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

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 11 OCTOBER 2017

Brisbane

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Committee met at 8.32 am

CHAIR: I declare open the public hearing for the Mineral, Water and Other Legislation Amendment Bill 2017. Those here today should note that these proceedings are being broadcast to the web and transcribed by Hansard. There will not be any media in attendance for this part of the hearing. The committee's proceedings are the 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.

ABBEY, Ms Fiona, President, North Queensland Miners Association, via teleconference

GRAHAM, Ms Carolyn, Secretary, Queensland Sapphire Miners Association, via teleconference

CHAIR: I welcome our witnesses via teleconference. I invite you to make an opening statement.

Ms Abbey: Thank you to the committee for allowing the following to be relayed in support of the North Queensland Miners Association. I am the current president of NQMA representing our membership base of approximately 130 individuals and companies. The changes as proposed in the amendment bill and in particular the amendments to the statutory negotiation process for the conduct and compensation agreement in chapter 3 of the Mineral and Energy Resources (Common Provisions) Act pose a significant risk to individuals and small to mid-tier mining and mineral exploration companies. The mineral mining industry has dealt with significant changes to legislation over the past few years and is subject to increased fees across the Department of Natural Resources and Mines, the Department of Environment and Heritage Protection, local council rates, emergency fire emergency levy and native title fees. All of these fees and more are required to be paid regardless of any amount that comes from mineral mining activities.

To determine whether minerals are for the purpose of extracting the resources under a mining lease, the state of Queensland needs exploration. Explorers need the right to enter on to land to undertake exploration activities to find the minerals and they also need to enter the land to meet the terms and conditions under the work programs as granted by the Queensland government. This is a right provided by the Queensland government and should not be at the mercy of the landowners or subject to the explorer's ability to pay the landowner's legal costs. Individuals and small to medium mineral exploration companies simply cannot and will not afford to pay these costs and will walk away from the industry.

It is understood that the introduction of this section of the amendment bill is due to the recommendations of the independent review of the Gasfields Commission. The Gasfields Commission was established by the Queensland government due to the concerns of the landowners and communities about the impacts of CSG development, including the loss of prime agricultural land, the depletion of underground water, the issue of land access, the location of CSG infrastructure close to residential dwellings and urban areas, and the increased pressure on existing regional infrastructure. This does not relate to the mineral exploration sector. The Gasfields Commission reported that 5,000 land access agreements had been signed for more than 2,000 landowners with approximately $238 million in compensation paid to the landowners in the previous five years and $189 million is to be paid to landowners in the next 12 years. This does not relate to the mineral exploration sector. The review also states that law firms have benefited from the process of negotiations between landowners and CSG companies to the extent that larger firms have moved into some rural centres to take advantage of the business on offer. This does not and should not relate to the mineral exploration sector. The introduction of the amendment bill based on recommendations of the Gasfields Commission review is unfair and unjust and does not take into consideration the differences between the gas and the mineral industries.

The impact to the ground from gas exploration activities is significantly different to mineral exploration activities. Companies exploring for coal seam gas are significantly larger than the individual and small to mid-tier exploration companies exploring for minerals. The impacts for landowners on a day-to-day basis from gas exploration are significantly different from mineral exploration activities and there is little to no impact for underground water tables from mineral exploration. I implore the Infrastructure, Planning and Natural Resources Committee to seek further answers and clarification on the differences between the two mining industries and take a look at the proposed legislation in the context of how this will impact the mineral exploration sector in Queensland. We are not the coal seam gas industry and should not be piled into a one-size-fits-all legislation fix at the detriment of mineral exploration in Queensland.

In the minister's speech to parliament on the introduction of this bill, it is noted that the Hon. AJ Lynham stated—

These changes have been broadly supported by our stakeholders.

This is incorrect to the point that the minister has been made aware, both vocally and in writing, of the great concerns from the mineral mining sector through NQMA, through the Queensland Sapphire Miners Association and through the Association of Mining and Exploration Companies, AMEC. These three groups only represent a small majority of stakeholders. However, they directly represent the stakeholders who will be most affected by this legislation. I thank you for taking these concerns into consideration.

CHAIR: Thank you, Fiona. Before we move on from there, can you tell me how much consultation you guys had with the department?

Ms Abbey: When the legislation was first proposed or the amendment bill was first proposed, we got it in an email which was private and said 'not for distribution'. Through the NQMA meeting we asked for a meeting with the minister at that stage. We had a Skype meeting with representatives of the minister's office and explained our great concerns very vocally at that time, and that was in July. We also asked for submissions and we lodged submissions in writing at that time. The next thing was that the bill was introduced to parliament and we were asked for submissions again, so we have not had any feedback from our submissions.

CHAIR: Okay; thank you. We just like to check how much consultation there has been and that is why I asked that question first up.

Ms Abbey: Yes. There would not have been any consultation without NQMA following it up and asking for it.

CHAIR: Okay. Carolyn, I invite you to make an opening statement.

Ms Graham: Good morning, committee and ladies and gentlemen in attendance. The Queensland Sapphire Miners Association represent over 600 members of the mining community in the Central Queensland gem fields and we collectively thank you for giving us this opportunity to have our concerns and objections to this bill raised at this level. These objections have previously been officially raised with resource policy management. Our collective view is that previous identified sections of the tabled MWOLA Bill will seriously affect explorations of small to medium tier miners in Queensland, particularly in our area of small family owned mining operations. We are also of the firm opinion that for several years now decision-making on mining legislation has been hijacked by farming bodies and green extremists, with legislators or policy advisers giving little or no consideration or consultation to small or medium miners who are, and always have been, the backbone of mineral greenfield exploration and are the focal employment body of numerous communities throughout Queensland. This MWOLA Bill is no exception to this flavour of legislation constantly being handed down to us without due consultation or consideration.

Unfortunately, what is legislated for the big end of town also affects the small to medium tier miner but to a much larger extent. The difference is that we use our own money and resources for exploration and mining, not shareholders' money like most coal and gas miners. Due to the large resource authority holder having these unlimited funds at his fingertips, he is able to negotiate an artificially inflated ownership purchase price or deal with the landholder for the target land he is requiring, which in turn artificially inflates surrounding land property values that may or may not contain any resource whatsoever. This further inflates all compensation agreements by landowners with miner resource authority holders for that particular part of Queensland. This is because previous land state values are a major part of Land Court decisions in landowner compensation entitlements. Compensation is really the focal point in most CCAs.

For the small to medium miner this MWOLA legislation will force any prospective resource authority holder into a very expensive and arduous journey that will dissuade numerous would-be miners and explorers from having a go, especially in our area of small-scale gemstone recovery. Exploration has huge fiscal risks. The small miner needs to undertake these risks for the continuation of his business, his employees, the current and future tourism of these towns and ultimately his community. Should this risk-taking be successful, the state will be rewarded with royalties, taxes, jobs and so on. If the project is unsuccessful, the only people hurting are the explorer and his family.

Under the Land Act and written into each landholder deed of grant are specified reservations. Those reservations are the rights of access for the purpose of searching for and working any mine for all minerals on or below the surface of the land. Therefore, landholders, explorers and miners are evenly entitled to utilise this land. Therefore, in our opinion it is discrimination which in turn is unlawful from legislation introduced by DNRM policymakers to force the explorer to pay the landholder's costs and ADR costs in what is really a civil dispute between two parties evenly entitled to make a living on this land and therefore should be evenly divided in any CCA costs and ADR costs. The Department of Natural Resources and Mines are not a party to this two-party civil dispute. If they were, you would expect they would be supporting the explorer or miner as he wins royalties for the state. This bill does not support the explorer and will destroy exploration much needed in terms of royalties and jobs alone for the state of Queensland going forward. It is our firm belief that small to medium scale mining needs separate legislation as our situation has no bearing on the larger coal gas mines in Queensland. Thank you.

CHAIR: Can you tell the committee what the consultation process was with regard to your organisation?

Ms Abbey: The first thing we received was an email saying that these changes were going to come into force. I immediately read them and realised that this was quite disastrous for our community. I rang the people in Brisbane, the policy advisers who had sent me the email, and said that we were not very happy with this. I immediately decided to fly one person up to Emerald—Jo Sorrentini, I think her name is. She came in with John Tolhurst, the Mining Registrar, and a couple of others from Emerald and we had a discussion over these changes. We were vehemently opposed to most of those changes and we explained why. We were satisfied that they were going to take our concerns on board. They went back to Brisbane. We submitted a formal report with regard to our concerns. The next step was we received an invitation to do another report, which we did, and that was all the consultation that we had. Then I accidentally found out that we could be part of the final say with the committee, and I did that as well. I put in our submission when we found out by accident that we could.

CHAIR: Fiona, do you have anything to add, given that there has been a bit of a break in between when we spoke to you last?

Ms Graham: No, but I do support what Carol has said about looking at the legislation, because there is a significant difference between the small end of town and the big end of town with legislation and even with minerals. That is something the NQMA has been championing with the Queensland government for a number of years, but we have had no solution to date. I think that is something that needs to be looked at again.

CHAIR: Can either or both of you give me an example of the costs that exist at the moment and what they will rise to?

Ms Abbey: Our concern is with regard to the CCA and the process. Landowners have the ability to go through that ADR process with the miner paying 100 per cent of the costs. At the moment there are not many. If you look back through the stats, the land access agreements are nowhere at the same numbers through the gas fields, and the amount that do go through the Land Court would be very minimal. Our concern is if this legislation changed to adopt the same as the gas fields, then the landowners would put a lot more through the ADR process. We do have a number of landowners that are against mining and do not allow mining. Even though we have the right to mine or explore, they are against it. As soon as this legislation is passed, I think they will take that as an opportunity to take it through the legal process at the cost of the miner and mineral exploration. They just do not have those funds.

Ms Graham: Yes, I absolutely concur with that. We have the same problem here with several landholders in our area with regard to mineral exploration. They are all tarred with the same brush. They are totally against mining, even though they tell the court otherwise.

CHAIR: I did have a question about cooperation and the spirit of goodwill between the organisations. It sounds as though you do have some good landowners to work with, but you also have landowners who make it difficult for you.

Ms Abbey: It is exactly the same anywhere, I believe, but it is just to a different degree. You will have a small number of landowners with minerals on their land. Obviously the explorer has to go where the minerals are. They cannot just pick and choose where they want to go. If you are up against a landowner who disputes mining, you will virtually have to walk away. You have individuals, families and small to medium companies that are doing exploration for minerals. They are not the BHPs from the big end of town that do exploration and find the resources.

Ms LEAHY: If a dispute arises at the moment between a small miner and a landowner, what is the process used to resolve that dispute? Are you satisfied with those current dispute resolution mechanisms?

Ms Abbey: I would say yes. You do have the Land Court there. In my experience not a large number go to dispute; it is only every now and again a dispute will pop up. You have the backing of the mineral hub as well as the Land Court if there is no outcome to that, but that is rare. The point is that because the miner and the landowner have to go into that each bearing their own costs, I believe that allows for more open communication because they just want to get it over and done with quickly.

Mr CRAWFORD: I have no questions.

Mr PERRETT: I have a couple of queries, and the first one relates to jobs and investment. I think you mentioned that if this legislation passes in its current form it will have a significant impact on the regions. Are you able to go into a little bit more depth in respect to your concerns about what will happen to jobs and investment in the regions?

Ms Abbey: I represent North Queensland, which includes a lot of small towns like Mareeba, Chillagoe, Cooktown, Georgetown, Mount Surprise, Atherton, Herberton, Ravenshoe and Mount Garnet. These are all very small communities that do not have a lot of tourist activity, but they also rely on the families and the mining from this area. Every time an explorer needs a drill rig they will go to the local community for that, so we have drilling based in Mareeba and Cairns. Every time they need something fixed on machines they go back to Mareeba. Because of the remoteness of where the mines are, they come back into the regional centres. Fuel comes from the regional centres; food and supplies come from the regional centres. If you take out mining, you are taking out a lot of money and jobs and opportunities for the rural people in those communities. That is a big struggle up here. I do not have them in front of me, but if you look at the income that comes into even Mareeba township under the Mareeba Shire Council for mining, it is quite significant. You need to get on the ground to explore for minerals to put your mining leases in place.

Mr PERRETT: Carol, you represent about 600 members, is that correct?

Ms Graham: That is correct. It is over 600 members now, the Central Queensland gem fields. The reason why we cannot expand is simply because of the actions of the landowner and their staunch Lock the Gate Alliance mentality up here. It is very blatant, to the extent that we get letters of defamation against our characters. We bend over backwards to try and work with these people, but we find that it is very difficult. The miners are terrified of the landholders up here. That is why there has been very little exploration and very little pegging—simply because we cannot get onto these properties without intimidation. The miners are very scared, to put it bluntly.

Mr PERRETT: Carol, with regard to that issue, why do you think that relationship has broken down between landowners and small miners? Why has it got to the point that landowners are locking the gates? What is the reason for that, in your view?

Ms Graham: I think some of it is a lot of gossip and perhaps a hangover from the olden days when miners were not rehabilitating the land. I think that could be what a lot of it is. I think the landowners are probably a little worried that their land will not be rehabilitated satisfactorily, but to be code compliant they have to these days. We have checks and balances everywhere, so we cannot disregard the land. Most miners here right now also agree that this has to be the status quo going forward. On saying that, I think the mindset of the landowners is the hangover from a previous time and their prejudices are very deep. I think it has been passed down to the younger generation more so.

Mr PERRETT: You mentioned earlier that there should be separate legislation for small to medium miners. Obviously, in your view this legislation caters to the big end of town and you have concerns. Do you think there should be thresholds set within this legislation? What do you suggest should happen with this legislation if it is to pass the parliament? Or do you think it should be thrown out and secondary legislation introduced?

Ms Abbey: The Department of Environment and Heritage Protection has two separate tiers for mining: they have a standard code of compliance and they have site specific. The majority, unless there are exceptional circumstances, fit within the standard code compliant environmental authority.

That means they have a limit on the disturbance on the ground, they have a limit on the environment that they can disturb and they must meet certain conditions. The big end of town, as we call it, would come under the site specific EA. They are the ones that do public notification of their environmental authority. They are the big coalmines or the bigger mineral mines that disturb much larger areas. This is something we have looked at before. I think if we are going to differentiate under the Mineral Resources Act, it needs to be tied into that EHP system of the two different codes of environmental authorities. That would make it easier, but you would see that about 80 per cent, I believe, would fit under the code compliant just as mining leases—well, all exploration permits fit under the code.

Mr PERRETT: Carol, do you have any comments with regard to that?

