INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

Members present:

Mr J Pearce MP (Chair)
Mr CD Crawford MP
Mr S Knuth MP
Mrs BL Lauga MP
Ms AM Leahy MP
Mr AJ Perrett MP

Staff present:

Dr J Dewar (Committee Secretary)
Ms M Telford (Assistant Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE MINERAL, WATER AND OTHER LEGISLATION AMENDMENT BILL 2017

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 6 SEPTEMBER 2017

Brisbane

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Committee met at 9.30 am

CHAIR: Good morning. I declare open the public briefing for the Mineral, Water and Other Legislation Amendment Bill 2017. I thank you for your attendance here today. As you all know, I am Jim Pearce, member for Mirani and chair of the committee. Other committee members here with me today are: Ms Ann Leahy, deputy chair and member for Warrego; Mrs Brittany Lauga, member for Keppel; and Mr Tony Perrett, member for Gympie. Those here today should note that these proceedings are being broadcast to the web and transcribed by Hansard. Media may be present, so you may also be filmed or photographed.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. Witnesses should be guided by schedules 3 and 8 of the standing orders. Before we commence, could you please switch off your mobile devices or put them on silent mode.

I now welcome representatives of the Department of Natural Resources and Mines and Department of Environment and Heritage Protection.

DOUGLAS, Mr Jason, Acting Director, Strategic Water Policy, Department of Natural Resources and Mines

HINRICHSEN, Mr Lyall, Acting Executive Director, Mineral and Energy Resources Policy, Department of Natural Resources and Mines

HODGMAN, Mr Laurie, Director, Environmental Policy and Legislation, Department of Environment and Heritage Protection

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

WISKAR, Mr David, Executive Director, Water Policy, Department of Natural Resources and Mines

CHAIR: Would both departments like to make an opening statement or just the one?

Mr Hinrichsen: We will have a statement from the Department of Natural Resources and Mines. Then if you have any questions that particularly relate to the component that the Department of Environment and Heritage Protection look after, my colleague Laurie will be happy to look after those. Thank you for this opportunity today. My name is Lyall Hinrichsen. I am the acting Executive Director of Mineral and Energy Resources Policy in the Department of Natural Resources and Mines. Thank you for this opportunity this morning to provide the committee with a briefing on the Mineral, Water and Other Legislation Amendment Bill 2017.

This is an omnibus bill that amends a number of resources acts to implement recommendations from the independent review of the GasFields Commission Queensland and to improve the operation of various pieces of resources legislation. It also improves the transparency and operational flexibility in the water planning framework, and my colleague David will provide a brief presentation on the water component at the conclusion of my opening remarks.

In relation to the resource act amendments, in his independent review of the GasFields Commission of Queensland Professor Robert Scott made a number of recommendations to improve the statutory negotiation and dispute resolution processes associated with both conduct and compensation agreements and make-good agreements. I know that we have briefed the committee on a number of occasions now in relation to various components of Professor Scott's report. This particular bill proposes to amend the Mineral and Energy Resources (Common Provisions) Act 2014 and the Water Act specifically to implement recommendations Nos 4, 7, 8 and 9 of Professor Scott's review.

The bill proposes to implement recommendation No. 4 of the review by removing department run conferences as a dispute resolution option within the statutory negotiation process for conduct and compensation agreements. Currently, these department run conferences are available to parties as a form of formal dispute resolution which the parties may undertake instead of alternative dispute resolution. Where parties participate in such a conference but they fail to reach agreement they may apply directly to the Land Court for a decision on the conduct and compensation agreement.

In his report, Professor Scott advised that these conferences were not a satisfactory precursor to proceeding directly to the Land Court for determination. These conferences will still be available to the parties. Quite often they are a mechanism by which parties can obtain information about the process. They will no longer be a statutory prerequisite to proceeding to the Land Court for a hearing on a conduct and compensation agreement.

Recommendation 7 provided that if the parties cannot agree on a type of alternative dispute resolution process or the practitioner who would undertake that, the parties should be able to refer the decision to a third-party decision-maker. This recommendation is implemented in the bill with the parties able to make application to either the Land Court or to a prescribed ADR institute for a decision on an ADR type and/or a facilitator.

To implement recommendation 8 of Professor Scott's review, following unsuccessful negotiation and ADR of a CCA and a make-good agreement by the parties, by mutual agreement they will have the option of going to binding arbitration as an alternative to the Land Court. The bill also changes which party is responsible for the costs of ADR processes. Currently, it is the party that issues the ADR election notice who is responsible for the cost of the ADR facilitator. Consistent with recommendation 9 of Professor Scott's review, the resource authority holder will be responsible for the costs of the ADR facilitator.

The bill also ensures that a resource authority holder remains liable to pay a landholder for necessary and reasonable accounting, valuation and legal costs incurred in the negotiation and preparation of a conduct and compensation agreement. This liability will now apply under the provisions of the bill where negotiations do not result in an agreement and has also been extended to include the negotiation and preparation costs of a deferral agreement between the parties. Furthermore, in line with recommendation 9 of the independent review, the bill expands the liability to pay a landholder's negotiation and preparation costs by including a liability to pay a landholder for necessary and reasonably incurred costs of an agronomist. As recommended by Professor Scott, the inclusion of agronomist costs within this liability will assist landholders to evaluate the impact of the proposed activities on the landholder's land. The Land Court will also be conferred a new head of power to determine whether accounting, valuation, legal and now agronomist costs were necessary and reasonably incurred in the negotiation and preparation of the conduct and compensation agreement. Again, that will also apply regardless of whether a final agreement has been made.

