STATE DEVELOPMENT, INFRASTRUCTURE AND INDUSTRY COMMITTEE

Members present:

Mr DF Gibson MP (Chair)
Mr MJ Hart MP
Mr SA Holswich MP
Mr R Katter MP
Ms KN Millard MP
Mr BC Young MP

Staff present:

Ms E Pasley (Research Director)
Ms M Telford (Principal Research Officer)
Ms M Westcott (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE REGIONAL PLANNING INTERESTS BILL 2013

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 30 JANUARY 2014

Toowoomba

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Committee met at 9.30 am

CHAIR: Good morning everyone. Thank you for being here. I declare open the public hearing for the committee's inquiry into the Regional Planning Interests Bill 2013 and I thank everyone for their attendance here today. I would like to introduce members of the State Development, Infrastructure and Industry Committee. I am David Gibson, the member for Gympie and chair of the committee. My other committee members here today are: Mr Michael Hart, member for Burleigh; Mr Millard, member for Sandgate; Mr Rob Katter, member for Mount Isa; and Mr Bruce Young, member for Keppel. Mr Tim Mulherin, the deputy chair and member for Mackay, sends his apologies. He is concerned about what is happening just off the coast, for understandable reasons.

The hearing today forms part of the committee's examination into the Regional Planning Interests Bill 2013. The Parliament of Queensland Act 2001 requires the committee to examine the bill to consider the policy to be given effect by the bill and the application of fundamental legislative principles. A transcript of today's hearing will be made by parliamentary reporters and published on the committee's website. Copies of the program for today are available from secretariat staff. We will break between 11 am and 11.15 am and 12.45 pm and 1.30 pm. The hearing should conclude at about 2.30 pm today.

Before we commence hearing from witnesses, may I ask that all mobile devices be switched off or put on silent mode. For the benefit of Hansard, can each representative please state their name and position when they first speak and speak clearly into the microphone.

This hearing is a formal committee proceeding. The guide for appearing as a witness before the committee has been provided to all those appearing as a witness before the committee today. The committee will also observe schedule 3 of the standing orders.

SOMERS, Mr Stewart, General Manager, Planning and Development, Toowoomba Regional Council

WILLIAMS, Councillor Mike, Deputy Mayor, Toowoomba Regional Council

CHAIR: I would now like to welcome Councillor Williams, Deputy Mayor of the Toowoomba Regional Council, and Mr Stewart Somers. Would you like to make an opening statement?

Councillor Williams: Thank you for inviting us to address this committee. As representatives of the Toowoomba Regional Council, obviously we have had quite considerable input into this process as it transpired from the Darling Downs Regional Plan and now obviously to the Regional Planning Interests Bill 2013, which will deliver some of the teeth that we hoped the regional plan would deliver.

Firstly may I say that we are very pleased that the plan has been put in place and the bill to support it, because obviously this is a way of addressing some of the issues that we feel very strongly about as a council—which are the conflicts in land use within our region. However, as you may appreciate, we still have reservations with what the bill will actually deliver and with some of the impacts that it will have on our council. You will find in our submission some more detail on that, but I will give you the highlights of what we consider to be some of the issues.

One of our concerns is that we have not seen the regulations to the bill yet. Quite obviously this bill will be quite clearly governed by the regulations because there is not enough detail in the bill to actually administer the actual actions. So we are very keen as a council to be able to view the regulations before they are adopted to be able to give further feedback as to the actual ramifications of the bill as it is rolled out.

Some of our other concerns as a local government are about how do we fit the process. This is not quite clearly spelt out in the bill at this point and we are hoping the regulations will clarify this more. Some of our issues come down to: what are our obligations under the bill as a local government authority? What are our powers? What input will we have to the process in determining land use conflicts? What costs may be borne by council with regard to the deliberations which we

make as to land use conflicts? What part do we play in the assessment process? Are we are reference agency or what part do we play in it? Then what influence will we have over decisions that may come from the act?

One of our second major interests is what effect it will have on our planning schemes. We had a planning scheme adopted in 2012. It did not have obviously the advantage of input from this bill, so we would like more indication of what will come in the regulations as to what conflicts or inconsistencies our local government planning act will have to ensure that there is not inconsistency with the bill when it is adopted.

Our third concern is what will be the status of current applications. You will be aware that there is considerable activity within our regional council area, to our west with Arrow Energy and with other major applications that are currently before it. It is unclear as to what the situation will be as to whether this bill will be retrospective or whether those current applications will be exempt. We have concerns as to whether the major impact is already happening and whether it is going to be too late to retrospectively wind back some of the impacts it will have and to rebalance some of issues that are there. There are obviously a number of landholders across our region, as you will see later in the day, with the people who are about to speak to you. There is still serious concern about land use conflicts across our region and to what the outcomes of those might be.

