AGRICULTURE AND ENVIRONMENT COMMITTEE

Members present:

Mr GJ Butcher MP (Chair)
Mr AJ Perrett MP
Mrs J Gilbert MP
Mr R Katter MP
Mr JE Madden MP
Mr EJ Sorensen MP

Staff present:

Mr R Hansen (Research Director)
Mr P Douglas (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE ENVIRONMENTAL PROTECTION (UNDERGROUND WATER MANAGEMENT) AND OTHER LEGISLATION AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 12 OCTOBER 2016

Brisbane

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Committee met at 11.11 am

CHAIR: Good morning and thank you all for coming. Before we start, can you please make sure that mobile phones are either turned off or turned to silent. I declare open the Agriculture and Environment Committee's public hearing in relation to its inquiry into the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016.

I would like to start by acknowledging the traditional owners of the land on which we gather here today. My name is Glenn Butcher MP. I am the chair of this committee and the member for Gladstone. With me today are Mr Tony Perrett, the member for Gympie and deputy chair of the committee; Mrs Julieanne Gilbert, the member for Mackay; Mr Robbie Katter, the member for Mount Isa; Mr Jim Madden, the member for Ipswich West; and Mr Ted Sorensen, the member for Hervey Bay.

The bill we are examining today was introduced on 13 September 2016 by Hon. Dr Steven Miles MP, the Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef. The committee is required to report to the parliament by 25 October 2016. The committee's report will help the parliament when it considers whether the bill should be passed. I remind everyone that the bill is not law until it has been passed by the parliament.

I remind those present that these proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may not participate in proceedings and may be admitted to or excluded from the hearing at the discretion of the committee. Hansard is making a transcript of today's proceedings which we intend to make available on our website. These here today should note that the media may be present at some stage during the proceedings, so it is possible that you may be filmed or photographed.

BOYD, Mr Andrew, Chief Operations Officer, New Hope Group

GOMEZ GANE, Ms Kylie, Manager, Environment, Policy and Approvals, New Hope Group

PACEY, Ms Kathryn, Legal Adviser, New Hope Group; and Partner, Clayton Utz

CHAIR: Welcome. I invite you to make a brief opening statement for the benefit of the committee.

Mr Boyd: Thank you for the opportunity to discuss our submission today. In addition to Ms Gomez Gane and Ms Pacey, we also have a number of employees from our New Acland operation in the gallery who have also made submissions to the committee. These employees have taken the time to come to Brisbane today from the Darling Downs to demonstrate their support for the continuation of the New Acland mine and to express their concern regarding the impact on their and others' jobs which this legislation presents.

The New Hope Group is an Australian owned and operated diversified energy company. We have been proudly based in South-East Queensland since 1952. I would like to start by saying that, despite the lack of consultation with the industry on the EPOLA bill, New Hope is supportive of the policy objectives of the bill and will work with the relevant government departments to meet these policy objectives across the eight coalmining projects in various stages of development that we currently have across Queensland.

Our concern and the reason for our submission to this committee is the New Acland stage 3 continuation project and the impacts that this legislation will have on that project. For context, the New Acland mine is located some 150 kilometres west of Brisbane near Oakey and employs 275 full-time employees. In addition, there are over 500 contractors who rely on the Acland operation for a portion of their livelihood. In addition, the mine contributes to around 2,300 indirect jobs across South-East Queensland and contributes over $300 million annually to the South-East Queensland economy.

When Minister Miles presented EPOLA to the House on 13 September 2016 the assertion was that EPOLA would strengthen the assessment undertaken as part of the environmental authority application and that, in the future, the environmental impacts of groundwater extraction by any mining operator would be addressed by this process, providing a streamlined process for the mining industry. We are supportive of this approach and the policy objectives of EPOLA. EPOLA also attempts to introduce transitional provisions for projects that are well advanced in their approvals process. These transitional provision take the form of the requirement to obtain an associated water licence, with associated applications, public submissions and court based objection processes.

When you look at the approach to the assessment of mining related groundwater impacts at both a federal and state level, it is clear that there is a significant amount of duplication and legislative confusion. In mid-2013 the federal government introduced new controlling provisions under the Environmental Protection and Biodiversity Conservation Act, the EPBC Act. This was the so-called water trigger which required coal seam gas and large coalmining projects to undertake a groundwater assessment for environmental impacts and impacts on other underground water users that maybe impacted.

New Acland stage 3 has undertaken a detailed environmental impact assessment, including public consultation and submission, consistent with the EPBC requirements. In addition, in 2014 the state government introduced the Water Reform and Other Legislation Amendment Act 2014, WROLA Act. Even though it has not commenced yet—I think it commences in December of this year—project proponents and government agencies have been taking this act into account in project assessment and the environmental conditioning of projects. This is the case with New Acland stage 3.

Projects that have gone through the EIS process that we have been through have not only gone through the process but also had conditions imposed, stated or recommended by the Coordinator-General. These conditions were negotiated with the Department of Environment and Heritage Protection and the Department of Natural Resources and Mines. These conditions have flowed onto the draft environmental authority for the New Acland project.

New Acland has been through this assessment and it has had conditions specific to groundwater already imposed or recommended by the Coordinator-General when he approved the project in 2014 and in the subsequent draft environmental authority that was issued in 2015. This approval and subsequent draft environmental authority were objected to by a small number of locals and a large number of anticoal activists and other interest groups. In accordance with the Environmental Protection Act, the New Acland stage 3 project was referred to the Land Court in 2015.

The Land Court hearing commenced in March 2016. Closing submissions were made last week—31 weeks after the commencement of the hearing. We eagerly await a recommendation from the Land Court. Groundwater impacts were scrutinised in detail in the Land Court, with independent experts on both sides debating the matter for over two weeks of that Land Court hearing. In our closing submissions to the Land Court, we have recommended further conditions and controls relating to groundwater.

For the New Acland stage 3 project we have undertaken significant work on developing a detailed underground water model, drilling water bores to complete our bore baseline assessment and negotiating make-good agreements with potentially affected neighbouring landholders. These activities will continue. Therefore, we strongly believe that the New Acland stage 3 project has already achieved the policy objectives of EPOLA and we do not believe that it is the right thing for this project to be subject to further regulatory hurdles, potential objections and delays as a result of this new legislation.

Being subject to another Land Court process to debate the same groundwater issues we have just discussed does not align with the minister's objective of providing a streamline process for the mining industry or one process of scrutiny and objections before the courts. Unfortunately, the impacts of such a process would be profound for many of our employees. As I mentioned some of those employees are here today.

We made our initial application for the New Acland stage 3 continuation project in 2007 and have been through an arduous and extensive approvals process. Time has run out and we are nearing the end of our current mining reserves. Our estimate is that the EPOLA bill, as currently drafted, will add at least 12 months to our approval process. As a result, we will have to significantly reduce the production rate at New Acland in 2017 resulting in job losses, a loss of customer contracts and a significant deterioration in financial performance.

The end result would be a loss of well over 200 jobs next year from New Acland, from New Hope's corporate office in Ipswich and from our QBH port facility down at the port of Brisbane. In addition, we would expect several hundred further job losses from our various suppliers and service

providers. We ask that appropriate and sensible transitional arrangements be put in place so that this legislation, introduced at 11th hour of New Acland's approval journey, does not result in further delays and the inevitable job losses that will result.

CHAIR: At the start of your statement you mentioned that there has been a severe lack of consultation. Has there been any consultation with the departments or the minister's office in relation to this new bill with your company?

Ms Gomez Gane: No.

CHAIR: None at all?

Ms Gomez Gane: No.

CHAIR: Part of this bill we are looking at deals with make-good agreements. How have they been going for your company? Are make-good agreements seamless with your company or have there been issues in the past? I have heard a few general comments that some companies are very good in terms of make-good agreements and with some companies it is very painful. Can you explain what your company's make-good agreements are and if this legislation will improve that or make it harder?

Mr Boyd: I will start and maybe you can finish. We are just embarking on the make-good process as a result of the state's stage 3 continuation. I think there are 12 landholders who are affected in our first stage. Obviously as the mine progresses there are landholders who are affected. We have looked at the initial landholders who may be affected. With 12 landholders we have negotiated and signed six make-good agreements. The other six are with the potentially affected landholders. I do not believe there has been any—

Ms Gomez Gane: There are only four because some are double-up properties.

Mr Boyd: I do not believe there have been any particularly contentious discussions or problems with those people. Those people are really waiting to see the outcome of stage 3 and see if it is approved before they are prepared to sign. From my perspective, I think it has been a relatively healthy and good process.

