular supported project proceeding in the community. It is clearly wrong. This legislation helps in that regard and that is why Guildford is so supportive of the legislation.

Mr KNUTH: I know the dealings that Guildford Coal has had with the constituents in my area. I admire the work that you have put in and the trust that you have endeavoured to build within the community so that when it comes to a mining development that trust is there and they know you are not a rogue mining company. There are rogue mining companies. Those rogue mining companies would probably get a fairer deal, especially when it comes to a mining development approval, quicker if they were able to work with those communities like Guildford Coal has.

Mr Lindsay: Mr Knuth, in every sector in the community there are rogues. In every part of the economy any sensible company does its best to work with its customers and with the people that it deals with because you get the better outcome that way. My son happens to be a senior geologist. He knows the mining industry backwards. He has seen over the years how mining companies have become more and more responsible, both to their communities and to the environment. But equally so, landowners become concerned when you talk about mining leases and what might happen to their family property and so on. That is why mining companies and landowners have got to work together in a partnership sensibly. That is why the provisions of this bill allow a framework where that can happen. But it also allows a framework where if there is a disagreement it can be resolved and resolved quickly.

Mr KNUTH: Can you give an example of the benefits of the opt out?

Mr Lindsay: Currently all sorts of notification processes have to occur every time something happens, but with this process proposed by the bill, once a landowner agrees with the mining company no further notices are required to be issued. That just gives a lot more certainty but it also saves a lot of cost and expense in being able to get about your business and do things once you have got the agreement of the landowner. That is why mining companies will bend over backwards to have good relations with the community and the landowners. That is in everybody's interests. That is why what is in the bill is, I think, to be certainly supported.

CHAIR: You are an exploration company so this might come into your area of expertise: the overlapping tenures for coal seam gas and coal, is coal worthwhile mining after you have taken the coal seam gas out of it?

Mr Lindsay: The answer is I don't know because Guildford is not in the space of overlapping tenures with coal seam gas and coal. Sorry, Mr Chairman, I cannot give you expert advice on that. If I was in the southern part of the state perhaps I could.

CHAIR: I should have asked the question down there. Thank you very much.

HARRIS, Mr Donnie, Director, Donnie Harris Law

CHAIR: Thank you for presenting this afternoon. It is always good to have someone from the learned profession of law here to talk to us.

Mr Harris: Thank you for inviting me to speak. I am a local solicitor who represents landholders impacted by, predominantly at the present time, large-scale coal projects. A lot of my comments relate to the mineral resources legislation in particular. There are a few concerns that I want to mention to the committee. The first concern is about restricted land and the proposed changes to the definition of restricted land. My submission would be that as the definition currently stands under the Mineral Resources Act there is certainty to landholders and also resource companies as to what exactly is restricted land. The new definition changes that accepted practice. It also leaves open the possibility for declaring additional restricted land areas by regulation. I do not think it is in the best interests of either party to have that uncertainty.

The other concern with restricted land is the fact that the new definition removes what I would describe as some key infrastructure, particularly for graziers. The number one key infrastructure is water infrastructure. If you talk to any grazier, or any farmer in fact, water is a key requirement for their enterprise. The other key infrastructure is the removal of the principal stockyards. Both those items are no longer going to be considered restricted land under the new definition so where does that leave landholders who were previously in a position where they could, for example, either negotiate make-good requirements for that principal infrastructure or at least negotiate a higher compensation value for the loss of that infrastructure? I think that is critical because the counter argument is to say, well, they will still be compensated, but there is a big difference between compensated on an added value basis and a replacement value basis. You will find that if it is left to the valuers to argue what is adequate compensation, most landholders would be compensated for their principal stockyards and other water infrastructure on an added value basis, which is substantially different to what it costs to actually build a principal stockyard.

I also comment on the water issue about the fact that there is no model make-good agreement that I am aware of that the regulators actually have when it comes to imposing make-good obligations on mining companies. It is often the case that, for example, an underground coal mine project would be approved on the condition that it must enter into make-good agreements with surrounding landholders, or affected landholders as well, but that is all it says. There is no specification really as to what a make-good agreement is, what is a standard make-good agreement and, in fact, landholders are quite often left to negotiate with mining companies as to what actually goes into those documents and that can often be a very difficult and time-consuming task.

It seems to me that if the legislator is determined to amend the restricted land provisions as contemplated, it must only do so at the same time as having a full overhaul of the compensation provisions. The loss of that key infrastructure from restricted land, plus also the potential loss of a veto right, is a key individual right. It is a key legislative principle which is being changed and in my mind it is being changed without at the same time increasing the ability to obtain fairer compensation arrangements. There are issues with the current compensation mechanisms, particularly with respect to the fact that in a declining market you may have a large-scale coal mine obviously that is going to more or less dispossess that landholder of the land who would be submitting that it should be done at the current market value, when if the landholder was left to choose as to when they would actually dispose of that land they would obviously wait until the market conditions changed. I do not believe that there is any real mechanism under the current compensation provisions to deal with that.

