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 J Trad 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, 27 AUGUST 2014

Brisbane

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Committee met at 10.44 am

FARRELL, Mrs Letitia, Research Officer, Land Court

HAYDEN, Mr Kevin, Registrar, Land Court

CHAIR: Welcome, ladies and gentlemen. I declare open this meeting of the Agriculture, Resources and Environment Committee. I acknowledge the traditional owners of the land on which this meeting is taking place. I am Ian Rickuss, the member for Lockyer and chair of the committee. Present also are the member Whitsunday, Jason Costigan, and the member for Thuringowa, Sam Cox. We will be acting as a subcommittee for this hearing. Please note that these proceedings are being transcribed by our parliamentary reporters and a copy of the hearing transcript will be publicly available on the Queensland parliament's website following the hearings.

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

I now invite the first key witnesses from the Land Court, Kevin Hayden, Registrar, and Letitia Farrell, research officer, to come forward. I remind you to state your name and organisation prior to presentation. Do you have any comments that you would like to make on the bill, Kevin? Have you had a look at the bill?

Mr Hayden: Mr Chair, no. I had some contact with the bill through my position as Registrar of the Land Court. Most of the contact with the bill has been via Letitia Farrell, the Land Court's research officer, who consults with the president.

CHAIR: Letitia, would you like to make some comments on the bill at all?

Mrs Farrell: Mr Chairperson, at this stage, no. My role at the court is primarily dealing with draft legislation and providing advice to the president and the members the Land Court. I also liaise with and provide feedback to the government departments on behalf of the court. Having said that, generally the court does not make comments on the policy underlying legislation. From the court's point of view, we are really only concerned with operational issues affecting the court and whether any jurisdiction conferred on the court is appropriate.

CHAIR: I would like to welcome Jackie Trad, the member for South Brisbane, to the committee hearing. Have you looked at the Land Access Implementation Committee's report of 2013 and is it being used by the Land Court now, at all, for advice?

Mrs Farrell: That is still in policy form at the moment. Certainly the court's judicial registrar and I, attended before the Land Access Committee and gave our views on the proposals at that stage. I have certainly reviewed the draft bill in terms of the land access provisions that are included.

CHAIR: It seems to have made some reasonable recommendations. Of course, we do not want land access matters turning up in the Land Court; that is the last resort. The committee has considered alternative dispute resolution processes such as, 'A preliminary conference conducted by the Judicial Registrar (of the Land Court)' and, 'An independent alternative dispute resolution (ADR) panel process overseen by an independent chair', and then there would still be access to the Land Court. Do you feel that would speed the process up and make it simpler for you, if, a matter could be resolved prior to it getting to the Land Court?

Mrs Farrell: My understanding, Mr Chair, is that there has been no change to the ADR process in the context of the land access provisions. Certainly the option of the judicial registrar of the court providing a preliminary conference was canvassed, but I understand that was not picked up and certainly it is not reflected in the bill. The court's only role is that if the ADR process, being

either a conference independently chaired by an authorised officer of the department or an independent ADR process via an external mediator, for example, if that process fails, then the parties come to the court.

CHAIR: With the departmental conferences, the recommendation in this report is that—

Departmental conferences (an option available under the legislation as part of the dispute resolution process) are not achieving effective outcomes in terms of resolving disputes, with some stakeholder's also perceiving a lack of independence and relevant expertise from departmental officers.

Are departmental conferences taken into account when they come to the Land Court now? If there has been a conference, is that information brought to the court, as well?

Mrs Farrell: The court would be aware that a conference has occurred, but anything said or done at the conference is generally not admissible before the court proceedings.

Mr COX: For my understanding, can you give me an example of how long something could take before it is put in front of the Land Court? This is probably a very open-handed question, but could you give some examples of how long things can remain in that court? There are two parts: how long until something is brought before the court once something has been triggered and some examples of how long it can be?

Mrs Farrell: It is a matter for the parties. There is no time frame in the legislation between when the ADR process ends and when they can apply to the Land Court; it is really up to them. Once a matter is in the Land Court, so to speak, then usually it is a matter of weeks or even within a month that the court would set it down for directions, with a view to then progressing the matter to a hearing as soon as possible. The court generally does try to give priority to these land access matters, particularly because of that Land Court exemption that allows mining companies to enter the land once the matter has been referred to the court after giving an entry notice and waiting 10 business days. The Land Court is mindful of that and does try to give priority.

Mr COX: I have a supplementary question: some people say that the courts are used to slow down processes or for mitigation to be dealt with differently. That is not for the courts to decide; it is the parties involved. Is that something that is identified through the process, at times, and people are pulled up on that if it is what they are trying to achieve? Is that something that the courts do look for, to make sure that due process is happening and it is not just a process with another end to it, that is, they are just wasting time, I guess?