Ms Gomez Gane: To put it in context, the mining industry did not have to do make-good agreements. This comes with WROLA. There are no guidelines so we have adopted the petroleum industry guidelines and mirrored that process to the letter. In the Land Court closing submissions we have captured what EPOLA is trying to achieve with make-good agreements in terms of fairness and legal and hydrology costs. The first make-good agreements that we have signed have the hydrologist paid by us and fifty-fifty legal costs. We have proposed to the Land Court that we would be happy to adopt EPOLA's approach—that is, that the onus is on us and the legal and hydrotechnical costs are on us.

Mr PERRETT: Thank you for making yourself available to come and present to the parliamentary committee today. Are the water requirements of the mine solely from underground water or can you access other—

Mr Boyd: Not, at all. The vast majority of the water that we use we acquire from Toowoomba Regional Council. It comes from the Wetalla water treatment plant. That effectively provides almost all of the water that we use for coal processing and other activities on site. That is not potable water. The only underground water that we use is from bores for potable water, showers, drinking. That is all. It is a very small amount.

Ms Gomez Gane: For which we have water licences. In addition, in terms of the concept of water licensing—the taking or interfering with water—from our operational perspective it is purely for safety reasons. We take the water only for safety purposes not to use it.

Mr PERRETT: You indicate that this particular bill may delay the process a further 12 months, that you need to be able to get timely approvals in place to maintain the continuity of the operation and there are potential job losses. You indicated that there could be at least 200. Have you had discussions with your employees or the union representing the employees—and I assume that is either the CFMEU or the AWU—with respect to the potential job losses and issues in and around this? If you have, what has their view been with respect to the proposals in this bill?

Mr Boyd: Yes, we have had those discussions. We have not said that there will be this many people who will lose their jobs on this date, but what we have said to our workforce is that if we do not have our approvals and we are constructing stage 3 by early 2017 then we will have a real problem maintaining continuity from stage 2 to stage 3 and that will inevitably mean job losses. We have told

our workforce that, yes. What has their response been? They are understandably extremely concerned. That is why we have representation here today and why I am sure you received a lot of submissions from employees, suppliers and supporters of the New Acland mine.

As I said, we have been going through this process since 2007. The prospect now of another approval process, another potential for objection, delay, deferral and Land Court hearings and the fact that that, and I am will not say might, will result in job losses means that our workforce has been through enough.

Mr MADDEN: I do not have any questions, but I just need to make a statement. I have two New Hope mines in my electorate of Ipswich West. Oakleigh mine has been rehabilitated and Jeebropilly is still active. I wanted to state that I have had no discussions with New Hope with regard to this bill. Mr Boyd, could you confirm that?

Mr Boyd: That is correct, yes.

Mr MADDEN: I had a meeting with New Hope, but it was some time ago and it was pretty much just a meet and greet.

Mr Boyd: Sure.

CHAIR: Thank you very much for your statement and for answering our questions.

BRAGG, Ms Jo-anne, Chief Executive Officer/Solicitor, Environmental Defenders Office Queensland

POINTON, Ms Revel, Law Reform and Litigation Solicitor, Environmental Defenders Office Queensland

Ms Pointon: I am appearing with Jo Bragg, our CEO and solicitor from EDO Queensland. I did let the team know beforehand, but I apologise for the last-minute notice.

CHAIR: Welcome. I invite you now to make a brief opening statement.

Ms Bragg: Firstly, we generally support the legislation. We think the bill should be passed subject to two particular amendments. The first amendment is that we wish to see included in this bill, as it is in the current Water Act, an ecologically sustainable development criteria in relation to water licensing. That is one amendment we will talk a little bit about. Secondly, we think it is important that there is a special provision inserted in the bill to provide that the Coordinator-General may not step in and overrule the water licensing provisions of this bill. You might be aware there was a declaration of critical infrastructure under the State Development and Public Works Organisation Act made recently. We will talk a little bit more about that. Those are our broad comments. We do not want the detail to obscure our general support, subject to those two amendments.

Firstly, we wish to express the strongest possible support for retaining a public submission and public appeal process in relation to mines and groundwater. What the committee members might not be aware is that the current law in fact has such public submissions and licensing. This is not something new, although it is proposed to be modified in this bill. For many, many years the requirement has been part of the law and we say for very good reasons it should continue to be part of the law.

I might use the Acland case as an example. Firstly, I note New Acland has brought along a few of its employees. I should mention that, in relation to the objection in the Land Court in relation to New Acland stage 3, EDO Queensland are the lawyers on behalf of the Oakey Coal Action Alliance. Contrary to what the previous speaker said, they are not activist people; they are a group of over 60 local graziers, landholders, farmers—people who have been severely affected, adversely affected, by the existing mine and decided they were as sure as hell going to come to court to try to stop the expansion due to its impacts, particularly on groundwater. Mr Frank Ashman is the chair of the Oakey Coal Action Alliance. He is our client. He is the person we deal with on a daily basis. I spoke to Frank this morning. He was at his property doing his work, but he authorised me to pass up a statement in which he strongly supports the need for these groundwater licensing provisions but does agree there should be ecologically sustainable criteria. We have a bundle of material to pass up.

CHAIR: Is the committee happy to table that material? There being no objection, it is so tabled.

Ms Bragg: At the front of that pile of documents is the statement Mr Ashman authorised me to make on his behalf. Basically, you will note at the end that he implores you to keep the licensing process of public submission and appeal for mines and groundwater and to assure it is precautionary and ecologically sustainable. There are existing landholders and business that rely on that groundwater, and those existing businesses do not wish to see their rights taken away. They support the bill. They support the provisions of the bill and do not agree that New Acland should escape these provisions.

I also refer to a submission by Max Schofield. The secretariat could not locate it but maybe I could summarise it by saying Max Schofield is also part of the Oakey Coal Action Alliance. He is a farmer at Brymaroo on the Darling Downs, about 10 kilometres from the mine. He basically complains that he was told he could never extract this groundwater because it was too fragile. He says, 'I am now enraged that any government would seek to legislate to allow a mining company free access to water that was refused to me.' It is a fairly angry letter, but Mr Schofield also strongly supports the public submission and appeal process relating to groundwater in relation to New Acland.

I am trying to speed up here because I only have 15 minutes and there is a lot to be said. New Acland went on extensively about jobs. I should make it clear that our clients and EDO Queensland support sustainable jobs. New Acland put forward a good face here at the committee, but what came out in the Land Court was that they have constantly grossly exaggerated the job impacts. The environmental impact statement that they referred to—and I will now find it. Are people are familiar with what an environmental impact statement is? It is the early look at the impacts and costs. It is sort of like a giant cost-benefit statement on the environmental, social and economic impacts.

In the environmental impact statement initially they said this project would create 3,550 jobs. In the supplementary environmental impact statement, it got downgraded to 1,566 jobs and in court, when New Acland's own economist Dr Jerome Fahrer was there under oath—he was not responsible for those earlier figures—he downgraded the jobs to 680 net jobs. What I would suggest to you is that, while we certainly support jobs, there are sustainable jobs in the rural community—existing landowners and farmers—that will and could be seriously impacted by the mine. I do have with me—and I think it is in the package that was handed up—a graph showing Dr Jerome Fahrer's—

Ms Pointon: It is called 'Supplementary statements by Jerome Fahrer', I believe. It is on page 7 of the attached report.

Ms Bragg: You can see that it is actually a graph that shows 680 net jobs. I say 'net jobs' because that figure takes into account jobs lost, because jobs will be lost if this mine proceeds as well as some jobs created. When you work it all out, New Acland's own economist shrunk those figures down to 680 net jobs which then has to be evaluated against the risks and damage.

Also, New Acland commented about the extensive analysis of groundwater that had gone on and it probably gave the impression that everything that had been done had been done well—to the contrary. In the Land Court it was very clear that the groundwater modelling had been faulty. It had been flawed. It was not done to a standard you could have confidence in. You might be aware of the Alpha coal case where the Land Court recommended the Hancock Alpha Coal Project be refused unless there was further precautionary work on groundwater. I anticipate that there is a very good chance a similar recommendation will come out in the Acland Land Court case. I cannot be sure but that was the nature of the queries and questions. The chief operating officer of New Acland who just gave evidence was in fact highly criticised in that case for his assertions of the urgency to get the approvals. We can send in the transcript of that particular page from that court case, if that is of interest to the committee.

I might pass very quickly to Revel to talk about other rural people who are strongly supporting the need for these groundwater public submissions and appeals. Could I clarify how many minutes we have left, Chair?

CHAIR: Four.