The bill also makes a number of amendments to improve the operation of resources acts and to make them more flexible and responsive. With regard to the Land Court, the amendments will remove existing provisions from the Mineral Resources Act 1989 that provide for the automatic referral of unresolved compensation agreements for new and renewed mining leases and mining claim applications. This means that the Department of Natural Resources and Mines will no longer be starting legal proceedings on behalf of either miners or landholders, as is currently the case. The bill also will remove ineffective minor penalties which are up to five penalty units and the Land Court appeals associated with the application of those penalties for prospecting permits and authorities to enter land for boundary definition purposes under the Mineral Resources Act. The ability to cancel a prospecting permit or the authorisation is retained to ensure appropriate compliance action can be undertaken.

The bill also clarifies the activities that can be undertaken on an access under the Mineral Resources Act. An access basically connects the mining tenement, to the mining lease, with a public road. The allowed activities will only be the transport of minerals and things reasonably necessary to conduct the authorised activities for the tenement and constructing road transport infrastructure to the extent that it is reasonably necessary.

The bill confirms that safety provisions in the Petroleum and Gas (Production and Safety) Act 2004 also apply to the Petroleum Act 1923. Amendments also ensure that safety provisions in the industry developed overlapping tenure framework for coal and coal seam gas operate as intended. There are also a number of minor and consequential amendments to the resource acts which will improve and streamline their administration, reduce red tape, modernise drafting style and correct some technical errors.

Through the development of the bill, the Department of Natural Resources and Mines and the Department of Environment and Heritage Protection have consulted with industry, landholder and environment peak bodies. Overall, stakeholders were broadly supportive of the amendments associated with the resources components of the bill. Now if I may, I will hand over to my colleague David to address the water components of the bill.

Mr Wiskar: Good morning. As Lyall mentioned, my name is David Wiskar, Executive Director of Water Policy in the department. As earlier mentioned, this bill provides the opportunity to improve transparency and operational flexibility under the water planning framework. The bill introduces an obligation for the water related climate change effects to be considered not only when making water plans but also when making new water use plans. Explicitly addressing climate change in water planning will continue to ensure that we utilise best science in our water planning and to clearly consider climate change risks and support adaptive response strategies. When you consider that climate change indicates changing rainfall patterns—sometimes it is more intense rain and sometimes it is less rain—you can see the importance of including climate change in our water planning arrangements. This work also aligns with the Queensland government's commitment to the climate change adaptation strategy and it mirrors the approach reflected in the Commonwealth water legislation and also the national water initiative.

The second important part of the changes proposed is to recognise Aboriginal people's and Torres Strait Islanders' close cultural connections with the land and the water and the significance that water resources play in their lives. The bill introduces the inclusion of cultural outcomes in water plans, allowing for these cultural values to be recognised and protected. These cultural outcomes will be achieved and protected through cultural environmental flow objectives in the same way as social, economic and environmental outcomes are and as an equally important consideration before allocating water resources. To successfully include cultural outcomes, continual consultation will be undertaken that combines the current science with Aboriginal people's and Torres Strait Islanders' immense ecological knowledge and understanding.

The third important part of the proposed bill is that a number of water plans set aside a strategic water infrastructure reserve. Currently, this water remains unutilised until it is required for its identified purpose. The bill aims to better utilise this water by providing for the temporary release of water from strategic reserves for other uses. An important feature of this amendment is the licence under which the water is released. It is granted for up to three years and at the end of the licence term the water returns to the strategic water infrastructure reserve. The process for releasing this water is the same process that is used for releasing unallocated water.

The bill provides a new power to the minister or chief executive. This power allows in emergency situations for a directive to be given to a relevant entity about actions to prevent or remedy a water quality issue. This change is a result of some of the cyclone events that we have had and would only be used in an absolute emergency and when other provisions under legislation could not achieve the objectives.

The amendment provides the flexibility to manage water quality issues when urgent action is necessary and not sufficiently provided for in a planning instrument. Consideration of the suitability of other mechanisms to deal with water supply emergencies and water quality incidents will be ascertained in close consultation with relevant agencies. To maintain application of this directive power, the minister or chief executive will be required to prepare and publish a report about the water quality incident including the circumstances under which this urgent direction was given.

In addition to the key amendments discussed, the bill also includes a number of amendments that further improve operational effectiveness. These include the process to release unallocated water held as general reserve under a water planning instrument to be prescribed in a regulation. This amendment means that the detailed and complex process for release of unallocated water stated in older water plans may be replaced with a more streamlined process.

The bill provides for seasonal assignment of water allocations for part of a year and a requirement for resource operations licence holders to collect and publish seasonal water assignment sale price information. The bill also provides for a person other than a licensed water bore driller, such as the landowner, to carry out water bore repairs up to 1.2 metres.

The legislation further provides for a regulation or water plan to declare underground water to be overland flow water where the two resources are highly connected and difficult to manage separately. Further amendment allows a planning instrument to limit the take of overland flow that is contaminated agricultural run-off without affecting any other statutory right to take this type of water.

Further amendment clarifies that compensation payable for a reduction in an allocation's value applies for the life of the plan. This amendment makes a technical change to the legislation that allows for the minister to extend the plan and ensures that that coverage is still in place.