In closing, one of the last highlights we have is that the Strategic Cropping Land Act 2011 obviously covers some areas which this bill does not. We were interested to find out whether or not the Strategic Cropping Land Act will be repealed and, if so, what will happen to some of the areas which it picked up which this bill does not cover. So they are our highlights. Obviously there is a lot more detail in our submission. We are happy now to answer questions.

CHAIR: Thank you very much, Councillor Williams. We do appreciate the detail that was in your submission. It certainly helps the committee in its considerations. I would like to start the questioning and then I will hand over to my colleagues. I note you raised in your remarks, and it is also in your submission, the council's role as an assessing agency. In your submission you raise a concern about the way in which clause 50 is worded, creating ambiguity in the manner in which the chief executive officer should give effect to recommendation of a local council. Would you like to elaborate on this for the benefit of the committee?

Councillor Williams: I might pass over to Stewart for the technical detail.

CHAIR: That is why you bring him along.

Councillor Williams: Absolutely.

Mr Somers: I guess the lack of clarity is that there is no set of criteria that would guide the chief executive in those areas where he or she would refer to local government. We are assuming that that will be fully fleshed out in the regulations. Certainly the principle of this bill does appear to be that this is an overarching piece of legislation and that the nuts and bolts, as it were, will be in the regulations. I think that is part of the general concern. Really we should be trying to read this bill with the regulations so we can get a good picture of the totality of the level of input that local government will have; the level of responsibility—which is probably even more important—which we must be involved in; and the sorts of changes that may be made to the current land use planning mechanisms that council currently uses to implement its policies, the planning scheme being one of them.

CHAIR: You quite rightly point out that this is framework legislation. So the regulation is where a lot of the information will sit. For the benefit of the committee, if that clarification to the requirements was contained within the regulation, that would address that concern for you?

Mr Somers: Absolutely.

Councillor Williams: A lot of our concerns here are that obviously without the regulations it is hard to interpret the intent of the legislation in how it is actually going to be used.

CHAIR: Rolled out on the ground.

Councillor Williams: So there is still some uncertainty. We are not saying it is wrong, but there is still from our point of view uncertainty as to how it will actually impact on us because we do not have that next level of information.

CHAIR: I open it up to members of the committee.

Mr YOUNG: Mike, the intent of the bill is to repeal the Strategic Cropping Land Act. You are probably aware of that.

Councillor Williams: We just wanted to confirm that, because obviously there are issues addressed within the Strategic Cropping Land Act which may not necessarily be fully covered by this bill.

Mr HART: You made a comment about clause 36(2), which talks about the chief executive's ability to make a ruling regardless of advertising. If the chief executive considers there is enough information about the relevant matters for the application, the chief executive can decide the application on the basis of that information. Can you elaborate a bit more on what your concern is with that particular clause?

Mr Somers: Yes, Mr Hart. Basically the main concern there is that there may be an ability to avoid involving the community in some major decision. The perception is that maybe major decisions could be taken without reference to the community through the normal advertising procedures. Again, the basis or the criteria that a chief executive would use in determining whether an application should be advertised or not no doubt will appear in the regs—one would hope anyway. If it does not, then it is a very broad sweeping power. I think the concern was that the community be involved as much as possible in a lot of the major decisions. That would be the primary premise of council. This does appear to be a gaping hole through which you may drive lots of cattle. So it is something that we would like to see tightened up in the regs, if not in this bill.

Mr HART: So your concern would be alleviated by seeing those regulations and what is contained in them.

Mr Somers: Absolutely. I think really the whole of our—

Mr HART: That is the whole argument?

Mr Somers:—submission is based on that, yes. If we had had the regs to read in conjunction with the legislation, that would have been very useful.

CHAIR: Can I just pick up on that, Mr Somers. Acknowledging that we do not have the regulation provided at this point in time and in the natural progression of things—no-one assumes a bill will pass, so we will allow it to go through the process—in the bill itself is there anything that you believe could be improved without reference back to the regulation? Is there anything lacking in what sits in the bill at the moment?

Mr Somers: I guess that is the sixty-four dollar question. I am having trouble with it. I did actually address my mind to that. The bill as an overarching document I do not think we have a lot of problems with. The devil is always in the detail, particularly with something as important as this. The council or the mayor was involved in the Darling Downs Regional Plan, and once again that focused reasonably narrowly on that land use conflict between agriculture and mining or resource winning and urban development. There are many, many other issues that, of course, exercise council's mind from time to time in terms of conflicts in the region. So that was relatively narrow. I think council was looking forward to something that might address some of the issues that were not in the bill. Some of it is there, but there are still a lot of gaps which we have picked up in our submission. Most of those gaps could certainly be plugged by the regulations. There is no doubt about that.

