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FINANCE AND ADMINISTRATION COMMITTEE

Members present:
Ms DE Farmer MP (Chair)
Ms VM Barton MP
Mr MJ Crandon MP
Mr CD Crawford MP
Mr DA Pegg MP
Mr PT Weir MP

Staff present:
Ms D Jeffrey (Research Director)
Dr M Lilith (Principal Research Officer)
Ms L Johnson (Executive Assistant)

PUBLIC HEARING—INQUIRY INTO THE PAYROLL TAX REBATE, REVENUE AND OTHER LEGISLATION AMENDMENT BILL 2015 (SESSION 1)

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 6 MAY 2015

Brisbane

WEDNESDAY, 6 MAY 2015

001 **Committee met at 10.32 am**

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

BIDWELL, Mr Paul, Deputy Executive Director, Master Builders Queensland

BIRD, Mr Stephen, General Counsel, Total GLNG Australia

BOYES, Ms Kellie, Policy Adviser, Chamber of Commerce and Industry

CONNELLY, Ms Julia, Policy Solicitor, Queensland Law Society

FITZGERALD, Mr Michael, President, Queensland Law Society

HOGAN, Mr Bernie, Regional Manager—Eastern States and Northern Territory, Association of Mining and Exploration Companies

JOHNSON, Ms Dyan, Manager—Policy and Economics, Master Builders Queensland

JOHNSTON, Mr Marc, Revenue Committee, Queensland Law Society

LAWLESS, Ms Suzanne, Senior Policy Adviser, Chamber of Commerce and Industry

PATERSON, Mr Steven, Revenue Committee, Queensland Law Society

SUTHERLAND, Mr Neil, General Manager, Business Development and Strategy, Total GLNG Australia

CHAIR: Good morning, ladies and gentlemen. I declare open this public hearing of the Finance and Administration Committee's inquiry into the Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015. I am Di Farmer, the chair of the committee and the member for Bulimba. The other members of the committee are Mr Michael Crandon, our deputy chair and member for Coomera; Miss Verity Barton, the member for Broadwater; Mr Duncan Pegg, the member for Stretton; Mr Craig Crawford, the member for Barron River; and Mr Pat Weir, the member for Condamine.

The purpose of this hearing is to receive additional information from submitters about the bill, which was referred to the committee on 27 March 2015. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Thank you for your attendance here today. The committee appreciates your assistance. You have previously been provided with a copy of the instructions for witnesses, so we will take those as read. Hansard will record the proceedings and you will be provided with a transcript. This hearing will also be broadcast.

I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. We are running this hearing as a roundtable forum to facilitate discussion. However, only members of the committee can put questions to witnesses. If you wish to raise an issue for discussion, I ask you to direct your comments through the chair. I also request that mobile phones be turned off or switched to silent mode and remind you that no calls can be taken in the hearing room.

The committee is familiar with the issues you have raised in your submissions and we thank you for the detailed submissions that we received. The purpose of today's hearing is to further explore aspects of the issues you have raised in the submissions. I now invite each of you to make a brief opening statement if you wish to avail yourself of that opportunity. The committee has a number of questions it wishes to put to you and there will be opportunities for you to make additional points throughout the hearing. You may also like to introduce the representatives from your group. We will start with Paul.

Mr Bidwell: Thank you, Madam Chair. Committee members, good morning. My colleague Dyan Johnson and I are from Masters Builders representing the interests of builders big and small across the state, residential and commercial. It is split pretty evenly between people who build new homes as well as renovations and alterations. What we are seeking this morning in the scheme of things I think is quite small in detail but is an amendment to the First Home Owner Grant Act to clarify the definition of a new home. Our case is that a relocated structure should be eligible for the grant once the building work has been completed. The bill already addresses a technicality with unintended outcomes, and we think this is another example. For all intents and purposes, a relocated home, once rebuilt, is no different to a home built from scratch. The same rules apply. You need local government planning approval, the builder has to comply with the National Construction Code and the state regulator, the Queensland Building and Construction Commission, is involved. The same rules apply and the cost of trades and materials is exactly the same. The difference is we are simply recycling building materials.

There are many examples of the inequity, and we have them in our neck of the woods where a house is shifted over and rebuilt completely and a new house is built beside it on the 400-square-metre block. One house is eligible for the grant; the other house is not. We say that is manifestly unfair. A relocated home should not be regarded as a home that has been previously occupied. That is what we put to the committee. A home is a building fixed to land. Removed from its location, it ceases to be a home. That is one of the provisions of the act that has elements of or echoes of *The Castle*. So with those few comments, I will not go on my Dennis Denoto speech. I will leave at it that.

CHAIR: Thank you. We will go to Neil from GLNG.

Mr Sutherland: Madam Chair and committee members, thanks for the opportunity to appear before you today. I am joined by Stephen Bird, who is our general counsel. I wish to speak today on the proposed amendments of the Duties Act 2001 and more specifically on the application of a duty concession in respect of exploration farm-in agreements. I will not go into detail of who Total is in the interests of time; I think that was in our submission. However, we are certainly the biggest French investor in Australia and we see Australia as being a key part of our growth portfolio going forward.