Mrs Farrell: Absolutely the court would be mindful of any tactics in that regard. Having said that, there are very few land access matters that come before the court. I think we have only had a handful, if that; maybe three to five matters, if that, before the court.

Mr COX: Thank you, Chair.

Mr COSTIGAN: Good morning, everyone. Mrs Farrell, further to what the member for Thuringowa has asked, what processes do you have that mitigate the risk of delays, holding up matters? As we all know, time is money for everybody. Not only that, there is the frustration that goes with these so-called stalling tactics?

Mrs Farrell: In the court's experience, there have not really been a lot of stalling tactics. If there is, it generally comes from both sides. It is not just landowners or objectors who generally are not ready to proceed; it is also often the mining companies that are not ready. Having said that, the main tool that the court has to deal with delays and putting parties to unreasonable expense and delay is the power to award costs. A party can seek costs against another party if that is something they perceive is happening.

Mr COSTIGAN: So you do not think that this tactic is as widespread as, perhaps, might be the perception?

Mrs Farrell: Absolutely. As I said, only maybe five cases of land access matters have come before the court and they have all been dealt with relatively quickly.

Mr COSTIGAN: Thank you, Mr Chairman.

Ms TRAD: Good morning. Mrs Farrell, clause 260 of the bill makes the amendment that the Land Court must make an order or direction that an objections decision hearing happens at the same time as the hearing for an application. To what extent has this not been happening to date?

Mrs Farrell: It always happens. It is a matter of our practice that we do it. Even if it was not in the legislation we would do that.

Ms TRAD: So the amendment is merely to reinforce current practice?

Mrs Farrell: Sure.

Ms TRAD: In terms of matters that the Land Court can now consider, can you detail those matters that are within the scope of the Land Court to make determinations on? There is quite a significant decrease in the matters that can now come before the Land Court as a result of the amendments contained in this bill.

Mrs Farrell: There is a decrease, I guess, in the number of objectors who can make an objection in respect of a mining lease application. Is that what you are referring to?

Ms TRAD: Yes, but in terms of the basis for the objection as well?

CHAIR: I think there were 13 before and it is now down to five or three.

Ms TRAD: Two, I think.

Mrs Farrell: There is still some jurisdiction that is there for the court to consider. Certainly it is reduced, but there would still be a hearing on those matters. I guess the only effect would be a reduction in the hearing time of those objection matters, because there are only limited grounds now which the court can consider.

Ms TRAD: Following on from previous questions asked by my colleague committee members, there have been comments made about stalling tactics. I am hearing quite clearly from you that that has not been the court's experience, that litigants do not engage in applications or objections on the basis of stalling. Is that what you are saying, to be really clear, that that is not the court's experience?

Mrs Farrell: There would be the odd person here and there who does—I do not want to say waste the court's time; that is probably not the best expression to use. Certainly there are one or two objectors who might play games or—

Ms TRAD: But if they do not have standing, they do not have standing.

Mrs Farrell: That is right, so then the court cannot hear those matters. At the end of the day, as I said, it is open to the mining company or whoever to seek costs against that person for putting them to unreasonable expense or delay.

Ms TRAD: Mrs Farrell, I am happy to take this on notice. I have tabled this previously. It is a list of persons against whom vexatious proceeding orders have been made pursuant to the Vexatious Proceedings Act 2005. There are some 20 individuals on this list. I would like you to look at it and see if, from your view, any have come from the Land Court in relation to applications against the awarding of a mining lease?

CHAIR: We might leave that to be taken on notice.

Mrs Farrell: I think that would be appropriate, yes. Nothing springs to mind.

Mr COX: I have a follow-up question. You say that it is minimal that people come in. There is still the opportunity for matters to come before the court; you do not determine what comes before the court, as such, do you?

Mrs Farrell: No, that is right.

Mr COX: There is still that ability, obviously, for people who may be going through a process and, at the end of the day, it gets to the court and the court says, 'Sorry, there is no argument here'. As many people can come at you as they want, but it is not until they get to you that you get to look through it and decide whether it should proceed. Is there a process, earlier on somewhere, that says, 'This should not even get to the court'? Everyone has that ability, don't they?

Mrs Farrell: Everyone has that ability, yes. If you lodge an objection with the department in relation to a mining lease application, that objection gets referred to the court and the court must hear it.

Mr COX: Thank you.

CHAIR: Have you actually dealt with much that has come before the court from the GasFields Commission, where it has been involved?

Mrs Farrell: No, we have separate jurisdictions. The matters that they are involved in we do not get involved in, as far as I am aware. They have more of a negotiation-type role.

CHAIR: Thank you very much for coming along today. It is very important to get your side of things. Most of us have never been to the Land Court, even though we all whinge about our valuation and our rates. Thank you very much.

Mrs Farrell: Thank you.

Mr Hayden: Thank you.