Ms Graham: I think that is perfectly sensible from our point of view. I have also been thinking about the size of your EPs. A lot of larger companies have 99 sub blocks and things like that, where most mineral miners only choose four or five sub blocks at any one time because they do not need a big area. They are focusing more on the smaller deposits that the larger mineral people would leave behind because there is not enough resource there to sustain them, but there is enough for a smaller show to be productive.

CHAIR: I can hear the crows in the background. That is a great connection with the country. I am looking at some notes I have here. There is a lot of concern from you people with regard to the introduction of explorers having to pay some landholder costs. I am still trying to understand what costs we are talking about and what the difference is.

Ms Abbey: Under the bill, we are talking about the changes to the conduct and compensation—so chapter 3 of the Mineral and Energy Resources (Common Provisions) Act. The GasFields Commission review said that, because of the review they undertook with the landowners, the review has recommended that the miner pays for all legal costs to negotiate the CCA and, if they go through the dispute resolution process, the miner has to pay for the mediator. The only way the miner can dispute those costs is by taking it to the Land Court and asking the Land Court to determine if those costs are appropriate. As we all know, as soon as you go to a solicitor, the time starts ticking over and that can run into $20,000, $30,000, or $40,000 in legal costs. If you do not agree with that, then you have to take the time to take that matter to the Land Court.

At the present time, costs are spread equally between the two parties—the miner and the landowner. That is the concern with the landowners. It is not saying that all landowners will do it, but the landowners who want to keep out exploration will take this matter through to the legal process straight up and then all of those legal costs go back to the miner regardless if the miner walks away or not. There is also a piece of legislation that they are proposing that, even if it gets to a point where the miner cannot sustain it and he walks away from it, he is still liable for the legal costs of the landowner up until that time.

CHAIR: Carol?

Ms Graham: Yes, that is absolutely correct.

CHAIR: The cost that both of the associations have at the moment under the current legislation and under the new legislation would be more likely to be accepted. It seems to me—and tell me if I am right or wrong—it is those increases to those ongoing costs that could eventuate. Is that what you are concerned about most?

Ms Abbey: No, it is just the legal costs. The compensation terms are agreed to between the miner and the landowner and they are usually quite reasonable. Even in that review, it says that, if you negotiate outside the process of the Land Court, the landowner usually gets a higher amount than what the Land Court would award. It is in the best interests usually for the landowner and the miner to make that compensation amount outside the Land Court arena. We are simply talking about the legislation dictating that the miner must pay the legal costs of the landowner.

CHAIR: Okay. Carol?

Ms Graham: Yes, that is absolutely correct. Our main worry is that the sky is the limit with regard to barristers and QCs and the money that can be wasted on professional fees that the miner ends up ultimately having to pay whether it goes to ADR or the Land Court.

CHAIR: Thanks for that.

Ms Abbey: I just wanted to also reinforce that it needs to be looked at from the point of view of whether this legislation is needed under the Mineral Resources Act. The GasFields Commission review was put in place for a reason—because there were many disputes between landowners and miners that could not be resolved with a high number of them were going to the Land Court. There

was a reason that commission was put in place, but the reasons of that do not reflect the reasoning to put in this legislation in the mineral resources sector. That is my concern. We are adopting it 'just because'. There is no rhyme or reason that it needs to be adopted. There is nothing to back that up.

CHAIR: I want to read from the response from the department. It states—

The requirement to pay a landholder's necessary and reasonable legal (and accounting and valuation) costs has been part of the land access framework since 2010. These submissions—

and I am talking about your submission—

misconstrue the amendments as *introducing* a requirement to pay a landholder's legal costs

So take that on board. The department's response states further—

Under this Bill, resource authority holders will continue to be liable to compensate a landholder for accounting, legal and valuation costs necessarily and reasonably incurred in the negotiation and preparation of a conduct and compensation agreement. These are called 'negotiation and preparation costs'.

What is your response to that?

Ms Abbey: The minister is in opening speech on the Mineral, Water and Other Legislation Amendment Bill states—

The proposed amendments will improve the statutory processes that landholders and resource authority holders may use to resolve disputes that arise in the negotiation of these agreements.

The minister says further—and this is talking about the amendments, not the existing legislation, but the amendments—

Require the resource authority holder to pay the costs of the alternative dispute resolution practitioner, regardless of who issues the alternative dispute resolution election notice.

And further, the amendments—

Ensure a resource authority holder remains liable to compensate a landholder for their professional fees, even in the circumstance where negotiations do not result in an agreement.

These amendments—

Expand reasonable and necessary professional fees to include the cost of an agronomist to assist in evaluating the impact of the proposed activities on the landholder's land; and

Expand the Land Court's jurisdiction to include the power to determine the appropriate level of professional fees.

These are all increases to what is existing. It allows the landowner to sit back, take their whole case to a legal representative and the miner has to pay. That is the difference. We understand that there is a portion of it still in the act, but that is working well at the moment. This is opening up the scope of legal fees and saying that they must pay for the alternative dispute resolution, which they did not have to before, and, if the landowner or the miner walks away from negotiation, then they bear their own costs. Now, that is not the fact. It is definitely expanding the scope of payment for legal fees.

CHAIR: You are saying that, if they walk away, you could be the person paying those costs?

Ms Abbey: Yes, but it is based on the experience of the gas fields. Those experiences are not there in the minerals field.

CHAIR: Fair enough.

Ms Abbey: It is opening up more avenues for more disputes between the landowners and the miner.

CHAIR: The cost of an agronomist has in the past been a cost for you?

Ms Abbey: No. Never. That is solely coming from, I guess, the concerns from the gas fields, because mineral exploration does not impact like that does.

CHAIR: I have my own ideas, but could you tell me why you would need an agronomist? I just wanted to put it on the record?

Ms Abbey: For the watertable—if your gas field is affecting the watertable of the property, or the level of water, or how it comes out of the ground. With mineral exploration, the drilling may hit a watercourse, but the majority of time that is a bonus for the landowner up here because they will put a bore on it.

CHAIR: Yes, that is true.

Ms Abbey: The intensity of mineral exploration is nowhere near the intensity of the coal seam gas. You have a lot of bores, or a lot of exploration in a condensed area. For the mineral exploration, it is a very remote type of operation if you are doing drilling. The majority of mineral exploration is just rock chip sampling, surveys, geology, mapping, soil sampling, panning—all of that kind of stuff. It is not as intrusive as your coal seam gas.

CHAIR: Do you think that the landholder has much to gain from having the associations doing the work that they are doing on the land when they get the authority to explore? Is there anything in it for the landholder?

Ms Abbey: The minerals are owned by the state. That is what we keep going back to. The minerals are there to be used by the state to get royalties from, to make computers, to make houses—to make everything that you are sitting on, touching and writing at the moment. If the mineral is on a landowner's land, they get compensated through the Minerals Resources Act under a compensation agreement. They do not own the minerals.

Ms Graham: That is also stated in every landholder's deed of grant—that they must not interfere with the searching for or the mining of minerals.

CHAIR: That is the landholder?

Ms Graham: Yes, that is correct, because we are both entitled to be on the land to do our specific job.

CHAIR: Is there any need to look at ways that we can improve the understanding between landholders and miners? Obviously, you have concerns at the moment where you are finding it very difficult to get on some land. What can be done to improve that relationship?

Ms Graham: Certainly, the lands department should start looking at landowners who are making it difficult for people to comply with their EPM with regard to them denying you access to your EPM. That is a terrible situation as it is at the moment. It is straight across-the-board where we are. Most of these farmers are tarred with that same brush.

CHAIR: I am sure, Carol, that we have baddies on both sides. Do your associations do anything to make sure that the miners themselves do the right thing?

Ms Graham: It is pretty hard to force people to do the right thing. All machinery miners here on the gem fields now comply with all of what is required of them. They have done for many years now. Old habits die hard with landholders and they have a very strict thought of gem fields people in particular and they are not shy in putting that in writing, either.

CHAIR: Thanks, Carol. Fiona, do you have anything to add?

Ms Abbey: Yes. I believe that it is education as well. The Mineral Resources Act is there to support exploration and mining on land for minerals that are owned by the state. Instead of making us be the bad guys, I think it needs to go back both being there for a purpose. The leaseholder, or the owner of the land, is there to graze cattle and to make a living that way, which we do not want to interrupt, and is compensated if we do interrupt. I think education and support from the Department of Natural Resources and Mines is what is required.

CHAIR: Thank you, Fiona, and thank you, Carol, for your input this morning. It has been very interesting. I appreciate you giving us your time. We need to call this session to an end. I hope to catch up with you in the country areas.

Ms Abbey: Thank you for listening,

Ms Graham: Yes, thank you very much.

HOUEN, Mr George, Principal, Landholder Services Pty Ltd

CHAIR: Would you like to make an opening statement?

Mr Houen: Thank you. I appreciate the opportunity to make a submission, firstly, and, secondly, to speak to you directly today. I am generally very supportive of the amendments and of the amount of work that has gone into them. I am a little concerned that the new system, when it settles in, will be more complicated than the previous one. That is a bit of a worry because ordinary folk—landholders or whoever they may be—are not as familiar perhaps, as people like myself, with the actual way the whole scheme works. There is a bit of added complexity.

I wanted to use the opportunity this morning to refer to what I think is a genuine case of the elephant in the room that nobody is talking about. That is the amendment in clause 37 of the bill to the definition of 'compensatable effect'. Are we talking here about compensation that is applicable to activities?

There is an important difference between the way compensation is dealt with for coal seam gas, which is all about activities and nothing about the fact that a petroleum lease has been granted, for example, and with mineral or coal exploration which is also activity based—you are compensating for specific activities—whereas with compensation for the grant of a mining lease, it is all about the fact that the property has been encumbered by a mining lease which is applied to the title of that land. There is an important difference.

It also has to be recognised that one of the features of it is that it is progressive. If you are looking at coal seam gas then you often find that there is an initial agreement that is for the drilling of a couple of wells and then there are more and more as more work is done. Each takes you back for another visit to the compensation provisions.

I had a client who, when I first became involved with them, had been involved with a coal seam gas company for a little over a year. The gas company had them sign 14 different agreements. That is really a no-no from my point of view. There is so much opportunity for contradiction and for ambiguity. It is a nightmare to try to work out what the actual terms of the compensation really are with so many different agreements one piled on the other. That is an important issue in this case. I will come to that at little later, if I may.

The problem I really have is that hidden amongst the 170-odd pages is the amendment of section 81, I believe it is, of the common provisions act, which unequivocally, I must say, actually makes a major change or reduction to the compensation rights of the landholder. It does that by changing two little words. It means that the compensatable effect is proposed to be for any activity on the land of the owner. Whereas at the moment it is for any activity that is in relation to the land of the owner.

The existing provision is one which is quite broad. I can speak with some direct experience of this because I have just recently finished a case in the Land Court for landholders named the Nothdurfts, which I think was the first judicial interpretation of the compensation provisions that we are talking about. It was the first time anybody had applied in the Land Court for review of compensation.

You will notice that in the Law Society's submission it says that there are some questions about whether the existing provisions allow a landholder to make a claim based on the noise, the dust and the loss of value of the property and whatever else on the basis of the project as a whole within that tenement. The Nothdurft case really does confirm that the present provisions mean that the Nothdurfts, let us say, who have a 300-hectare property in the middle of the gas field are entitled under the present legislation to claim according to the impacts of the project as a whole. In practical terms, there is really no other way to do it.

The amendment proposes to limit that eligible claimant's scope to impacts that arise from activities on that owner's land alone. If you have a project with several hundred gas wells with a very large processing facility with a very large compressor facility and a very large water treatment facility, the noise, the air contamination from fugitive gases and all those things and the effect that all that has on the value of the property—what somebody will be prepared to pay for it—is drawn necessarily from the project as a whole, from the whole tenement, rather than the 300 hectares that belongs to the landholder. I do not actually believe that what is proposed in the amendment is workable. I do not honesty see how you could ever hope to say that this much of the noise comes from this owner's property and the rest of it is from somewhere else. It cannot be done.

The Nothdurft case proves the point. There are a seven wells on their 300 hectare property. There are 38 wells within a 2.5 kilometre radius of their residence. Something like 5½ times the 2½ kilometre radius was chosen because it was agreed that that was the buffer zone for residents.

In fact, to meet their noise limits they have had to keep 80 something per cent of those 38 either shut in or the valves closed and no gas or free flowing—no use of an engine or the hydraulic power unit that goes on top of the well. All but about 15 per cent of the field is closed down or nearly to try to comply with the noise conditions. That illustrates that in the Nothdurft's case it is not the seven wells that are on their land that are the reason they would have a need for compensation it is at the very least the 38 wells that are within a 2½ kilometre radius.

You cannot distinguish in terms of coal seam activity, in terms of the mineral exploration and the sort of work that your two earlier witnesses were speaking about. That is a little different. It is much more likely that you can effectively trace the impacts on the market value of the noise and dust and so forth on one property. In the majority of cases it is physically impossible for coal seam gas activities. If you get a very large property you could fit a gas field in one corner of it and it would still be the one owner on whose land the impacts were created. That is not the usual situation. The great majority of gas fields would be as they are at this one at the Crossroads just south of Chinchilla.

I believe it is impractical. I have a real concern that it is not spoken of at all in the explanatory notes. There is coverage of clause 37, but it does not say anything about this. It is not spoken of in the minister's introductory speech. It is not mentioned in the minister's letter. I had a letter in the *Toowoomba Chronicle* saying, 'Hang on a minute guys, there is something that we have not been told about,' and I explained what the change is. The minister wrote a letter in reply which said it was to rebut what I had said about how the amendments could adversely affect landholders, but he never mentioned the actual change that we are talking about. Officially, to the best of my knowledge, nobody but nobody has acknowledged that this really big change is in the bill. I do not know it has not been acknowledged but I can assure you that it has not. That seems to be unsatisfactory.

I am positive that what I am saying is correct because it is very much the same as what Glen Martin, a solicitor, has said in his submission to you. It is acknowledged by the Law Society in their submission that this is exactly the effect it will have. It is a huge change and the great majority of landowners in coal seam gas fields would get little or no compensation because of it. It would just about remove their eligibility for compensation. The scope of it is very significant.

I feel concerned that those who have made submissions to this inquiry for the most part made them without knowing about this change. Neither AgForce nor QFF, from a primary producer point of view, have mentioned it. Presumably they did not know about it. The Queensland Resources Council does not mention it, presumably because they did not know about it either. Why that situation has arisen, I do not know. I am concerned about the impact of it. To me there seems to be a case for this inquiry to be suspended so that people can be properly informed. Those who made submissions may have made them differently if they had known this. Those who did not make submissions may have made them if they had known about this change et cetera.