Within Australia we have two LNG projects—one in Darwin and one here, GLNG in Queensland. In addition, we hold various exploration licences onshore and offshore. It is in the context of exploration that we wish to comment on the proposed amendments. Total already has one exploration area in Queensland outside GLNG and we are certainly looking for more. We, however, have concerns that the proposed amendments will have a negative impact on the attractiveness of such opportunities and that the amendments do not go far enough in meeting the objectives of the previously stated government policy of encouraging exploration and supporting the junior sector of the exploration sector.

In our submission we raise two areas of concern: one with respect to the treatment of farm-ins which occur prior to an exploration authority being granted, and I would like to comment a little bit more on that; and the other with respect to what are called hybrid farm-in agreements whereby they are excluded from the duty concession. We have expanded on that in our submission and I think a number of the other submitters here have done so, so I will not go into that in the interests of time today.

Addressing the first of those concerns, though, with respect to the treatment of effectively pregrant farm-in agreements, for a company to secure exploration acreage it can do so in one of two ways: we can either bid in a government auction for acreage or we can buy in or farm in to acreage which another party has secured previously. The proposed amendments to the Duties Act provide a duty concession where a farm-in occurs after the exploration authority has been granted or the exploration permit has been granted. It is our view that limiting the concession to only those farm-in agreements where exploration authorities have already been granted does not meet the policy objectives of encouraging exploration and in fact in practice may act to delay exploration activities in the area.

Exploration is by nature a high-risk activity, and certainly the provision of a duty concession for farm-ins will assist exploration and use appropriate recognition of the investment risks in undertaking exploration activity. However, as the amendments are proposed, transactions entered into prior to the grant of an exploration authority do not qualify for the duty concession. But as a company and as an industry, in practice we do not differentiate between pre and post grant. Rather, for us our interest is to conclude a transaction as fast as possible, to secure the grant of the exploration authority and then to commence exploration works, and this is beneficial to both the farmee—that is, us—and the farmor. For the farmee, a pregrant transaction allows all requisite planning to take place. It allows a work program to be jointly worked with the farmor such that as soon as the exploration authority is granted the exploration works can commence. This leads to earlier development and, in the event of success, earlier revenues, which is obviously in the best interests of the farmee, the farmor and the state. For the farmor, who is often a smaller explorer, the benefit of concluding a deal prior to grant of exploration authority is that it provides them with certainty of funding with the confidence that they can actually meet their work program commitments under the exploration authority and, as such, move forward and secure the grant of that exploration authority.

CHAIR: Excuse me, Neil, if you do not mind me interrupting. We have received very detailed submissions from everyone and we have particular questions that we do want to ask to clarify. Just in the interests of everybody who is here today, if I could just ask people to make a very brief opening statement. We have all of that taken down and it might save us from asking some questions later, but if we could just follow that approach. Andrew, would you like to make some opening comments?

Mr Barger: I think I sort of get to wear the dunce’s hat today, because we managed to write two submissions. So our apologies for that slightly schizophrenic appearance from us.

CHAIR: But you were not the only ones though.

Mr Barger: Really? Good, excellent! I am less contrite then. There are two issues that we called out. As Total mentioned around the exploration farm-in, we went into some detail in our submission around the way the wording of the legislation—the complex administrative framework that has been set up to give effect to a fairly simple policy idea—actually confounds the intent. There is a risk in that in trying to say, ‘Here’s an activity that the state wants to encourage,’—an activity that is in the state’s best interests to get people to risk their capital to go out and find the resources that belong to all of us—we should not be collecting a stamp duty for that farm-in process. The risk is that the compliance parts of the legislation have been written as though it is meant to deal with multibillion dollar transactions. It is overengineered and too complicated. In our submission we have what we think are hopefully a series of helpful suggestions to trim it back to better match industry practice.

The other part in the bill that I wanted to talk about has to do with the amendments to the Environmental Protection Act. I guess there are two things. One is a correction in the existing drafting which is in the bill. It is important to acknowledge that both the current and the previous governments have worked quite closely with industry to develop this mechanism. We had a legislative dead end where you developed a transitional environmental program and could not actually exit out of that without it flowing through to your environmental authority.

The amendments create an ability to cancel that transitional process with the agreement of both parties. It turns it from a cul-de-sac into an actual avenue. As you have seen from the submissions, that is really important for a couple of big projects in north-west Queensland. We have gone ‘beyond helpful’ with our submission to suggest, while you have the bonnet up on the Environmental Protection Act, we have made a whole lot of other suggestions about how you could improve that process. I am happy to talk to those, too, if you have any questions.

CHAIR: As you are going to be at the next session as well, there might be an opportunity. The chamber of commerce?

Ms Lawless: Our interest today is in the payroll tax rebate for apprentices and trainees. We recognise that a highly skilled workforce is essential to business success, and apprentices and trainees are particularly important for Queensland small businesses. CCIQ is supportive of the bill. However, we wish to further explain some of the limitations of the initiative. At present, around 11,000 Queensland businesses are required to pay payroll tax, representing only three per cent of the Queensland business community. The opportunity to meaningfully impact apprentice and trainee numbers is therefore significantly diminished. The remaining 403,000 small businesses stand ready to assist in providing the state’s youth an entry into the workforce if only offered an incentive to do so. CCIQ, therefore, considers that the provision of financial incentive payments which are accessible to all Queensland businesses who hire an additional apprentice and trainee can more meaningfully influence commencement numbers.