Ms Bragg: I might ask my colleague Ms Pointon to take one or two minutes and then I will try to take three minutes on one other very important factor.

Ms Pointon: In your bundle you have a piece of media from the *Queensland Country Life* on 4 October that Mr Bruce Currie provided to the *Country Life.* Essentially, Bruce Currie was involved in the Alpha and Kevin's Corner coalmine Land Court cases that EDO Queensland also represented other groups in. As Jo mentioned, serious uncertainties in the groundwater impacts, especially offsite, were demonstrated, particularly through the Alpha coalmine case. After slogging it out in the Land Court, the Curries actually got a recommendation from the Land Court in their favour that said, 'We agree. The uncertainties in the groundwater impacts are too great to allow this mine to go ahead, unless they get a water licence that is actually assessed'—and it explicitly states, 'assessed against the precautionary principle.' While Bruce Currie would have loved to get a submission to you—I understand he is still trying to; he is a grazier; he is a busy guy, but he hopes to get one in tonight—he did say that he was happy for us to at least demonstrate this article that he had published last week.

I wanted to touch on two further points on the Acland mine that came out of the previous statements. That mine was applied for back in 2007. The water licence framework, as it is now—you need a water licence; it is assessed against the principles of ESD—has been in force from 2007 until today. It is no surprise that this mine would be subject to the water licence framework. All of those objectors and anybody who has ever been looking at that mine and concerned at all about the groundwater impacts would have been under the expectation that that mine would have to go through the water licence process with the principles of ESD assessed. While we are not able to at this point table any documents from the Land Court hearing of the Acland case, I really encourage the committee members or the research directors to have a look at the submissions of the EHP to that case and what they might say about the assessment that was undertaken and their consideration of the water licence framework.

Also, I just wanted to touch on the consultation that was undertaken. The Queensland Resources Council is actually on the Water Engagement Forum. EDO Queensland are happy to be on the Water Engagement Forum as well. We were actually consulted on this bill through that process. No farmers were consulted. They were consulted through their representative groups of QFF and

AgForce, as we were the representative group for our members. Essentially, New Hope and other resource companies are represented through that engagement forum by QRC. It is not correct to say that they had no consultation whatsoever having a representative body on the forum.

Ms Bragg: We suggest there is absolutely no basis on which New Acland, Adani, Hancock, Alpha and so on should escape going through that this groundwater licensing process. They are not surprised. It has been the law for years. They could have had their application in and under assessment and the public submission and appeal processes happening years ago. They chose to take a chance that the law could get changed and be weakened and then they would be happily off and away having escaped the scrutiny. The water licensing process for groundwater is in no way a surprise to these mining companies.

The last point that I would make relates to the critical infrastructure designation relating to the Adani Carmichael project. Are members of the committee familiar with that? Have they heard about it in the news?

Mrs GILBERT: Yes.

Ms Bragg: You may recall—those of you who spend time in South-East Queensland, as I guess politicians do—that we were in quite a severe drought and there were water problems in 2007. At that time the then premier Anna Bligh declared parts of the South-East Queensland water grid critical infrastructure because essentially we were seriously worried that we were going to run out of water. That made sense to be able to push those approvals through. It was an absolute surprise that the Mining Minister Lynham declared the Adani Carmichael combined project critical infrastructure under the State Development and Public Works Organisation Act because it is a foreign owned mining company; the jobs figures are doubtful—as with Acland, they claimed there were 10,000, but their own expert in court said it was just 1,464, so the jobs shrunk; and that project will undeniably have very severe environmental impacts on the reef and elsewhere. Why on earth would Minister Lynham declare this critical infrastructure? What we say is that they should not escape going through the public submission and licensing process. That has been the law all the time their project has been under assessment. It is the law today. They were just hoping to escape that by Minister Newman's changes to remove those processes.

We say that in this bill we need a clear provision which states that the licensing process will apply irrespective of anything the Coordinator-General has done or might do under the Coordinator-General legislation, the State Development and Public Works Organisation Act. There has been a lot of consultation in relation to this legislation with all parties. We need to keep those public submission and licensing processes for these major transitional mines—Acland, Adani, Carmichael, Alpha and so on—but, unless we put a provision in this act that clearly states the Coordinator-General cannot step in and take over the decision-making which could remove all of the public processes, there is a risk that all of the good policy work in developing this bill could be lost through that Coordinator-General step.

CHAIR: Thank you very much. That was a very thorough statement. Thank you very much for your attendance today and your statements.

BARGER, Mr Andrew, Director, Economics and Infrastructure, Queensland Resources Council

CHAIR: Welcome, Mr Barger. Would you like to make a brief opening statement for the benefit of the committee?

Mr Barger: Thank you for the opportunity to appear today. I would like to start by acknowledging the traditional owners on whose country we meet today and offer my respects to their elders, past and present.

You have quite an extensive submission from QRC. Rather than step you through it, I thought I would quickly call out a couple of its key points because I would prefer for the committee to have time to ask questions. I think what you will hear again and again today—and the sequence of speakers is almost designed to encourage the contrast—is two very different world views between the people appearing today. You have a very legalistic view exemplified by EDO that the courts are ultimately the only place where we can make decisions about some of these important decisions like water licences, and then you will hear from proponents who have projects and are looking to employ people, looking to create jobs in regional Queensland, who are just wanting to know what the rules are. I think you will hear a sense of frustration that some of these projects have been in an assessment process for an enormous amount of time where enormous amounts of money have been spent. It seems that, as soon as you start to see some light at the end of that assessment tunnel, we get new legislation suggested which effectively orders more tunnels so you get caught in this hamster wheel of endless re-regulation.

I will try not to walk through what the previous speakers have said and rebut that, because I think that gets a bit tiresome. You will get a sense of a very different point of view. QRC's submission sought to bring four issues to the committee's attention. First of all, like New Hope, we support the objectives of the act. There is a lot of laudable changes that have been brought through in the act. We welcome the belated recognition of the need for a transition mechanism. That is something industry has been talking about for three or four years. The problem is that the proposed mechanism is enormously duplicative of the assessment processes that have already been run. As you have heard from New Hope and as you have read in your submissions, it creates an uncertain open-ended approval process which is inimical to the investment certainty that the industry needs to create jobs.

The second thing is the lack of consultation that has defined this process. Water legislation has been in a state of flux for a couple of years, which is in marked contrast to the way water plans and the water licensing framework have always developed on a regional basis of really deep and detailed consultation. Legislation has been hurried into the House and raced into the committee—and incredibly complicated legislation. It is not just a simple legislative bandaid that is being introduced. It is omnibus legislation. It amends acts that have not commenced. It amends bills that have passed but not commenced. You almost need a PhD in law to track through all the amendments. It is an enormously complex bill introduced in a hurry with no regulatory impact statement.

The third point I bring to the committee's attention is that, absent a regulatory impact statement which steps through the proper policy development process of why there is a need for change, how the current laws are deficient and how this would address it, it is very difficult for stakeholders on all sides of the debate to understand what is being proposed and how it might affect them.

That leads to the final point. Given the pace, the complexity and the importance of what is being considered, it is very difficult to recommend to the committee that the bill is consistent with fundamental legislative principles. Given that uncertainty, it is difficult to say that the bill should be supported, which, to go back to my first point, is a shame because there are a lot of good reforms. There is a lot of change being suggested which reflects industry practice and there is a lot of regulatory catch-up going on which, had the legislation been developed through a proper consultative process where the details were available for proponents to understand what was being proposed, likely would have been supported. I said that I was not going to talk very long and I have, so I will stop.

CHAIR: I have a quick question about the consultation. I noticed you mentioned it quite a few times. Was the Queensland Resources Council involved with any consultation in relation to this bill?

Mr Barger: I will give you a really helpful answer of yes and no. As Revel said, we are on the Water Engagement Forum. Yes, in that process there was a process of seeing parts of the bill in confidence, not being able to share it with my members for a period of about a week and giving comments on that. Definitionally, for a whole new transition mechanism do I see that as consultation?

No. There was not an ability to understand the complexity of the projects that it would affect. There was not an ability to engage with members, get their feedback and channel that through. Fundamentally—and at odds with what Revel was saying—I do not think I was representing my members because I was precluded from engaging with them. There was an announcement. There was an ability for me to give my personal feedback on that over a very short time period for a complicated process. I would not characterise that as consultation and certainly not consultation in the context of such a complicated process as water licensing.

Mr PERRETT: Thank you for making yourself available today. You identified a regulatory impact statement as an important part of the process and what presumably should be part of the considerations. Can you expand on how that would inform the process, particularly to the various parties that are making submissions that see a potential delay with respect to this bill?