Apart from that, I just wanted to make a general comment about the changes to the process. I found the QRC's comments quite helpful. I really do not support the proposition that because there is a provision for arbitration as one of the ADR methods that that provision for arbitration should come with a right of appeal. To me that is not arbitration at all. If it were the only avenue to have compensation determined when the parties cannot agree that might be different, but it is not. It is going to be an option instead of going to the Land Court. If people want a right of appeal then they should use the Land Court. If they want the matter settled and take a realistic view of it then arbitration is a very useful process.

Obviously you take something of a risk in that the person appointed arbitrator is going to make a fair decision. You must have a way of resolving these disputes. We put arbitration provisions in lots of agreements because they are necessary. You do not muck around and you do not say, 'I would not mind having a right to appeal against whatever the arbitrator's decision is,' you say, 'Let's do it.' Somebody has to decide that this is the moment of truth. I think that arbitration should stand on its own and nobody should tinker with it and make it a softer landing.

As to the landholder's costs, that is a very welcome change. I have put in my submission a direct experience which relates to a landholder who made a very genuine and professional effort to meet the coal seam gas company halfway. The landholder spent $60,000-odd on legal fees which he was left with because the CSG company refused to pay because no agreement had been reached. The negotiations occurred at their initiative seeking an alternative arrangements agreement. It did not happen. They would not pay the bills; they should.

As to including a provision for agronomists costs in the costs that may be recovered, I am concerned that what we really should be talking about are the costs for professional advice or representation or whatever it is as required in the particular case. It is much more likely in a coal seam gas matter particularly that a landholder might need a hydrogeologist; or more especially a noise

expert; or a hydrologist—a surface water person, as distinct from a groundwater person; or an air quality expert, even an agricultural economist or even an animal behaviour expert. An agronomist is one of a whole shopping list of half a dozen or more disciplines that might be required in a particular case. I do not see any reason for putting agronomists in there when it is only one of a number of forms of advice that may be required.

I have some words to say in my submission about how nice it would be if the same reform principles were applied to a couple of aspects of the compensation for the granting of mining leases, but I appreciate that that is outside of the inquiry that you are conducting, so I will not take up your time with it this morning.

CHAIR: Before we move away from section 81, the response from the department states—

There is no change to the obligation to compensate neighbouring landholders as a result of the changes to section 81. The provision has always only been about compensation for landholders upon whose land the advanced activities are being carried out on.

There has been no change. Why are we all of a sudden focusing on—I am not saying it is wrong—the compensation for neighbours?

Mr Houen: I am not. Glen Martin did in his submission. I do not know quite what he is referring to there. I never have understood it that a neighbour who did not actually have activities on the property would be able to claim. I have never said anything to that effect. Glen Martin would have a reason for that, but I could not speak for him. It is not the point, however. It is not the point at all. The point is that there is a change to the definition of 'compensatable effect'. I, the Law Society and Glen Martin believe that it would have the effect of radically altering the compensation entitlement of a landholder upon whose property activities were taking place.

If the department have responded to your committee in those terms and still have not acknowledged the effect that we are talking about then there really is a problem. It may mean that they do not understand how the legislation actually works for compensation. It is amazing if they have been shown what was been said and they still do not get the point. What does it take to get them to see what the real issue is?

CHAIR: I will add to the quote which might draw some further comment. They go on to state—

This is clear when the existing section is read in the context of the Act as a whole. A conduct and compensation agreement (CCA) is only required where a resource authority intends to enter private land to carry out an advanced activity. There is no requirement for a CCA on private land where no advanced activities are proposed.

Mr Houen: They are not understanding the words in front of them. If they had anything to do with drafting this letter from the minister, which I would be happy to hand to you if you would like to see it, then they are the problem. They do not understand the issue if that is what they are saying. I urge you all to read what Glen Martin has said. You may quibble about his inference that there is a right of neighbours to claim. I do not say that at all and the Law Society does not either. I know—and I know because when I planned my client's case for the Nothdurft matter in the Land Court, a lawyer said to me, 'Are you sure that that is what the provision really means—that the landholder as the eligible claimant is entitled to claim for the impacts of the project as a whole, not just the seven wells on the landholder's property?' I said, 'Yes, I am absolutely confident that is what it means.' The Nothdurft decision, which I can hand up to you as well, if you wish—I have only brought one copy of it—confirms what I am saying, that at the moment it is the whole project which forms the basis—the compensation addresses the impacts from the whole project, not just the seven wells on this particular owner's property. I am astounded if the department does not understand that.

The change to the two words—'relating to' the owner's land—has been done very deliberately by somebody who knew precisely what the effect would be. How come it has not been acknowledged at all? How come nobody has so far proffered to officially concede that the change in that definition, changing those two words, means an enormous amount to the eligibility of the claimant for compensation?

CHAIR: I have a submission here from Shine Lawyers, which states—

... the proposed clause 27 unequivocally removes the existing obligation of resource authority holders to compensate landowners within their tenure area, who suffer a compensatable effect in circumstances where the activity is not actually being conducted on the land of the landowner.

That is the argument that you have been putting up.

Mr Houen: Yes. As I said, the Law Society submission confirms what we are saying. In my supplementary submission about this I quoted the case law on which I am legally advised my interpretation of those words relating to the land is based. There is case law support for it. I cannot say any more than that. I am absolutely certain that the effect that I complain of is real.

CHAIR: Why do you think the department would be putting themselves in that position, like you said earlier, that they do not understand? They do not accept—

Mr Houen: I would hope that it is that they do not understand because the alternatives do not bear thinking about.

Ms LEAHY: George, we have about 20 minutes and I want to get to the bottom of clause 27 and what it does and the meaning of 'compensatable effect' in section 81. It is absolutely possible to convince this committee that there are provisions in this legislation that need to be changed. We do not always hold the department's information up as a bible. Clause 27 inserts a new section 81. You are saying that the definition of 'compensatable effect' in section 81 has dramatically changed from what it previously was. 'Compensatable effect' is defined in the legislation as—

(i) deprivation of possession of its surface;

(ii) diminution of its value;

(iii) diminution of the use made ...;

(iv) severance of any part of the land from other parts ...;

(v) any cost, damage or loss arising from the carrying out of activities under the resource authority on the land;

That is what the new section 81 says. Can you tell us what was in the previous legislation? I am trying to put them side by side.

Mr Houen: The words are re-arranged, but the provisions that you just read out for the definition of 'compensatable effect' have not changed. The new version is perhaps more efficiently organised but those descriptions of a 'compensatable effect' have not changed. What has changed is the preface to section 81(4) (a), which currently says—

(a) all or any of the following relating to the eligible claimant's land—

'Relating to' means that it can be interpreted to mean, as confirmed by the Nothdurft case, that the whole of the project has those compensatable effects which relate to the claimant's land. They do not all occur on the claimant's land but they certainly relate to it because noise comes from all of the project, dust comes from all of the project, fugitive gas emissions come from probably the processing plant or that sort of thing, but it is the project as a whole. The replacement of section 81(4) (a) says—

(a) any of the following caused by the holder, or a person authorised by the holder, carrying out authorised activities on the eligible claimant's land—

That is 'activities on the eligible claimant's land'. In Nothdurft's case, their 300-hectare property, as I said before, has seven wells on it. Somebody would be faced with the impossible task of saying, 'This much of the noise comes from those seven wells and the rest of it is from somewhere else that we are not interested in.' It cannot be done. That is set out very clearly in the Law Society's submission at pages 3 and 4. It says at the bottom of page 4—

SLS is concerned that the proposed changes to the definition of *compensatable effect* may result in an unintended change to the nature of resource authority holders' liability to compensate public and private landholders.

Just two words is all that has changed but it has an enormous effect.

Ms LEAHY: I know the case that you are referring to at Chinchilla. The other issue here is that the department has said—

There is no head of power for the Land Court to determine compensation for neighbouring landholders if activities are not carried out on their land.

Mr Houen: No and I never said there was. That is something from Glen Martin's submission that I do not understand. I would not dare to try to answer on his behalf. I agree with him. I agree with what the department says. I was thinking it may be referring back to the way the provision stood a couple of moves back, but I do not really know that.

Ms LEAHY: The department is commenting on exactly this section, clause 37, section 81(4). Let us get to exactly the two words in section 81(4). Let us go back to that. You are saying that the two words that have been rearranged in the bill—

Mr Houen: Are the words—

Ms LEAHY: It is section 81(4), which is clause 37. It states—

(a) any of the following caused by the holder, or a person authorised by the holder, carrying out authorised activities on the eligible claimant's land

Mr Houen: Yes, whereas it used to say 'relating to' the eligible claimant's land. That direct comparison of the two is on page 4 of the Law Society's submission.

Ms LEAHY: Yes, I have that in front of me. You are saying that you would prefer subsection 4 to read 'relating to eligible activities relating to the eligible claimant's land'; is that correct?

Mr Houen: Eligible activities 'relating to the eligible claimant's land'. It is exactly the last five words that are in existing section 81(4) (a): 'relating to the eligible claimant's land'.

Ms LEAHY: Relating to or on?

Mr Houen: No, 'relating to'. As my submission says, and it is a quote from legal advice that I have, the interpretation of those words, 'relating to the eligible claimant's land', is necessarily done on the facts of the particular case having regard to the intent of the legislation.

Ms LEAHY: In relation to that particular case, that would have been heard not on this legislation but on the previous legislation—

Mr Houen: On the current legislation, yes.

Ms LEAHY: Which has in it the words 'relating to'.

Mr Houen: Yes.

Ms LEAHY: How would this create a different outcome for that case?

Mr Houen: This would result in wiping out any parts of the claim that related to dust or fugitive gas. It would have virtually wiped out any part of the claim that related to loss of value of the property, simply because your assessment of the loss of value of the property because of resource activities is done on the basis of the independent expert's assessment of the attitude of a hypothetical prudent purchaser. You can fairly sensibly, to the extent that there is anything logical about the way a valuation is done, argue with quite a respectable logic that the whole of the project, the Kenya project, will say the fact that it exists; the fact that it is widely known to be associated, along with other gas CSG projects in the area, with serious ill health among people who live in or around it; and the fact that it is perfectly obvious that the seven wells and the activities that go on there are going to disturb the stock and make the raising or fattening of stock less efficient than it would otherwise be makes it perfectly obvious that I as a hypothetical prudent purchaser will walk onto the place and see that it is surrounded by gas wells and pipelines and some flares and all sorts of other visible things to affect my attitude. If I am still interested in buying it, it will be at a discount.

Try to envisage how we could ask a valuer to assess the attitude of a hypothetical prudent purchaser when they are asked to ignore the fact that the whole of the gas field even exists and concentrate on the fact that we are valuing this one 300-hectare property that has seven wells on it. What affect do the seven wells have on the value of the property? Some, but nothing like what the effect of the gas field as a whole is.

Ms LEAHY: We would be quite happy to go back to the department—they will be coming in at the end of this session—and ask them about the omission of those two words.

Mr Houen: Thank you.

CHAIR: In very simple terms, are you saying that a neighbouring landowner cannot be considered for compensation unless we change those words?

Mr Houen: I believe that the only eligible claimants under the legislation—and it is the current legislation that I am talking about—are those whose properties are within the tenement and certainly their activities on the claimant's property. It may be that there is a case for compensation if you do not actually have any activities on the property, but you have some of the impacts. I am not really sure about that. It is designed to enable the person, like the Nothdurfts who have seven wells on their property, to be able to claim compensation for all those things, of which the big ticket item is loss of value of the property. As I said, it is easy to see that there is a loss of the value of the property and its attractiveness to a hypothetical prudent purchaser if it is surrounded by the whole gas field. You can form a view as to whether he wants to be involved with that or not. If you are trying to only value it on the basis that the rest of the field is not even there and it is only the seven wells on this property, it is a different equation altogether. I am not a valuer, but I do a lot of work in that field.

Ms LEAHY: You have been to the Land Court a few times.

Mr Houen: Once or two. I can assure you that it would wipe out the great majority of the eligible claimant's compensation entitlement.

CHAIR: What about the neighbour? I want to make sure that it is clear.

Mr Houen: I do not think there is anything in the present legislation or in the proposed amended legislation that would allow a neighbour outside of the tenement to claim. Glen Martin says there was or used to be; I cannot explain that. He may be right, but I am not aware of it. If there is an arguable case for that, I do not know what it is.

CHAIR: Is the person with the 30-odd wells that you talked about before inside the tenement?

Mr Houen: Yes, that is right. For sure.

CHAIR: Why aren't they entitled to claim?

Mr Houen: They are entitled at the moment, of course.

CHAIR: Under the legislation as it is?

Mr Houen: Yes. If their claim in the Land Court had been made under the proposed amendments, the claim would not have begun in the first place. They would not have tried to do it, because the answer from the valuer is going to be such a meagre sum that it would be too small to be even bothered with.

CHAIR: I am trying really hard, but I am finding it hard to understand.

Ms LEAHY: Can I summarise this fairly quickly. Property A has a tenement and that tenement does not run over to property B. Property A might have seven wells. Property B might have a compressor station, and it might have dust and gas and noise and all those sorts of things. You are saying, with the legislation as is presented in the bill, even though it is right next door to property A there could not be any claim for the dust, the noise and the tapping on property B; is that right?

Mr Houen: If it is inside the tenement—

Ms LEAHY: Let us say it is two separate tenements.

Mr Houen: If it is not in the same tenement as the claimant, as property A, if they are in separate tenements, this one that is in a separate tenement cannot claim for the tenement that is around property A. As far as I know—I am not a lawyer—I do not believe there is a way of claiming for the neighbour. I do not know that there ever has been.

Ms LEAHY: Even though the gas from property A might be going to processing on property B?

Mr Houen: Whatever the activity is, if the resource authority holder's activity includes a compressor station and a treatment plant on property B, yes, currently it is included, as the Nothdurft case shows. One critical factor there is if you look at the proposed replacement 81(4) (a), it says it has to be 'carrying out authorised activities on the eligible claimant's land'.

One of the problems there is that it is typical—it is not necessarily the same in every case, but it is usual—that the compressor station, the treatment plant and the water processing plant would all be on land that is actually owned by the resource authority holder. The coal seam gas companies usually try to own the land where they are putting that major infrastructure. Therefore, no private owner within the gas field is going to be able to claim for the loss that arises from the excessive noise from the compressor station, for example. That particular one has been credited with causing excessive noise, particularly low frequency noise, which is especially annoying noise, over significant areas of the blocks, as they call them, around Tara—all those little 40-acre blocks. There are hundreds of them.

Ms LEAHY: I know them well, George. They are in my electorate.