CHAIR: The Association of Mining and Exploration Companies.

Mr Hogan: I thank the committee for this opportunity today. For those of you who are unaware of or unfamiliar with AMEC, we are the largest industry association representing specifically the explorers and miners in minerals commodities. We do not represent the oil and gas sector. Very similar to what Mr Sutherland mentioned before, we would like to talk specifically about inefficient state taxes that are on mineral tenements. AMEC advocates the removal of any inefficient state tax—payroll taxes, stamp duties and land tax—specifically because they are a disincentive for investment.

In looking at the framework in the act at the present time, we find that the framework is counter to the policy intent of encouraging investment and encouraging exploration, mostly for three reasons. It will encourage more red tape. At the present time, a prepaid and a postpaid farm-in agreement in their entirety will be exempt but any hybrid is not. What you are going to have is more companies looking to split every transfer of ownership so they get exemptions. You are creating more work. Most explorers are not large organisations. Most people think of a mining company and they think of a huge company with big yellow trucks. They are not. Explorers are small, entrepreneurial companies and they rely upon these frameworks to be able to find the next economical deposit.

The other thing we have to consider is that it is of a highly speculative nature. One in 1,000 exploration programs will actually find a deposit that is economical. So we need to make sure that we take that into consideration and that we encourage as many as possible.

The final reason this will affect us is that there will be less investment. Queensland is in competition for this investment with the rest of the world. If we have a situation where we cannot reduce the cost of activities, they will go elsewhere. You have seen our submission, which goes into far more detail. This is really a situation of our competitive advantage. This is not helping our competitive advantage at this time.

CHAIR: Thank you. Michael from the Queensland Law Society.

Mr Fitzgerald: I appear with my colleagues from our revenue committee, Steven Paterson and Marc Johnston, and Julia Connelly from our advocacy and policy team. The society's comments are mainly focused on the Duties Act. The society raises the following primary concerns in relation to the proposed provisions of the bill. The bill sets out, in the society's view, unduly complex requirements so that technical noncompliance is likely to become a serious concern for taxpayers. In addition, the complexity of the provisions detracts unnecessarily from their underlying policy.

The bill also departs from the public ruling by retracting concessions which were previously administered such as those applicable to hybrid farm-in agreements, and section 84J(2) of the bill appears to contemplate that mining information constitutes dutiable property which would represent circumnavigation of already existing provisions and practice, with mining information being subject to no duty under any other type of transaction. My colleagues, if you like, could explain how the legislation in some other jurisdictions is much simpler and also elaborate on our concerns about the departure from the current revenue ruling.

CHAIR: I think at this point in time we will leave the comments at that. It is possible that we may come back to you with further questions after this hearing. We have an hour to discuss a range of issues. Thank you for that offer. We will go to some questions now. I would like to ask a question about the Payroll Tax Act and the exemption from payroll tax. I have a question for the Master Builders. Paul, can you provide some insight into how your industry has benefited from payroll tax rebates in the past?

Mr Bidwell: Simply because we engage apprentices and we have been eligible for the concession, but with the change now existing employees are not eligible. We want it to be retrospective in a sense because our industry has a history of employing people—almost giving them a go and then they roll into an apprenticeship. So they would have been here prior to the commencement of the scheme but they will be ineligible because they were with the company before the scheme commenced.

CHAIR: I was going to ask you about that very thing. Can you comment on whether there has been an increase in the uptake of apprentices as a result of exemptions?

Mr Bidwell: I would be gilding the lily if I said that that were the case, but we know that during the GFC unfortunately the first people to go were apprentices because they were seen as adding the least value. That is a shame—I will not say it is criminal—and we will live to regret that in the next few years when things start to turn around and we have skills shortages. Every incentive we can get will help, but I could not pinpoint how much it is going to. Everything is useful but how much I could not say.

CHAIR: That is fine, thank you.

Mr CRANDON: I want to take up some comments that Suzanne made earlier. You mentioned that 403,000 employers do not get any benefit from the proposals around apprentices and payroll tax rebates. Clearly, 11,000 businesses in Queensland is a substantial number, but 403,000 is significantly more. There is a range of employers in that 11,000. There would obviously be some smaller employers in that 11,000. To take on what Paul was saying, the big end of town of those 11,000 would tend to be employing apprentices anyway. This incentive is not necessarily going to be of all that much benefit to the bigger end of those 11,000. Yes, every little bit helps but that would not be their motivator. I am trying to get to the bottom end of the 11,000 and then the people who fall under that. What would you say would be a better alternative to this to impact on a broader number of employers and give perhaps more opportunity for apprentices to come on board with those smaller employers? Give us your views.

Ms Lawless: Our view is that financial incentive payments to employers that are accessible to all businesses would have a more meaningful impact. That is exactly what we have highlighted in our submission. You would have to be employing approximately 20, based on average weekly earnings, to get you over that threshold. That is where we have come up with 11,000 versus the remaining 403,000. So direct financial incentives to employers we believe is—

Mr CRANDON: Any examples?

Ms Lawless: The previous pledge was fully subscribed. That was a direct 6,000—

Mr CRANDON: Tell me about that. What was the previous pledge?