DILLON, Ms Sue, Projects Manager, AgForce Queensland

CHAIR: I welcome Sue Dillon from AgForce. It is nice to have you here again. As you are aware, we have been looking at the Mineral and Energy Resources (Common Provisions) Bill. We have held quite a number of hearings around the state. I cannot remember whether AgForce was represented at our hearing in Toowoomba, but certainly a number of your members presented, as well as in Mackay and probably Townsville, as well. The process is about reducing red tape, which I am sure everyone agrees with. The community does have some concerns about some of the issues raised. Would you like to make an opening statement, Sue?

Ms Dillon: Thank you to the committee for extending us the opportunity to present here today. For our members we represent the cattle, sheep, wool and grain sectors in Queensland. Mining and CSG is one of the biggest issues that they have ever faced. There are many, many challenges out there, as I am sure all of you are aware. The word 'coexistence' is often used in terms of these industries moving forward and how we do that. We would like to congratulate the government on this bill in terms of attempting to reduce red tape; however, in terms of coexistence our members do have a number of issues in relation to this bill which we would like to put forward.

Firstly, in a generic sense some of our legal minds have cautioned that many of the aspects of the existing acts will now be put into regulations. Their advice is that that is of concern to us in terms of the ability to lobby. It is not as transparent in the regulations as compared to the legislation which we are looking at today, so a number of our legal minds have said that they are concerned about putting things into regulations rather than legislation.

In terms of land access, we have been heavily involved with the committee that made the recommendations to Minister Cripps, and that committee came up with a number of very solid recommendations in terms of moving the industries and coexistence forward. There is one key element that we are very mindful of and very concerned about, and that is the opt-out clauses. While we understand that in many cases there are legitimate grounds for that where there is no need to go through a rigmarole if none is required, we are concerned that those opt-out clauses could be somewhat abused by the resource companies. We want to make sure that there are some very clear parameters about when and how opt-out clauses can be used, and we want to make sure that there is some sort of a checkpoint at which it is made clear to landholders what they are doing. There is a risk factor there. We do understand why opt-out clauses could be a good thing, but we are concerned that it could be abused and producers who may not be as educated as others could easily be convinced of an opt-out clause when it is not appropriate.

In terms of registering CCAs on title, we believe it is a very good step forward. If a landholder is going to look at purchasing a property, it is absolutely imperative that they know what is attached to that property. I think one of our legal minds again has noted that while that is a good step forward, it may be prudent to include deferral and access arrangements that are registered on the title as well, so that is something that needs to be considered as an addition.

Our third point is the standardised consent framework. Certainly we agree that consistency across acts is a good move forward for everyone, however, there are a number of issues that we have in relation to this: firstly, areas that attract protection under restricted lands. We believe that these clauses have been lessened in this bill in relation to things like bores, wells, stockyards, et cetera. Obviously we are concerned that reducing these from the restricted list could compromise producers and management, and it would be our preference that they would be included in a restricted land inclusion. Things like bores, wells and stockyards, as you all know, are very pivotal to the management activities. We think it would be safer if they were included as restricted.

Also there are some issues surrounding homesteads. In the past there has been some confusion between acts about areas that are 200 metres, 600 metres, et cetera. We are not sure that the bill adequately clarifies that. It is a big issue for our members because their homes are their businesses and vice versa, and anything that disturbs the homestead is seen to be of a high level of stress for producers. Some clarification and maybe a bit more rigour in terms of what are the rules surrounding restrictions around homesteads would be welcomed.

Our fourth point is in relation to objections. Our members have probably been the loudest on this issue out of all the issues contained in the bill. Public notification renewal has come up as a big issue. They believe that it is vital to have more publicly accessible information out there in relation to these resource activities so any public notification removal, in their mind, is not acceptable. We understand the premise of why this has ended up in the bill because of possibly vexatious claims in the past where certain groups with their own agendas have tried to object to anything and everything. We certainly do not agree that that is the way forward, but our biggest issue is in terms

of landholders. There are often, in more cases than not, affected landholders who are not actually the ones that are being accessed, so the inability for those people under this act to have a say has raised a lot of consternation within our members. We understand it has been put there to prevent some waste of the court's time, but for some landholders that inability is certainly of high importance. I am not a legal mind so I am not sure how you could do it, but certainly definitions of 'affected persons' may be able to include neighbours where they can prove that they are going to be impacted. The Anderson v. Currie case comes to mind, where those people had to go through a longwinded process to prove that they were impacted. Obviously the government has fixed some of those issues, but the whole issue of being able to object is a key one.

Our last issue is legacy boreholes. We believe what is in the legislation is a good step forward. It has certainly been an issue that concerns our members. I guess in terms of a landholder's agreement where there is no emergency, landholders need to be engaged in an agreement to rehabilitate these bores because it will impact on their business. We recognise that where it is an emergency, things need to be done quickly.