Mr Houen: It has been identified that the particular compressor station affects some of those properties with excessive noise. This all depends on wind direction and weather conditions and that sort of thing, but the Nothdurfts are affected by noise from that compressor station as well. As a matter of fact, the holder of the resource authority is in the process of building a 15-metre-high noise barrier all along the north side of the compressor station, to try to block the noise that currently travels five, six or whatever kilometres to the Nothdurfts' house when there is a wind from the south. That causes them to immediately exceed the noise limits, which they are only achieving, as I said before, by having 85 per cent of the wells within a two and a half kilometre radius either shut in or only free flowing anyway. The compressor station and other really noisy and really air-polluting stuff is usually on land owned by the resource authority holder.

Ms LEAHY: I think that would be covered under the environmental authorities and under the Environmental Protection Act.

Mr Houen: Yes, of course.

Ms LEAHY: This is not the Environmental Protection Act.

Mr Houen: Sure. What you are going to have is an environmental authority that says that noise limits apply throughout the tenement and beyond it, and anybody outside the tenement can claim for excessive noise or dust or whatever it is—anything that is a breach of the conditions of the environmental authority. However, on the eligibility for compensation, if these amendments are brought into force it will mean that there is a huge difference between what happens about impacts of the project under the Environmental Protection Act compared to what happens under the common provisions act.

Ms LEAHY: Thanks, George, for coming in. We will look at it very closely. I am sure you have sparked a considerable amount of conversation between this committee and the people who are about to appear before them.

Mr Houen: I really do appreciate the opportunity. Thank you for listening.

CHAIR: Members, we have had these documents tabled. You have all looked at them.

Ms LEAHY: Leave is granted.

CHAIR: The time for this session has expired. I now call on representatives from the Australian Petroleum Production and Exploration Association and the Queensland Resources Council.

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

HANSEN, Ms Emma, Resources Policy Advisor, Queensland Resources Council

MULDER, Ms Katie-Anne, Policy Director, Resources, Queensland Resources Council

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

CHAIR: Welcome. Matthew, do have an opening statement?

Mr Paull: Just a brief one. I would be more than happy to discuss the issues that were just being discussed about compensation for neighbours and so on. We certainly have a view on that. We have highlighted the key issues in our submission on the cover page. We see them as quite important. One of them relates to maintenance of the existing certainty in time frame of access. That is a very important feature in the Queensland system and it is balanced by clear incentives for resource authority holders to negotiate access and not use legal instruments to force access. Certainly the record of the industry is that voluntary access and access agreements entered into with landholders voluntarily are the main means of access.

The second point we have raised is around case appraisal. That is a new concept that is being introduced into the land access framework. We think that could be a very positive new feature, but we do see that as working most effectively as a final step before Land Court as opposed to another form of ADR. Case appraisal is different to ADR. It is different to mediation. In mediation you have a mediator tying to help the parties see each other's point of view without necessarily expressing an opinion on the merits of the parties' point of view or the reasonableness of what is being requested. Case appraisal is different. Case appraisal effectively gives you a preview of how you might go in court. You would get a professional's opinion based on the evidence before them of what a reasonable outcome would be, so it is a way of parties that are not agreeing with each other to avoid court. It would be most effective in that regard as a step after ADR and before court. It is used in other legal jurisdictions in Queensland and it is quite effective in those such as the planning court, but we would really like to see case appraisal taken out of all other kinds of ADR and put after it before court. I note that the only other submission to address this directly was from AgForce and they had the same view as us. The other point we raised was around authority holders not inadvertently being required to fund the legal preparation of court cases, and that is detailed in our submission.

CHAIR: Thanks, Matthew. Over to you, Andrew.

Mr Barger: Thank you, Chair. We would like to thank the committee for the opportunity to make a submission and to appear today. As you said, we do wear the carpet out a bit coming up here. It is almost like a second home.

CHAIR: We love you guys.

Mr Barger: You keep inviting us back, so thank you. If you believe the speculation in the paper, the committee may not have much longer left to run before we get a shiny new parliament. If it is our last appearance, thank you very much for all your patience in listening to our explanations and appeals over the life of this parliament.

CHAIR: Thank you.

Mr Barger: I would like to acknowledge the traditional owners of where we meet today and offer our respects to their elders past, present and emerging. It is a difficult bill to discuss in a lot of ways just because of the range of it. You heard from the previous speaker about two words and how much can hang on that, and that is across 170-odd pages of amendments and eight different bills being amended. Omnibus bills are inherently difficult to deal with. I guess the way we have broken up the QRC submission is to reflect the explanatory notes. There are six policy objectives—two that I would broadly characterise as around land access tenure issues and four that deal with water issues. I think there is probably a seventh which is where the bulk of the bill comes from which are the streamlining and miscellaneous amendments with a lot of those tidying up issues. Katie-Anne and Emma are our experts on land access and the tenure issues, so they will speak to those areas. I have mainly focused on the water issues, which have not received much discussion today, so I am happy about that.

Just to quickly skip you through the QRC submission before handing over to Katie-Anne and Emma, like a lot of the submissions, generally our view is that the amendments are constructive. The bill is useful. There has been a good consultation process go into most of it, so people were aware of the intent of the changes and have had a chance to comment on how they might come into play. It is noted in the explanatory memorandum that there is some discussion around consistency with fundamental legislative principles, and I think the notes do a good job of balancing those concerns. They call out some of the risks, but on balance we tend to fall in the same camp as the drafter of the notes. We think those considerations have been given appropriate weight and properly recognised.

In terms of the four water objectives—they are to look at the effect of climate change on water planning, to provide for cultural outcomes in water planning, a mechanism for temporary allocation to unallocated water, and a new set of emergency powers—we have raised some comments about those in our submission, but broadly we think the intentions are good. They largely reflect practices that are in place now. The sense we had both from the collective consultation and reading the submissions is that while there is some finetuning that can be done most of the stakeholders seem to support them. They recognise that the intent of those water-planning processes is constructive. I might hand over to my colleague to talk to the more complex and contentious parts of the bill.

Ms Mulder: Thank you, Andrew. I do not know about that; I think water is probably the most complex out of all of them. Basically Andrew is right: this bill is mammoth. It is a big omnibus bill and we are very happy with the consultation which the department ran us through early on, so that was really good to help us get across the detail in such a big bill. Andrew has spoken to the water amendments. I will speak very briefly to other parts of the bill which we support or are seeking some slight amendment to. As Andrew said, we largely support the bill. There are just a few things around the edges I suppose which we would be seeking.

The first part which Matt spoke to was the statutory negotiation processes for reaching agreements between resource companies and landholders through a conduct and compensation agreement, or a CCA. We largely support those amendments in that they provide different opportunities for landholders to come to an agreement with resource companies through a range of options under the alternative dispute resolution mechanisms, including case appraisal, which we also support. We also support the pathway to choose arbitration over the Land Court, understanding that that might be an option which some people are keen to take and note George's comments before that we see a lot of value in that pathway. We have mentioned in our submission that we also support the inclusion of agronomist fees into the land access framework. We are highly supportive of that. There are a few things which we would like some further refinement on, and we have outlined those in the submission around the fact that there can be a bit of uncertainty of time frames and things like the time frame to set an arbitrator or an ADR facilitator. We do not feel as quite clear there.

Moving on to other more tenure amendments in the bill, we are highly supportive of a number of areas including the inclusion of a non-competitive pathway for coal exploration tenure. A number of years ago there was a moratorium put over the state of Queensland for coal tenure. Usually you would apply for tenure over the counter whereas now it is similar to petroleum where the government releases the land. We have not seen a lot of coal releases in the last few years. I think we have only seen about two releases in four years, so that is quite minimal. For companies where they are looking to slightly extend their operations for infrastructure purposes and other ancillary operations, then it can be quite a barrier. There are also some amendments in the bill with regard to overlapping tenure, specifically the overlapping tenure regime for the coal and coal seam gas parties. We wholly support those amendments. Those amendments were proposed by industry—both QRC and APPEA—so we would just like to put on record that we support those going through. Thank you.

CHAIR: Thank you very much. In the QRC submission the QRC expresses concern regarding how negotiation and preparation costs will be defined and suggests an easier way to resolve cost disputes between parties. What are your suggestions?

Ms Mulder: We think that we can work through some further options with the department going forward. We do not believe that there should be any further amendments in this bill with regard to resolving those sorts of disputes, but obviously the amendments with regard to what is a necessarily and reasonable cost might be something that we see more of going forward. We would like to look at other approaches which are outside the court which companies or landholders could access.

CHAIR: Can you give us an example?

Ms Mulder: Matt through APPEA has some comments I think in your submission that outline it.

Mr Paull: There are mechanisms available in the court where as part of a court case you can seek a determination on costs. That would obviously be a step too far in terms of a CCA negotiation, but it would be very useful if there was that sort of service separate to the court or attached to the court, for example, where you could go and discuss it with them and seek a view on whether the costs being put forward are reasonable and necessary.

It is certainly an issue across the whole resources industry where our members have seen inflated costs being put forward. There is a relatively loose definition of such costs in the act—what is reasonable and what is necessary. Companies are essentially being put in the position of arguing with landholders over whether their legal and professional fees are reasonable and necessary, or paying inflated costs to professional and legal advisers which really benefits nobody other than the lawyers, and I do not think that is the intent of the act. I think the intent of the act is to ensure that landholders are able to access high-quality professional advice that is relevant to the negotiation that they are under. It is not to generate a lawyers feast so that all sorts of advisers can rack up their fees. In doing so, the incentive there is to prolong the negotiations and make them more complicated than they need to, and that does not help the landholder either. It is an area that I think needs more attention, with input from stakeholders from all sides to improve the quality of the advice that goes to landholders. It needs to be the advice that they need and is not aimed at undermining the negotiation and prolonging it for the purpose of generating fees.

CHAIR: That is a very good point, but how do we do that? Would you need an independent person monitoring the whole process because it can happen easily?

Mr Paull: I think it is a complicated area and it needs to be approached carefully and sensibly. I think it needs to be a focus for government going forward. I would not want to suggest a solution at this point, but we would definitely like to explore how that could be achieved with landholder groups contributing, with us contributing, with a reasonable expert in the middle listening to both sides and seeing what we can come up with. I think there is certainly room for improvement and that would be improvement that is to the benefit of landholders. It would improve the advice that they are getting. It would reduce the angst they have going through land access negotiations, and it would make the process a lot more efficient and cost effective for the resources industry too.

CHAIR: It would probably generate a little more faith in the system too, would it not?

Mr Paull: I think so. If you are getting told by your advisers, 'Don't trust them; let's fight all the way,' when you are perhaps being offered a decent deal you are going to be left with a bad taste in your mouth. It is not good for you. It undermines faith in the whole system. I think there is a win-win solution here, but it is a complicated area so it does need to be approached—

CHAIR: Explored a bit more.

Mr Paull: Yes, explored in a methodical way.

CHAIR: That is a good point, thank you. The QRC expressed concern with the proposed amendments regarding the reduced certainty of process time frames—I know you touched on that before—and the potential for increased costs in the process to reach an agreement. Do you want to tell us what that means?

Ms Mulder: In commenting on the potential for increased costs, the current approach is that you first try to come to an agreement and you then go to a conference put on by the Department of Natural Resources and Mines—the mining registrar—and if there are further issues it extends to the Land Court. The process proposed in this bill which was outlined in the Scott review is that there are a number of ADR options plus an extra step possibly with another pathway being arbitration. In the bill it outlines where there are costs associated. For instance, if you are going through the ADR process, then the resource company pays for the cost of the ADR facilitator. If both parties agree to arbitration, those are shared costs between the parties. It is quite clear there, but given there is potential for more steps in the process there is potential for additional cost. Overall, to be honest, it is not a significant issue that the resource industry has.

CHAIR: I note that the QRC requests that the committee give consideration to recommending that the joint interaction management plan regime insofar as it applies to coal parties be consolidated within the Coal Mining Safety and Health Act rather than continue to be partly applied under that act and partly applied under the Mineral Resources Regulation 2013. Who wants to tell me a little more about that?

Ms Mulder: I can. The joint interaction management plan is a new requirement for coal and coal seam gas proponents which is part of a much broader overlapping tenure framework that was brought into place on 27 September 2016 for coal and CSG overlaps only. There is a number of

mandatory requirements under this new framework which both parties must undertake for co-development basically. One of those mandatory elements is the joint interaction management plan, which is not an additional document. It is a bridging document between each party's safety regimes and safety health management plans. It is really about how they are going to manage an interaction. It is really about putting down who your emergency contact is if there is an emergency. When are you going to meet—monthly, bimonthly or annually? Who is the contact person on certain days? It is all those sorts of things. What are the vehicles that are going to be on site in that joint interaction area? It is really how you communicate with each other to reach a good safety outcome and no incidents.

What we have outlined in our submission for amendments to this bill is in regard to that joint interaction management plan. A lot of those amendments are in the Mineral Resources Regulation. To be honest, in regard to the safety regime for the overlapping tenure framework there are amendments in all sorts of resource acts. They are in the petroleum and gas act. They are in the petroleum and gas regulation. They are in the Mineral Resources Regulation and the MER(CP)A, which is the Mineral and Energy Resources (Common Provisions) Act. There is quite a few sets of amendments everywhere for this framework.

Our comments in regard to amending or removing those amendments from the Mineral Resources Regulation and into the Coal Mining Safety and Health Act are really around where it belongs. If it is a safety amendment, it should be in the Coal Mining Safety and Health Act rather than the Mineral Resources Regulation which typically does not deal with safety matters. That is what those comments are about. We do not feel that it would lead to a better safety outcome. It is more that it more belongs in a safety act.

CHAIR: Have you raised this with the department?

Ms Mulder: We have, yes.

Ms LEAHY: I am interested in Matthew Paull's comments in relation to case appraisal, and I am looking at the submission from APPEA. The submission suggests that case appraisal should be separated from the ADR processes. Are we putting in more processes by doing that? I am looking at this in a couple of ways. Are we putting more processes in before we get to an outcome for a landholder and a resource company, or if we do that separation of the ADR and case appraisal will there be mechanisms there to enable people to not have to go to court to get an outcome? I am working my way through because there is that recommendation in APPEA's submission to separate ADR and case appraisal and do some further amendments.

Mr Paull: It is certainly an additional process, but we think it is a very worthwhile one. Adding additional processes to the land access framework has occurred a number of times, and it might be worthwhile taking a look at the whole system and working out how that could be streamlined. Case appraisal is a different concept which we think would be very worthwhile because it offers the potential for a landholder to avoid going to court. Nobody wants to go to court if they can avoid it. This facility provides a low-cost accessible way for a landholder to test whether they are being offered something reasonable and likewise for the authority holder. If either party is being unreasonable, if either party is asking for something that is beyond what they are obliged to offer or beyond what they are entitled to, case appraisal is a way to get an understanding of where you sit without having to go to court.