Ms Lawless: A $6,000 payment for hiring an apprentice or trainee.

Mr CRANDON: And how many fully subscribed?

Ms Lawless: It was 6,000 new apprentices. The pledge was that if you take on a new apprentice you would get a $6,000 payment.

Mr CRANDON: So it benefited all employers—

Ms Lawless: Correct.

Mr CRANDON:—regardless of whether it was a one-man business or right the way through the ranks to the top end of town?

Ms Lawless: Yes.

Mr CRANDON: But it was just the first 6,000?

Ms Lawless: Yes, and it was for commencements, too. As we understand it, the rebate applies to apprentice and trainee wages in any given year. There does not appear to be a carve-out or a requirement for it to be additional. We see that it is benefiting the majority of the big end of town, like you said, that would already have had investments made in large numbers of apprentices and trainees.

Mr CRANDON: Thank you.

Miss BARTON: I have a question to the Master Builders about the first home owner grant. In your submission you outlined your concerns regarding the definition of a first home. I am not sure whether you are aware but that is not within the scope of the bill. The committee had a departmental briefing from Treasury and we sought some clarification regarding your concerns. Treasury have explained that your query relates to existing provisions that are in the first home owner grant legislation. They have also explained that the definition is made clear on the Great Start Grant website's frequently asked question 'What is a new home?' which outlines that a new home does not include a relocated home—for example, buying and relocating an old house. I think I am going to know the answer to the question, but are you satisfied with Treasury's response, particularly given that it is outside the scope of what we are dealing with in the bill?

Mr Bidwell: Our position is that there are amendments being made to the bill, so can we piggyback this one on that? We do not understand why the Office of State Revenue is taking the line that it is. We just do not think it makes any sense. There are not that many cases of it. It does happen across the state and it happens regularly, but we will commence 40,000 homes this financial year. We are talking about hundreds so it is not as though it is an enormous number.

Ms Johnson: We have a member who has a case going through QCAT at the moment. They have been advised by QCAT that it is an issue in the legislation. So we may have that wrong, but that is why we came here today, because where is the problem and how can we best fix it?

Miss BARTON: Just as a follow-up to that, then. Are you possibly able to provide the committee with some information about that circumstance so that we can perhaps consider what we might be able to do?

Ms Johnson: Absolutely. Sure.

Mr PEGG: I have a question for the Association of Mining and Exploration Companies in relation to the amendments to the Payroll Tax Act. I note that your submission supports the rebate on apprentice wages but considers that payroll tax should be removed in full. Would you like to clarify what benefits you would perceive in a full removal?

Mr Hogan: As we have said before, all inefficient state taxes are what AMEC looks at. So it is not just payroll tax; it is payroll, stamp duty, land taxes that have been mooted and have been mooted for many years to be replaced with the introduction of the GST at the federal level. All small companies look at that as a direct on-cost to employing another person, another job.

Specifically when you are dealing with our membership, who are often working in remote and regional areas, that job is vitally important. But they also have other costs that are just inherent in being there. They are having to transport that person, they are living away from home—whatever it may be. I think it was mentioned previously that any of those costs individually may make it seem, ‘That won’t be the driver,’ but it is the cumulative cost that constantly grows with every small tax. Everybody goes, ‘It’s only one per cent here, one per cent there.’ That one per cent actually could be the margin for a minerals operation. If that margin disappears, that mine stops. If that mine stops, you are not just losing one job; you are losing many jobs. We look at this as part of a suite of issues of inefficient taxes that are just cumulative and doubling up.

Mr PEGG: Thank you.

Mr CRAWFORD: I am just going to jump forward now to the Duties Act. I have a question for the Law Society. We note your concerns identified in your submission regarding the definition of ‘farmor’ in section 84A and that you believe that it may have an impact on early investment opportunities in exploration activities. Would someone like to expand on that?

Mr Johnston: We certainly echo the comments that have been made previously that the main purpose of this concession should be to encourage investment at an early stage to enable the smaller miners to develop these tenements and to limit the concession to situations where the tenement has already been granted. It just flies in the face of that concession aim. From a policy perspective, there does not seem any good reason to limit it to the situation once it has been granted. As long it is granted, it should be sufficient to cover the application as well.

Mr WEIR: My question is to Total. The committee notes that you also have similar concerns in your submission regarding the limitations to the application to concession of the farmor. Would you advise the committee of the impacts the amendments may have on your organisation or industry?

Mr Sutherland: I think the response is very similar to the previous one in the sense that it is the imposition of the duty. If it is pre or post the grant of the authority, it is a material cost on top of the investment cost that you are already making, which is a cost that will be borne no matter whether the exploration is a success or not. We may not have quite the one in 1,000 that we heard earlier but, still, exploration for oil and gas is a very high-risk game. So to act early and have a duty impost, or act later and have no impost, is driving a behaviour that would seem, as previously stated, to be inconsistent with the policy objective, which is to secure early exploration, early development and, therefore, early revenues for both the companies and the state.

CHAIR: Your submission has suggested that the definition of ‘farmor’ be amended. The committee has identified that there could be unforeseen consequences in amending the legislation as it is suggested in your submission. For example, the applicant of a loan is not a borrower until the loan is approved and, therefore, may not be eligible for, say, the first home owner grant. Can you suggest—

Mr Sutherland: I do not think I am able to comment on the first home owner—

CHAIR: That is an example.