Further amendment includes a referral panel to now consider environmental management rules contained in a resource operations licence and allows a resource operations licence holder when a dispute about an amendment to these rules occurs to request that it be referred to the referral panel. Another amendment provides for all owners of land to which a water licence attaches to be notified when a draft water entitlement notice is released which proposes to convert the licence to a water allocation.

Further amendment clarifies how water licence dealings are processed if land changes ownership either partly or wholly. A final amendment prescribes that an application for a dealing to relocate a water licence can only be made if provided for in a water plan, a regulation or a water management protocol. It also clarifies that these applications are made, assessed and decided by the process prescribed in the regulation.

Development of these provisions has involved consultation with 21 key stakeholder organisations through the department's Water Engagement Forum. I acknowledge the significant amount of time that those bodies and people have put into helping us craft these amendments. Many of these amendments have come through request and feedback from water users and they have provided that input to the department to put forward these proposals. I am pleased to advise that organisations represented on the forum have provided general support for all of these provisions.

CHAIR: Thank you, gentlemen. I think you both finished off on some reflection on the consultation process. Can we get a clear understanding of who you consulted and how you consulted?

Mr Wiskar: Our Water Engagement Forum contains people from all significant peak groups—representatives of farmers groups, the resource sector and local government, the Australian Bankers' Association, the Local Government Association of Queensland and a range of conservation groups. As I said in my opening, there are about 21 groups represented in total. I can table the full list, but it covers all significant aspects of the Queensland economy and Queensland society.

CHAIR: Was a lot of that consultation face to face?

Mr Wiskar: It was done over a series of face-to-face meetings. I think it is important to recognise that many of the amendments came from feedback that those groups had provided to the department initially. They were then provided drafts of the changes. Their comments were taken into account as we crafted the legislation, and as we did it we attempted to deal with any issues that they raised in the drafting process. It was over an extended period. There were a number of face-to-face consultations and a review of documents and written submissions.

Mr Hinrichsen: Mr Chair, you would have noted that the explanatory notes contain details of the stakeholders that we have consulted with, and it is an extensive list. We would also point out that a large number of amendments related to the resources acts are derived from Professor Scott's report. Members, I am sure, are familiar with the process that Professor Scott utilised. There has been a lot of consultation around the processes associated with getting better dispute resolution around conduct and compensation payments and make-good agreements. The courts will always have a place there, unfortunately. Most of Professor Scott's recommendations recognised the role of the court but also identified mechanisms by which disputes could be resolved in an effective, efficient and, ultimately, amicable manner prior to people needing to resort to briefing their legal representatives to take a matter to court.

Earlier this year, in July, we released an exposure draft of the resource provisions of the bill to a large number of stakeholders representing the various sectors. You will see those stakeholders identified in the explanatory notes on page 11. A number of stakeholders sought face-to-face discussions following that. We certainly accommodated those requests for face-to-face discussions about various aspects of the bill, both in Brisbane and regionally where some of those organisations are based. We also received written submissions from a number of stakeholders which we have taken into account in refining the provisions of the bill before it was finalised and introduced.

Mr Wiskar: With your indulgence, Mr Chair, a point I missed in my earlier answer was around the engagement with Indigenous groups. Separate to the Water Engagement Forum, which was probably our primary activity, we did a deep dive into consulting with Indigenous communities about the changes there. We had separate engagement with a total of 19 groups and that involved some regional activity as well as a series of face-to-face meetings and workshops. That was something that I neglected to include in my earlier remarks.

CHAIR: I might start with some questions on the climate change considerations in water planning. I have not used these terms very often in the past, but it is something we certainly need to take into consideration as we move forward. I am interested in the importance of knowing what water is available. Are your calculations based on rain events for the coming wet season or is it a history that you use to get a formula for the four-year plan?

Mr Wiskar: The modelling that is taken into account in planning has to necessarily be over a history and it has to be longer than one year because of climatic variability that is very much a part of water management in Queensland. The changes start to look at the risk around potential changes to rainfall patterns in the future. It starts to ask questions about how we might consider those changes.

In a general term the climate scientists tell us that this is still something they are understanding, but two key things that I think we can point to are the likelihood of more intense rain—and I guess in the end that will lead to potential flooding impacts—but, equally, changes in rainfall patterns. The climate scientists tell us that will be different wherever we are. When individual plans are prepared they will take into account the history, but they will start to think about what might happen in terms of those future patterns and try to make allowances for that. It is a risk based approach, really.

CHAIR: Risk based?

Mr Wiskar: Yes. To clarify that point, the modelling is not risk based; it is based on data. In looking at climate change, the issue of the potential change to the climatic patterns is part of what we have to start to consider.

CHAIR: The explanatory notes to the bill which I have in front of me state—

The Bill proposes to enhance the water planning provisions of the *Water Act 2000* to better recognise the importance of water resources to Aboriginal peoples and Torres Strait Islanders. Amendments in the Bill will support the Minister in preparing water plans by providing for cultural outcomes to be specified separately from economic, social and environmental outcomes.

Could you explain the cultural outcomes for us?

Mr Wiskar: Perhaps the best way to explain is to give an example. In each individual community the culturally important factors will be different. It might be access to fishing holes and the ability to see fish stocks retained as they would have historically been. In other communities it will be around more deeply engrained things in culture in terms of special places and special waterholes that need to be protected for the significance of ceremony. Those things are very specific to each of the individual communities. It will be different for each of the communities what they place priority on in terms of cultural significance.