There are also issues with respect to compensation relating to owners' time and also recovery of professional costs against or by or from resource companies. Both of those issues are, in my experience, frustrating for landholders. Again the compensation provisions are not clear with respect to either of them. With respect to owners' time, it is not a separate heads of compensation as I would describe it and, in fact, I have seen decisions by the Land Court where it has been fairly clear that it wouldn't allow owners' time unless proven, which can be a very difficult task for a grazier to do.

With respect to recovery of professional costs, the problem with that is that it is actually described as a compensatable effect. You do have, I suppose, the term used earlier was rogue resource companies. I will say that most of them actually I think do the right thing and they pay regardless of whether they proceed with the project or not and they certainly pay from the time that they perhaps start negotiations, but you do have the odd few who insist that as a result of the way that the legislation is that they are not obliged to compensate for professional fees until they reach a compensation agreement and if they walk away then the landholder is left out-of-pocket.

The last item I want to summarise is the objection process. I understand the reasons for wanting to deal with again what I describe as perhaps rogue objectors and trying to streamline the process. Although I will say that in my experience both an objection to a mining lease and an objection on an environmental basis to the EA is generally run in conjunction. You do not really have any loss of time or greater delay. In my experience the Land Court almost insists that they be heard together and dealt with as a parcel rather than separately. The concern is that with the changes to the mining lease objection process are we really, for the sake of cutting red tape or trying to cut red tape, opening ourselves to greater danger in the future of not having a public means by which we can voice our concerns and also, of course, the other concern is identifying when and if there ever is corruption.

I think we need to be very careful about changing the checking mechanism process which we presently have just for the sake of cutting what we foresee as some red tape. I would emphasise that as it presently stands the Land Court can only make recommendations in any case, so it still generally falls back to the minister to determine, but it is an important checking mechanism on the process for both the approval of a mining lease and the EA itself.

I would flag that the changes to the types of matters that the Land Court can now consider on a mining lease objection process to my mind quite clearly have been narrowed, but I have some concerns about the removal of certain items; for example, one that appears to be removed is 'whether the past performance of the applicant has been satisfactory.' It seems to me that the Land Court can no longer consider if the applicant for the mining lease has a history of perhaps not rehabilitating previous sites or bores or other types of resource holdings that it may have had. It seems to me also that what has been removed is 'whether the applicant has the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease'. Again I do not necessarily see that as being an EA issue. That is a broader mining lease issue that I would have thought should have stayed in the criteria. Again we have removed 'whether the public right and interest will be prejudiced' and we have also removed that any good reason has been shown for a refusal to grant the mining lease. Again I question why we would remove such things, when ultimately the Land Court can only make a recommendation and it is left to the minister to act on that recommendation in any case.

CHAIR: Thank you very much. I just have a couple of questions. Have you actually looked at any make-good provisions that have been ordered by land courts or other courts?

Mr Harris: When you are talking about make-good provisions, there are obviously make-good requirements in the Water Act itself which relate only to petroleum resource holders at the present time. So if you are talking about, for instance, an underground coalmine which clearly will have an impact on both groundwater and surface water, I would submit that the Water Act does not presently apply. While there may be some court decisions about when a make-good obligation arises, what I am referring to is that there is no standardised pro forma agreement that is in existence.

CHAIR: No, I understand what you are referring to. I do not think I have heard a lot about make-good provisions actually being implemented, because it is bloody hard to make good a bore that is broken.

Mr Harris: I am involved in a matter at the moment where there are experts who are submitting material in the Land Court around that very issue. You are right, but 'make good' generally does not just mean repair the existing bore.

CHAIR: I realise that.

Mr Harris: `Make good' may actually mean putting down a new bore in another location, carting in water or putting in a pipeline. It is a broad concept.

CHAIR: With the stockyards being one of the items that has been taken away from restricted areas, if property owner X is due to muster 1,000 head of cattle and for some reason they disturb the stockyards and he cannot use them for a month or however long it takes him to build a new set of stockyards, or the government in its wisdom has decided to stop live exports to Indonesia and the cattle are worth half the money, do you think there is a provision in the bill that would cover that sort of thing?

Mr Harris: Are you talking about a disturbance to the mustering operation?

CHAIR: You need the stockyards to muster.

Mr Harris: Yes, that is right.

CHAIR: So they have decided to do some work right up to the stockyards and the stockyards are not fit to muster in, or there are people around the stockyards working with drilling rigs and boring rigs.

Mr Harris: I guess your question is about more or less coexistence.

CHAIR: It is not a restricted area any more, is it?