They are our main points that have come from our members in relation to this bill. We certainly agree that a reduction in red and green tape is a good thing, but anything that reduces the rights of landholders in relation to genuine coexistence is something that our members are extremely concerned about.

CHAIR: Thank you, Sue. In terms of the conduct and compensation agreements, as you said, the opt-out agreements are sort of wishy-washy at the moment. Would you see there being any problems with opt-out agreements being included in the conduct and compensation agreements? Someone brought it up and it just seemed to tick a few more boxes.

Ms Dillon: I think there are two issues with the opt-out clause, and one is the process that leads producers to sign the opt-out clause. Our concerns are that there needs to be some rigour behind that so resource companies cannot unduly push a producer to sign an opt-out clause. That is the first issue. Certainly anything that has been agreed to that can be registered on title I think is a positive move forward.

Mr COX: In your previous submission you mentioned a mining lease notification objection initiative in the Land Court. We have heard submissions that no-one wants to end up in the Land Court, and that is what we are trying to get away from. We have heard in the past that everyone thinks that is where it is going to end up, but we hear that not many actually do end up there. Do you think that we need another group or a compliance unit to go around on a technical basis? Do you think there is a need to have an engagement that would be made up of people with life skills—a retired QC, for example—with your lawyer and the company's lawyers talking, and sometimes the landholder is advised to not be present at the consultation. Do you think something like that might help with some of the misunderstandings? Do you think there is a place for something like an engagement unit?

Ms Dillon: Certainly. Firstly, we would agree that very few people will end up in the Land Court unless there is absolutely no other recourse. It is an intimidating process for most landholders, they do not have the resources to pay the legal bills and it is a huge risk whether they will win or not. So no-one really wants to go down that path and, as I think the Land Court people said before, not many have actually got there. But I think the issue that you are alluding to is that in the current processes, the step before that does not seem to be working overly well. The department doing mediations, in our experience, is not working at all, so anything that could be put in as a medium step to prevent the Land Court scenario, but provide a bit of robustness and ensure some fairness before that, would be a positive move for sure.

Mr COX: I take your point that the department has a role to play, but there is probably a point where they need to step out of it and we should probably be engaging another unit. Who that would be made up of would need to be talked about.

Ms Dillon: There are various people that could maybe sit on that sort of forum to assist, but it just seems that the department doing it is not working. They are better off doing some of the other activities that they are engaged in.

CHAIR: Just while we are on this subject of access, there are verbal access agreements. What are your thoughts on verbal access agreements? That is normally the situation when you are driving through a property to get to something else or to one borehole or whatever. This is particularly relevant on the big properties. I think it is going to cause a lot more grief around the Downs and those sorts of places.

Ms Dillon: I am trying to remember back to the Land Access Committee and some of the discussions we had around that table. If I remember correctly, the opt-out provisions were really a way to get around those sorts of scenarios instead of going to a full-blown CCA about a very small issue. It is quite daunting for producers who have not been engaged in the process. If the opt-out provision was in a sense a verbal agreement in that we do not need to write anything down but we will agree to these sorts of things, I still would have concerns. In a simple case that is fair enough, but where it does get more complicated is when people's perception of the agreement is different, then you are going to run into trouble. But there is not always the necessity to do a full-blown written CCA.

CHAIR: So an exchange of letters or something would still be beneficial?

Ms Dillon: It comes down to the fact that a lot of companies that landholders are dealing with are genuine in their desire to work with landholders. Occasionally some are not as robust in their negotiations, and I think we certainly would always promote to landholders that they have themselves covered by preferably even a simple letter over a verbal agreement.

Mr COSTIGAN: Thank you for your presence here today in front of the committee. It was good to see some of your members at the Mackay public hearing from our beloved brigalow belt in our hinterland. You were talking about homesteads before. Could you elaborate on your concerns around homesteads on restricted lands for the benefit of the committee?

Ms Dillon: My understanding is that at the moment there are a number of different rules in relation to that across the different acts. If we look back to the beginning of when the resource sector started in Queensland in the last five to seven years, one of the things that have got messy is where different companies have come too close to homesteads for producers' comfort.

My point is that anything that can secure at least a 600 metre boundary across-the-board would provide producers with a lot of comfort. There has been some confusion. We are not sure that the current bill has made that clear enough.

Mr COSTIGAN: And you are comfortable with 600?

Ms Dillon: Six hundred would be the minimum. If you spoke to producers they would obviously like more, but 600 would definitely be the minimum.

CHAIR: I terms of major infrastructure, the problem I can see is the fact that bores and stockyards have been taken out. I will use the example of the Indonesian cattle price when the cattle ban was in place. All of a sudden you might want to move cattle. If you have made a verbal agreement and your yards are down it might take you two months to get a set of yards built. Do you not think that would be disadvantageous to the group?