It is beyond traditional mediation. A mediator does their best to help the parties agree, but it is not their role to express a view. If one party is being unreasonable, the mediator is not going to call them out. They are not going to inform them of that. If one party is being informed badly, it is not the mediator's role to say anything. If that is the case, do we want that dispute going all the way to court or do we want to offer a circuit-breaker before you get to court? It does work very well in the context of the Planning and Environment Court. It is already a feature in Queensland, but we see it as a separate and distinct stage to the traditional ADR process.

Ms LEAHY: Who would do the case appraisal?

Mr Paull: We would see it essentially coming out of the Land Court. It would be for the Land Court to determine exactly how they do it and exactly who they get to do it but administered by them to provide the rigour and independence that you would need for this sort of process.

Ms LEAHY: It would have to be either registrars or Land Court members?

Mr Paull: Something like that, yes. This act is providing a clear head of power for the Land Court to do that.

Ms LEAHY: But it is not clear in the legislation that that can occur; is that what you are saying through the submission?

Mr Paull: It is clear that it can occur but it is set up as another form of ADR, not as a step after you have tried ADR and failed but before you go to the Land Court as a distinct step in between—the Land Court or arbitration.

Ms LEAHY: Would it be the case that—I am just working my way through the process—people could elect not to go to ADR and go straight to case appraisal?

Mr Paull: We would not have a problem with that. If both parties wanted to do that, if it is by agreement that is fine. It would probably be beneficial to do ADR first because that allows you to explore each other's views and if you can reach agreement in that manner then that is fantastic. Case appraisal is a bit more formal. Both parties are going to be told an independent view on the merits of each other's case and what would be a reasonable outcome. It is a more formal step but, again, that is a reason why it should be separated from the less formal approach of ADR.

Ms LEAHY: In relation to case appraisal we talked earlier about legal representation. Would there be legal representation for the parties in case appraisal or not?

Mr Paull: If it is needed, but we are suggesting that if the company calls for case appraisal then they fund it. If the landholder calls for it, then they would fund their own legal representation. Otherwise you are in a situation where the landholder can call that as a means to preparing their court case basically and the landholder is under no obligation to enter into it. They do not have to agree. It is the company that wants to access the land. If the company wants to move down that process, then it is reasonable that they fund the case. The landholder is in a different position. If they want to go to case appraisal then we would see that as akin to them wanting to go to court. If the company has to fund their legal fees in that sense then they are potentially funding the court case which is not a requirement under existing legislation.

Ms LEAHY: Legal fees come up nearly every time. It does not matter whether it comes up from the landholder's side or the resource company's side. I suggested to the Queensland Law Society that perhaps we should look at some capping of legal fees. They said, 'We would have to workshop that,' for obvious reasons. There has to be some way, because I think there are more lawyers floating around some of these communities than there are real estate agents. Is there some way in which we could have a tiered system, or some caps, or something? Has any thought been given to that?

Mr Paull: Caps certainly exist in other jurisdictions. There are pros and cons in that sort of approach. Ensuring that there is good information available to landholders about what a successful CCA negotiation looks like can be of benefit. I think that we would see case appraisal as assisting in that regard as well, because if you are being poorly advised, then you would think that is going to be called out by the case appraiser.

I would see that as sitting in a more detailed consideration of what is reasonable and necessary and is there a better approach to the existing head of power in that regard. From our perspective, it all comes back to making sure that the landholder gets the advice that they need but is not used as a source of generating legal fees.

Ms LEAHY: Thank you.

Mr PERRETT: My query was around case appraisal, too. I think they have been adequately canvassed. They were the only inquiries that I had with respect to the submissions.

CHAIR: In relation to the amendments that were a recognition of the spiritual connection of Aboriginal people and Torres Strait Islanders to water and the natural features that waters support, do you want to talk a little bit more about that for us, please?

Mr Barger: Our submission talks about this a little bit. The principle is a good one and, arguably, it has always been there. There has been a recognition of the cultural use of water, but it has not ever been terribly clear. The amendments try to provide a bit of clarity. The way the explanatory notes describe it, the way the amendments in the clauses describe it marry up quite well with our understanding of it. We think it has become a little bit confusing right at the back end. The definition of the 'cultural' use of water just talks about a beneficial use, which to us seems to encompass the cultural use, the social use, the economic use. A whole range of other allocations that might already be held in a water planning scheme suddenly seem to be aggregated into a big pool which is now called 'cultural'.

We are suggesting a better definition. It may well be that some of these allocations have a benefit at multiple levels. It may well be that an allocation provides an economic use and also a cultural use, but you need an additional allocation to provide a specific flow of water to meet a cultural use. Defining it with respect to the other uses of that water seems to better reflect the way the bill has been drafted, whereas the definition at the back of the bill seems very 'all of the above'.

The concern for other water users is, if you are not clear what an allocation is being used for—say a flow of water in a watercourse is being reserved for another user and you are not particularly sure if it has been reserved for community use to drink, irrigation, an environmental benefit where the flow provides benefits for fish stock or biodiversity, or a cultural use—you lose some of that transparency that we have spent a fair bit of time trying to drive into the water planning process.

The explanatory notes talk about the consultation that the department has initiated with as many as the native title groups they could. I expect that there would be a different view from different groups about how that cultural use might be expressed. You might need something different in water use plans. I think the way that cultural allocation is described needs to be very clearly linked to a cultural benefit. You do not want questions asked about, 'Is it cultural and economic or is it cultural and social?' We already have those other categories. I think it should be possible to define 'cultural' in a way that is clear and unambiguous.

CHAIR: For the record, what is your interpretation of 'cultural' use? Is it always achievable?

Mr Barger: Again, it is a difficult one, because what it will mean to one group at one scale will be quite different from another. In some ways, it may well be that those cultural benefits are already picked up in environmental flow objectives. The example that the department used during the consultation was that there may well be a specific waterhole that has cultural importance, so there is a certain amount of water that needs to sit within that waterhole throughout the full cycle of the year. The way to provide that is to ensure that there is a flow of water reserved to keep that waterhole at a certain level. That is a cultural outcome.

It may well be that, in the existing water plan, that same waterhole is also an important fish habitat. You might have some flow objectives that ensure that there is water in the waterhole at the time the fish are breeding. The way I understand it is that that water plan may already have, through existing allocations, a view of how water moves through that waterhole during the year as people are exercising their allocations. You should be building another check in this to say, 'Among all of that variation that you will get you also need to try to keep the waterhole at a certain level of water.'

It takes what can be a fairly nebulous aggregate concept at an act level and tries to make it something quite tangible and local within a water plan. It is a concept that sits fairly comfortably within water planning, but it needs that clarity of definition so that you are sure why you are trying to put water into a waterhole. Is it because somebody is running a pipe out of it to irrigate some crops for an economic purpose or is it because of biodiversity? It might be that you need that waterhole sitting there to keep trees or birdlife in the neighbourhood. Or is it because it is associated with a particular native title group's cultural beliefs so that needs to be preserved in addition to those other uses?

CHAIR: Thanks, Andrew. You were both here earlier when Mr Houen gave his evidence. He raised some concerns about clause 37, which amends section 81. Does either organisation want to make some comment on that?

Mr Paull: This is a relatively complex area and I think it is not particularly helpful or informative to focus on a few words in a particular provision and draw conclusions about the broader framework without first understanding the broader framework. In Queensland, you are allowed to do things that cause noise, odour and dust without compensating your neighbour. My neighbour can mow his lawn without him having to compensate me. If he tries to mow his lawn in the middle of the night, that might be a different situation. He might not be able to do that.

A similar framework exists for resources projects. Those controls are under the Environmental Protection Act. I think the committee understands a lot of this. The companies within their environmental authorities have limits on noise, dust, odour and so on. You either have to comply with those limits or you can enter into an alternative arrangement with what is called a sensitive receptor—someone who can hear what is going on. Those alternative arrangements can be pretty much anything that you can agree on. If you are going to make a noise for a week, you could maybe fund a holiday to the Gold Coast or something for that week so that the neighbour does not have a problem. You could give them financial compensation. You could install double glazing in their house and give them air conditioning so that they cannot hear it as much. There is a range of ways that you can solve an issue if someone feels like they are being affected by the noise, the dust and so on and you would rather deal with them directly than operate under your EA.

Those alternative arrangements can sometimes be included in conduct and compensation agreements. That is not because they are a requirement in conduct and compensation agreements but for simplicity. If you are going to have a contract with a landholder, it makes sense to put everything that you might be dealing with with the landholder in that contract. Sometimes, alternative arrangements are contained in CCAs for simplicity.

That does not mean that the obligation to compensate for compensatable effects automatically includes noise for neighbours. The company needs a CCA only if it wants to enter a person's land. If you are not entering a neighbour's property, you do not have to enter into a CCA. You do not have to compensate them under the CCA. You have to deal with them if you are making too much noise, if you have light and other effects, but you do not have to enter into a CCA. I think there is a bit of confusion about what a CCA is for, what its requirements relate to, and requirements of the Environmental Protection Act, which are distinct and separate, but sometimes dealt with separately for administrative purposes.

Certainly, I have asked our members and no-one is aware of any neighbour being compensated with a CCA for impacts from the neighbouring property. Alternative arrangements, yes; noise impacts, light and so on, yes. No-one has ever entered into a CCA with a neighbour because they are drilling some bores next door.

Ms Mulder: I think Matt has covered that extremely well. I have no further comments.

CHAIR: Well done, Matt.

Ms LEAHY: Well done. You have made something complex very simple.

CHAIR: Are there any more questions? Once again, thank you very much for being here. I always appreciate your attendance. There was nothing taken on notice. We will call this session closed. We will take a short break now.

Proceedings suspended from 10.41 to 11.22 am

MILLER, Dr Dale, General Manager, Policy, AgForce

PHIPPS, Mr Daniel, CSG Project Leader, AgForce Projects

Dr Miller: I would like to thank the committee for the opportunity to make a submission on this bill as well as to present to you this morning. The intent of the bill is to implement recommendations from the review of the GasFields Commission and implement several changes to dispute resolution processes. It also seeks to make changes to the Water Act 2000, including making explicit the consideration of the water related effects of climate change and protecting the cultural values of Aboriginal and Torres Strait Islander peoples in water planning; enabling temporary access to strategic water infrastructure reserves; and establishing new powers for dealing with urgent water quality issues. A number of other streamlining amendments are proposed and have been addressed as needed in our submission.

In relation to the water reforms, AgForce largely supports the proposed amendments but highlights some concerns. We note that existing technical assessments already consider climate variability and change, and we agree that the planning framework should work to support primary producers' capacity to manage climate variability and adapt to change. Climate change projections point to reduced water supply reliability and water plans must support entitlement security, regional water supply and on-farm efforts to adapt. We would caution that the minister should address those climate change impacts expected during the life of a plan or its subsequent replacement and focus simply on the availability and use of water on land.

We support governments recognising and specifying in water plans the water related cultural values of Aboriginal and Torres Strait Islanders to be largely met through the environmental flow objectives. The current definition of cultural outcomes in clause 276 as a beneficial consequence is quite broad and could encompass primarily commercial or economic benefits, which then risks adverse third-party or environmental impacts and the duplication of existing consumptive water allocation frameworks. This definition should be clarified with cultural, economic, social and environmental outcomes managed separately, clearly and with appropriate weight.

AgForce supports enabling temporary access to strategic reserves for agricultural purposes. We have noted the calls in other submissions in relation to temporary licences of up to five years. In our submission we indicate that three years is acceptable. We are open to having temporary licences of up to five years as well. We believe this could be appropriately accommodated by the department in terms of some of the restrictions that might go with that extended period.

Finally, the emergency powers for dealing with water quality issues should ensure that impacts on downstream users are avoided as far as possible and warnings provided for any significant releases that might impact on those watercourses. We do support the calls in other submissions for the prompt reporting to parliament of the exercise of those powers.

In relation to the CCA and make-good dispute resolution proposals, while the bill proposes some positive steps there are still possible improvements. AgForce strongly supports the landholder's professional fees in CCA negotiations being covered by the resource authority holder, including those of agronomists, and the covering of those costs in situations where a CCA agreement is not reached. We would like to see covered costs expanded to include the landholder's time spent in preparing and negotiating an agreement with development between stakeholders of a process to determine what is reasonable in that situation. However, we believe this cost allocation acknowledges the fact that these costs would not be payable without a resource company seeking to access the land and engage with the landholder.

In relation to the introduction of arbitration, we strongly support arbitration being voluntary and the costs being covered by the electing party, particularly if it is determined that parties can agree to go straight from negotiation to arbitration. Our strong preference is for an adequate ADR step prior to arbitration to encourage a full attempt at negotiating differences and to promote transparency, disclosure and release of information, which is of significant concern to landholders.

AgForce opposes the proposed restriction—section 91C and section 433C for make-good agreements—of landholder legal representation as requiring the consent of the resource company or arbitrator. Legal representation should be a right given the implications of the process; that is, potentially being without appeal, binding of successors and assigns and to create a fairer setting for that conversation. A potential disadvantage of arbitration is the lack of clarity in the bill concerning the qualifications of arbitrators, how disclosure of information will be provided to landholders, including the compelling of information, the potential for pressuring of landholders to go straight to a binding arbitration step and the lack of appeal grounds except for jurisdictional error.

We would also encourage the committee to clarify and rectify, if necessary, the issues raised by submitters in relation to the general liability to compensate affected landholders arising from authorised activities. That is the clause 37 issue that has been raised. We have not had a legal opinion on this, but AgForce understands that it is not the intention of the government to reduce the current liability provisions, and we would not support any such reduction occurring. We seek clarity that any obligations will be maintained. We do not support permitting a resource company to enter private land to carry out advanced activities without a signed CCA or deferral agreement, as has been proposed in cases where it has been referred to arbitration but not decided.

AgForce would like to thank you again for the opportunity to make a submission and present to you today and propose some amendments which we think would improve the effectiveness of the bill. We can now respond to any questions that the committee might have.

CHAIR: I might start off with access to land for advanced activities without agreement. You say that AgForce does not support amendments to section 43 of the MER(CP) Act that would permit a resource company to enter private land to carry out advanced activities without a CCA or deferral agreement being signed if the company has commenced arbitration but no decision has been made. I understand where you are coming from, but do you want to go into a little bit more detail? Do you have an example of why it does not work?

Mr Phipps: Our concerns are centred on the current structured proposal for arbitration, particularly if landholders and companies agree to go to arbitration skipping the ADR process. It is a very short time frame for negotiations and being able to adequately gather information to inform CCA negotiations. Our concerns are centred on the ability of companies to enter a property to carry out those advanced activities without an agreement being in place or without the matter being before an arbitrator. It certainly does not provide landholders with a lot of confidence or certainty that the framework will give them protections to control access to their property.