Mr Harris: No, it is not; that is exactly right. It could be very difficult to have that coexistence, but again it probably depends on the nature of the project and particularly the company you are dealing with. Most landholders and companies would negotiate reasonable access arrangements and notice provisions, and certainly landholders would give companies a fair indication of when they would be doing mustering and those types of things to reduce the likelihood of that occurring. I guess the concern is as it presently stands that is an absolute veto right. Those stockyards are excluded. That is not going to be the case going forward and you are substantially shifting the bargaining power for a landholder to negotiate those reasonable conditions when they might be working around the stockyards. Also another matter I am dealing with at the present time is simply negotiating provisions for them to shift and relocate those stockyards at their cost if they have to as a result of the mining activities coming within close proximity, bearing in mind that principal stockyards on a replacement value basis are around a couple of hundred thousand dollars in most instances. It is a substantial piece of infrastructure.

CHAIR: Just out of curiosity, and you do not have to answer if you do not want to, but with regards to legal fees have you been caught where a landholder has had to dig into his own pocket when a mining company has walked away and—

Mr Harris: Yes, it was actually a coal seam gas company. It seems to be that in the coal seam gas industry there are a couple of companies that have a policy—and it is not only legal fees—of not paying the valuation costs either or not reimbursing them until compensation has been agreed to.

Mr COX: You have seen the department's responses to some of your questions, and this is the only one I am going to ask you. In regards to the Land Access Implementation Committee, they are an independent body and their report has been used in the department's response regarding the legal fees that the chairman was just talking about. What do you say about the comment that there has been positive evolution in negotiation and that comment being used to support some of these changes?

Mr Harris: I think you are referring to the comment that there has been consultation since about 2012 on some of these issues.

Mr COX: That is right.

Mr Harris: Interestingly, I did a little bit of research today and I saw a paper saying that there were three key conditions about that consultation: phase and engage reform; retention of existing legislative principles—and that is probably a key issue here when I am talking about changes to restricted land—and no disadvantage unless agreed. If that is the basis upon which the consultation in 2012 occurred and now we have some fairly substantial changes particularly to restricted land, which clearly is a disadvantage to landholders, I just do not think that the consultation was actually probably as open and frank as it should have been. If there were going to be changes to restricted land in the way that we are proposing, then I think we should have been telling those key stakeholders at the time, because they may well have had a different view about whether we needed to change the compensation provisions if that is the case, and I have no doubt they would have.

CHAIR: Do you think that landholders should be entering into verbal agreements?

Mr Harris: No. Bearing in mind that, depending on the nature of the resource entitlement that we are talking about, it can be a blot on title whether it is registered or not. It decreases the value of the land, so it does not just impact that landholder at the time. They may not appreciate it, but when they try to sell their property they might suddenly find out that it is a problem. Also, of course, you have the problem that you have future owners of the property. So I do not think it is prudent to have a verbal agreement.

CHAIR: You would not be recommending to your clients that they enter into these verbal agreements?

Mr Harris: No.

Mr KNUTH: Do you find it surprising that stockyards and watering points were removed from restricted land so that any negotiation for compensation is really devalued because it has been removed?

Mr Harris: Substantially, and particularly with large-scale projects which, in many respects, ultimately dispossess the landowner of their land. At the present time under the Mineral Resources Act it is pretty clear that it is on a market value basis plus generally 10 per cent, and that is the rule of thumb. The Land Court pretty much says 10 per cent is the premium.

CHAIR: That is your disturbance cost.

Mr Harris: Yes, and you struggle to find anything over and above that. When you see reported properties that have sold with 40 or 50 per cent premiums, you will generally find that that is because of the restricted land issues. A resource company does not want to be dealing with a landholder who has retained veto rights in respect to restricted land and they pay an extra premium for the landholder to give up those rights. So it will have a substantial impact on bargaining positions.

Mr KNUTH: Obviously you have dealt with a number of rogue mining companies, and you have said that a lot of people will be left out of pocket because of this bill. Can you very briefly give us a couple of examples of what you were talking about?

Mr Harris: I did not say that a lot of people would be left out of pocket because of this bill. I suppose what I am saying is not just with regard to legal fees, but professional costs, valuations, accounting and legal fees are all in the same basket. There is still no change in the definition of compensatable effect. Professional costs still fall within that definition, which means that you are still allowing the rogues to argue that they do not have to pay for professional costs and they do not even have to pay for a landholder's time in dealing with them until they have reached the point of signing a compensation agreement or the Land Court has determined compensation. That means that if they walk away, you are going to have landholders who are left paying the legal fees that they have incurred, perhaps their own valuation costs, and obviously not being able to recover their time. That is the issue. I think there needs to be a slight change to the approach in the legislation to ensure that professional costs are recoverable from the moment that they more or less serve a notice of intention to negotiate, which is what I know it as now, regardless of whether or not they proceed with the project.