Mr Bird: Sorry, could you clarify the—

CHAIR: The definition of ‘farmor’. Is there any way that you could see your concerns about the definition of ‘farmor’ being addressed?

Mr Bird: Our main suggestion was that if someone was an approved applicant for an exploration authority then that should also be included in the idea that that person was a farmor. So either a grant or an approved applicant for the grant of an authority would still enable the person to be a farmor. As we see the legislation being drafted, the concession will then only apply as it is intended to—to exploration—which is spent after ultimately the authority is granted and the agreement is put into effect. But it will not have the negative impact of preventing early agreements being signed and early commitments to expenditure, which is really our main concern. I do not know if that answers your question.

CHAIR: I think so. We may come back to you on that issue.

Mr Bird: Yes, we are very happy to assist if there is anything further.

CHAIR: It is about the point of approval, I suppose, isn't it?

Mr Bird: Yes, correct.

Mr CRANDON: I have a question for the Queensland Resources Council. The committee notes the comment in your submission that the bill may inadvertently discourage outcomes focused farming. Would you please explain what is meant by 'outcomes focused' and elaborate on your reasons for your concerns, please?

Mr Barger: The point about outcomes focused exploration is reiterating what Bernie and others have said. The problem with the way the bill has been drafted is that it is inconsistent with the ruling. So at the moment we have a ruling that has been in place since 2012. Essentially, what that does is provide a concession for the farm-in process. What the bill does, as Bernie described, is to try to drive it to both ends of that farm-in process. So it is either entirely front-ended or entirely back-ended, and in the middle at the moment what you have is a rich body of industry practice where it may well be that that farm-in interest is earned based on an outcome. So it may well be that, once you reach native title agreement or once you have a land access agreement or once you have done a feasibility on how you are going to get the drill rigs on site, then that is the trigger, rather than what the bill anticipates is a very kind of cut-and-dried financial analysis of: 'Here's what you are purchasing at this point in time in return for that amount of money.' The risk is that, by focusing on the amount of money and by trying to drive the farm-in transactions that are eligible for a concession to either up-front or ex post, you miss all of that middle ground.

The reason that is really important is that the way a lot of the small entrepreneurial explorers work is that they are running on the sniff of an oily rag. They do not have a lot of finance. Encouraging drill intersections—so finding some oil and gas or some minerals that looks promising—will get a larger company that has finance but is not prepared to take that technical risk to say, 'You might be on to something there. We would like to farm in.' If you just turn it into a conversation around money, you are really narrowing the scope of what is possible.

So what we were saying in our submission is to reiterate two of the points that previous speakers have made. You miss the opportunity to reflect existing current practice in the way the bill has been drafted—and I think that is inadvertent. I think what has happened is that it has become a bit focused on compliance. The Office of State Revenue has gone down a bit of an income tax route—'Let's make it bulletproof'—when what we are talking about is not necessarily large amounts money, not complex financial engineering, but a complicated geological process.

The other thing that you do is that you have an inconsistency with the current ruling, which is a concern, and you have an inconsistency with existing practice. There are often these agreements based on outcomes. So the trigger may not be that you get a clean percentage in return for a certain amount of money, but there may be some activities tied up with that. If you are ruling out the opportunity for those activities to be considered as part of the farm-in, you are unnecessarily complicating the concession and, as the other speakers have said, you penalise the explorer and, particularly for the small explorers, you may dry up that avenue of finance. So you may make it impossible for them to operate, because when they start to find some promising results they suddenly need a big company set of legal resources to engineer that farm-in agreement rather than a much more informal outcomes focused process.

Mr CRANDON: Thank you.

Miss BARTON: I just wondered if I could go back to the CCIQ and follow up on the question asked by my colleague the member for Coomera. Payroll tax generally, I think, is a tax on jobs. You spoke about the benefit of the $6,000 scheme as an incentive for all businesses. I just wondered if you could perhaps expand on some of the general commentary around the impost that payroll tax is having generally on business and the stimulation of employment, particularly in light of other discussions that have been had over the past few years about lifting the threshold of payroll tax, or generally providing payroll tax relief so that we are talking about stimulating employment as a general means. I am also thinking about where apprentices are no longer apprentices and they are going into the workforce and being able to ensure that small businesses and businesses generally have opportunities to continue to employ people and an incentive to create jobs. I just wondered if you could perhaps expand on some of that.

Ms Lawless: Yes, sure. Yes, I agree. The CCIQ has long advocated for the complete phase-out of payroll tax. It is a tax on jobs. Certainly, we have evidence from our members of businesses structuring themselves so that they just fall under the threshold. So, yes, it does deter expansion and business taking on employees, which would push them over the threshold. As an example, for someone who is just over the threshold, that $1.1 million would have a payroll tax liability of roughly $52,000. So it is a sizeable liability. So, yes, we do have them structuring themselves under that threshold.

Our interest, obviously, is in indexation so that those 403,000 that currently fall outside liability continue to benefit from payroll tax relief. Hence we see indexation annually and a gradual phase-out conditional upon national taxation reform, because obviously we recognise that payroll tax revenue is almost a third of overall state revenue. So it is a sizeable chunk. We cannot really have meaningful reform unless there is national reform. So that is our position on payroll tax.