Mr Barger: Thank you and I apologise for not explaining the context. The usual process for bringing a bill forward that proposes changes to rights or obligations is that you have a process. Here is an issue we have identified; here are some solutions. There is then a process through the regulatory impact statement of saying, 'Here is how we think it might work. Here is why we think it is the best alternative.' If you look at the explanatory notes for this bill, they identify no alternatives. That is an extraordinary statement. It is really difficult to believe that, with all the intelligence of the Queensland government, there is no other way to address the objectives of the bill other than the bill that we are seeing tabled in a great hurry.

The discipline of a regulatory impact statement is to say, 'Here is half a dozen things that you could try. We don't think this would work because it is expensive,' or it would be too slow or it would require too much time from landholders. You get a ranking of policy issues that then provides a framework for consultation. It may well be that the project proponents say, 'Actually there is not too much uncertainty because we have done some of this other work in previous approval processes.' If there is an ability to recognise that, we can bring that to bear on the decision and it may not be too slow.

It is a way of shining a spotlight onto what policymakers are thinking. Instead of having to delve into the introductory speech and the explanatory memorandum to try to work out what the effect of a tabled bill will be, it is a way of channelling feedback into the development of the legislation before it is drafted. It is a really good framework for providing consultation. It provides a lot more transparency. Unfortunately, with eleventh-hour omnibus bills being tabled, you run out of time to do that which is to the detriment of the outcome of the bill I think.

Mr PERRETT: Presumably through that RIS and the consultative process that is developed, that also gives some of the opponents of some of these projects an opportunity to be directly engaged as well.

Mr Barger: Definitely. They may well say, 'The regulation does not go far enough.' We heard a lot from the previous speakers about escapes and ducking regulation. There is a framework there with some proposals. If you can see some loopholes in there and identify a better solution, then put them on the table. It is a good policy development instrument which, unfortunately, is absent.

Mr KATTER: I asked this question the other week. These are issues I am not all that familiar with. Where I am from there is not a lot of coalmining activity, but with regard to water impacts I always recall the Coral Creek issue which was outside of my electorate but it seems pretty relevant to what we are talking about. Inadvertently, a landholder was affected downstream. I think a prior preapproved mine was expanding and it was alleged that it cut off his water which disabled a hell of a lot of his property. I think it is in QRC's and everyone's interest to avoid those. Perhaps it was one minor anomaly, but it was an issue. From your members' point of view, you are trying to protect them from all these other people opposing it who are outside the influence of the mine, but that fellow fell in that category and he was very heavily influenced by that mine.

Mr Barger: This bill is dealing with groundwater, but the principle of whether you have done an adequate job of assessing who will be impacted by your project is the common one. The process that exists now around the groundwater assessment is to map out what the impacts on the changes in groundwater might be and who might be affected by that. Equally and importantly, if you are not identified in that process there is an ability to say, 'Hang on, my bore is doing something funny. I think I am seeing an effect here.' There is an ability to have an assessment of the bore done. There is a framework for dealing with the assessment of what the projected impacts will be up-front and also an ongoing framework whereby if, as you were saying, the impacts for a project might be different from what was forecast there is an ability for the regulatory environment to adapt to that.

Mr KATTER: If you follow that one through, often if you ask one individual farmer to prove there has been an impact on his bore it is often beyond his financial means. It comes down to a balance of negotiating power between a large mining company and an individual landholder. I believe in this new act there is provision for mining companies to cover the cost of those hydrology assessments, or whatever they are called. Do you agree with that?

Mr Barger: Yes. To put it crudely, the mechanism is effectively to demonstrate that you are not impacting. There is an assessment done. You are right: particularly if you have a really old bore, there will not be good information about how deep it was in, what aquifer it is in. Anecdotally, you hear a fair bit that, when that assessment is done, they find that the bore is not as deep as they thought it was, or perhaps the aquifer that it is draining from is not at the bottom of the bore. Often that baseline assessment process, which is an objective scientific process, is a really good way of putting some facts on the table about the performance of the bore currently and what it has probably done historically. The beauty of that process is that, by putting some facts on the table, you get quite a good basis for having a conversation about, 'If we extend your pump down 20 metres into the aquifer that you thought you were in, you are going to get the flow rates that you were expecting from that bore.' There is a mechanism there to deal with those processes and it has worked fairly well for a long time.

This raft of amendments applies that same framework that has been developed for coal seam gas use for mining use. The aim is to try to make it simpler for landholders so that they are dealing with one regulatory framework. That works really well for new projects. Where it gets complicated is these transitional projects. When you have projects that have been in the assessment mincer for eight or nine years, suddenly coming up at the 11th hour with a new ability to delay the project over information that has already been tested does not sound like a great idea.

CHAIR: Thank you, Andrew. Thanks for your timely comments today.

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

CHAIR: Welcome. Would you like to make a brief opening statement?

Mr Paull: Just a short statement—we have obviously made a detailed submission setting out a number of concerns that we have, particularly relating to the further constraints being placed on underground water rights and the make-good framework. I am happy to answer any questions on those, but I would also like to emphasise some of the comments that Andrew just made about consultation. To give you a parallel, I think the make-good framework is similar in a lot of respects to the one that exists for land access. Both have companies dealing with landholders and negotiating an outcome. When the land access framework was last considered by the government—it was initiated under the Bligh government—they set up an expert panel, they sought submissions, they had direct discussions with anybody who wanted to express a view. They got a very deep understanding of what was happening in practice, what people thought the issues were. They proposed a number of changes to government which, by then, was the Newman government. The Newman government considered it. They supported some of those and then they established an implementation committee, which had landholder groups and resource bodies. They asked that group, which I was on—and I think Andrew was on it, too—how best to implement those items. We provided that advice. Some of the ideas that were initially proposed, which sounded good at first, ended up being dropped as a result of that consideration. We ended up with a package that basically had broad support and has been successful when it was implemented.

Like Andrew just said, the proposals within this bill have not really benefited from that at all. The changes to make-good are based on points that were put into submissions to the committee for the WROLA bill. They have basically been cherrypicked and put into this bill. There was no real consultation with people who are involved in make-good negotiations. There is no deep understanding of what is working and what is not. We would not say that it is perfect; it is a system that has been in existence for only a handful of years. There are things that could be improved to the benefit of everybody. Cherrypicking a few ideas and putting them into parliament I do not think is a good way to achieve that.

Likewise, with the underground water rights, I am a member of the Water Engagement Forum that has just been mentioned. They were first proposed back in March. We all got a series of quite significant changes put on the table on the Monday. We were given 24 hours to respond and told that they would be in parliament the next week. We met with EHP and asked a lot of questions on the Tuesday following. A lot of those questions could not be answered in terms of the scope and intent. Then we basically heard nothing until quite recently when again they were put to the Water Engagement Forum and we were given an opportunity to respond in a very limited window.

These are complicated issues. They are obviously very important to a broad range of people. Progressing them in this manner is fraught with peril. There really needs to be a much deeper consideration of the issues and consideration of all perspectives before we finalise this.

We have said in our submission that we really think that there needs to be a regulatory impact statement prepared. I think there also needs to be some proper consultation with all stakeholders before a call is made on exactly how to proceed. Thank you.

CHAIR: Thank you. In your submission one of your solutions you have suggested is that the bill should be amended so that it is not retrospective and does not further constrain underground water rights for existing activities. Can you give us a bit more information on how you have come to that suggestion?

Mr Paull: The bill suggests that EHP would, in environmental authorities, condition resource activities partly on the basis of past impacts. At the moment, the petroleum industry is able to take groundwater to the extent that it is necessary and unavoidable to produce petroleum. That is found in the Petroleum Act. That is the basis on which projects have been sanctioned. With some very large projects—Queensland's LNG industry—there has been many millions of investment made on the basis of those water rights. This bill proposes that that would no longer continue, potentially, and that it would be further constrained beyond what is necessary and unavoidable on the basis of environmental impacts. Beyond that, it is very difficult to work out exactly how that would be given effect. There is very little explanation in the bill or in the explanatory notes. There has been very little consultation. We do not really have much of an appreciation of how this will affect operations.

CHAIR: Thank you.

Mr PERRETT: On that consultation—the RIS—and the importance of that to make certain that any legislative change takes into consideration and reflects the views of all stakeholders and not just the group that you represent but more broadly some of the opponents to some of these projects, can you just expand on the normal processes that you have been involved in previously to build up to a point where legislative change happens?