CHAIR: Thank you very much for that. I am in agreement with Donnie: their people are being paid from the moment they start to negotiate.

Mr Harris: Yes, that is exactly right. I have landholders who say, ` When I come and see you I have to pay for your time.' We expect the same. If someone comes to see us and wants us to take them around the property and show them where our critical infrastructure is or access roads and all those type of things, they should be able to charge for their time.

CHAIR: I spoke to a number of landholders today, some of whom were from Mackay, who are dealing with five, six or seven resource companies. I told them to try and set their own criteria: 'If you want to deal with me, you must deal with me on Tuesday afternoon from 12 until 4. That is the time I put aside every week for resource company dealings.' Would that then give them a reasonable chance of getting some of that compensation back from the Land Court?

Mr Harris: I tell my clients to keep diaries, but again not everyone keeps a diary.

CHAIR: Unfortunately, you have to control the agenda a bit when you are dealing with these companies, haven't you?

Mr Harris: Yes, you certainly do to the extent that you possibly can. It comes back to the fact that sometimes their schedules do not match the landholder's schedule and there has to be some give and take.

Mr COX: From your profession's point of view, is there a simple solution as to how you could have that registered or have that noted that is common and across-the-board? Is it that someone uses a diary and someone sends an email? I am not being flippant. Do you have a solution of where there is a point that could be simply identified that says, `Yes, this is when we should be marking from' and how that can be recorded? Is it done through legal terms? Is it done through the department? Does that make sense?

Mr Harris: If it gets to the Land Court, it is done through valuation evidence. At the present time that is the reality. So the valuers put in a component of landholder time but, again, they have to have something—

CHAIR: To back it up.

Mr Harris: To back it up. If they have plucked a figure out of the air the Land Court will not give it any credence whatsoever. I suppose it comes down to landholders implementing certain practices, whether that be dedicated times and recording it, but I think also the legislation just needs to recognise that it is a separate heads of conversation—that landholders are entitled to recovery of their time.

CHAIR: Thanks very much. Thanks for appearing today.

TUBMAN, Ms Wendy, Coordinator, North Queensland Conservation Council

CHAIR: How are you today?

Ms Tubman: Not too bad. How about you?

CHAIR: Very well, thanks. Would you like to open with a brief statement, Wendy?

Ms Tubman: Yes, I do. I have a number of things that I would like to say but I am going to start by putting a human face to some of the things that we are talking about. This is the human face that I am referring to. This is Charlie Morton. Charlie Morton is the landholder of Strathtay, a 40,000 hectare grazing property 120 kilometres north of Hughenden. His property and his neighbour's property called Clyde Park—it belongs to Norman Sim—are both under a mining exploration lease threat from Guildford Coal. Charlie Morton has been missing for six days.

CHAIR: Please, Wendy, with statements like that, please do not try to make any insinuations that may have no validity at all.

Ms Tubman: All I can say is that I believe, his wife believes, his family believes and all his neighbours believe that the stress that he was under because of what was happening to his property was enough to tip him over the edge.

CHAIR: Please, no more. Thank you.

Ms Tubman: This is the reality of what we are dealing with.

CHAIR: I realise that these are emotional issues for some people. I have said as much in other meetings as well. These are emotional issues, whether you are an Indigenous landholder or whether you are a European landholder, or whatever. They are emotional issues and some people are fifth- and sixth-generation landholders. But please, do not make rash statements.

Ms Tubman: I was not making a rash statement; this is a fact.

CHAIR: Because you have a microphone in front of you, please do not make a rash statement. Thank you.

Ms Tubman: I will move on to a lot of other issues that I want to make. First of all, we are talking about red tape, green tape—whatever tape. The idea of the purpose of the bill, if you read it, is to facilitate faster and more efficient delivery of services for industry and faster processing times and lower associated costs for industry. My concern is that we are looking here at speed for the sake of speed.

I notice that Mr Lindsay commented on the Productivity Commission's report. I want to comment on the same report. One of the things that they did draw attention to was the fact that in Australia the developments are increasing in number, in size and in complexity. Unfortunately, the response to that seems to be, `Let's make it easier. Let's cut out some of the rules and regulations' rather than saying, `If these things are larger and more complex, maybe we need to have more resources in order to assess the impact of these proposals.' That was not done, which is a great deficit in the Productivity Commission's report.