Mr PEGG: I have a question for the Queensland Law Society. I note that in your submission you highlighted the uncertainty if a stated amount in a farm-in agreement can be a minimum or something other than the exact amount. Could you please elaborate on those comments?

Mr Paterson: I think the theme coming from the people here today is that constrictive concepts like a stated amount reduce the flexibility that the parties have in negotiating the farm-in agreement, which is most appropriate for both the tenement and also the financial situation in which particularly the junior miners find themselves. By having a stated amount, it significantly reduces that flexibility. In a number of cases that I have personally been aware of, given the difference in what is found compared to where the agreement started, it is quite possible and sometimes quite common for the parties, on receipt of that information, to renegotiate the farm-in to have regard to the quality of the tenement, or the quality of the resources that it has found. I think unduly saying a stated amount is severely restricting what the parties can negotiate to just qualify for the concession. I should note, too, that none of the other jurisdictions that have farm-in concessions in Australia have that concept as a restriction.

Mr CRAWFORD: My question is in relation to the pro rata interest comments. I will take comments from the Law Society and then from the Resources Council, because you both made references to that. The submission from the Law Society was that changes should be included to allow transfer or retention of a pro rata interest when only a portion of the stated amount is spent. Could you elaborate on those reasons and highlight perhaps some industry practice examples?

Mr Paterson: Again, continuing on with the theme of flexibility and having regard to the quality of the tenement that is found during the exploration phase, you could, for example, have a situation where the original agreement is that $3 million would be spent to do significant exploration. However, after $1.5 million is spent they suddenly find themselves in a very different phase in which they can progress to the next level towards a production tenement and it would make no sense then to continue spending the $3 million just to qualify for the concession. Rather, it may make much more sense for the interest to be reduced that is farmed in having regard to the fact that only half the amount of money was spent to get to that point. Going back, the original agreement could have been that a 20 per cent interest would be obtained for a $3 million spend. That could be reduced to 10 per cent on a $1.5 million spend depending on what is found during the exploration.

Mr CRAWFORD: Andrew, do you want to jump in on that one?

Mr Barger: Just to do my nodding dog routine. I would agree entirely. It is about the flexibility of the arrangements and it is same issue again with the stated amount. If you have a compliance process where the amount is hardwired in rather than the outcome that you are actually trying to encourage, the way the bill is currently drafted if you do not spend that exact dollar amount then the farm-in is not activated when in actual fact at the time the farm-in agreement was made that may well have been an estimate based on what they knew at the time and as they come closer to that point it may well be that the exploration has been less expensive, more efficient, more productive, they have reached the target that both parties are interested in and the bill denies them the flexibility to make that farm-in proceed. It is about reflecting the operational arrangements of what is happening on the ground rather than necessarily fixating on a dollar estimate and hardwiring it into the process.

Mr WEIR: My question was mentioned earlier by Andrew in relation to hybrid agreements. The committee notes that your submission identifies concerns that not all agreements concerning both up-front and deferred agreements are possible in the industry. Could you give any examples of where hybrid agreements have been entered into?

Mr Sutherland: I can certainly do that because it is in the public domain. The exploration opportunity that we have signed into, farmed into, in Western Queensland is with Australian company Central Petroleum. As part of that deal we have a phased entry where they will assign some equity and then we will do some work, which is an up-front agreement as I understand it as defined, and then at the back end, after three different phases, when we have completed the final phase of work they will then assign us a further amount of equity. For us, we want to be on title early so that (a) we are on title, (b) that gives us access as a joint venture partner to the Queensland government authorities and (c) it acts as a mitigate in case the farmor ever gets into financial difficulties so that we are there. For them, they do not want to assign us any interest until such time as we have fulfilled work. So you end up with this neat balance between what works for us and what works for them, but as defined our agreement is a hybrid agreement and therefore would not be eligible for the concession, whereas it makes commercial sense for both of us to go down that path. I hope that is a reasonable example.

Mr Barger: Could I just add that the staged process is quite common where you might have an initial farm-in for a small amount and then, contingent on outcomes, that interest can increase through time. That process is important for funding the small explorer, both directly and in terms of their equity raising, because you quite often see a junior explorer presenting and they will say, 'And we have got big company X or interests Y and Z that have these farm-in agreements.' It is a way for the junior explorer to signal to the market that they are onto something that others in the industry are interested in. It is not just a direct flow of money; it is also actually how they access equity. It is a way to signal to the stock market that their operation is finding interesting results. It is really important that that hybrid process is recognised in the concession.

CHAIR: I have a question, following on from that, for the Law Society. Your submission raised concern that there appears to be a departure from the public ruling as it did not prohibit hybrid arrangements that allow for multiple transfers consisting of both up-front and deferred elements from being eligible for the concession. Your submission said that this inconsistency might have a negative effect on Queensland's reputation. Could you please elaborate on that view?

Mr Johnston: I guess we would suggest there is an element of sovereign risk here in that people have relied upon this ruling for the last two years. The legislation changes the definition of a farm-in agreement to 'either/or' but not an 'and', whereas the ruling contemplated that a farm-in agreement could be a deferred farm-in agreement and an up-front agreement. To change the definition at this late stage we suggest would be unfortunate and to the detriment of the state because of the miners that have relied upon it. I am not sure what the numbers might be but, whatever number, a number of miners have relied upon it.