Mr Paull: As I said, I think the land access considerations are a really good example. There was a lot of consultation and discussion with anybody who wanted to put a view forward. There was a lot of detailed consideration as to how any proposal would play out in practice. As I said, there were some suggestions that were initially on the table but did not end up proceeding. A lot of them sounded like a good idea at the time and then when you work through and you think about it and you talk to people, you realise that that is not really going to have the intended effect.

As far as make-good goes, we really want to see a system that gives landholders the support they need and provides for timely agreements to be reached, avoiding disagreement where you can. That is basically the objective and that is a shared objective. I do not think that those questions have been asked about these amendments. I do not think that the effect has been fully thought through. For example, with independent hydrological advice, at the moment, a company has to do a bore assessment. They have to get that independently certified by an expert. The landholder can request that that bore assessment be reviewed by the department. You already have two assessments: one by the government and one by the company certified by an independent expert. Does adding a third hydrological assessment assist the landholder? Absolutely, they need to have advice that they can rely on in order to make a decision. The company has to pay for it—accounting support, legal advice and so on—but does adding a third assessment to the existing two really assist the landholder? It is a broad term. What is reasonable and necessary hydrological advice? Beyond that definition, there is no further detail.

In that approach, there is a lot of room to come up with competing assessments, to increase the potential for disagreement, for argument, for lengthening the time taken to reach an agreement. I do not think that that really helps the landholder. As I said, they need some advice that they can rely on and have faith in. I think there are better ways to achieve that. That is the outcome that we want. We do not think that the bill is going to get us there. We think that the bill is going to degrade satisfaction with the make-good system for landholders and for industry and it is to no-one's benefit.

CHAIR: Thank you very much, Matthew, for coming in and thank you for your comments.

Mr Paull: Thank you.

FLINT, Ms Carmel, Campaign Coordinator, Lock the Gate Alliance

CHAIR: Could you please make an opening statement?

Ms Flint: Sure. I just firstly want to say that we support the bill, although we would be happy to see some additional amendments to it. We believe that, in combination with the Water Legislation Amendment Bill, it results in improved groundwater protections when compared with the body of water laws that we ended up with after the Newman government amendments, particularly the Water Reform and Other Legislation Amendment Act. We believe that the water system in Queensland, even with these bills, is still heavily biased towards the mining industry. Our preferred system is one that provides a strengthened water licensing scheme that subjects the water use of mining and CSG companies to strictly defined limits and maintains the Land Court as the final decision-maker.

At present, the regulator system is basically set up to allow unsustainable take by the mining industry and enables them to evade the constraints on groundwater impacts that other water users have to abide by. We are happy to see improvements, and there are substantial improvements in this bill, but it still does not address the fundamental issue that we have of allowing unsustainable take and the dewatering of beneficial aquifers by the mining industry.

The improvements that we are really happy about in relation to the bill are that it requires transitional mines, such as Acland, to obtain an associated water licence and it retains landholder objection rights to those licences. It strengthens the initial groundwater assessment for mines under the Environmental Protection Act, which is significant, because if you are losing the licensing assessment and process you need a better up-front assessment, because that has been shown to be very weak at present. It allows better ongoing scrutiny of the impacts of mining on groundwater over time and it makes improvements to the make-good agreement framework to the benefit of landholders, including a number of amendments that our members and supporters have been asking for for a long time.

Specifically, I would like to refer to this issue of transitional provisions and whether the way that the mining industry has been framing this—as a new round of red tape that they have to deal with—is accurate. As we see it, the statutory right to underground water has not yet been enacted. That has not commenced. At the moment, that licensing provision still applies. Therefore, we think there is a very valid question as to why companies like New Hope and Adani did not apply for groundwater licences some time ago.

When WROLA was passed in 2014, the ALP made it very clear that they were opposed to it and their pre-election promises were to repeal the Newman government water laws. This bill does not quite repeal them but it goes some way to addressing some of the worst failures. The disinterest of those companies in obtaining groundwater licences in accordance with the laws over the last couple of years can only suggest they were deliberately delaying compliance with the regulatory framework to their own ends. Obviously, landholders and communities are often accused of delaying mining companies gratuitously, but I think in this case they have delayed themselves and it is slightly hypocritical for them to now suggest that that is an unfair impost on them. With the lawyers they have and the resources at their disposal, they should have been prepared and they should have been moving through the process.

There are two key amendments that we would like to see to this bill. One is we would like to see the associated water licence process subject to the principles of ecologically sustainable development, particularly because that requires an assessment of the precautionary principle. The reason why caution is required in relation to the granting of these water licences is the huge uncertainty about the groundwater impact of many of these mines, including Acland and the Galilee Basin mines.

With some of the Galilee Basin mines, the discrepancy in the company's own assessments of groundwater impact has ranged from something like that they would intercept 100 gigalitres of water to that they would intercept 800 gigalitres of water. That is an immense discrepancy which underscores the scale of the uncertainty for landholders, and that is why it is absolutely crucial that a precautionary approach is required through the application of ESD principles.

The other thing that we would like to see changed which we think would be a minor amendment is to broaden the definition of the hydrogeological assessments that resource companies are required to pay for in relation to make-good agreements. Hydrogeology is quite a specific term, and what landholders often need is advice from bore drillers or hydrological advice. We believe that could be broadened and that would make a substantial improvement to landholders who are often having to deal with very large costs in relation to make-good agreements.

In particular, in relation to the issue raised previously about bore assessments, for existing bores and assessing bore impairments, the companies cover those costs but in determining what the make good is and whether there is going to be a new bore drilled or some other form of water provided, the landholders usually end up with those costs themselves. That is where this is required to deal with them working out what the solution is for them—bearing in mind that, at the time, their water is being lost in advance so they are in the situation where their bores are dropping, they are trying to survive and they are trying to negotiate agreement with cashed-up mining companies and their lawyers, which is extremely difficult with an enormous amount of stress, and adding financial pressure to that makes it incredibly difficult.

CHAIR: Just touching on make-good agreements, with your campaign and what you do with your group, can you explain a bit more about some of the impediments I guess that some of the property owners have had in the past in relation to make-good agreements? Basically, quite a few people and companies that I have heard from have all said that they are proactive, that they have been doing it for years and that this is just another add-on. Is that true in itself? Have there been a lot of issues?

Ms Flint: There have been a lot of issues. I think one of the difficult things has been the cost. One of the difficult things has been just being in that position of a very weak negotiating position from the outset. Farmers are becoming desperate as their bore water is lost because the projects are allowed to commence, dewatering commences before they get make-good agreements. One of the most well-known cases was George Bender and the problems he had in trying to negotiate make-good agreements and how difficult that was for him and the stress that put him under.

We found that one of the big issues is that a lot of the mining companies, the CSG companies in this case, do not want to pay the expense of drilling a new bore into a new aquifer. That is the most expensive option so there is a lot of pressure to accept lower water security, lower water quality, than what these farmers need to be able to replace the water they are losing. It is quite an extraordinary thing to have an industry come in and be able to dewater beneficial aquifers; it is sort of unprecedented. To put all kinds of pressure on farmers to deal with the finances of that, to deal with the expertise of dealing with the hydrological issues is just incredibly full-on. The government has in some ways just left farmers alone to deal with multinational mining companies to work out how the water consequences of mining are going to be dealt with. That just puts extraordinary pressure on people. We think these steps are important in relation to the make-good agreement framework and we really want to see those changes go through.

CHAIR: Thank you very much. We appreciate your time today.

Ms Flint: Thank you.

LEZAR, Mr Llewellyn, Head, Mining, Adani Mining

MANZI, Mr Hamish, Head, Environment and Sustainability, Adani Mining

CHAIR: Welcome, gentlemen. I invite you to make a brief opening statement.

Mr Manzi: Adani would like to make an outline in support of our written submission so we will not overview everything we have put in that written material. By way of introduction, Adani Mining is a subsidiary of the Adani Group of companies with significant global logistics, resources and energy business operations. Adani is seeking to develop the Carmichael coal project in the Galilee Basin. We are well aware that a water allocation is required for this project to proceed. Therefore, the project is influenced by the proposed changes as put forward in the EPOLA bill.

In our submission we made clear that we do support the broad intent of the bill. We support that, having gone through environmental assessment processes since 2010, so we understand the rigour required for these projects. Our written submission does highlight two things I guess with respect to proposed transitional arrangements. Firstly, the proposed transitional arrangements for an associated water licence for advanced mining projects are likely to result in a duplication of environmental assessment, consultation and third-party review processes with respect to the material that is presented and underlies those processes. Secondly, specifically for our project, we have completed significant environmental assessments over the last five years with respect to groundwater impacts. These have been assessed and approved by both Commonwealth and state agencies. We have undertaken substantial public consultation through that period. The merits of our groundwater impacts have been the subject of public scrutiny in the Queensland Land Court. There has not been a single landholder objection in relation to groundwater issues for our project. It is our submission that the requirements to undergo further processes in the current format of the amendments will result in an unnecessary repetition of that assessment, consultation and review processes we have undertaken.