CHAIR: It just does not work without an agreement, does it? There is too much risk for the landholder.

Mr Phipps: That has certainly been our opinion. Certainly even in the current structure, if the matter is brought to the attention of the Land Court and an election notice is issued, advanced activities could theoretically be undertaken. However, the main reason is that obviously there is still an ADR step and a mediation step before entering the Land Court and more ability to try to resolve the dispute, rather than heading straight to arbitration without first trying to exhaust those options earlier in the process.

CHAIR: Could you define 'an appropriately qualified agronomist'?

Dr Miller: We did refer to the Department of Environment and Heritage Protection bore assessment guideline in coming up with the suggestion for the committee which we have included in our submission. That basically provided a range of points that would be of relevance in determining who would be appropriately qualified. We want to ensure that our landholders are getting the best advice and that those individual agronomists are professionally qualified and experienced to be able to make those sorts of recommendations.

The definition that we have proposed in the submission is that an independent agronomist providing advice to landholders and CCA in negotiations must, firstly, not be an employee or have any financial interests or involvement that would lead to a conflict of interest with the tenure holder themselves, so they are truly independent. Secondly, they must have a degree in a relevant science or agricultural discipline. Thirdly, they must have a minimum of five years prior experience in at least one of the following fields: crop, pasture, plant and/or soil monitoring and assessment; animal and livestock health nutrition and welfare; or agricultural production systems. Finally, they must have a practical knowledge of grazing and/or cropping operations and infrastructure.

Largely we want to ensure that they have the appropriate technical background and experience to be able to provide good advice. You could interpret 'agronomist' very narrowly and just say that it applies to crop and maybe pasture agronomy. We think it is important that you also consider other elements of the production system. It is largely how the entire production system operates on a property that is important, because you can have implications with resource developments that might impact on the immediate area and might also have broader systems implications. We want to ensure that we can capture that effectively.

CHAIR: Would those agronomists have their skills and qualifications registered so that it is easier to do a check on them?

Dr Miller: There is a registration process. It used to be the Australian Institute of Agricultural Scientists and Technologists, but I think they have changed their name since then. There are professional steps that can be taken to get registration. My experience is that not every practising agronomist or agricultural scientist is registered with those. That would not necessarily disqualify them from being an appropriate person to provide advice.

CHAIR: How do you know if they have those skills, as we were mentioning before?

Dr Miller: To qualify to get their expenditure remitted, I think it would be in the landholder's interests for them to demonstrate that they have those covered.

CHAIR: Fair enough. The bill proposes that once an arbitration election notice has been issued it must be accepted or refused within 10 days. You recommend 15 days.

Dr Miller: Ten days is quite a short period, obviously, to go into a binding determination process. We would like to see that extended. At a minimum, if you did sit with the 10-day period we would like to see a cooling-off period as well, so that there is the capacity for maybe legal advice if that has not been sought up to that point to be achieved and for the producer to have a bit of a sit back and think about where they are heading with that process. Daniel, do you want to make any comments?

Mr Phipps: I would support that. Certainly in relation to similar time frames landholders have expressed concerns with entry notice processes for preliminary activities, which is also a 10-business-day period. The concern from landholders is the time to both receive that notice to be able to adequately review the potential implications and respond to it. In terms of arbitration, it is a fairly limited time frame to be able to, first of all, find an arbitrator when landholders are not experienced in finding or understanding the process, and giving them time to adequately consider the implications of what they are being asked to enter into. Obviously, as Dale mentioned, it is the potential future restrictions of having a binding decision and not being able to appeal. Also, the actual format of arbitration is a time-consuming process for landholders without experience.

Ms LEAHY: AgForce's submission talks about the water legislation reforms and the explicit consideration of climate change in water planning. Can you elaborate a little on what is in your submission?

Dr Miller: Our understanding from departmental advice is that they already perform technical assessments on climate variability and climate change impacts on the availability of water. Our understanding is that the bill is largely seeking to formalise that within the process, so it is requiring the minister to consider those elements. From our perspective, it is important that there is adequate opportunity for landholders to be able to adapt to climate change, particularly in terms of their water management. Climate change projections for Queensland are for a drier climate and also greater rainfall intensity and variability. That really has implications through to availability of water on property and the capacity to capture and utilise that effectively. We would like to see elements within the minister's considerations to include the capacity for landholders to maybe modify storages to improve or reduce evaporation, improve effectiveness of use, support irrigation efficiency opportunities and then there is a whole raft of other production implementations that producers can undertake to manage some of that climate variability.

What we do not want to see is water planning that brings in climate change projections for 50 or 100 years into the future and tries to apply them in the current planning cycle. We need to be focused on existing impacts and those that we are expecting to see in the next 10 to 20 years of the cycle. At a regional level, it is important that regions have adequate water storage capabilities to deal with the more variable conditions going forward. In that case, you will have a longer lead-in time, so it is important that we look far enough out in front, but not too far that we are dealing more with hypotheticals rather than realities.

Ms LEAHY: Are you suggesting that it should be more event-by-event management, rather than looking at the climate change projections—and obviously we would have to look at some of the science behind those projections, as well—for 50 to 100 years? Are you saying that it should be more event-by-event management?

Dr Miller: There are two elements to the equation. It is the short-term climate variability that farmers deal with on a day-to-day basis, but then it is the longer term investment decisions that look over a 10-, 20- or 30-year time frame, whether it be property purchase, infrastructure improvements or installation. I suppose it is a challenge to try to bring that back to something that is practical, but ultimately primary producers want to make sure that their water entitlements are secure and that their share of the available resource is also secure. It is really about giving people confidence, through the

water planning process, that that additional variability can be accommodated and managed effectively and practically at the property level, and that we are not seeing planning instruments apply restrictions that are unnecessary and may impact on a producer's capacity to adapt.

Ms LEAHY: Do you think that, while some of those planning instruments and water management plans are reviewed every five years, if there is explicit consideration of climate change and climate change predictions we may see a reduction in entitlements?

Dr Miller: We would not like to see a reduction in entitlements unless it was in response to a very high level of certainty that that reduction in availability was going to occur as well. There is also opportunity. In some areas we might see greater water availability associated with climate change and the pie may be greater in terms of what is available for consumptive use going forward. I do not think it is necessarily just a matter of a reduction. That is probably where things are heading. Ultimately, for investment certainty, producers want to know what the planning framework will look like and if reductions are necessary that it is done in a proactive and fair way.

Ms LEAHY: How do water entitlement holders get to test the science that is being used in any climate change prediction? How do they get to test that, in the context of water planning?

Dr Miller: I think it is a fair comment in relation to the technical assessments and modelling that sit behind the plans. My understanding is that the plans are required by law to be a sustainable allocation of water, so they do need to look at all the elements around environmental sustainability and social, economic and other impacts. In terms of a line of sight for the average producer back to the modelling and the technical assessments that go there and the sorts of incorporations of considerations around climate variability and climate change, I do not think that is very strong. We would be more than happy to talk to the department to get a better understanding of what that looks like and, I guess, through this bill, if that is becoming a more explicit consideration of the minister in setting up a plan, we should have a good and adequate understanding of what that looks like.

Ms LEAHY: We do not have an understanding of what that looks like now?

Dr Miller: Personally, I have not sought that level of detail. Kim Bremner, the chair of our water policy committee, is much more engaged in the technical side of things and has looked more closely into the modelling. I think the modelling is good at allocating or relative allocations of available water and possibly less so for magnitudes of water availability. I am more than happy to investigate that in conjunction with the department going forward in terms of how this works out in practice.

Mr CRAWFORD: You expressed some concerns around the definition of 'cultural outcomes' and water plans. Can you expand on that, please?

Dr Miller: I think the proposal around the framework of how cultural water will be dealt with is sound. The issue really comes into the definition within the dictionary of a cultural outcome being just a general beneficial outcome. That introduces a degree of potential confusion within the minds of other water users and, I guess, the allocation of environmental water in terms of how that will look in practice. Certainly we are very supportive of the government looking to provide adequate acknowledgement of the cultural values and interests of Aboriginal peoples and Torres Strait Islanders, but we would like to see the commercial and economic uses of water by those groups managed under the current framework for consumptive water use rather than setting up a duplicative system. If the cultural uses are intended to be delivered largely through the environmental flow objectives, if you bring in an economic purpose into that space as well—excuse the terminology—it can muddy the water around what is trying to be achieved by those allocations.

If cultural water includes an economic purpose and that is coming from an environmental flow, you can probably start to see that you can set up some adverse consequences or potentially do so in the future. Then where you have existing water users with existing entitlements and allocations for commercial and economic use, as a potential of that the cultural allocation will then start to have implications as well.

If the government is trying to accommodate an economic benefit for Aboriginal peoples and Torres Strait Islanders, our preference is to see that it does that through enabling them to participate in the current water allocation and trading framework. Whether that is providing funding, skills or other support to enable them to do so, we think that is a better way of achieving those economic outcomes than maybe including that element within a cultural definition. We strongly encourage you to look at that definition of 'cultural outcomes' within the bill and consider those points.

CHAIR: We talk about water management plans and documentation, which sounds like pretty common stuff in use these days. I wonder about the reliability of a water management plan when you start talking about water for cultural issues or you talk about ongoing supply for communities. My point is that it is probable or possible. How much faith should we put in these water management plans?

Dr Miller: From a primary producer's perspective a lot, if you are making investment decisions on the basis of what is in there. A key point of flavour of all of AgForce's submissions in relation to water is that it is all about security and certainty of entitlement. When you start to introduce uncertainty into a planning system, the confidence that individual primary producers have about making some significant investments into what might be ring tanks or other irrigation infrastructure—whatever it might look like—is diminished. As a result, you forgo the opportunity for local development, employment opportunities, social advancement et cetera.

From our perspective, it is vitally important that we get water planning right. We do not like seeing tinkering which has the potential to unbalance that or cause either confusion or uncertainty about what the intention is. It is important to us that it is very clear about how that water planning process works and that there are quite strong and good consultation steps associated with any changes to those plans and that we do it in a measured way—a 10-year plan and reviews as we go to see whether there are any issues that are emerging and deal with them as soon as possible. You are right: we are dealing with a variable commodity that varies in supply. Then you overlay a range of different users with different priorities. It is a complicated process.

CHAIR: You seem to be reasonably happy with the way it is operating at the moment.

Dr Miller: At this stage we are not aware of any systemic problems with the water planning process itself, apart from the fact that—referring back to my earlier comments—it would be good to see all consumptive uses operating within the same water planning framework, including resource sector utilisation as well, because we believe that is the best way to get a clearer and more transparent understanding of the resource and the uses of it to ensure that those uses are sustainable and everybody's rights are protected.

CHAIR: In your submission you expressed some concerns around the definition of 'cultural outcomes' in the water plans. You have already made some additional comment on this. It is something that I think about a lot. What is your definition of 'cultural outcomes'? What does that mean to AgForce?

Dr Miller: It is probably not up to us to define that. It is really a matter for the Aboriginal and Torres Strait Islanders involved who have a much clearer understanding of what the cultural outcomes are from their perspective. Personally, it is probably more about traditional use and ceremonial uses rather than the broader economic or commercial purposes. Ultimately, that needs to be negotiated clearly with all the stakeholders involved, particularly those individual groups themselves. It is my understanding that there are a range of views within those groups as to what cultural use encompasses. Admittedly, there are some traditional uses that did have a bit of a trade flavour about them as well. It is a difficult one, I think, to put a succinct, black and white definition around. From our perspective, we would like to keep those cultural elements separate to the economic and both areas being weighted and treated appropriately.

CHAIR: That would depend a lot on the climate conditions at the time. If we have a drought for four or five years, you are not going to be able to meet—

Dr Miller: Certainly droughts impact on everybody and everybody's purposes for the use of water.

CHAIR: There would be an acceptance of that. Could you explain to the committee why AgForce does not support the proposal by which arbitration can be accessed without first completing an ADR as a prerequisite?

Dr Miller: The key concern there, in our view, is that it is a loss of opportunity to have a full discussion and negotiation around what the issues are before you move into a more highly pressured environment. The current proposal is that it is a binding outcome. We would like to see as much opportunity provided for a full process of discussion to occur prior to reaching an end point similar to a Land Court determination but effectively without appeal. There is a lot of pressure on people to come up with a good outcome through that. We want to make sure that the selection of arbitrators and the process itself is effective and gives our members and other primary producers the best opportunity of coming up with a satisfactory conclusion. We can appreciate why it might be attractive to try to incentivise a streamlined, faster process, but it is ultimately about getting the best outcomes through that. Hurrying people through an ADR process and then calling for arbitration without undertaking that completely—and then the time taken to prepare appropriately for that sort of process, we believe, is much better served by having an ADR step prior to that. Daniel might make further comment.

Mr Phipps: I echo those comments. In our conversations with landholders and in some of the survey data we have collected over the years, one of the key issues that landholders feel is hindering them negotiating effective agreements or having satisfaction in their agreements is the transparency of information and the access to information to be able to make informed decisions when negotiating an agreement. Our experience has been that in areas where negotiations are rushed or without the oversight of independent eyes, some of that information is not necessarily forthcoming from company representatives. That can complicate the negotiation process for landholders.

Having a mediation step included as a precursor to accessing arbitration in our view would give landholders an opportunity to gain more information to inform their negotiations, to understand more about the company's activities and also for the company to greater understand the landholder's activities of their property and also their concerns. Ultimately, our aim is for landholders and resource companies to reach agreements voluntarily, without having to resort to mandatory provisions through Land Court or through arbitration. Having an additional step in our view would help resolve some of those disagreements.

CHAIR: You have also suggested that professional costs incurred in preparation and negotiation of an agreement should be recoverable for landholders. You are suggesting that the cost should be extended or expanded to cover the cost for the landholder, whether it is a day or half a day. Are there any other costs that you think should be taken into consideration? Also, can you give me some idea how we might determine what those costs are?

Mr Phipps: We certainly appreciate that it is a difficult area to quantify. Again, the data we have collected from landholders and through our conversations indicates that there is a huge amount of time that landholders are spending negotiating agreements, attending meetings and conferences and dispute resolution meetings or attending activities on property informing the negotiations. That is a direct cost to their business, and that is something that landholders have often indicated should be a cost recoverable process. In a negotiation process, everybody is being paid to attend that process other than the landholder. It is putting a great degree of time and cost restraints on the landholder.

In regard to other cost measures, I think the bill as it stands and other existing provisions with legal advice, evaluation advice and accounting advice covers most of those concerns. The addition of agronomy advice will provide a lot of information to landholders to feel confident in the agreements they are negotiating. Also, expert groundwater advice in regard to make-good agreements goes a long way to providing that trust and rebalance in negotiations. I think it covers a lot of the processes.