CHAIR: People are planning forward?

Mr Johnston: That is right.

CHAIR: Would you like to comment on that, Andrew?

Mr Barger: I think the point is well made that in some cases projects are two years down the track based on a public ruling based on an understanding and lots of assurances from both this government and the previous government that the concession would be consistent with the ruling. An important drafting change from 'and' to 'or' means, again, you have that very binary result where it is either up-front or after the fact but not hybrid. That does not sit comfortably with the public ruling, so you have all the issues of people who have been making decisions in good faith or existing industry practice.

Mr CRANDON: The committee understands that your submission stated that the examples of combined up-front and deferred farm-in arrangements and when they are eligible for duty concessions have added some complexity. Could you please elaborate by providing specific examples of up-front and deferred farm-in arrangements?

Mr Hogan: I think we are tracking down the path that we have been discussing here. A couple of areas of complexity are as we have said. The way it has been set down in examples—to say that we only have up-front or an outcomes based farm-in—is something that is incongruous with the way minerals explorers would work at the present time. The other area that they would see as a complexity and that gets in that compliance area that we are talking about is that we have a situation where, should they not spend the stipulated amount, they have 30 days to notify, and it is very strict on notifying that it has not been spent. Well, they may not agree that it has not been spent within a certain amount of time and we have then hit this hard compliance issue here. Again, we are dealing with an exploration organisation that does not have an army of in-house counsel or compliance officers and they are reliant upon, as we said before, their ability to make a strong announcement that they have a strong partner in their farm-in to access the capital to continue work. A compliance ticket on there would suddenly make them go, ‘Hang on, that doesn’t look good in their capital raising.’

Mr CRANDON: In part of the question I am looking for some specific examples of up-front and deferred farm-in arrangements. Do you have some specific examples?

Mr Hogan: I cannot really give you any from my members straight out because that would be commercial-in-confidence, but I think we have already heard several of them. Total gave us a prime example from that area there for oil and gas in Western Queensland. That is very similar. You are going to have them in gold in North Queensland and you are going to have them in coal in Central Queensland.

Miss BARTON: I had a question for the Law Society. In your submission you made reference to the statement that was made by the then New South Wales Chief Commissioner of Stamp Duties with regard to a farm-in agreement and your submission outlined that it is unclear whether section 84G(1) is intended to apply only to the grant of a new right under section 9(1)(f) and not to an agreement for transfer. I was just wondering if you could provide us with some of the reasons that you had for those concerns.

Mr Paterson: I think this is just the way in which the Queensland Duties Act is framed. There are a number of different transactions which are dutiable transactions and therefore subject to duty in Queensland. One of them, which is typically what we are talking about today, is the transfer of dutiable property. However, in Queensland there is an additional transaction notice that granted the new right. What we have observed is that you could technically fall within that second category of dutiable transaction for which no concession applies. It is more an equitable statement in relation to the way in which the Duties Act is framed in that to undertake the policy for which the concession was originally framed it should cover all dutiable transactions, not just leave one out on a technical basis.

Miss BARTON: As a quick follow-up to that, we received advice from Queensland Treasury and they have drawn attention to the explanatory notes, and I am not sure whether or not you have had a chance to look at the explanatory notes. They clarify that both an up-front farm-in agreement and a deferred farm-in agreement are agreements for the transfer of a dutiable property mentioned in section 9(1)(b) and cannot be characterised as any other dutiable transaction, for example the acquisition of a new right. Having perhaps put on you the spot, not knowing whether you have had a chance to read the explanatory notes, does that provide you with some satisfaction or is there still some concern for you?

Mr Paterson: I think there is concern insofar as the explanatory notes, while they are an aid to interpretation, are not the law itself and so therefore there is always a risk where there is ambiguity, which we have found and which is not addressed in the legislation itself, as to how a court would have regard to those explanatory notes in interpreting the legislation. It would be much better to have certainty in the legislation itself.

Miss BARTON: Are you seeking clarification through a change in the wording or would perhaps some clarification in the second reading speech provide that?

Mr Paterson: We would be seeking a change in the wording so that it is in the legislation itself.

Mr PEGG: I have a question for you, Andrew, in relation to the QRC submission that section 84J should be amended to exclude stamp duty on a consideration paid for mining information under a farm-in agreement. Could you please expand on the reasons for that?

Mr Barger: Again, I might call in the heavy artillery and rely on some advice from my learned colleagues on my right. The issue with the mining information is that often, with the way the farm-in works, the person who is on the ground exploring has geological information—so they have found something interesting. The bill unnecessarily complicates that process of transferring the information across. Part of the problem with stamp duty is: what is it applied to? What is the value of the tenure? If you ask six valuers what a resource tenure is worth, you will get 300 different views, and it is contingent on their understanding of the tenure at a point in time. It is inextricably tied up with that geological information, so even if they put the same raw data into a couple of different geologists' models, depending on their experience and understanding one will get wildly excited and start investing and the other will throw it over his shoulder and start redrilling.