Ms Dillon: Bores, wells and stockyards are actually the centre of any operation on a grazing property. I think anything that we could do to include them in the restrictions is going to give producers comfort that they are able to run their operations as they see fit without interfering with the resource companies. I think it makes it clearer and a bit tidier in terms of negotiations if they are automatically ruled out of going into those areas. I cannot see a scenario where it would be absolutely necessary for a resource company to be that close to those infrastructure items.

CHAIR: It is a moving feast. There may have been good rain on another property and you are in enormous drought. You may not know when you are going to have to muster or whatever. The same could apply to water. If one of your bores breaks down in the back paddock and that is the only water then there are issues.

Ms Dillon: I think it could be a cause of tension. If we could avoid that it would be best avoided.

Mr COX: You might have gone over this, but with regard to legacy bores going forward, there is a framework around repairing or leaving these bores in a better state. We still have the issue across the state—and it depends what you are talking about—of the over 100,000 mineral bores in place. I guess you would appreciate that the bill will not address the old bores but at least it will address bores going forward. Probably a matter for another day is looking at what we can do with the other bores. That is an enormous problem we have. Is that how you see it?

Ms Dillon: I think the legacy bore issue obviously came up as a result of the Kogan issue. The key issue was an emergency scenario where the government had some authority to fix that particular issue. I think that is the key thing. Because there are so many of them, as you have alluded to, moving forward landholders need to be consulted appropriately where it is not an emergency situation and whatever is done should not impact on their operations et cetera.

CHAIR: People can actually be involved in conduct and compensation agreements for a fair length of time and then the resource company can walk away. They still do not actually have to pay any of the legals or that sort of thing until the agreement is signed. Have you had any issues with that with your members?

Ms Dillon: We have had a number of circumstances where people have been left with bills. I guess it comes down to people's definition of reasonable. The parties may differ. Again this is where, as Sam said, if you could have a referral agency in between to mediate and solve a problem you may actually limit some of these involved legal bills. There have certainly been members left with outstanding legal bills of significance.

CHAIR: Would there be a trigger there where if they have had preliminary discussions and they are trying to get serious then maybe the resource company has to put up a bond of $20,000 or $10,000 or $5,000—a bond of reasonable sorts so the landholder knows that they are not going to be hung out to dry?

Ms Dillon: I think as we have progressed and there is more information out there about what occurs in the CCA process some of those issues have been resolved. Certainly where there are complex issues and there are serious implications there are concerns. If you are on a $10 million cotton farm and trying to negotiate a CCA to get it right is going to be a longwinded process. If you are on an extensive grazing property and they are going to put in 100 wells it is going to take a while to get there. There is a need to make sure that producers are not left in the cold and that there is some trigger point to ensure that maybe the parties stop, have a look at where the process is at and either go to some sort of mediation or make an agreement there and then on the legals. What is happening is that it tends to blow out and then someone is left with a big bill.

Mr KNUTH: I might be doubling up because I missed the first part of your address, but when you saw this bill put forward, as a representative from AgForce, did you feel that this favoured the mining companies more than the landowners?

Ms Dillon: I guess we all hear about co-existence, but for our members anything that reduces or dilutes their rights is of concern. As I outlined in my opening speech, some of the elements of this bill such as the provisions around restricted land objections and things like that have certainly, from our producers' perspective, limited their rights to the benefit of the resource companies.

Mr KNUTH: In terms of restricted land, do you believe that valuable assets such as stockyards and watering points have been devalued?

Ms Dillon: I am not sure that they have been devalued, but I think excluding them from restricted lands will cause some management issues down the track. I do not see any reason why they could not be included for the sake of good conduct arrangements and good negotiation arrangements.

Mr KNUTH: If you were to make recommendations for changes, with regard to restricted land would you like to see stockyards and watering points left alone?

Ms Dillon: We would clearly like to see those things included in restricted land. So any key infrastructure—stockyards, gathering points where cattle are mustered perhaps and certainly anything to do with water, which is critical—needs to be restricted land.

Mr COSTIGAN: You touched on the need for parameters around the opt-out clauses. Can you provide the committee here today, before we let you go, if I could be so colourful, with some examples of what these might be to protect land owners and members of AgForce?

Ms Dillon: Looking back to when we had this discussion in the land access committee what came to mind was a simple sheet that producers had to sign before they could sign an opt-out agreement. I know it sounds like more paperwork, but it is a fairly simplistic thing—'So you understand that what they are doing is opting out of a CCA and a CCA means this? Are you sure you understand what you are doing?' This is only to be used in simple cases where there is no need for complex arrangements. There would be a cooling-off period. If they sat back the next night and had a think about it they could say, 'I might ring Joe Bloggs down the road and see if I have done the right thing.' There was a step there where the resource company could not shove an opt-out clause in front of them and say, 'Mate, sign this—she'll be right.' It is a case of, 'Do you understand that this document you are signing means you have this? You have 10 days to think about it.' It was a fact sheet, for want of a better word, and a cooling-off period. We need to keep it simple because the aim of the opt-out clause is to simplify things. There needs to be something to make sure that producers are not coerced into signing one without having understood the facts.