To highlight the nature of this duplication, I want to summarise the project history in those three key areas—assessment, consultation and merits review. Adani commenced our environmental impact assessment processes in 2010. In 2012 we prepared an EIS and we submitted that to the Coordinator-General for bilateral assessment under Queensland and Commonwealth legislation. The EIS comprises four volumes, many thousands of pages, inclusive of which is around 600 pages of groundwater related technical material. From 15 December 2012 to 11 February 2013—which is roughly 40 business days but two months in calendar terms—government agencies, landholders, community groups, interest groups and stakeholders were provided opportunities for public submissions on the EIS. From that submission, we received 68 individual submissions, 13 of which raised groundwater as a specific issue of concern.

We then compiled a comprehensive submissions report, which we were asked to do by the Coordinator-General, to respond to those submissions. Amongst that matter were technical reports on groundwater. We submitted that material in late 2013. It included six technical reports totalling another 800 pages, all of which touched on groundwater and groundwater related matters. Then a second consultation period occurred with stakeholders from 25 November 2013 to 20 December 2013. It was quite a targeted consultation as well. We had broad submissions, including another 68 individual submissions, 24 of which raised groundwater as an issue. We have been well aware that groundwater is particularly a concern for our project.

We were then instructed to undertake further assessment by the Coordinator-General and we compiled another three technical reports responding to groundwater matters addressing state and Commonwealth requirements of around another 500 pages. Across the whole EIS, we have prepared through our technical experts and others close to 2,000 pages of relevant material on groundwater. In May 2014, the CG evaluation report was issued, and the Commonwealth approval was issued in July 2014 and reissued in October 2015. Both approvals contain very strong and broad conditioning with respect to groundwater monitoring, management, review, offsets and compensation.

Concurrent to this work, Adani had been engaging with landholders on a regular basis, discussing the project, its potential impacts with regards to groundwater and progressing towards reaching binding legal agreements with those landholders whose groundwater reserves were predicted to be affected by the project. These make-good agreements provide a legal framework for ensuring ongoing access to water for landholders and obtaining appropriate compensation should this not be possible.

Adani also progressed the applications for mining leases and environmental authorities under the Mineral Resources Act and the Environmental Protection Act respectively, and both have since been granted this year—the mining leases in April and the environmental authority in February this

year. That process alone included another consultation period of 40 business days, targeted consultation, at the end of which we only received two objections, both from NGO groups. It is important once again to state that we had no objections from landholders associated with the project.

As a result of the objections raised, a merits review hearing in the Queensland Land Court was heard in May 2015. During that hearing there was substantial time and resources devoted to cross-examining both Adani's and the objector's—Land Services of Coast and Country and their legal representatives, EDO—experts on groundwater. Our position was supported by the exhaustive work undertaken on groundwater, the consultation Adani undertook with landholders and the robust and thorough state and federal conditioning on the project. We believe that this significant work contributed to the Land Court recommending that the environmental authority and mining leases be granted as drafted, with no further conditions on groundwater.

From the technical assessment work undertaken to date, the multiple consultation processes and the opportunities for third-party review, Adani's Carmichael coal project is not only an advanced mining project as described by the EPOLA bill but a project that has undergone significant agency, public and legal scrutiny, with strict project conditioning at state and federal levels, no landholder objections to mine approvals, a clear pathway and commitment to make-good agreements with those landholders, and court recommendations in favour of the project.

For these reasons, we express our concern at the potential duplication of process proposed in the EPOLA bill and submit that, should the Carmichael coal project be required to once again undertake these processes, this is unlikely to create any additional socioeconomic or environmental value but will instead result in a longer process with associated costs for both government departments and Adani and consequential delays to the start of the project.

CHAIR: Thank you. I have been asking quite a few questions of different groups about the make-good agreements. Can you explain the process that has happened to date with landholders and make-good agreements and the work that you are doing prior to the project?

Mr Lezar: We started in early 2014. We had a simple goal of saying that we were going to engage with the landholders and talk about the impacts, but the objective was that we were going to make sure they were happy so we did not end up with objections in the Land Court. That was our goal. We looked at the projected impact area and we approached all the landholders—that is 42 properties, circa 37 landholders. We approached them. The approach was that we paid all their legal fees, we paid any geohydrologist fees, hydrologist fees, et cetera, and we have been consulting with them now for the last two years. We have probably more than 60 per cent signed up. Some of those are not interested because it is a fair way out. We went to areas that had potential impact of 0.2 metres, 20 centimetres, which is highly unlikely.

There are some properties there that are just not interested in signing it and, in terms of the impacts, you are talking 20 or 30 years down the track and it has been very successful in our view. We took a simple approach: let us put ourselves in their shoes, so how should we address it? The success of using that approach was the fact that we had no objections from those landholders. The feedback from the DNRM around the actual make good that we have offered is that it is best practice, and that was really the philosophy and the approach that Gautam Adani and the Adani businesses wanted to have around this project. They wanted to have best practice around these sorts of things, so that is the approach that we took.

CHAIR: You mentioned a couple of times that you engaged with landholders. How did you actually go about that process? Have you got a specific manager or someone who dealt with that or was it community consultation and forums?

Mr Lezar: Essentially I had my maintenance manager, who is a landholder himself—he has property just south of there—and an environmental adviser on site who knows the landholders and has been working with them through the project since 2011. The two of them went and essentially took the information, sat down at their homes, talked through that and then started a process. If we needed additional expertise in there, we brought them in. If they wanted to bring in expertise, we brought them in. It was as simple as that.

CHAIR: That is of the 35—

Mr Lezar: Circa 37 landholders. We approached each of them individually. We did not try to overwhelm them. We just kept it simple.

Mr PERRETT: This may have no relevance, but I will be interested to know. I refer to the recent announcement by Minister Lynham, the Minister for State Development and Minister for Natural Resources, with regard to the priority infrastructure project and any discussions that you may have had with him regarding this particular issue.

Mr Manzi: I can answer that question. Adani's understanding of critical infrastructure and the powers that it provides to the Coordinator-General is in relation to the interfaces of infrastructure easements, so things like water, power, gas, telecommunications. For us our mind was clearly on where that would occur on the project, particularly the rail project because we were crossing other infrastructure entities' easements. My understanding is that it is a mechanism which was brought about with the Queensland water grid to make sure those interface agreements can happen in a timely and efficient way. We had not turned our mind at all to how this particular designation of critical infrastructure had any relationship to the water licensing. I think that is a separate matter that has been raised today. It is more in relation to prescribed project status.

Mr PERRETT: I was just intrigued to see whether there was any correlation between the two. Thank you.

Mr MADDEN: This might sound like a strange question, but with regard to your submission dated 10 October 2016 how many pages is that?

Mr Manzi: Jim, let me tell you: there are four pages.

Mr MADDEN: Okay. I just wanted to check that. Thank you.

Mr PERRETT: I have a follow-up question not directly related to that but more broadly, and I touched on it with a couple of other groups previously about the RIS process regarding the impact statements and the benefit or otherwise of that process to deal with some of these issues before this legislation is considered by the parliament.

Mr Manzi: Adani is a member of the QRC, so we do have a strong connection to the QRC and the committees that they have. We have a strong working relationship with government departments and we have worked with government departments over the last five or six years, both the centrally located departments here in Brisbane and also the regional offices. We are always open and available to contribute to those processes. In terms of the regulatory impact statement, we would welcome an opportunity to participate in that process as well.

Mr PERRETT: You would see it as beneficial to the outcomes and some of the issues that you raised with the potential delays for further approvals for the project?

Mr Lezar: Yes, definitely. Give us the opportunity to raise any concerns and unforeseen consequences and those sorts of things. Give us the opportunity to put that forward.

Mr Manzi: I guess the point we make is that there is a test for projects in this transitional space and the bar is set very high. Our project has obviously passed a lot of those stages already in terms of federal and state EIS approvals, mining lease approval, EA approval and progress on make-good agreements. We understand that we need to get approval for water use, so we just want to make sure that that is taken into account.

CHAIR: Thank you, gentlemen, for joining us today.