I refer also to that report where it is noted, in talking about how easy it was to do business in Australia compared with other countries, the World Bank in 2013 told us that Australia ranks tenth out of 185 countries in terms of ease of doing business. It is above Sweden, it is above Canada, it is above Germany, it is above Japan and it is above 171 other countries. There is a good business environment. We do not necessarily need to throw any more protections away in order to increase that. Not only is it good for doing business but the OECD Better Life Index tells us that Australia is indeed No. 1 in terms of quality of life compared to—I cannot find it right now, but it is in these papers and I have provided a copy to give to you. The point that I am trying to make is that these rules and regulations are often there for a good purpose, because we are dealing with complex issues. We are dealing with a very complex environment. We are dealing with people and we are dealing with communities. Those are complex and as we get bigger and more complex, unfortunately, we need more and more protection.

I am suggesting that, therefore, we need more haste and less speed. We also need more science. In that situation I point to the Queensland government's new environmental offsets policy. That was introduced after a period of consultation, but it was introduced again to increase the speed and ease with which industry could do business. So we have overruled the science behind what is needed in offsets. I can give you an example. This was given to me by the departmental person who was conducting the consultation. He pointed out that there is now a standard ratio of damage to offset. I will not go into whether offsets actually make any sense—

CHAIR: I was going to say that you are straying from the bill.

Ms Tubman: I am looking at the science of these things. In that offsets policy, instead of looking at the science of it, they said, `Let's make it easier. Let's make it quick letter. Let's make it simpler. Let's have the same ratio of offset for every single condition.' The department knows full well that that will not protect certain species.

CHAIR: I do not really think that you can speak on behalf of the department, Wendy, but keep talking.

Ms Tubman: Okay. Another concern that I have with the bill is the fear of what they call sterilisation and the idea that the responsible management of the state's resources occurs when an economically viable resource is not prevented from being developed. There are occasions when a resource can be left undeveloped in order for greater benefit to be achieved. I think this push and this rush to try to exploit every resource that is available for an economic purpose is taking us away from where Australia wants to be and I think that this bill will assist that process.

Specifically, in the bill I believe that the time frames are unrealistic. People, landholders, landowners, are extremely busy people as we all know—as we all are—and they are not used to working in a legalistic or business framework. They need to have time so that they can find the time to stop what they are doing, stop what has to be done on the property and make a sensible consideration. So when we talk about things like 10 days and 20 days, this is just not workable.

One of my other concerns is the degree to which this bill will move us away from the idea of cumulative impact assessments, which is the direction in which the federal and the state government are moving at the moment. In recognition of the fact that a small action here and a small action there and a small action there all adds up to a much bigger action, if you are not careful you end up with what we call death by a thousand cuts. What we need to look at is not the specific, small property of that one owner; we need to look at the entire regional impact of that project and other projects on that landowner and the wider community, including the wider environmental community.

I also believe that there is a strong case for having NGO involvement in the development of these issues and the discussion of these issues. I will table a paper by Dr Joan Staples, who is a lawyer, and who is a visiting doctor with the University of New South Wales. She draws on the benefits of having NGOs incorporated into community discussions on issues that affect the community—and these affect the community, the broader community, not just the individual landowner.

I know that Mr Lindsay when he spoke appeared to think that you could find a community that was absolutely totally committed to a coalmine, for example. In that case, if the landholder thought that it was a good idea and the community thought that it was a good idea, then it should be allowed to go ahead. I defy Mr Lindsay to find a community where every single person, or every single group, thinks that it is a good idea. There will always be difference of opinion and those opinions need to be expressed. They need to be discussed and they need to have the benefit of sunshine on the arguments so that issues beyond the immediate fence can be considered.

Finally, I would like to table the comments that were made by my colleagues from the NGO and I will present that as well to you. They have a list of eight points that they thought—I will not go through them because I know that you have received that.

CHAIR: Yes, we have received that.

Ms Tubman: Yes. I will not go through it again. So that is the essence of my presentation.

CHAIR: Are there any questions?

Mr COX: I notice in the paper that I have here—

CHAIR: From the North Queensland Conservation Council?

Mr COX: The North Queensland Conservation Council, point 8. I will not read the whole point, but it is in regard to an ABC interview. There is a comment in here that says that climate change advancing industries at the expense of sustainable farming and people and the environment can in no way be seen as a role of government responsibility. That comment of climate change advancing industries seems to indicate that any industry that you see that is climate changing, which we will not talk about today, is a problem and needs to be looked at. How does that relate to a specific development, which is what this bill in part deals with, and those local people who are affected by it? You are coming in with a statement that it is about climate change advancing industry. Who determines whether it is climate change advancing industry, for a start?

Ms Tubman: The science determines that. They have determined that.

Mr COX: So on that aspect then, would I be right in saying that your organisation would not believe that the coal industry, for example, is something that should be sustained any more in the world and that, going on that statement and using supposed science, anything to do with coal should automatically be objected?

Ms Tubman: I think we should move as rapidly as we can away from fossil fuels as a means of generating power. I say that with the benefit of the climate authority behind me, which has already said that we should be leaving 80 per cent of the coal in the ground and with the international panel on climate change.