CHAIR: How will those be protected? You mentioned that there might be some specific waterholes that need protection. If you have a serious extended dry period, those waterholes will be in danger anyway. I think you are putting a lot of pressure back on the minister, in the preparation of the water plans, to know what is the right thing to do here. Are you going to restrict access to that water if it is needed?

Mr Wiskar: The way that the water plan will effectively work is to set aside some cultural water for the Indigenous folk as part of the planning framework, in the same way as it sets aside water for environmental purposes. Obviously, that gets done in a broad sense as the plan is prepared. The minister will sign off on the plan, which will protect those waters the same as it protects environmental waters currently.

CHAIR: I am a little concerned about how the minister is being asked to sign off on a document when this is really pretty broad. This is not a simple one, two, three; it is dependent on weather conditions and flows in the systems. I will leave that one with you.

Mr Wiskar: That is always the case for the water. When the models are prepared, the climatic conditions are considered in the preparation of the models and the way that the water is allocated across the various priorities of the plan. That is the same as it is for other waters that we have allocated. Now we are saying that this is a priority as part of that process.

CHAIR: Did you say that underground water is to be declared overland flow? That is really interesting.

Mr Wiskar: In particular instances, groundwater systems and overland flow systems are interconnected. A particular example that we have is in the Stanthorpe area. It is very difficult to separate those, so treating them as the same in those particular instances does make sense, yes.

CHAIR: I come off the land myself. I know that underground water regimes can change between you and me. It concerns me that you are saying that underground water is to be declared overland flow. That would vary in a lot of situations where the overland flow in one particular area is a lot more significant than it is in another area. How is that going to impact on underground water that can come from thousands of kilometres away? How can you pull them together?

Mr Wiskar: With your permission, Jason Douglas has been working on this for me. He has been specifically involved in the Stanthorpe area. I will ask him to address that in the Stanthorpe context.

Mr Douglas: In relation to the Stanthorpe example that David referred to, you have very sandy soils and you have very shallow groundwater aquifers. Where development can occur, the department already manages the capture and take of overland flow under the water planning framework. At the moment, groundwater in that planning area is not managed, so presently there is an opportunity for storages potentially to be modified or changed. The shallow groundwater that is in the sandy soil could be intersected by the take of that overland flow water. A hillside storage may be taking not only the run of water that comes over the land but also the shallow groundwater. We have notifications from the landowners in relation to that overland flow capture. We are not looking to put another layer of regulation and management over those existing works. This is a way of dealing with it, all in one.

It is not too dissimilar from the Water Act, which already provides for the management of groundwater as surface water. You may have a creek that is flowing along and beside that creek there might be strong linkages to groundwater. If people were to construct bores adjacent to the creek, they could impact on those flows. It really is a fit-for-purpose mechanism that would be applied to a particular circumstance in a water planning area.

CHAIR: It is not a one-size-fits-all sort of thing; it can apply in different locations and different situations?

Mr Wiskar: Very much so.

CHAIR: Okay, that helps a little as I was concerned.

Mr Wiskar: Certainly it is not intended to be a blanket provision. It is a tool to be used in particular instances. In the Stanthorpe situation, certainly the discussions with stakeholders have indicated that this helps to clarify the situation for users.

Ms LEAHY: I want to come back to the data that is used in the model in relation to assessing climate change. From where does the department get the data for the model?

Mr Wiskar: There is a wide range of data sources. Obviously the Bureau of Meteorology is a significant source. The department has a wide range of data-gathering activities, and water users are required to measure flows and data as well. There is a wide source of data. The scientists and modellers of DSITI access that data from all of those sources and then use the models to make sense of what is happening in each area.

Ms LEAHY: The bill proposes to strengthen climate change contributions in the water planning framework, making it an explicit requirement that the minister consider the water related effects on climate change. When does the water entitlement holder get consulted about that particular information?

Mr Wiskar: There are significant processes in the preparation of plans that involve consultation with water holders. When we develop a plan we develop a consultation process with local stakeholders, and they have input throughout that process as we go through the various assessments. Typically those assessments involve the science on the water modelling side of things, but we also do some significant bodies of work around the economy of the region and other key things that stakeholders are wanting to take into account in that planning process. The stakeholders are involved throughout the development of the plan.

Ms LEAHY: Say there is a situation—and there probably are some—where the data that has gone into the model is incorrect in relation to climate change. If you are using the Bureau of Meteorology, I can tell you there are plenty of inconsistencies across regional Queensland. If the minister has to take into account that incorrect data, what can he do? Can he refer that back? Can he refuse to have that data in place under this legislation or does he have to take on board incorrect, ungrounded or unproved data?

Mr Wiskar: Typically when a water plan is produced there is active data collection happening as part of the process. One example that we are involved in at the moment is work in the Lower Burdekin. We have scientists in the field deploying and capturing data that has been deemed as relevant to dealing with the water planning issues. As part of the process of developing the plans, we

can be gathering more scientific information and more water data, and that is part of what we are doing. Obviously, to get historical data we need longitudinal data sets. Obviously, we do rely on key agencies such as the bureau for those longitudinal data sets. I might throw to Jason to see whether he has anything to add to that.

Mr Douglas: To add a little further in relation to the engagement with stakeholders, when we undertake a review of a plan the minister will release a statement of proposal. That is a public document. As part of that the minister will take submissions. That will set the scene of what is in scope for that water plan. Then, as part of the engagement between the department and stakeholders, user groups might be established and the plan is developed to a draft stage. There is another formal step for the minister to review the community's input to that draft plan as to how that plan would be managed. By the time we get to that draft stage, there will have been the opportunity to build in the local community issues. Along the way, the objective of that engagement is that it be two-way. We are able to provide information across the range of economic, social, cultural and environmental issues for that community to consider in terms of what the plan will address.