CHAIR: It would be fair to say that the council's position is that, considering the framework that this bill is, you do not see any defects in that. It is the lack of information that you are looking for—

Mr Somers: That is right. Once we see the regulations you might want to go back and have a look at the legislation then. So it might be the first amendment.

CHAIR: One hopes that we, as a committee, can play our role to ensure that that is not the case. Michael, sorry to interrupt your questioning.

Mr HART: No. That was a good question. I was going to ask that one as well. Stewart, assuming the regulations come through and they are as you expect them to be, what sort of transitional issues do you see with this legislation moving forward? Is there anything in particular that you can think of?

Mr Somers: I think there will be an impact on the planning documents, particularly the Toowoomba Regional Planning Scheme. The one thing that I think will be very important is that, in order to bring that scheme into accord with the legislation and the regs, if it were made clear that any consequential amendments to either local laws or planning scheme—mainly the planning scheme—would be the fast method. In other words, it would not be advertised and it would not require the formal state sign-off. It would be a resolution of council, it would go to the minister and the minister would approve it. That is in a nutshell the fast method.

The long method of amendments to schemes is that it goes to the minister before council can exhibit its planning scheme after it has adopted it. The minister gives council permission to advertise it. It is advertised and goes back—there is a lot of toing-and-froing. It takes about nine months to get through the planning scheme amendment process that way. The quicker way gets you through in about two to three months. If everything goes through as is and the regulations do shine a light on some inadequacies in our planning scheme, that would be, I think, a good recommendation to come forward from the committee. That is probably the main one.

The only other issue is—and this is a hoary chestnut—will this involve any further resources on the part of local government? Will the implications of this legislation and the regulations mean that we will have to employ two or three more people in our planning area or wherever? It is a little unclear as to whether that is the case reading this document. It will certainly become clearer I think in the regulation.

Mr HOLSWICH: We talked a little bit before about the co-existence issue. Co-existence particularly in priority agricultural areas is something that has been raised in a lot of submissions. Are you able to expand on any issues that you have with that area, granted you have already said a lot of it will be hopefully dealt with when the regulation is available? But are there other issues with co-existence that you have?

Mr Somers: I think it is a perception of the imbalance between a mining conglomerate, let's say, and an individual farmer. I think there is that issue there. Who is there to stand between the farmer and the conglomerate? I guess that is the issue. There is reference here to council having involvement in the assessment of those mining activities, but it is quite unclear as to what degree that is and whether it is to any greater degree. At the moment, council is involved in providing submissions on EISs—very much the same role and rights as any citizen in the land has. There is no power and there is no ability to influence other than through the power of argument and logic, which does not always prevail. It is still a bit foggy as to whether local government will get any more tools to use in that area. At the moment the full power rests with the state government and the federal government, to some degree, with export licences and things but the principal approval mechanisms for mining rests with the state government, and local government comments on the EISs basically.

Councillor Williams: We are coming from a situation where virtually all the power has rested with the mining interests, and obviously we are looking to redress that balance. The concern within our communities is that this bill still will not go far enough to redress the balance. The power will still rest with the mining companies if push comes to shove. If it comes to a point of conflict it is that we are not probably giving enough balance with the traditional primary producers and landholders to be able to say no or be in a position of bartering to be about to say, 'Yes, you can,' but the bartering needs to be on an equal footing rather than having somebody come from a position of power.

I think there is still a significant amount of concern within our community that this bill is not giving enough strength to the equalisation of the two parties. You will hear more about that today, I am sure, but that is certainly the message that we are getting back. Does this really address the balance of power or is it only giving lip-service to say we are talking about it? If it comes to a real point of conflict where there needs to be a resolution, the mining companies will still win. That is the concern that is still out there, and I think this needs to quite clearly redress that balance to the point—

Mr HOLSWICH: Essentially, there are two slightly different issues (1) the priority of mining and agriculture; and (2) the ability of agriculture to be able to stand up and fight their case.

Councillor Williams: That is the issue that is still there, because to this point agriculture has had very little power in that process. We have had this problem for some time. We are very grateful that the Darling Downs plan came in to address this issue, but is it really addressing it? Is this bill really addressing it? We are yet to see the detail to see whether there has been a change in the balance so that landholders have some bargaining power to be able to say, 'If you want to come on to my country, this is where you must put your gas lines. This is where you must put your wells.' It needs to work for both parties. I have seen documents from Arrow Energy which quite clearly state, 'If there is a conflict, we win.' Obviously that is what this bill is trying to address. It is trying to redress that balance of power.