CHAIR: That brings me back to the point about the CCA and why it could not be included in that.

Mr KNUTH: With regard to the cooling-off period, I am getting my head around what you are saying here. Basically what you are saying is that there is an agreement entered into but at the same time there is always a lot of pressure put on landowners to sign off on it. With that cooling-off period, how many days would you be looking at?

Ms Dillon: There are legal minds that would probably give you an exact idea. If you look at the philosophy of the opt-out clause it is where there does not need to be complicated arrangements. I guess all I am saying is that there needs to be a bit of a gap—probably a two week gap—between when they sign the page which says that they have understood that they are about to agree to an opt-out and when they actually say, 'I am cool to go with it.' In case there is a bit of coercion, there is a period where if their intuition kicks in the next day and they say, 'I think someone is having a lend of me here,' that they have a little bit of room. Obviously, you do not need it to be three months or anything like that.

CHAIR: There is 10 days in the legislation.

Mr COSTIGAN: That is a good point that you have made there, Mr Chair. Do you think there is any scope for a warning statement? Have you given any consideration to putting that in the mix?

Ms Dillon: In relation to the opt-out?

Mr COSTIGAN: Yes.

Ms Dillon: I guess in a sense that is what we are saying with this form that they would fill in first. It is a warning that it is the traditional approach that you sign a CCA. In these sorts of circumstances it may not be necessary. If you want to opt out that is good, but you need to have a think about it and make sure you are happy. In a sense it is a warning for the producers and it gives them that one extra step to have a think about it before they sign. It is a warning in a sense. I guess that is what we are saying.

Mr COX: Without going on about it, this was brought up in the Townsville hearing. It is similar to when you go and buy a house. Everything has been agreed to by then and everyone is happy, presumably. But you are being warned again, 'Have you got advice,' and then there is a 10-day cooling-off period. So you are thinking about something similar to that—it is a reminder to stop, check and move forward?

Ms Dillon: It is just a safeguard. If people have been coerced or have not really understood what they are doing they have a little bit of time—rather than signing on the dotted line then and there and then they are done. It gives them a bit of time to think about it.

CHAIR: Thank you very much for making your time available and for coming down. It is much appreciated.

Ms Dillon: Thank you to the committee.

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

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

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

MEADOWCROFT, Mr Rex, Director, Policy and Program Support, Department of Natural Resources and Mines

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

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

CHAIR: I welcome the representatives of the department. I will start the questions. In considering a single consistent approach, has the department considered an option to include a section to opt out within the code of the compensation agreements rather than have a separate opt-out agreement? Why can we not put the opt-outs into the CCA?

Mr Barr: There are several requirements for a CCA. It has to specify how and when entry is made, the types of activities that are to be in that entry and the compensation liability. So it becomes a question of would we want to require all of that information to be specified and then giving the eligible claimant an option to opt out of all of that. The requirements in the legislation have to be met, but there is no specified way in which documents have to be put together. The department has a template that may be used by either party in coming to these agreements. So if two parties wanted to do it that way, then they certainly could. It is a question of would we want to make that a statutory requirement.

CHAIR: Is this not about reducing red tape, though? This is what we are doing here—trying to reduce red tape and make things simpler. Surely, if it is an opt-out agreement, which is pretty simple, there is a box on the CCA agreement that says, 'This is an opt-out agreement. This is the opt out here. Sign this box.' I am no lawyer, but I have done enough business transactions to know that you can put in anything that you like. I cannot see why, if we are reducing red tape, we would be making more agreements. You can take that as a comment if you want.

Mr Barr: I guess the only comment I would make is that the framework is designed for flexibility for either party to make their own arrangements on how those agreements are made. There are some statutory requirements. There may be no reason what you suggest could not be undertaken but, certainly, the bill does not propose to make that a statutory requirement.

CHAIR: So we are not making red tape so that we can reduce red tape; is that right? Thank you. The land access could be done as a voluntary code? If you are driving through one block to get to another block or a single borehole and all of those sorts of things, they can be verbal agreements? That is my interpretation. Is that right?

Mr Barr: Yes. The land that is used for crossing, to get to the area of the resource authority, is referred to in the bill as access land. An agreement relating to that is an access agreement, not to be confused with a conduct and compensation agreement.

CHAIR: I realise that, for some of the larger landholders that are of a couple of hundred thousand hectares, that is probably relevant, but it does not seem that relevant for the smaller landholders, which there are probably more of around the Downs or even in Central Queensland. It just seems to me that, in this day and age, any verbal agreement could be fraught with danger. Probably the resource companies have much greater resources to be able to say, 'This was a verbal agreement that we had.' I just find that that could be fraught with danger purely to the landholders more so than anything else. I will just make that as a statement more than anything else. Are there any questions?