FONTES, Mr Tony, Coordinator, Great Barrier Reef Divers; Reef Campaigner, Mackay Conservation Group, via teleconference

McCALLUM, Mr Peter, Coordinator, Mackay Conservation Group, via teleconference

CHAIR: Welcome, gentlemen. Thank you for joining us today. I invite you to make a brief opening statement for the benefit of the committee.

Mr McCallum: First of all I want to say thank you to the committee for giving Mackay Conservation Group this opportunity to put our considerations forward on the bill and to say that we generally support the bill. We see that what it does is effectively maintain the status quo. We know that at this time nearly all mining operations in Queensland and all proposed mining operations are required to obtain a water licence, and that includes mines such as Adani's Carmichael mine. Some mining proponents have been working on the assumption that the laws around water will change and effectively remove the requirement for them to obtain a licence, but we think that that is just an example of poor management on their behalf. They should have been considering other options as well, because there have been indications from the government and the people of Queensland that they are concerned about granting unrestricted access to water to any group, especially the state's biggest water users. An example of that is the delay last year in implementing parts of the WROLA Act which showed that the government was considering its provisions at the time. We believe that the amendments in this bill affect expectations rather than any practice.

The bill will restore provisions to various acts and the outcome will be that mining companies are required to apply for a licence to utilise groundwater, just as graziers and farmers are required to. We believe that a careful assessment of groundwater usage through a licensing system is essential to ensure that water is used efficiently and for the correct purposes. Mackay Conservation Group generally supports the principles of ecologically sustainable development for all developments. By that we mean that developments, including mining, should not be undertaken unless scientific assessment shows they will not have a detrimental effect on the ability of current or future generations to enjoy and make use of the environment. We believe that this bill could be enhanced by including extra provisions that ensure that applications for water licences for mining operations are assessed according to the provisions of ecologically sustainable development. We also believe that if there is any uncertainty about the impacts of a proposal then the precautionary principles should apply. By that we mean that if there is a lack of scientific evidence to show that the use of underground water would be ecologically sustainable then the licence should not be granted and the onus to show that the proposed use of water would not cause ecological harm should lie with the proponent.

Mackay Conservation Group supports the provisions of the bill that allow people affected by the granting of a water licence to seek an independent review of the decision by the Land Court. In a democratic society it is important that government decisions can be challenged and rectified if they are found to be incorrect. The decision by the Minister for Natural Resources and Mines to designate the Carmichael mine rail and port project as critical infrastructure undermines this democratic process and could lead to unsustainable use of water in relation to that project. We believe that the amendment bill should include a further provision to ensure that the licensing of water for mines is excluded from decisions of the Coordinator-General and that they remain open to review by the Land Court.

We have spoken to landholders here in Central Queensland who have been covered by make-good agreements for mining operations who hold concerns that their ability to obtain water at the end of a mining operation could be very difficult when the make-good agreement comes to an end. The environment generally needs to be covered by make-good agreements that show that underground water fed wetlands and recharge points are not impacted by a mining operation's use of water. By permitting organisations that represent the environment, including the Mackay Conservation Group, to challenge decisions in the Land Court, then any failure to consider the impact on ecological systems has the potential to be rectified through make-good agreements.

Mines use a lot of water. It is used in their wash plants to separate coal from stones and other non-combustible material. It is used to suppress dust in underground mines, and we have seen the impact of not doing that with the black lung issue recently. It is used on mine roads and conveyor belts. It is used to cool machines. The supply of water is as critical to mining operations as the supply of electricity. Mine operators are people like anyone else. They have no different motivations when it comes to water than the average suburban householder. When water is abundant for householders they will use it to water their grass and clean their car, but when it is restricted they have to start thinking about better ways to reduce and re-use their water. That is the same for miners. When water is available without rules they will use it in any way they can.

By licensing the use of water, mine planners have to consider how water is used. What we see is that in areas of mines where water can be saved and recycled it is. Westland, for example, re-use almost all their water. If miners have free access to water, then they will change the way they consider it when they plan mine operations. Mines are like all businesses that aim to maximise profits, and in recent years we have seen that reducing costs is the most effective or the most widely used method to do that. If this amendment is not passed by the parliament, mining companies will have free access to associated water with no consideration on the quantity of water that can be taken, the source of that water or the way it is used. If a mine operator finds that groundwater is the lowest cost source, then they will use it. This has the potential to significantly impact on the health of ecosystems and the human environment. That is our opening statement.

CHAIR: Thank you very much.

Mr PERRETT: Peter, you mentioned your concern about Minister Lynham designating the Carmichael mine as a critical infrastructure project. How do you see that declaration interfacing with your concern with this bill?

Mr McCallum: It will remove the ability of any affected person to challenge decisions made by the Coordinator-General with regard to underground water for that mine. We know that the Carmichael mine has lower-quality coal than we see in most of Queensland with up to 38 per cent ash—which is all those stones and other non-combustible materials mixed in with the coal—and they would need to wash it to get it to an acceptable standard for export. I imagine they would be keen to make use of that underground water as a means of washing the coal. If the underground water is not used in an ecologically sustainable way—for instance, by recharging the watertable—then we might see that bores for graziers nearby or wetlands are affected by the reduced watertable.

I think it is important that, if a bureaucrat in the government makes a decision, people in the community who either represent the environment or their own business interests should have the right to take that to an independent party such as a court and have a decision made one way or the other as to whether that is really ecologically sustainable.

CHAIR: Thank you, gentlemen. That was a very comprehensive statement so there is no need for any more questions. I thank you both for your time and for calling in today.

HOUEN, Mr George, Landholder Services Pty Ltd

CHAIR: I invite you to make an opening statement.

Mr Houen: I would like to comment on the earlier presentations. Unless I missed it, the mining interests are specifically concerned with the transitional provisions for the continuation of water licensing to authorise the take of water in the dewatering process. I do not think I have heard any concern about the process that will apply to new projects, which is that the take of water that is automatically the result of activities will in future be approved and authorised by way of a particular part of the environmental authority assessment process. That means that in their applications for environmental authorities miners will deal with impacts of the take of water in their dewatering activities and it will be assessed as a component of the environmental authority. That is obviously different to the proposal in the WROLA act, which would mean that they had a statutory entitlement to take water and no authorisation was necessary. For petroleum and gas projects, which now take the water in dewatering because of a statutory right to do so—I think that is in the petroleum and gas act—their take of water for new projects would also be part of their environmental authority and part of their environmental authority application, so the impacts of the take of that water on existing water users will be assessed, whereas it is not at the moment. Unless I have missed it, nobody from the resource industry has expressed any concern about that this morning.

I have not read the submissions because they have not been posted on the website yet. What they are concerned about is the transitional provision, and I am puzzled at that because it would almost universally be the case that in introducing new legislation there are transitional provisions which mean that applications which had begun before the new legislation commences would be dealt with under the old provisions. What they are really concerned about is that they are going to be dealt with under the old provisions, which are that for mining operations in declared subartesian groundwater areas they have to have a water licence to authorise the take of water in a dewatering process. That is really a standard transitional provision that everybody would expect would be part of this legislation and any other legislation making such changes. You do not disadvantage the people who lodge their applications before you pass the changes. They are complaining about being given their normal rights to transitional provisions which is what puzzles me, but I also think that there has been no recognition, particularly from the representative from New Hope, of the fact that in the briefing session between your committee and departmental officers a couple of weeks ago there was a good deal of discussion about this problem of doubling up, which is in a sense what I think New Hope particularly, and Adani also, were complaining about. There is a clear statement on page 7 of the transcript of that hearing by Mr Moor, one of the departmental representatives, that they would not be required to start again. If all that work had been done, then there would not be any need to repeat it. I think that might have been overdramatised.

My primary submission is that we have finally come face to face with the insistence of Environment and Heritage Protection that water supply is not an environmental value. My recollection is that ever since the then EPA became responsible for the environmental management of mining in around about 2000 its policy has always been—and still is—that water supply is not an environmental value. How can you justify in common-sense terms or legal terms—or whatever other battleground you choose—that an environmental value is water quality? What is the point of having an environmental value for water quality if you take no interest whatsoever in the impacts on water supply? It is not going to help you if the book says water quality is an environmental value if the water has all been lost due to the impacts of mining. There is no point in having a protection for water supply if you are not also protecting water quality. They are inseparable twin values.