The point about mining information is that the bill treats it as though it is an objective fact with a hardwired value that is very easy to levy a stamp duty on. It is not treated like that in any other resource transaction. So the way the concession has been framed is not consistent with the way a full transfer of tenure works. There is not that explicit focus on mining information.

So it is back to that overriding theme that the compliance regime seems overcomplicated for the process it is designed to regulate. The risk is that both the farmee and the farmor tangle themselves up in legal knots trying to make sure that what they see as quite a simple transaction satisfies the requirements of the concession. That mining information definition is going to be a stumbling block for both parties, so it just seems an unnecessary complication. It is not consistent with the way the full transfer of a tenure works. If I was selling you an exploration or production tenure, there is not that focus on mining information so it just seems overengineered and unnecessary.

Mr PEGG: Thank you. I had a follow-up question for the QLS. You have suggested that clarification is needed in that this section does not intend to cover payments made under the farm-in agreement for mining information which is not dutiable property and which is not subject to duty under any other type of transaction. Could you please outline the reasons for that uncertainty?

Mr Johnston: Certainly. The way the Duties Act is framed is that there are different types of dutiable transactions and dutiable property on which duty can be levied. That does not currently cover any form of information or know-how or anything like that. To attempt to bring that mining information into the duty almost by stealth here, by pretending that it is somehow dutiable because it is not exploration expenditure, is contrary to the entire policy behind the way the Duties Act operates. That is the first point. We can certainly provide the committee with more detailed explanation about the case law and so on that supports why information is not a form of property, if necessary. More importantly, I think at a policy level it is contrary, again, to the entire purpose of this concession to try and impose duty on the information when it would not have been dutiable, for example, in a straight-out sale of a tenement. They are the two main points I would like to make.

Mr PEGG: Thank you.

Mr CRANDON: Just on that, you offered to provide us with some case law and so forth?

Mr Johnston: There is certainly case law that exists around Australia as to why information is not a form of property.

Mr CRANDON: Chair, is that something we would like to get?

CHAIR: Yes, thank you. That would be very helpful.

Mr CRAWFORD: I have a question for Andrew and the QRC. I want to talk about the 14 days and 30 days part of your recommendation and section 84. We note that in your submission you recommended that the time period for lodgement be extended from 14 days to 30 days. We were advised by Queensland Treasury that the 14-day lodgement requirement is an intentional departure from the standard 30-day lodgement period and is entirely consistent with the existing requirement under the ruling. Would you like to comment on that and elaborate a bit?

Mr Barger: I am not surprised that Treasury say they deliberately drafted it that way. It is not as though they are going say, 'Whoops.' I agree that it is consistent with the ruling, but I guess the point we were trying to make is that it is inconsistent with the Duties Act. Throughout the rest of the bill that it is amending, if you have to notify something there is a 30-day process. I guess I would go back to Bernie's example earlier. Given that you are dealing with small companies often in remote areas where, even with current telecommunications technology, 30 days can tick past fairly quickly, then winding that back to 14 days just seems unnecessary. It has the feel of, 'Let's have a concession in name that we can talk about but let's wind the compliance back so that effectively we're trying to jam a camel through the eye of a needle.' No-one is going to be able to satisfy the requirements.

The 14 days is consistent with the ruling but it is not consistent with the rest of the bill and it just seems unnecessarily difficult and complicated. I guess I am saying that it would have been really helpful if Treasury had articulated in the explanatory notes why they thought 14 days was appropriate, because I could not see anything along those lines.

Mr Fitzgerald: If I can perhaps make one comment on that. As the Resources Council have said, 30 days is the usual provision in the act. I suppose what the 14-day period could lead to is inadvertent noncompliance and possible penalties for the parties.

CHAIR: Unfortunately, the time for this part of the hearing has expired. It is highly possible that we will require further information from you. If so, we will write to you very shortly. The member for Coomera would like to ask one very quick question.

Mr CRANDON: It is a quick question but it is for all of the witnesses. Were any of you consulted by the department in the preparation of the bill, or did you first hear about this when the bill was presented?

Mr Hogan: No, we were not consulted. It was on the presentation of the bill. We knew this issue existed so obviously we kept a watching brief on it.

Mr Sutherland: There was no consultation but we knew the issue for exactly the same reason.

Mr CRANDON: The QRC?

Mr Barger: I will give a more complicated and slightly longer answer.

Mr CRANDON: Of course! That is you, Andrew!

CHAIR: But not a very long explanation, please.

Mr Barger: Okay. It will be very short but complicated. There was no consultation on this bill so the wake-up call was it being tabled. I guess it substantially replicates a previous bill on which we had been consulted, so we knew the issue was afoot. In a way, it is reassuring to see the same provisions, with all their glorious flaws, brought through.

Mr CRANDON: Yes, but all the flaws. That is the thing I am concerned with—that we have this hugely complex issue where we need you to explain things to us. Why wouldn't you have been consulted in the drafting of the bill? Was the Law Society consulted?

Mr Fitzgerald: I believe our position is the same as the QRC's.

Mr CRANDON: Thank you. And the others?

Mr Bidwell: No.

Ms Lawless: No.

CHAIR: Thank you for your attendance. We appreciate your assistance. I declare this hearing closed.

Committee adjourned at 11.38 am