Mr COX: In regard to alternative dispute resolution, or trying to get outcomes before we get to courts, in your opinion do you think that there is a need for a department conference to remain an option in the new common provisions framework. Sometimes it is probably not the best that the

department tries to help with these resolutions and that we should have an independent group. Can you comment on that? We could get more resolutions before the matter goes to the Land Court, even though we know that not a lot end up in the Land Court.

Mr Barr: The bill proposes to replicate the existing land access requirements for a minimum negotiation period between the parties, which is 20 days. If that is not successful, there is an option for either party to then seek a conference mediated by an officer of the department or an alternative dispute resolution, which could be arbitration or mediation or other types of ADR. So they are available now. However, it is optional. Also, one of the recommendations of the Land Access Implementation Committee was to look at an alternative in this respect. The department is investigating a form of accredited ADR process that will be implemented nonlegislatively.

Mr COX: Thanks Dean, that was just a clarification.

CHAIR: The Land Access Implementation Committee report has virtually recommended that the department not be involved. Seeing that we are reducing red tape, why have we left the department in here? Is there any particular reason?

Ms Ditchfield: Just from memory, from when that report was done the department really did not have those mediation skills to effectively negotiate the right outcome.

CHAIR: And in 12 months the department has the mediation skills, has it?

Ms Ditchfield: That is why we are pursuing alternative dispute resolution with non-government people being involved.

CHAIR: Is it the department or non-government people who we are talking about now?

Ms Ditchfield: I am sorry, Ian?

CHAIR: It says—

Departmental conferences (an option available under the legislation as part of the dispute resolution process) are not achieving effective outcomes in terms of resolving disputes, with some stakeholder's also perceiving a lack of independence and relevant expertise from departmental officers.

Then it goes on to say—

A preliminary conference conducted by the Judicial Registrar (of the Land Court)... An independent alternative dispute resolution (ADR) panel process overseen by an independent chair.

I would imagine that would be someone who has some mediation skills as an arbitrator or a mediator—an ex-judge, or an ex-solicitor, that sort of thing. So are we taking the department out of this or not?

Ms Ditchfield: As a final resolution mediation process, the department will always have a role in bringing together parties to communicate, but from a formal resolution process we propose a formal ADR type of process, which formalises those discussions.

CHAIR: Yes, but the department conferences do not remain an option under the new common provisions? We are not reducing red tape?

Ms Ditchfield: Departmental conferences are always an option. Our first goal is to bring the parties together when there is nonagreement, but, certainly, we do not have the skills to facilitate more detailed mediation.

CHAIR: Why are we trying to do something that we do not have the skills to do?

Ms Ditchfield: Again, at certain parts of the conversation we can hold these preliminary conversations to get people into a room to speak freely about their circumstances. Sometimes we have found that that is enough. But when there are obvious disagreements that cannot be resolved, then we would have to go into a process.

Ms TRAD: Sorry, are these without prejudice discussions?

Ms Ditchfield: Yes, that is right.

CHAIR: Just use your microphone.

Ms TRAD: Sorry, my question was: are these without prejudice discussions?

Ms Ditchfield: They are informal discussions where we bring together perhaps the mining registrar and the landholder to have a discussion about what are the issues and, where the mining registrar, or the mining officer, cannot negotiate anything further, then there would have to be an ADR process.

Ms TRAD: I am sorry, Ms Ditchfield, but informal discussions are not the same as without prejudice discussions. Are they without prejudice discussions?

Ms Ditchfield: They would be without prejudice discussions.

Ms TRAD: And landowners are advised of that in writing?

Ms Ditchfield: Yes—no, I am sorry, we will have to take that on notice.

Mr COX: In regard to clause 68 of the bill, restricted land, can the department explain the rationale of the prescribed distance for restricted land to be included in subordinate legislation?

Mr Barr: The aspect of the bill that you refer to in terms of proposing to prescribe restricted land distances by regulation I can answer on two fronts. Firstly, it aligns with the overall approach taken by the bill to make better use of the subordinate legislation in the context of the existing resources acts, which are quite detailed and lengthy and, secondly, allowing the distance to be prescribed by a regulation allows flexibility in prescribing different distances for different resource activities. We are now talking about five acts into one and also different resource authorities, building structures. So there could be multiple scenarios where different distances will be required. So this is one of those scenarios where further lengthy details would be appropriate to be prescribed in subordinate legislation.

Mr COSTIGAN: Good morning, ladies and gentlemen from the department. Thank you for joining us again today again. I see in the explanatory notes an indication that the provisions in relation to restricted land will be 200 metres. Can anyone from the department tell me and my colleagues how you have come about arriving at that particular figure? I ask that against the backdrop of the contribution to the hearing this morning from Sue Dillon from AgForce, as you would appreciate. Her view, to be frank, was obviously a little bit different from that particular measurement.