Many, many times over the years I have asked people from the EPA, now the EHP, to tell me why they hold this policy. I have never yet received an explanation, and I am not really expecting to get one either because I do not see how there could be one. The problem with that is that the assessment process for new applications for both mining and petroleum will be decided according to a set of criteria that are in the two sections I have mentioned in my submission, which are based entirely on water quality principles. They do not recognise water supply impacts at all. I believe that in practice it simply will not work because of that major defect. It is a serious flaw. I do not really even believe—not being a lawyer—that the authority that EHP grants, based only on water quality parameters, is actually going to authorise environmental harm on water supply. An environmental authority authorises environmental harm, but only for the activities that are specified. In hearing an application for a new environmental authority for a mining project as to the dewatering component of it, EHP will not be able to take any water supply issues into account because the criteria exclude them and the authority that it grants, I suspect, will not in a legal sense authorise the environmental harm of damaging the water supply. My submission says that I strongly believe that the bill is a good

step forward and should be passed, but only if it is first amended to make sure that the criteria for deciding these new dewatering authorities includes water supply impacts as well as water quality impacts.

May I take a minute to emphasise the make-good issues? You will see that in my submission I have firstly given a comprehensive explanation of dewatering and what it actually is as I understand it, because I thought that might be informative. I have given some detail about the ongoing dialogue that I have been having with the government about the make-good system. I have included a copy of a make-good agreement that was first developed by myself and a lawyer for one of the coalmining companies. It has since been successfully adopted in a number of other mining projects. I have found coalmining companies by and large to be cooperative, sensible and constructive about make-good agreements. You will see that my agreement—if you can find the time to look through it—illustrates what is really required and how terribly, terribly important it is that any make-good system has a foundation of fact. You have to have measurable criteria for the baseline of an individual bore and for any trigger values which will indicate to you if there is something going wrong and for the interpretation of the data, because hydrogeology is a very, very obscure science which is prone to huge variations in opinion and assessment. A friend in the resource industry says, 'Why would you need a second opinion on hydrogeology?' I can tell you that, apart from valuation, it is one of the most inexact sciences that we use, but you have to use it so you need that provision for the hydrogeology advice. I wanted to illustrate that make-good is not a mug's game: it is a very technical issue. What is really radically wrong with the government's make-good system is that it relies on broad circumstantial evidence as to what somebody thinks the bore might have been capable of before the mining started, and that is not going to cut it. It will be challenged in court and it will get nowhere. You have to have the facts to the standard of proof that will apply if it is decided in court.

CHAIR: Can you explain to me who Landholder Services represent and what you do?

Mr Houen: It is a straight-out consulting company that represents landholders primarily in relation to the impacts of resource developments and related infrastructure. I work for clients all over Queensland and help them respond to resource applications. I represent them in the Land Court and help them with their negotiations with resource companies for settlements. I help them with the implementation of make-good agreements, with agreements relating to resource activities and their effect on organic primary production—pretty much anything to do with the impacts of resource industries.

CHAIR: One of the previous speakers said farmers feel as if they are on their own, but they are not; there are service groups out there who can help them but it costs them.

Mr Houen: Definitely, yes. That is correct.

Mr SORENSEN: You talked about the capacity of some bores and some bores do rely on rain to fill the aquifers up again. I have had properties where bores have run dry in a drought, so what is the capacity of that bore in the first place? Can you explain that a little bit more please?

Mr Houen: If you can find the time to glance through that make-good agreement that is part of my submission, it is all there in chapter and verse. Here is a scenario. The mining application is active. In order for the landholder to protect himself properly, it is absolutely essential that before the mining activity starts there is a proper baseline assessment. It has to be an assessment which includes the sustainable yield of the bore. There is a sort of short version test of that is sustainable yield is too difficult. You have to pump the bore for six hours using a bore that is capable of putting the bore under stress. All you can measure its capacity on the day. It requires involvement of an expert hydrogeologist. All of the start-up needs to be interpreted by somebody who really knows what it is about. The hydrogeologist who is doing a job properly would probably identify any issues such as declining water level in the aquifer or the seasonal situation. Having first established the baseline as at day one, then there has to be—this is not in the existing scheme; this is one of the things that is wrong with it—monitoring considered along with climatic data as to the rainfall and what is assumed to be the recharge, where the aquifer recharges and the situation there. You build up the data and you have established trigger points at the very beginning. You keep those trigger points under review for the first couple of years and that sort of thing so you get to understand the bore and its actual capacity, not just its water level.

It is absolutely naive to believe you can manage a make-good system based only on water levels. They are part of the story, but they are not directly related to loss of yield. They are one of the things that you have to take into account, but they are not a reliable measure of change in the capacity of the bore. It is all there in chapter and verse if you care to read it.

Mr KATTER: In terms of the hydrogeologist, is that pure science or does it lend itself to interpretation? From the point of view of the landholder, if you have one hydrogeologist doing the bulk of his work for the mining company, of course you are going to have scepticism from the landholders, which cuts to the point that APPEA was making earlier when they asked why would you need a second opinion? From the point of view of the miner you might say how can they have approved that many if it is not an exact science? Is there a fair bit of argy-bargy in your experience in the court process?

Mr Houen: Yes. I do a lot of objections work with hearings in the court and over the 26 years or whatever it is I have worked with and against a lot of hydrogeologists. You are absolutely right; there is a lot of room for disagreement. You would expect to find that if you engage a second hydrogeologist there will be a difference of opinion. Obviously, like any expert evidence, if the dispute has to be resolved by a dispute process—and you will see in my make-good agreement the dispute resolution process is all the way along the line—ultimately, a third party, somebody as an arbitrator in effect is going to have to decide who is right and who is wrong. There really is no escape from that. There is plenty of room for disagreement about groundwater and hydrogeology and you cannot be put off by that. It is capable of resolution by the proper methods.

Mr MADDEN: I want to clarify a couple of things with regard to your submission. I have a document in front of me that has your business name on it, but at the top it has 'submission part 2'.

Mr Houen: I beg your pardon. It might have been that I have reused the make-good agreement—

Mr MADDEN: That is the opening one where it says 'submission, Agriculture and Environment Committee, state parliament, Environment Protection (Underground Management) and Other Legislation Amendment Bill, Mr George Houen, Landholder Services'. Should I just ignore where it says 'part 2'?

Mr Houen: I cannot actually see it on my copy, but yes please, because it has only one part. I am sorry if we created any confusion there.

Mr MADDEN: I just wanted to confirm there was no part 1.

Mr Houen: No.

Mr MADDEN: We very much appreciate that you have attached the make-good agreement that you have spoken about. It is good to see it.

Mr Houen: Thank you.

Mr MADDEN: At the back of your submission there is a document headed 'Proposed reform of Water Act, chapter 3, Water Act' and it is dated 2015.

Mr Houen: Yes.

Mr MADDEN: Did you mean for that to be attached to your submission?

Mr Houen: Yes, I did. There were earlier hearings by the infrastructure et cetera committee into the water legislation amendment bill. At that point there was advice to the committee from the departments that the make-good system in chapter 3 of the Water Act was going to be reviewed. That submission to the minister was made telling him that I appreciated the fact that they had agreed to review it and giving him some advice in advance of what I think they need to be looking at in the review and why I think it preferably should be done by an independent person who is not the department and who is not me. I am somebody who claims to know a bit about make-good agreements and there really needs to be somebody who comes into it with that independent approach.

Thank you for the opportunity; I did hope to say today that I have not heard any more about that promised review. I do not know whether the items that were referred to as having been cherrypicked are the review that I did not ever get to participate in or whether it is still to come. The Minister for Natural Resources and Mines said he was writing to his colleague the Minister for Environment to ask that they do include me when they have this review, but I have not heard anything about it.

Mr MADDEN: There was an election a few months later in August. That might explain it.

Mr Houen: That could have been it.

Mr MADDEN: Is the agreement registered with the court or is that simply—

Mr Houen: It has been developed over the last six or seven years. Every time I propose it to another mining company, more lawyers have another look at it and we finetune it and that sort of thing. As I have explained in the submission, the origins of it go back to 2004 when the petroleum

and gas act was first introduced with the rudimentary make-good provisions in it. It fairly rapidly became apparent to me that they were just the tip of the iceberg and you have to be much more comprehensive and make provision for the collection of all of the appropriate facts and data for a proper interpretation of that with proper trigger points to ring the alarm bell if there is a deterioration in the quantity or the quality of the water and that sort of thing. To my mind, an effective agreement has been in place in its first use for the last six or seven years in an area where it is not a matter of if the bores will be damaged but when. It is working.

CHAIR: Thank you, everyone. Ladies and gentlemen, the time allocated for today's hearing has now come to an end. Officers from the Department of Environment and Heritage Protection and the Department of Natural Resources and Mines will now provide a public briefing for those who are interested. We anticipate that many of the issues that have been raised today will hopefully be addressed by departmental officers.

Committee adjourned at 1.09 pm