Mr COX: Does that mean that any development to do with coal—

Ms Tubman: Any development of coal.

Mr COX: Should be objected it?

Ms Tubman: Of coal.

Mr COX: Should be objected it?

Ms Tubman: Yes, thermal coal.

Mr COX: In your submission it states that the restricted rights to object to matters of broad significance to all small cohorts strikes at the very root of the democratic system. I will not read the rest out. Given that theory, I will have to ask the question which I have asked many others at these hearings. You are talking about democracy. If we have a landholder where a coalmine is going—it is one landholding—and we have people affected due to getting access to that landholding and we have the majority of a town and community saying, `This is what we want. We need this to keep our schools open, to keep our hospital open, to keep jobs,' do you believe that that group should not have a stronger voice than a small cohort that could be from anywhere—they could be a thousand miles away or on the other side of the planet—and have the right to deny those people their democratic right?

Ms Tubman: It sounds a bit like you could be describing some of our coalminers at the moment, Mr Cox. They are a small group of a community coming from a long way away.

Mr COX: I did not say coalmine staff; I said the community. I am trying to be specific to this bill and what we are dealing with here. Do you believe that those people do not have a democratic right as a majority?

Ms Tubman: They have a right, yes. So do other people have a right.

CHAIR: Thank you very much for your time, Wendy.

SEWELL, Mr David, Spokesperson, Citizens Against Mining Ben Lomond

CHAIR: Welcome, Mr Sewell. Thank you for coming along. This bill is not specifically about uranium mining, you realise that?

Mr Sewell: I realise that.

CHAIR: Would you like to make an opening statement?

Mr Sewell: Our group has made it our mission to alert the public of, firstly, the existence of the Ben Lomond uranium mining, which is only 50 kilometres from where we sit here now because so many people are unaware of it. I think we have been doing a pretty good job of alerting the public to what is happening. People around this town anyway all seem to know about its existence. Secondly, there is the fact that this mine has already been declared by the state government's own experts as being a threat to public health.

The impact of uranium mines is acknowledged to last for tens of thousands of years and may have serious impacts on public health, ecology and the environment—particularly a development already declared a threat to public health by the government's own experts in the upper reaches of Queensland's largest river, the Burdekin, which services a huge area, including the public water supplies of Townsville, a major city; Charters Towers only some 40 kilometres downstream from where the Keelbottom Creek, the mine site, enters the Burdekin; the water supplies of Ayr and Home Hill and a huge irrigated area; and, finally, the ocean into which that river runs. This is an enormous area. It affects a lot of people, a lot of businesses and a lot of agriculture.

CHAIR: When was Ben Lomond opened?

Mr Sewell: I did live up in Charters Towers at the time and I only became aware of it in 1981. I am not sure when it opened. That is some 33 years ago. There was an accident where material was released. They were not actually processing the ore. It was just run-off from the ore which created high pollution levels in the creek. Even after the mining warden found that the mine was unsafe and suggested that the mine should not be given a further lease, the mining company continued, by its own admission, to continue to have accidents, more than 12 months after that mining warden's court finding.

Contrary to what Mr Lindsay was saying earlier about having a debate about uranium mining at an election time, I would remind everybody here that we have never had that debate. This government does not have a mandate to mine uranium. We did not vote for it. Furthermore, we have not been given any consideration.

Some 73 stakeholders were invited to make submissions to the implementation committee. The Charters Towers Regional Council was invited to make a submission, which they did—it was a good one. The Townsville port authority also put in a submission. They said, `We are ready to ship this stuff out.' The Townsville City Council, however, were not invited to make a submission. Now we probably understand why. The Townsville City Council has recently reaffirmed that Townsville is a nuclear free zone. Those guys are our representatives. They represent all of Townsville. They are our democratically elected representatives. People are not in favour of this development.

CHAIR: This bill is not really about uranium mining though.

Mr Sewell: Yes, I realise that. We are upset that there could be problems in terms of us making some sort of legal appeal or objection, particularly in relation to certain clauses in the bill. The narrow definition of `affected person', for instance, as proposed would exclude neighbours or community groups or people in water catchments. That is absolutely absurd. We have also been increasingly frustrated by the minister's inability to adequately answer questions that we have specifically put to him—even questions in parliament—on this particular mine. The honourable member for Dalrymple asked if the government would consider the fact that this mine is in an earthquake area and has been subject to floods and cyclones and has already had a radioactive contamination spill. After a very longwinded reply, the minister could not even simply say, 'Yes, we will consider it.' We are left in a very difficult situation where we believe that we are not going to be given a fair hearing.

Mr COX: I note that it was in 1981 that the mining warden's report for Ben Lomond came out. That is obviously 30 years ago. That has been superseded by another act. That is why that came about. As you would be aware, the mine currently sits under an EA so it has to be monitored all the time, which you and I have spoken about, David. I appreciate you being at the hearing today. In trying to bring us back to the bill, there would have to be community consultation and engagement.