The Department of Science, Information Technology and Innovation is the primary agency for which our hydrologic modelling is undertaken. As David mentioned, that group will look at the longer history of stream flow, rainfall and evaporation data that we have. They will also look at the projection of what would be proposed, to look at the climate change risks to a particular catchment or water resource, taking into account that we have a long series of hydrologic data. Some of that may be extended over 100 years. Within that period you have very wet periods and very dry periods. The climate change or potential climate change risks would provide pointers for the minister to consider the potential effects of the risks to security of water supply and water management approaches within a given catchment.

Ms LEAHY: I will use the Quilpie Shire Council area as a classic example. I think you are probably aware of some of the anomalies and the issues that have occurred in recent times in relation to Bureau of Meteorology data and rainfall data, or lack of, in that shire. If you do not have that, do a Google search of 'Quilpie' and you will find it. When a situation arises like that, where it is absolutely clear that all the surrounding areas have good data and a particular area does not, what mechanisms does the minister have? Out there you have a catchment that will have a water management plan. What mechanisms does the minister have to say, 'We know there are issues here. There is not sufficient data to support some of the other theories. We do not need to take that data into account.'? What are the mechanisms?

Mr Wiskar: I think we have covered quite well the process of how water planning gets done. The only thing that I would add is: if there are information gaps as we are going through that process of developing the plan then we can deploy scientists out there to try and look at the problem of the data gap to try and make good on that. We also have fairly robust conversations with the Bureau of Meteorology about the types of things that they should be doing into the future. It is impossible to undo history—let us say there is a gap in a particular area; that is a fact—but what we can do as part of preparing the plan is look at what information we can gather. Some of that can happen from measurement, but some of it can also happen from observation—historical photos and those sorts of things can start to give an indication—and we can get the scientists to start to take those things into account.

Ms LEAHY: I might move on to the cultural outcomes to be included in the water plans. Can you tell me how those water plans will interact with existing Indigenous land use agreements and why an ILUA was not seen as being sufficient to provide that sort of access that you were looking at and talking about earlier?

Mr Wiskar: One of the issues in moving forward with this is how to have the best interaction with Indigenous peoples, and I think linking into those land use discussions certainly is a way to do the engagement process in a way that makes sense. That certainly is the direction we are heading in with regard to those processes. What we are doing here, however, is setting in place the allocative process in the water planning—the engagement comes after we have made that water available in the plan—and it is then how we get groups to use that. What we are doing at the moment is looking at a number of different case studies around how that might go forward in a practical sense with Indigenous communities. To come to the core of your question, the agreements under ILUAs are a good method of working out which people we should be talking to, because obviously their rights are acknowledged by that process.

Ms LEAHY: Why do we need to have this additional water planning mechanism if the ILUA can deliver a very similar outcome for Aboriginal and Torres Strait Islander people? Why are we having two processes? Are they duplicating?

Mr Wiskar: No, they are not, because effectively we have to have a mechanism in our act to make the water available. With regard to the role of the ILUA, having made the water available in the plan, the next step in the process is how we get community to use that water. We have talked today about cultural and social outcomes, but there are also potentially economic outcomes for a community. Once we have made that water available via the planning process, that is the next step, which is: practically what do we do? With regard to the need to change our legislation, when we prepare the plans the water is there and protected. That is why it is in this legislation.

Mrs LAUGA: Thank you for being here this morning. I have a question about the requirement for notification. With respect to the compensation agreements, it says that notification will provide a nine- to 15-month period for the landowner and miner to negotiate a new compensation agreement. I just wondered if the department conducted consultation on the time period with stakeholders and what the feedback was.

Mr Hinrichsen: Thank you, member for Keppel, for the question. I guess this is about those situations where a mining lease or a mining claim is coming up for renewal. Currently there is a requirement for a new compensation agreement to be developed between the landholder and the resource authority holder who is seeking a renewal of that tenure prior to the grant of a renewed tenure. The current arrangement does not require any advance notification. It requires that there be an agreement, but this provision is basically so that before the tenure is renewed—well before the tenure is renewed—the resource authority holder needs to advise the landholder that they intend to make application. That then gives a significant lead time so that a new agreement can be properly negotiated before the deadline for renewal of that tenure ticks around. That deadline is able to be extended. If it has not been negotiated by that point, it does not mean that the tenure ceases to exist. It can lead to that particularly if the resource authority holder is not making active steps to either negotiate with the landholder or, alternatively, if those negotiations have come to a screaming halt to then make an application to the Land Court for a compensation determination.

In terms of the consultation that has occurred, as part of development of the bill we consulted with a range of the groups that represent both the landholders—AgForce and QFF—and the resources sector. We have some flexibility in the current system and that certainly recognises that in some cases it may take a much longer period to negotiate, so there was no desire to guillotine that consultation if it is working progressively towards a satisfactory resolution. It also does recognise that you cannot leave these things to sit in abeyance forever. Basically, the resource tenure will continue to allow operations up until the point where a decision is made by the minister on that renewal application, so there will come a point where if the minister is not satisfied that reasonable efforts are being made by the company to negotiate or they have not made an application to the court then that tenure can be terminated as a result.