Mr Barr: The rationale behind the proposed 200 metres was based on giving landholders some sort of certainty on the distance on which they get to have a veto over whether resource activities can be conducted in close proximity to certain buildings and other areas. It is reflected on the fact that the current distance for the mineral and coal sector is 100 metres. There is no restricted land distance, obviously, for the petroleum and gas sector at this time. So it was a view that 200 metres versus 100 metres would be more appropriate now that we are taking into account petroleum and gas and other resource types. Also, there are other frameworks that control the proximity of activities to various buildings such as environmental conditions and also safety considerations as well from potential hazards that may be posed.

Mr COX: With regard to my previous question, I understood your explanation, Dean. Thank you for that. Why in the legislation do we not just have a minimum distance? You gave an explanation about the variances and all the different scenarios and bringing five acts into one, but why do we not just have a minimum distance?

Mr Barr: Certainly that could be an option. We are looking at distances for various types of activities. One option could be a minimum being a certain distance—so 50 metres for argument sake. That reflects what the minimum distance is now for things like stockyards, dams and bores with regard to mineral coal. Then the regulation could prescribe high distances depending on the circumstances.

Mr COX: I guess you can see where I am coming from. If we just had that safeguard back to a minimum, it could be a minimum for whatever the five scenarios are. I thought maybe it could be something that could be considered in the legislation. That is how I am seeing it.

CHAIR: In the scenario that I put to Sue where there are operations happening around a bore or a water hole or a stockyard that have been approved and you have a catastrophe somewhere else, what sort of safeguards does the landholder have in there to cover that?

Mr Barr: Under the proposed framework the types of infrastructure you mention will be subject to the conduct and compensation agreements. They talk about how and when activities are proposed and the types of compensation that may be payable. Any changes that may be up for negotiation around those types of infrastructure would have to be considered under the CCA framework.

Ms TRAD: Something that we have heard repeatedly—it was certainly something that came through at the hearing in Toowoomba and obviously in the AgForce submission—is that the reduction in the existing rights will erode the goodwill between the agricultural sector and the resources sector and will increase conflict and the lack of possibilities of co-existence. Has the department provided any consideration of the flow-on effects regarding the impacts on co-existence from this bill?

CHAIR: Do you want to take that as a statement?

Ms TRAD: There is a very documented conflict between landowners and resource companies in terms of access rights. The removal of the current provisions that exist in terms of objection and notification will, as landowners have said, lead to further conflict. Has the department done any work in relation to what impact this bill will have on those co-existence issues?

Ms Ditchfield: That is a very difficult question to answer in just a few minutes. Obviously, from the government's point of view, co-existence is something that we take very seriously. That is how we see the success of the two industries developing together. You have to look at the totality of the bill. There are some elements that support the resources sector and there are elements that support the landholder. You will see that through the land access amendments that we have made. I would consider the bill to be the government's position to try to balance those two competing industries. It is not meant to favour one or the other. It is really trying to balance out each of those sectors.

Mr KNUTH: Sue Dillon from AgForce expressed great concern with regard to the restricted areas and the fact that things like stockyards and watering points have been removed. What I could gather from what she said is that their removal and any form of co-existence favoured the mining companies. Would the department recommend having those restricted area things like stockyards which have been removed placed back into the legislation?

Ms Ditchfield: Unfortunately, I do not think that is something that I can answer. That is not departmental policy; it is government policy. It is more for the minister to speak to.

Ms TRAD: Ms Ditchfield, at page 36 of the explanatory notes it states—

... where low impact mining lease applications do attract objections about highly technical and financial matters, they are regularly lodged where no evidence is brought to the court by the objector.

Can you provide examples of where this has happened?

Ms Nichols: I can speak to that. The Land Court actually has a practice direction that allows there to be three levels of objectors. The first one is an objector with no evidence brought. That actually quite often happens when there are proceedings with a number of objectors. There were in the recent Alpha case, for example, a number of objectors who did not actually bring any evidence and just relied on their papers. That is a procedural direction of the Land Court that allows that process to happen.

Ms TRAD: Is it common?

Ms Nichols: I do not know exactly. It is not something we have explored. I can take that on notice, if you would like.

Ms TRAD: There were a number of objectors in that application?

Ms Nichols: That is exactly right. My understanding is that on some of the bigger mines it does happen relatively frequently. But I do not have any figures. I can find that out, though.

CHAIR: Thank you very much for making your time available again. This is fairly complex piece of legislation. I am sure there will be more discussions on it. That concludes the public hearing on the Mineral and Energy Resources (Common Provisions) Bill. We thank people for being with us today. The draft transcript will be on the parliamentary website in the near future. Thank you Hansard.

Committee adjourned at 11.51 am