An environmental impact statement would have to happen before any such mining operation started again. I take everything on board—and you and I have had this conversation before—but a lot has changed in 30 years.

We have different acts that involve that mine. The fact that that mine, which has no applications pending at the moment, has to go through those other processes and has new provisions that relate to it is something that I am more focused on. It would have to tick a lot of boxes before it got going.

Mr Sewell: I fully understand that, Sam. We know that yes we can make some kind of objection under the environmental impact statement if an application comes through, but we are not prepared to wait until that happens. Like I said, our mission is to alert the public to this mine's existence and to the fact that it has already been declared unsafe, as you say, under old conditions 30 years ago. If you think those conditions are a little wobbly and they said then that it was safe how much more unsafe would it be today?

Mr COX: I could not comment on whether it is. You have a mission, but I am saying from the government's point of view and my position on that and on this committee—

Mr Sewell: Sam, could I just ask you a question. You mentioned ongoing monitoring. We have been trying to find out what that ongoing monitoring is but we have been getting no response from the minister. I doubt very much whether there has been any ongoing monitoring.

Ms Nichols: I undertake to find out what monitoring has been going on. That would be through the department of environment.

CHAIR: We will get that back to you at some stage.

Mr KNUTH: You mentioned before that this bill narrows the definition of community groups or landowners that have the opportunity to have a say. Is that what you see this bill doing?

Mr Sewell: Part of it is about that. It is trying to limit our powers to put in an appeal.

CHAIR: Thank you very much for your comments, David.

NAVARRO, Ms Connie, Partner, Emanate Legal

Ms Navarro: Thank you, Chair and committee members, for allowing me to speak. Not unlike Mr Harris who spoke earlier, I represent a number of landholders in central and regional Western Queensland. I would like to make a couple of comments in relation to some of the items discussed earlier, particularly around the landowner comments.

I think I can make the comment from my experience that landowners and mining companies can co-exist, but it does come down to relationships being built early with decision makers who have the ability to deliver on what is promised. One of the frustrations for landowners is people who come out on behalf of mining or gas companies promise the earth and then deliver nothing.

This bill provides some restricted land areas as a refined definition, which may cause their own difficulties. It also provides an area of 200 metres which is off limits. It draws a line in the sand, I think are the words being used in the commentary. In reality, landowners understand that mining will happen. There are some landowners who do not want mining to happen full stop. It is a respect for the landowner's business as much as it is for the miner's right to be on the property.

In terms of conduct, I think under this bill the relevance of the Land Court now being able to hear about the conduct of the parties during the negotiations is very relevant. I do agree that compensation related matters are also relevant—things such as a landowner's time is one that has been very difficult to deal with over many years. You asked the question earlier about some of the alternatives to assist with dealing with that type of issue. How do you record it, for example?

A lot of this can be dealt with by an upfront understanding between the miner and the actual landowner. Examples that I have seen that have worked are where clients have been asked to keep an hourly record of the work they are doing with or on behalf of a mining company. That is fairly laborious, but it did work. Other examples are upfront lump sum payments. But, of course, you need to include the parameters in terms of what those upfront payments actually relate to.

The other one is setting some factors with regard to how you actually compensate a landowner after the event. That could be brought back to diary records if your client keeps that photographic evidence. It could also relate to the cost of employing additional labour to come in and do the work that you as the owner of the business could not otherwise do.

Some of the graziers we act for have very large enterprises and are very significant to our Queensland economy. The reality is that it is not a simple matter of just getting a manager in on a short-term basis so that they can deal with the 10 mining companies. They may well need to employ a manager of operations on a full-time basis and that might be the parameters for compensation for the landowner's time. Those are only suggestions, but I do think it requires further investigation as part of this bill.

If I can speak on the opt-out provisions: on the mining company side, I can see that there are benefits from an opt-out provision and I believe on the landowner's side there may also be benefits. However, is there any requirement to seek advice before signing off on an opt-out agreement, for example, a legal certificate or a financial certificate, so that the landowners are fully educated before they actually enter into or elect to enter into any opt-out agreement? I think some parameters need to be put in place. I know there is a 10-day cooling-off period, but is that enough? Some landowners are so frustrated that they will sign anything or, on the other hand, will just bury their heads. Others will seek legal advice before making any election in the first instance. I am happy to leave that to the landowners as to whether they wish to go down that path, once fully informed.