Mr PERRETT: My first question is around the climate change provisions within this legislation, particularly the baseline data that I assume Mr Wiskar was referring to earlier, and how this provision within this bill will enhance what you already have in the considerations for your water planning issues across the state. I use the example—and I think it was mentioned before—that there have been extreme periods of dry dating back to the 1800s and extreme periods of wet and surely that data and that information would already be used to make determinations in and around water plans. What new data or data mechanisms will be available to assist the minister in making his determinations as he moves forward?

Mr Wiskar: To go to the heart of your question, you are right: effectively, data around the climate variability is already taken into account. I guess what we are doing by making this change is acknowledging climate change and its importance going forward. I think all agencies in the data collection business are trying to grapple with gathering that data and getting better at it, but what I think we are doing by this legislation is acknowledging the important role climate variability plays in water planning decisions in ensuring that we have good focus on that as we go forward. I think both you and the deputy chair have raised issues around data collection and I think they are valid questions that we all should be asking. By putting this into the legislation, we are saying to agencies, 'You need to think about how you do your data collection.' Certainly as the person responsible for water policy in the Queensland government I will be using this provision to ask the types of questions you are asking of those data collection agencies.

It is not going to be solved easily or quickly, but I think what is legitimate about the whole process is that we acknowledge climate change, we acknowledge the important role that it plays in water planning and we continue to ask the types of questions you have asked me of the people who are doing the science and who are doing the data collecting. I am interested in gaps—and, Deputy Chair, I would certainly be interested in the Quilpie example—because I think it is only with good

information and good science and asking the right sorts of questions that we are in a position to advise policymakers like yourselves about the best way forward. Let us get the facts out on the table and try to make the best of those facts. I think this provision really says that climate change is there, that we have to consider it and that we need to consider it in all aspects of water planning and at the core of data capture, and both your question and the questions that the deputy chair asked earlier, which go to this, are really valid questions. I do not think the way to get to those questions is to avoid the question of climate change, if I can put it that way.

Mr PERRETT: That may be the case. As a rural landholder, I think there are some tools that have been developed over the last 10 or 20 years that certainly assist us in making decisions based on what the climate may be into the future, although they are never exact and that is why I always caution with respect to that. Historical data is certainly an excellent way to look at what may happen into the future in respect of the decisions that we make, and that is why I want to be assured that that baseline data is there and is used.

I will move on to my next question, which deals with the provisions around cultural outcomes for Aboriginal peoples and Torres Strait Islanders in water planning. I note the comments that you made earlier, particularly when you touched on economic opportunities. Looking back at some legislation that was enacted some time back relating to wild rivers, that legislation created some angst amongst various peoples, including Indigenous peoples, because they believed that that legislation may restrict their economic opportunities. I just want to be certain that this provision within this bill—and if it is enacted into legislation—will not restrict economic opportunities like previous legislation has. Do you have any comments around that?

Mr Wiskar: I think it is exactly the opposite of that. I think this makes an allocation available. The next step is to have discussions with Indigenous communities around how they see that water being important to them, and obviously economic opportunity is critical. We have had some discussions already within government about programs that colleague departments operate to provide support to communities with regard to economic opportunities. Certainly we are hoping to see some good examples of cultural demonstration of use of the power that we are asking for but equally economics. It is not our role as water planners and water policy makers to provide that support, but we have made the linkages with appropriate other folk in government. The intent would be that through our way in water planning we support those activities. Those activities might be about specific business type activities that they might enter into or they might be around the potential for them to participate in the water markets with the allocation that they have. Discussions are underway at both those levels in different parts of Queensland.

Mr PERRETT: I note your comments earlier about the cultural ceremonial significance, and waterholes were used as an example. Does this bill have the provision to be able to declare whole water catchment areas, river systems or creek systems as opposed to specific ceremonial sites?

Mr Wiskar: To be very clear, this is not about those things. The arrangement here is talking about volumes of water specifically. It is not talking about areas like the question that you asked.

CHAIR: It is a pretty tough job, because you have historical data and you need to take into consideration data that you do not even have yet. When you talk about climate change there are things that are going to happen in the future that will change the whole impact of water in streams—underground water and all those kinds of things. It is pretty hard to put a plan in place that is going to work and be effective if you do not have that data to look at.

Mr Wiskar: Water planning is a tough job. You can give me a pay rise if you like! Sorry, that was a joke.

CHAIR: That is okay. I am usually the funny one.

Mr Wiskar: You are right. Similar to the answer I gave the member for Gympie, due to the fact that we are acknowledging climate change is an issue, we then start having discussions with the people who are doing the science about the data that they need and we start asking questions about how we make our models and our planning better attuned to that future reality. I have read lots and lots of reports, as I am sure all members of the panel have, about climate change. I think there are some broad trends that seem to be emerging in terms of the future, but I have yet to read a report that is going to tell me what is going to happen tomorrow.

I think it is important that we acknowledge that whatever happens in terms of future climate is going to affect water availability. We have to have within our legislation an ability to start thinking about that and start asking the hard questions about data collection. That is what this provision does: it sends a signal to our scientists, it sends a signal to people like me and it sends a signal to water

users. If I am a farmer and the climate is going to change, we need to be starting those conversations. Can I sit down with individual farmers and tell them what is going to happen on their land right now? No, I cannot. The alternative is not to have this in the legislation. What that means is that we are not beginning the conversations and we are not gathering the data. Yes, it is an imperfect world, but I think we are better protected by having this in the legislation and those conversations and those planning decisions starting to be talked about and happening than not having it in the legislation.