Dr Miller: We do not have a set proposal around how to value a landholder's time. That would be something we need to work together with other stakeholder groups on in coming up with an appropriate solution.

CHAIR: Are you aware of any other jurisdictions where landholders are refunded?

Mr Phipps: There is an argument that under the heads of compensation there is a compensatable effect that refers to any cost, loss or damage as a result of authorised activities. If a landholder was required, for example, post agreement to attend a site meeting or attend a field scouting survey, that is a direct cost attributable to carrying out those authorised activities. There certainly is an existing argument that there is a provision to recover some of those costs. We are certainly aware that many companies are paying landholders for some of that time, and that is an excellent step that the industry has taken. We would like to take it a step further to cover the negotiation period, where landholders are expending a lot of time developing the agreement and then managing the agreement post agreement.

Ms LEAHY: We heard earlier from the Resources Council and also APPEA. APPEA suggested in their submission that it would be good that there be some amendments to this legislation to distinctly separate the ADR process and case appraisals. What are AgForce's thoughts in relation to that? It is a bit of a double-edged sword. It is an extra process. It is an extra step. Then it may well prevent people from having the need to go to court, and that is always a good outcome.

Dr Miller: It is a bit of a moving feast at the moment in terms of those discussions with the Land Court about case appraisal and where it sits within their process as well. We had noted that case appraisal sat as an ADR step within the bill. We would like to see that separated and included as a step prior to Land Court as one of their processes and giving a clearer line of sight to a landholder around the strengths of their case in that circumstance. Going back to a comment previously, we would like to see every opportunity for them to negotiate and come to an outcome prior to having to enter the Land Court. This would give them an additional step to that process in terms of having a case appraisal with the Land Court as opposed to a single ADR step.

Mr Phipps: It also in a way refers to my earlier comment that negotiations allow more information to be forthcoming. If case appraisal is included as a step in ADR, technically under the proposal after only 20 business days spent negotiating you could then go straight to a case appraisal process. If you were looking for an adjudication of the merits of your argument, it does not necessarily provide an opportunity for all information to be forthcoming and to base your decision—that applies to both sides of the conversation, from a resource company and from a landholder's perspective. We think there would be greater value provided to both sides if the dispute is tried to be resolved in earlier steps. As a last resort, if either party wants to go to arbitration or the Land Court, they both have the ability to properly understand both sides of the dispute from either party and also to present information that would allow them to adequately assess the merits of their case.

Dr Miller: Potentially it could be 20 days from the notice of intention to negotiate to having to then prepare for a Land Court case appraisal. We think that time is too short and we need to have sufficient time for that to occur.

Mr Phipps: Also, from a landholder's perspective, it would create a greater sense of urgency or risk if you were going straight from a negotiation to a case appraisal process with a direct line of sight to Land Court. It is a very intimidating step to automatically enter into directly from a negotiation process. That is something to incorporate in looking at the pressure that this puts on landholders.

CHAIR: How much time do you think they should have?

Dr Miller: Have you had any feedback from producers on that?

Mr Phipps: We have not honestly spoken a lot about putting a specific time frame around the case appraisal process. We understand that neither party wants to be wasting either party's time or creating steps that create more time spent for either side of the dispute. Certainly there would have to be an amount of time that allows for whoever the person is reviewing the case appraisal, whether that is the Land Court, to adequately assess the information that is available and also have the ability to compel information from either party. Landholder feedback has been that in certain Land Court cases information is not necessarily forthcoming until it is compelled by the court, and that has a drastic impact on the result of that dispute resolution process. There would have to be a sufficient period of time that would allow the case appraisal facilitator to review the information and also time to request additional information and consider it. There would also need to be time available for landholders to gather expert information for themselves. If it is in a dispute in regard to a technical aspect of negotiations, it can take a lot of time to gather that expert evidence and information and also to be able to provide that to the case appraisal facilitator.

CHAIR: Thank you very much, gentlemen. Thank you for your input.

Dr Miller: I thank the committee for the opportunity.

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

HINRICHSEN, Ms Natasha, Team Leader, Strategic Water 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, Mineral and Energy Resources Policy, Department of Natural Resources and Mines

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

CHAIR: I now welcome representatives from the Department of Natural Resources and Mines and the Department of Environment and Heritage Protection. Do you have an opening statement?

Mr Hinrichsen: Good afternoon, committee members. Thank you for this opportunity to respond to stakeholder submissions on the Mineral, Water and Other Legislation Amendment Bill 2017 and to provide a bit of additional information and context to the committee. I would also like to respectfully acknowledge the significant time and effort that stakeholders have put into this bill process and thank them for the feedback they have provided on the proposed amendments. With me today are my colleagues from the Department of Natural Resources and Laurie Hodgman from the Department of Environment and Heritage Protection, which has also been involved in this bill's development.

There were 19 submissions made to the committee from a range of stakeholders including members of the public, small mining associations, peak mining, agriculture and environmental bodies and the state's peak professional body for legal practitioners. In most respects the bill was well received, I think it is fair to say. The vast majority of the amendments received either support or no comment, which I think reflects the extensive consultation that occurred as part of the bill's development. I will concentrate on those areas where stakeholder concerns were expressed in the submissions. That predominantly relates to the alternative dispute resolution processes for conduct and compensation agreements. There was also some feedback about the water planning and make-good agreements which will be addressed separately by my colleagues.

In relation to the resources components, the comments received and the proposed amendments to the statutory negotiation and dispute resolution processes I think do illustrate that a range of views still exist in relation to striking what is a fair balance between the interests of the resource companies and the landholders. In particular I note comments around the amendment to section 81 of the Mineral and Energy Resources (Common Provisions) Act 2014 and suggestions that the minor drafting amendments to that section reflect a significant change in policy. I would like to provide a bit of context. That section in the Mineral and Energy Resources (Common Provisions) Act does need to be read in conjunction with the other land access provisions in that act to get an understanding of how it is intended to operate. I do note that Mr Paull from APPEA did give a pretty good summation of that which I thought was bang on.

Historically, there has been an ability to compensate landholders when authorised activities have been undertaken on a landholder's property. The entirety of the legislative framework for land access is designed around this liability. Specifically, conduct and compensation agreements are only required when a resource authority holder intends to enter private land to carry out an advanced activity, and the legislation defines what an advanced activity is. It is essentially activity that has an impact on the business or the land use activities of the owner or occupier of the land on which that activity is to be carried out; for example, drilling a well, building roads, digging trenches or building camps. It does not include things like just driving around a paddock or driving along an existing track or taking hand samples. It is only for those more intrusive activities. This means that if there is no advanced activity on a property there is no requirement under the existing framework for a conduct and compensation agreement. Traditionally, the Mineral and Energy Resources (Common Provisions) Act does not provide any head of power that would allow a neighbouring landholder to make application to a Land Court for compensation determination. Only owners and occupiers who have activities on their land are able to seek such a determination.

Conduct and compensation agreements deal with how and when entry to an eligible claimant's land may occur; how authorised activities must be carried out on the land; and the compensation liability owed to the eligible claimant. There is no requirement under the land access framework to compensate for things such as noise, dust or odour, but any amenity impact a landholder may encounter because of a resource authority holder's activities such as an increase in dust, noise, light or odour—and they do obviously occur—continue to be covered by the environmental authority conditions that the resource authority holder must comply with.

A neighbouring landholder may also enter into alternative arrangements with a resource authority holder about how any nuisance impacts on their property are to be limited or addressed. That could include compensation, mitigation measures or even temporary relocation. I think Mr Paull suggested, maybe rather novelly, that it can include a holiday to the Gold Coast. It is quite distinct from the compensation that is due and payable and recoverable under a CCA under the land access framework. There is nothing in the changes to section 81 of the MER(CP) Act that will affect those alternative arrangements associated with an environmental authority under the Environmental Protection Act. I am sure my colleague Mr Hodgman will be more than happy to talk more about those arrangements and maybe some practical examples of how they could apply.

Some stakeholders from the small mining or exploration sector are particularly concerned about purported new requirements for explorers to pay a landholder's costs in the negotiation process for conduct and compensation agreements and they believe their concerns have not been sufficiently addressed. The requirement for explorers to pay a landholder's necessary and reasonable accounting and valuation costs has been part of the land access framework since 2010. The bill does propose to expand this requirement to include a liability to compensate for the necessarily and reasonably incurred costs of an agronomist. I know that a number of other witnesses today have made reference to that point.

The bill also proposed two other important changes to the resource authority holder's cost liability when negotiating a conduct and compensation agreement. First of all, it proposes changes to ensure that a resource authority holder is liable to pay a landholder's necessarily and reasonably incurred legal, accounting and valuation costs as well as the new agronomist's costs, even in circumstances where the resource authority holder walks away from negotiations without reaching an agreement. In the past that has not been the case, and it has meant that in very limited circumstances those landholders who have been engaged in negotiations in absolute good faith incurring expenses have not had a legal power to recover those. Most resource authority holders do the right thing and know that if a landholder in good faith has incurred those then they cover them, but it has been outside the legal scope of what is recoverable.

This particular amendment is based on recommendation 9 of the independent review of the GasFields Commission that Professor Robert Scott undertook and ensures that landholders—I should point out that landholders themselves cannot walk away from negotiations—would be compensated for the necessarily and reasonably incurred costs of negotiating to the point at which a resource authority holder decides to terminate the negotiations. The bill also proposes to require the resource authority shoulder to pay the cost of the alternative dispute resolution facilitator—rather than the person who issues the ADR notice, as is currently the case. This again implements a component of recommendation 9 of the independent review of the GasFields Commission. Professor Scott recommended resource authority holders should be liable for all of the costs of the ADR facilitation. The amendment contained in the bill reflects that recommendation.

Questions have also been raised—we discussed it when we provided the original briefing on this bill—about the term 'necessary and reasonable costs' and how they are calculated, particularly with the addition of the agronomist's cost to the existing framework. Ultimately the Land Court is responsible for determining what is necessary and reasonable if there is a dispute between the parties, but if the parties do not seek to go to the Land Court—and in many cases they would not—then there is an opportunity for them to get an independent expert to help them bridge the difference, if you like. In most cases we experience there is agreement between the parties as to what is reasonable and necessary, but we have heard discussion about cost assessors or cost appraisal or case appraisal. There are practitioners out there who can provide a service, but that is obviously a commercial arrangement.

I am mindful of the time. I want to leave adequate time for any questions. My colleague Mr Wiskar may like to make some comments in relation to the Water Act amendments.

Mr Wiskar: The amendments to the Water Act provide an opportunity to improve transparency and operational flexibility under the water planning framework. As Andrew Barger from QRC said earlier, it is a good bill with good intent. Overall, the submissions indicate that there is general support

for Water Act amendments; however, there are a couple of points of clarification that I would like to provide in response to the issues expressed to the committee today. In the first instance I will talk about climate change and the considerations of the effects of climate change on water availability and the water planning process.

A key point to make up-front is that AgForce raised the issue of gazing 50 years into the future. That is not the intent of this work. Essentially, the intent is to focus our planning around what we know and are able to measure at a particular point in the process. The concerns raised earlier about things that are going to happen many years in the future are not part of the considerations here. What I would like to do is talk about the different parts of the water planning process and how climate change might be considered as part of that water planning process.

If we are talking about the preparation of water plans, the effects of climate change would be input via looking at all of the available data, considering hydrological and technical assessments based on that data, and looking at scenarios for future climate change risks and risk assessments and ecological modelling. That is in the preparation of our plan. The intent of the proposed amendment is to provide for the consideration of climate change and for the likely risks posed to water availability over the 10 years of that water plan.

It is important to note that in implementing water plans the department has a range of instruments and strategies that we can implement throughout the process that help us to manage water through the life of the plan. Of particular note is that at a five-year term in the process the minister has the power to implement a review. Throughout that process we have opportunities to consider the extra knowledge that we might acquire in the process and adjust as we go forward based on the facts that we have available to us. Again, I just raise the point that we are not talking about gazing off into the future; we are talking about basing it on data and information that we have available. I think it is important that climate change is considered because it is something that is likely to affect water availability.

A couple of other points I would raise are that the department is strongly supportive of activities for all resource users to improve efficiencies. I note the point made by the AgForce representatives about on-farm water efficiency and storages, and certainly the department would intend for those activities to continue to be supported and developed as adaption measures.

The second area that I would like to clarify is the recognition of cultural outcomes in water plans. Both AgForce and QRC raised concerns regarding cultural outcomes, including most particularly the direct economic benefits and the risk that it poses to the transparency of the water planning process. It is important to recognise that section 95 of the Water Act already provides a general authorisation for Aboriginal peoples and Torres Strait Islanders to access water for ceremonial and traditional uses, so this already exists. However, we are extending that recognition to be more formally available through the process. Cultural outcomes as introduced in the bill are deliberately broad in scope to encompass all beneficial consequences to Aboriginal people and Torres Strait Islanders relative to water values and uses in the relevant plan area.

Cultural values of water resources are already recognised in many water plans as part of existing social, environmental or economic outcomes. The objective of separating cultural outcomes from these other plan outcomes is to more explicitly recognise the values and uses of water resources to Aboriginal peoples and Torres Strait Islanders as part of the water planning process. Separating cultural outcomes from these other outcomes will make it clear that any future decisions about water management must consider cultural outcomes. The strategies to achieve cultural outcomes will be included in the water plans, as will monitoring and reporting obligations about these outcomes. In many cases the delivery of cultural outcomes may be achieved through existing water planning mechanisms such as environmental flow objectives or through the setting aside of unallocated water as Indigenous water reserves.

Just to turn to a bit of an example, wetlands quite often are of significant value to traditional owners. They use them for food, medicine and fibre resources. They have cultural activities, story places and seasonal indicators, and they can be of historical significance for them. How are we going to recognise that in the water planning process? We consult about the values and then we integrate knowledge from that consultation into the water planning context, so they might require certain flow regimes or groundwater flows to ensure protection of and persistence of those ecosystems and they can identify culturally important species as part of the ecological asset identification process. What do we do in a practical sense when we prepare a draft plan? We develop some strategies to protect those values. Environmental flow objectives might achieve that, or restrictions or limitations on flow conditions or drawdown conditions might enable us to protect those values. Through the process we are able to identify the values and then put some mechanisms in place, and quite often for these uses

they might overlap with environmental outcomes. I might just ask Natasha to speak specifically to you about the concerns that were raised by QRC and AgForce about the differences between cultural values and economic values.

Ms Hinrichsen: The difference is that in a traditional water planning process—and we have some diagrams to provide for the committee—we have social, economic and environmental outcomes which David has alluded to. What this is doing is taking the cultural outcomes that were included within social, economic and environmental outcomes and putting them aside transparently in a cultural outcome category. To realise those cultural outcomes, we may decide to provide a volume of water available through a strategic reserve process as an Indigenous reserve, and that would assist the Aboriginal and Torres Strait Islander people in that water plan area to access that water for economic benefit.