Probably the last comment I would like to make is on overlapping tenures. My comment there is regarding the overlap between your coal seam gas and your coal, and in particular make-good agreements. I have issues the moment for clients where there may well be, in the future, some difficulty in identifying who is responsible for the make-good provisions that need to occur in regards to a property. Is it the coal seam miner or is it the coal producer? At the end of the day, the landowner still is required to be compensated or to be put in the place they were in before the mining operation began. In some cases, maybe their property and business needs to be bought out if they cannot continue to operate. The reality is, though, they should not be stuck in between the coal seam miner and the coal miner. There is a difficulty there if there is an argument as to who is responsible. That perhaps needs some further investigation.

CHAIR: That is a good point. I have not heard that one before. What about the verbal agreements? Are you of the same opinion as—

Ms Navarro: Yes, I am; Mr Harris. The reality is that we are talking about generational issues here. Who is going to remember what dad did 10 years ago? I think some sort of written arrangement is necessitated, whether that is an exchange of emails or a formal written agreement.

Mr COX: You made a good point on the opt-out provisions. While this is not a comparison, when people buy a house—and I do not believe we have changed this—there is a cooling-off period of seven days. Someone could be making a $300,000 decision, so I am not trying to compare that to selling land, but those sorts of periods are there and that sort of process happens. From memory, when you sign a contract, if you want to call it that, you get legal advice. Is that where you are going? It is more from an education point of view, that somehow there is a policy, rather than it being in legislation, that people seek that sort of advice during the cooling-off period? Is that where you are going with that?

Ms Navarro: That could be one option. Under the Retail Shop Leases Act—and I do not necessarily do a lot of work in that area, nowadays—it requires legal certificates and financial certificates for tenants moving into a retail shop, for example. Do we mandate that they must get a certificate saying that they understand the effect of signing opt-out arrangements? That is one option. The other option is, like you say, education so that before you elect to opt out you have considered obtaining legal, financial and other advice. I say 'other advice' because you do need to consider the impacts from valuers and things like that.

Mr COX: I guess that is where I am going.

Ms Navarro: Yes, there are probably two options.

Mr COX: We are trying not to burden them with more time delay and more regulation. I do not want to be cynical, as some are, about the legal profession and trying to get money. It is not about that. That happens now with big decisions when people buy a house.

CHAIR: That is a fair point, in that it is a statement that includes the 10-day cooling-off period or the 20-day cooling-off period, or whatever we decide is the cooling-off period.

Ms Navarro: Correct.

CHAIR: You want a statement to say, in big bold print, 'Please, get advice on this matter'.

Ms Navarro: Yes.

Mr COX: It should be pointed out to them, but only as an education thing. That is just a thought.

Mr KNUTH: Connie, with the opt-out provision, would you like it to be brought up from a 10-day period to a 20-day period? You are talking to a committee that will lobby this, so do you think that could be an option?

Ms Navarro: Time frames can sometimes be a bit of a vicious cycle. Sometimes it is too short, sometimes it is too long. I think it is more around the education. If there is no mandated requirement to seek legal or financial advice certificates before entering into that opt-out arrangement, then they need to have sufficient time, if they were going to seek advice after signing it, so that they could then obviously withdraw under the cooling-off period. Is 10 days enough? It could be difficult for some people to get the advice they need within 10 days and it would be nice for them to have a longer period, whether it is 20 business days, which perhaps is more reasonable. But it does come down to the regime as a whole. As it currently stands, if it was going to be that you have a cooling-off period only, there has to be very clear education path and I think the time frame does need to be extended.

Mr KNUTH: Obviously you have come a fair way—

Ms Navarro: I am based in Townsville, although we have offices across the state.

Mr KNUTH: Do you see this bill as favouring the mining companies or is it a happy medium?

Ms Navarro: I think there are benefits for both sides, but there are also traps for both sides. On the whole the intention is to try to create better relationships between the two parties and I think there is still some work that could be done. Restricted land is an area that will create some difficulties for clients in understanding compensation provisions, because that is ultimately what a lot of our landowners are left with: compensation and/or conduct arrangements. Does it favour one or the other? I probably cannot really comment too much on it, but it does look at some of the issues that we have been dealing with today.

CHAIR: The parties from both sides should act as good corporate citizens and have good relationships. One of the examples that I have used, and it is pretty well common knowledge, is that Santos seems to have a fairly good strategy where it acts to benefit both the community and itself. They could all be pretty good corporate citizens like that. Some of the landholders can be very difficult to deal with, too. I deal with a few of them at home.

Ms Navarro: That is right.

CHAIR: Thank you very much for attending today. Ladies and gentlemen, that concludes our public hearing on the Mineral and Energy Resources (Common Provisions) Bill. We thank you for coming to meet with us today. We especially thank all the speakers. We appreciate that some of you have travelled some distance to be here. I also thank the officers from the Department of Natural Resources and Mines for their assistance. The draft transcript of this meeting should be up on the website by early next week. If you are able to stay, please join us for some refreshments.

Committee adjourned at 5.11 pm