CHAIR: We might move on from water. With regard to the bill's proposed amendments that would see arbitration being an alternative to applying to the Land Court for a determination, could you please explain what will happen to the process if both parties cannot come to an agreement to attend the arbitration?

Mr Hinrichsen: The arbitration process reflects Professor Scott's recommendation that arbitration only occurs if there is mutual agreement to go down that pathway. It is on the basis that it reach a binding outcome. If you like, it is an alternative way of getting to a solution. You can go to court and you can get the court, through its processes, to make a determination. I guess there are circumstances where perhaps both parties are motivated to get an outcome much, much quicker than that. It might be that they agree on most of the points but there are a few points that they do not agree on: 'These are the outstanding issues.' They then go to an independent party who is able to make a call. They basically put their trust in that person to make that call. Both sides will obviously have opportunity to put the information that they see as relevant on the table, but then it is over to the arbiter to make the call. As I say, that process only applies if both parties want to go down that pathway.

The alternative is alternative dispute resolution. Alternative dispute resolution is a prerequisite to going to the Land Court. Alternative dispute resolution, unlike arbitration, is not binding and it is not determinative. There are various mechanisms that skilled dispute resolution practitioners can utilise to get the parties to think about the alternative ways of solving the problem to get them closer to a solution. ADR is about facilitating agreement between the parties whereas arbitration is making an agreement. Then there is still the court. If parties do not reach agreement through an alternative dispute resolution process, they can still go off to the Land Court. Either party can make application to the Land Court for a hearing and determination through that process.

CHAIR: Does this put the mining companies or the big companies in a stronger position than they were before? I am concerned that we may have a situation that could be sorted out pretty simply through arbitration but some of these mining companies get a bee in their bonnet and they will push as hard as they can to get what they want without really caring about the impact on the landholder. Is anybody advantaged as a result of these amendments?

Mr Hinrichsen: Certainly when Professor Scott put his recommendations together he was focused on—his assessment looked at gas particularly and the land access framework associated with gas. It does also apply to minerals exploration but not to mineral production tenures of course. I guess he was wanting to address this issue where it almost inevitably went off to court. Following the lead of the input that we have had from industry—it has certainly been our minister's position for a long time. Courts are an important part of the process, but they should be an absolute last resort.

I guess what Professor Scott was encountering was that landholders felt that they were being dragged to court as opposed to having a party that would sit down as an equal and negotiate an outcome with them for coexistence. That is what Professor Scott really did then focus on. That is why you need better and more formal alternative dispute resolution processes, yet you have always been able to do that. You can always go to an independent arbiter to solve your dispute. Now this will make alternative dispute resolution a prerequisite to going to court, so you cannot just say, 'We'll see you in court in 50 days.' You have to go through an alternative dispute resolution process before you get there to negotiate an outcome.

CHAIR: The bill makes amendments under clause 91 so that resource authority holders are responsible for the professional fees necessarily and reasonably incurred in the negotiations of a CCA including the cost of an agronomist. Did you receive feedback from the resources industry and relevant stakeholders on this? If you did, what was the feedback that you received?

Mr Hinrichsen: I think it is fair to say that the feedback from all sides thought that it is fair and appropriate that reasonable and necessary costs are covered. There are always differences as to what 'reasonable' and 'necessary' might be. That has been the subject of many conversations about how you define 'reasonable' and 'necessary'. Do you cap it? Do you have a schedule of fees? In the end I think the resolution has been that the principle is absolutely rock solid—reasonable and necessary—so they have to be necessary to the negotiation and they have to be reasonable costs.

One of the significant changes that has been made is to empower the Land Court to ultimately make that determination. The court will ultimately adjudicate as to what fees are necessary and reasonable in terms of that negotiation process. It is not meant to be uncapped; it is not meant to be a lawyers picnic for legal representatives on either side. That is certainly not the intention. We are talking about what might be a significant commercial agreement, so those costs are not going to be trivial. We have seen examples of that. We have also seen examples where those legal fees are many times more than the actual compensation that the landholder receives. That is certainly somewhat out of whack with the intent of this framework.

There is also a significant change—and you will note it, Mr Chair. In the past the legislation was always about these costs being recoverable when an agreement is reached. We have seen examples—and it is rare; I make that point—of the landholder entering into good-faith negotiations and, through no fault of their own, for whatever reason the company terminates that agreement, effectively walks away from the negotiation table and leaves the landholder out of pocket. I know from talking to people on both sides of the industry that most companies would not do that. Most companies would say, 'Fair thing, we were negotiating in good faith. Our circumstances have changed and we will cover your costs.' However, there have been instances where landholders have been left short. It has been an absolute gap in the legislation and one that Professor Scott recommended quite reasonably and sensibly to address, and this bill will do that. Even where an agreement is not reached, if the costs incurred have still been reasonable and necessary to the negotiations, they will be recoverable. The court will be able to make that determination and make an order that those costs be paid to the landholder.

Ms LEAHY: Following on from the chair's question in relation to those professional costs that can be deemed as—I think the terminology was—necessary and reasonable, is it prescribed in the legislation to limit it to legal, valuation, accounting and agronomist? For instance, there could be a family who needs to get advice from a succession planner, which would not be considered a professional of one of those categories.