Mr Wiskar: Thank you, Natasha. The inclusion of separate cultural outcomes in water plans will also support more targeted consultation with Aboriginal and Torres Strait Islander stakeholders. It will ensure that their values and uses in water are better identified and provided for through the water planning process. The process will also provide clarity for all stakeholders and provide a process for engaging around cultural values in the identification of a water plan. By raising the level of this and creating a transparency around the process, we get engagement from both the Aboriginal and Torres Strait Islander stakeholders and all other stakeholders. One of the things the committee can be very confident in is the fact that consultation is at the very heart of water planning, and that is broad-based consultation. When the processes happen, all of the stakeholders are in the room having the conversations and are participating in the process and all of the information is provided broadly to stakeholders at a local level.

I will now turn my attention to the strategic water reserves and the release of those water reserves through this process. These strategic reserves have been set aside by the state to provide for future dams or activities that are likely to occur in the future. Interestingly enough, we have 990,000 megalitres set aside in strategic reserves across the state. It is right and appropriate that we keep those reserves in place for future economic and other activities, but clearly there is an opportunity for that water to be used. The bill provides an amendment to allow the chief executive to temporarily release under-utilised strategic reserves through the granting of water licences for other uses for a period of no more than three years. Whilst the proposed arrangements are broadly supported, some submissions recommended that the maximum licence term be increased to five years to create further opportunities for holders of these water licences to maximise productivity. In addition, as an alternative to longer licence duration, these submissions sought that the provision in the bill that precludes licence renewal be removed. Our response to those matters is that these licences will only be granted for genuine short-term proposals because we do not want to affect the longer term certainty for strategic water infrastructure projects and we do not want to compromise water plan outcomes, objectives, water markets and water supply schemes and other water users. On this basis, it is not appropriate to consider dealings such as amalgamation, renewal or reinstatement of these water licences.

I want to turn my attention to what happens at the end of the three-year process. It is important to recognise that, while we are not supportive of extending to five years, the chief executive may consider whether it is appropriate to release water from the reserve for a subsequent period of three years. The power exists—let us assume there is an infrastructure project that is no closer to being on the horizon—for the chief executive to enter into a new process, but we are sending a very clear message that these reserves are ultimately allocated for that strategic reserve process. The opportunity that the stakeholder representations are making is available, but our contention is that the three-year time frame is appropriate.

Another recommendation noted in the submissions was to include more specific considerations about deciding when to release the strategic water and strategic reserves, and people made submissions indicating that we needed to take into account environmental issues and potentially the requirements of the Murray-Darling Basin plan. Consideration of these matters already occurs. It is in fact a key underpinning of the existence of the Water Act, so environmental protection, including protection of the reef, and our requirements under the Murray-Darling Basin plan are already considered as part of any water planning process and certainly would be considered in the release of the strategic reserves under any temporary arrangements.

With regard to water quality issues, we have introduced into the bill an ability for an emergency provision to be able to take direct action to prevent a water quality issue. The definition of the water quality issue in the bill includes, among other things, a matter relating to water quality that could be harmful to the environment. It is also important to recognise that the definition of the environment in

this bill—and the changes that we are proposing—has been changed to align with the Environmental Protection Act and it is broad in its definition and includes ecosystems, people and the qualities and characteristics of communities and locations. Therefore, it is our submission that the consideration of the impacts on the environment is sufficiently broad.

Under the bill, matters the decision-maker must also have regard for include impacts that the directed action may have on water supplies, water security, the environment and public interests and other means to achieve the result. The department assures the committee that these considerations sufficiently cover all aspects raised in the submissions. A further recommendation raised in the submission made by the QRC on this matter was to prescribe a statutory time frame for tabling this post direction report. Our response to the QRC's recommendation is that the department will consider a possible non-statutory time frame to ensure that reporting on the activation of these powers is carried out promptly and in an appropriate manner. This concludes our opening remarks.

CHAIR: Thank you very much. That was very interesting with a lot of detail and much appreciated. I am still thinking about your first comment to me earlier that you had been listening.

Mr Hinrichsen: Yes, of course.

CHAIR: I want to go back to the small miners represented by the North Queensland Miners Association and Queensland Sapphire Miners Association. There is that old issue which seems to come up quite regularly if there are concerns from stakeholders with regard to what is in the legislation and whether it favours them and whether it does not. In terms of consultation, you would have heard their comments with regard to a lack of consultation and nobody getting back to them. Did you want to add anything to that?

Mr Hinrichsen: We acknowledge their feedback. We have been consulting on this particular bill, as I think I outlined in the briefing that we provided a few weeks ago, and this has been a long process. We started obviously talking more to the peak bodies, and in that space I guess that includes AMEC, the Association of Mining and Exploration Companies, and small miners are members, including the North Queensland Miners Association. We did get the vibe from there that there were particular interests with some of those small mining associations and that is why we took the effort to provide them with an exposure draft of the bill—not everyone gets an exposure draft of legislation—and we had officers who attended to provide a face-to-face briefing. We totally accept that we could not incorporate all of the feedback that they got. There were some issues that are policy matters that were beyond our remit to accept in the process of finalising this bill, but we certainly do value their input and we did go to significant lengths to consult with them and we will continue to do so.

CHAIR: What do you think about their concerns that the additional costs would probably force a lot of them out of business?

Mr Hinrichsen: We do not accept that there is a lot of additional cost. As I think I have articulated previously, this framework is about trying to get resolution without it becoming a very expensive process, and that is what the whole prerequisite ADR is about. It is about finding resolution without it becoming the lawyers picnic that, unfortunately, in some instances it has become. There will always be a place for the esteemed legal profession where there are disputes, and nothing in this framework takes away the ability for people to have appropriate legal representation. Indeed, it is a part of the framework that those necessary and reasonable legal costs are covered. The Land Court is ultimately there for a judicial determination on those arrangements.

The additional costs in terms of that space are pretty minimal. Agronomist costs were a significant recommendation to come out of Bob Scott's work, but, again, they have to be reasonable and they have to be necessary. For the more intensively farmed areas where they are cropped or grazed and maybe in some of those more expansive pastoral areas, landholders are much more likely to have a requirement to call on the services of a professional agronomist, but it will be about what is appropriate in terms of the activity that is being undertaken and how that might affect crop or pasture production in that area.

The Land Court will always have a determination. It is not about a landholder being able to run up a tab for tens of thousands of dollars of unnecessary, unreasonable costs. It all comes back to what is reasonable and necessary. Overall the framework is about de-escalating the conflict and finding solutions. If you listen to the contribution from AgForce, APPEA and the QRC, there is a lot of great work that those associations are doing to try to facilitate solutions on behalf of their members, working together cooperatively and collaboratively. I think there is a great opportunity to build relationships rather than seeing landholders as an impediment to mining activities.

CHAIR: I have a concern with decisions of government and decisions of agencies when they talk about reasonable costs being the cost of a cup of coffee a week. That is fair and that is reasonable, but it is on top of all the other additional costs that we have in place, too, and therefore it has an impact on people. Do you have any idea of the difference in cost from what it is at the moment and what it will be once this legislation goes through?

Mr Hinrichsen: It is 'how long is a piece of string?' really. It depends on context. That is why we established a framework historically over the last seven years under this land access framework where there is a definition of the intent, what the framework is about, what the conduct and compensation agreement framework delivers, mechanisms to reach resolution amicably between the parties but ultimately leaving it to a court to make a determination in the appropriate context as to what the appropriate cost should be. In many cases, if a landholder and a resource explorer or a gas company, whatever the case might be, can reach resolution without going to lawyers, without any of those professional costs, the cost will be very minimal, but, let us face it, there are situations where conflicts do exist. We want a framework that is as about reaching resolution effectively and efficiently, at the lowest possible cost.

CHAIR: We heard George Houen's contribution earlier. I know that you covered it to some extent, but it is a pretty complex argument which has been put forward. If you could, I would like you to explain it in simple terms—you do that quite well; I am giving you a build-up, too—so that people who read this or who are listening can understand why under the proposed legislation and the words of that clause neighbouring landholders are not able to seek compensation if they are being impacted on by whatever is happening in one particular area which is on a mining lease. Do you know where I am coming from?

Mr Hinrichsen: Yes, absolutely. I think it is a very valid question. I do hear conversations and think there are a lot of interwoven issues when it comes to compensation of a landholder, be they directly affected, or a neighbouring landholder being adequately compensated. I think it is fair to say that the term 'compensation' covers a variety of aspects of a development. We totally accept that when a landholder sits across the table from a resource company they will be talking about compensation that probably covers a number of legislative components and statutory obligations. In relation to the common provisions framework—the land access framework, if you like—it is about compensating the landholder in terms of the impact of those activities on their land, be it drilling a well or building a road—something that means there is ultimately less income or less productive land that is available for the landholder. That is what the framework is about: compensating for those direct impacts on the land that is accessed as part of the resource development. However, there are also other issues that arise. We have spoken previously about the make-good framework, which is about impacting on water. There is an element of compensation in 'make good' that is not restricted to only the landholder and the activities undertaken. Obviously, underground water knows no property boundaries. When there are those impacts a make-good arrangement applies under the Water Act. Our colleagues under EHP have administrative responsibility for that.

Equally, as I briefly mentioned, you have those alternative arrangements that deal with those nuisance issues of dust, noise and light, and other things that impact on livability. The environmental authority is there and that provides the balance, but there are mechanisms in that framework that allow for those specific circumstances to be addressed through, in some cases, compensation.

I guess we have various components of compensation. The changes that are being made to section 81 are not about water related issues or environmental authority related issues. They are about land access issues only. In the contribution from Mr Houen I think there were a lot of issues that were beyond the scope of the land access framework. They were quite legitimate in terms of the interests of landholders, but it is not what this particular provision is about. This provision, as it has been redrafted, does not change the status quo in relation to those compensation liabilities for the land access framework. I hope that helps.

CHAIR: Yes, that was good. Can we ensure that the minister in his second reading speech is able to explain that in a similar way?

Mr Hinrichsen: I will certainly make the suggestion to him.

CHAIR: Do you want to add anything to that, Laurie?

Mr Hodgman: There was some earlier discussion about other matters such as noise, which is normally dealt with under the environmental authority conditioning. That is quite a separate matter that does not come into the scope of this compensation arrangement.

CHAIR: I understand.

Ms LEAHY: I want to get complete clarification on this. I am looking at clause 37, which is the replacement of section 81. Can you clarify for me whether the original legislation included the words 'relating to the eligible claimant's land'?

Mr Hinrichsen: Absolutely.

Ms LEAHY: It did?

Mr Hinrichsen: Absolutely.

Ms LEAHY: What is the reason for changing it to 'authorised activities on the eligible claimant's land'?

Mr Hinrichsen: That is a fair question. The amendment to section 81 was driven by the issue of the compensation associated with the cost of developing the CCA. Right now it is defined in that existing section as compensation due to activities. Activities can only occur when you have a CCA, so the costs leading up to the CCA were outside of that framework. In giving effect to Professor Scott's recommendation, Parliamentary Counsel basically subdivided that section, creating a new section to cover those necessary and reasonably incurred costs associated with developing the agreement. They then, in restructuring that provision, provided words that, in their view, were designed to provide clarity. Now obviously that in itself has created some concern.

Ms LEAHY: Some discussion.

Mr Hinrichsen: Absolutely. In terms of the overall policy framework and what follows from that in terms of who can claim compensation, the framework has always been about those landholders on whose property the advanced activity is undertaken.

Ms LEAHY: Would it be the end of the earth to put those two words 'relating to' back in? Would it substantially change the legislation?

CHAIR: The intent.

Ms LEAHY: Yes, the intent—just to settle the matter and make sure there is no ongoing discussion.

CHAIR: On top of that, I do not know whether you have seen Shine Lawyers' letter, but it states—

> ... the proposed clause ... unequivocally removes the existing obligation of resource authority holders to compensate landowners within their tenure area, who suffer a compensatable effect in circumstances where the activity is not actually being conducted on the land of the landowner.

Mr Hinrichsen: The department does not agree with Shine Lawyers' interpretation of the existing provision, and I think that is reflected in various interpretations that have been done including through courts. I guess we will agree to disagree with Shine Lawyers on that particular point. In terms of changing the provision back, the only concern would be if that reintroduced ambiguity that the parliamentary drafter had been seeking to address in their recrafting of the provision. Their job is provide clarity in the legislative provision that exists, and seemingly that existing provision has not been clear given the interpretations that have been drawn on that.

Ms LEAHY: Is it possible to find out what that ambiguity was that was trying to be tidied up? Is it possible to determine the reasoning?

Mr Hinrichsen: I think the ambiguity that Parliamentary Counsel was trying to tidy up was to make sure that any possible reading of that was consistent with the provisions that followed in terms of who is due compensation and the mechanisms for that compensation amount being determined, either through the compensation agreement or through determination by the Land Court in specifying an agreement.

CHAIR: I am sure that the committee does not want to support recommendations back to the minister which rule out neighbouring properties getting involved in access to compensation if it is available to them. That is my only concern—that we could be ruling out people who are entitled to make applications.

Mr Hinrichsen: It is very clear from our point of view that, under the existing framework in relation to land access compensation, neighbouring landholders are not eligible, but in relation to the water issues under a make-good agreement it is a different matter. In relation to any of those nuisance issues to do with alternative arrangements under an environmental authority, it is potentially a different matter. They are subject to regulatory oversight by EHP, and that is something that maybe Laurie can expand on.

Mr Hodgman: I do not think it is relevant to us in that sense.

CHAIR: I am sorry to butt in, Ann. Did you have anything else?

Ms LEAHY: Like the chair, I do not want to be proposing something that might take away what is an existing situation and refine it too far, because sometimes we can go too far in legislation by making it clear.

Mr Hinrichsen: I understand. I can absolutely assure you that that is not the policy intent at all in terms of the provision that is drafted in the bill. It is basically about maintaining the status quo, albeit making sure that, given Professor Scott's recommendation, the law ensures that landholders who incur those reasonably necessary costs—legal and other costs—and who through no fault of theirs have a legal bill for tens of thousands of dollars if the company walks away, have an ability to recover that rather than being left holding the bill.

CHAIR: I think the intent is okay; it is just the interpretation.

Mr Hinrichsen: Sure.

CHAIR: We have had a request to table a document. Is leave granted? There being no objection, leave is granted. Thank you again. We always appreciate your input and the frankness with which you participate. I declare this hearing closed and look forward to seeing you before Christmas.

Mr Hinrichsen: As do we.

Subcommittee adjourned at 12.44 pm