Mr Hinrichsen: Yes, those categories are defined in the legislation. Accountants might provide some of that type of relevant advice, but it does have to be necessary and reasonable to the negotiation that is going forward. Just like accountants or other professionals might provide other advice, just like an agronomist might provide other advice about a particular use of land or a particular pasture management practice, if it is not directly relevant to the negotiation that is occurring between the landholder and the resource authority holder then it would be outside of the scope. Those four categories are relevant in relation to the conduct and compensation agreements. There are other professional costs that are within the scope of the Water Act when it comes to the negotiations for the make-good agreement. My colleague Laurie might be able to expand on that if the committee would like.

Ms LEAHY: It would be good for the benefit of the committee if the department could advise about those relevant to the make-good agreements.

Mr Hodgman: In the context of make-good agreements there is provision for the resource company to pay for a hydrogeologist. To put some framework around that we said that it must be an appropriately qualified hydrogeologist. It is not really related to other advice that is not relevant to make-good agreement. Does that answer your question?

Ms LEAHY: I am just wondering how prescriptive the legislation is in relation to who are considered those professional people.

Mr Hodgman: In the case of a hydrogeologist we have said that that will be defined in the guideline. There is a provision for a statutory guideline for those arrangements. I am not clear whether we have included that in the guideline just yet. I would have to check that for you. That addition is a relatively recent amendment.

Ms LEAHY: If you could take that on notice and come back to the committee that would be appreciated.

Mr Hodgman: I will.

Ms LEAHY: I have some further questions in relation to the clauses in the bill regarding the urgent actions for dealing with water quality issues. I think you covered that a little bit in your introduction. I am interested to know if there is a provision in the bill that they have to be triggered by a particularly event—for instance, a cyclone or a flood.

Mr Wiskar: In talking about this provision, I think the first statement that I would like to make is that if we never have to use it then that would be our preference. We did have a particular incident in a previous cyclone. Fortunately in that area we already had the capability to do what we are proposing via this bill.

The specific question that you have asked I am probably going to need to do a bit of research on to answer. I will take that under advisement. The emphasis I would make is that it is likely to be part of an event. I would imagine that it would be part of a decision-making process where the district disaster groups, the local disaster groups and ultimately the state disaster group are all engaged. This would be one option for solving the particular problem that might emerge in a particular instance. I think it is likely or quite likely that we will be in an incident type situation when these decisions are made. As a result of that, I think there is likely to be some triggers. To specifically answer your question I think I need to come back to the committee.

The other thing that is in place within what we are proposing is that the minister or the chief executive would have to consult widely prior to using the proposed power. The transparency around the use of the power is protected by the fact that there would have to be a public report.

Ms LEAHY: I would be quite interested if you could come back to the committee on that. I am just going through the bill and it does not seem to indicate to me that it would be on the direction or at the request of an emergency management group in a particular area. I would be very interested as to how that would impact on the bill.

I suppose my concern in relation to the water quality issue is the potential for abuse. As we know, when it comes to licences the chief executive is pretty much God in terms of the powers he has in relation to water licences. If there is a water quality issue they may say, 'You can no longer take water.' I am trying to make sure that there is a mechanism in the legislation that requires that this is triggered by an event.

In my area not much of the water goes to the Great Barrier Reef. I do not get too many cyclones that impact on the Great Barrier Reef. I do not want to have people caught up with a mechanism that is there and that might be issued across Queensland but is not necessarily relevant to particular areas of Queensland. Is the use of this power specific to potable water or all water?

Mr Wiskar: In terms of the first question, as I have said, I will come back to the committee with some specific advice. The water quality provision is around all water.

Ms LEAHY: The bill does make specific reference to any impacts on the environment including, for example, the Great Barrier Reef. Could you come back to the committee on what any of the impacts might be and what was envisaged there?

Mr Wiskar: Sure.

CHAIR: Would you mind explaining to the committee how clause 237 relating to proposed new section 40B, which specifies the matters that the chief executive must consider in deciding to temporarily release water held in a strategic water infrastructure reserve, will ensure the long-term protection of the water reserve for its assigned future water infrastructure project?

Mr Wiskar: It is important to backtrack a little bit from the question to perhaps put the question in some context. Effectively what this provision says is that we have put strategic reserves in place. That effectively is there to protect for future potential infrastructure projects, or they might be significant economic projects. If we know that there is likely to be an expansion of a big industry based project we might have made some strategic reserves, or if there is growth in a community that is likely to lead to a new dam proposal, as an example.

What we are saying under this proposed provision is that there is an opportunity potentially for that water to be used on a temporary basis. Those bases would be for a maximum of a three-year period and then the water would be returned to the strategic reserve. The provisions here in proposed section 40B really are around giving some guidance to the chief executive in decision-making.

I guess one of the key principles here that needs to apply is: if there are other potential sources for water then we would be, via water trading or other unallocated water, wanting the proponents to be looking to that water before they came to this provision. The provisions in proposed new section 40B are really around some checks and balances to ensure that those other options are being considered adequately and that we are not going to be left in a position where that strategic water will not come back after the three-year process. Obviously that is important to the integrity of our water planning. Those key projects need to be protected.

CHAIR: I appreciate the frankness of your answers to our questions. We have learned a lot from your responses. It makes the work of the committee a lot easier if we get detailed answers. Sometimes we get people trying to dodge the question, but you guys were spot on. We have a couple of questions that were taken on notice. Could we have those answers back by Wednesday, 13 September? I thank you for the briefing. I thank our Hansard reporters as always because we could not do it without Hansard. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare the hearing closed.

Committee adjourned at 11.57 am