CHAIR: Can I pick up on something? Mr Somers, you talked about the council's powers. What powers would you like to see council have in the process?

Mr Somers: I think that is something that I might refer to the deputy mayor.

CHAIR: Councillor Williams, what powers would you like to see?

Councillor Williams: Until this point, local government has worn a lot of the heat from land conflict issues but has had very little input, in reality, other than commenting on EISs. We have had very little power to be part of the process. I am not sticking my hand up now to say that we want to take all the power away from the state, because obviously there are lots of decisions about which we would rather say, 'They did it.' However, there will be lots of issues where we have a very clear understanding of what the lay of the land is from a local government point of view and from the local people's point of view because we are closer to the local area. To be able to have input and to be a referral agency, to be able to give information back into the process, to at least be consulted so we do not get a decision which is remote from us so that we feel we are a little closer to it and to be able to give guidance—that is certainly what I think local governments would like.

CHAIR: Thank you. Bruce, did you have a question?

Mr YOUNG: No, I am pretty happy with that. Basically we are here to hear from you. The whole basis of us being here is that you have a good platform so we can hear these views.

Ms MILLARD: With regard to the concerns that you have raised, you highlighted some inconsistencies with the bill as drafted versus your local planning. Do you want to tell us the inconsistencies that you are most concerned about?

Mr Somers: I would have to take that on notice and get back to you in terms of specifics. It is really the level of power. The planning scheme was prepared under the provisions that prevailed at the time a couple of years ago. Certainly things like prohibitions are not permitted in planning schemes. The state can certainly bring out documents that prohibit various uses and what have you but you cannot do that in a planning scheme, so prohibitions would be one issue.

I think dispute resolution is the other. Cheap, quick dispute resolution under the planning mechanisms would be a wonderful thing because you almost have to mortgage your house if you want to lodge an appeal against anything as a third party. I think some people do. They are two areas, but we could certainly get back to the committee with more specific areas. I think some areas are in our submission, but if you are happy with that I can get back to you through—

CHAIR: We always appreciate further information. Whilst it will not be part of your submission, we are happy to take it as correspondence to assist us.

Mr HART: On the matter of appeals, which you mentioned then, do you think the criteria for who can make an appeal needs to be widened or narrowed, or are you happy with the way it is?

Mr Somers: Normally that would be an item that you would put into the regulations because it does go into some detail. If you do not put detail in there, then you will get the lawyers—bless their cotton socks—who will really work away at broadening that definition. It is fairly broad in here at the moment. I think that is an area that definitely needs to be picked up and would normally be picked up in a regulation accompanying an act. There has been a trend over the last 10 or 15 years to put everything into the act and not rely on regulation. That has probably been found a bit wanting, again, because it is a field day for the lawyers. This appears to be a step back where you are going back to setting up a framework and relying on your regulations to fill in the gaps. Who can appeal, how you can appeal—the whole premise of appeals is fraught. Anyone who has dealt with any planning matters will know that, but it certainly needs to be fleshed out.

Mr HART: In this instance, do you think it should be pulled out of the legislation and put into regulation or narrowed—

Mr Somers: I think you need to give it a head there, but it would need to be detailed in the regulations definitely.

CHAIR: I want to pick up on that because you are making a very valid point and I want to tease it out a bit further. When we look at clause 68, which talks about the definition of an affected landholder, it is a very broad definition and by my reading would give appeal rights to a much wider range than would normally be the case.

Mr Somers: Which is not good, I have to say. When most lawyers hear that sort of language—and I do like lawyers—they hear 'ka-ching, ka-ching' ringing in the distance.

CHAIR: At six-minute increments.

Mr Somers: That is right. So it needs to be tightened. We have raised that as an issue, but that would have to be picked up in the regulations. I think it is better to have it in the regulations because you can alter it quickly as a regulation, whereas this has to go through the tortuous path of parliament. It is legitimate that that level of detail would be in the regulations, but we would love to see it before the regulations are adopted. I am not sure whether that is the plan of government or not, but that is our loud message.

CHAIR: Excellent.

Mr KATTER: I want to distil down Toowoomba council's position. This is probably directed to you, Councillor Williams. With regard to the issues that this bill is planning to address, from your point of view is there a lot of conflict created by mining interests versus existing landowners, whether it be agricultural, rural or residential people? Is that the greatest source of conflict or angst or discontent that you pick up as a council? Is that issue the most prescient for you? I appreciate there are other issues surrounding mining which impact on infrastructure, but is conflict between land uses the biggest issue which this bill is trying to address?

Councillor Williams: When we first looked at the concept of the Darling Downs Regional Plan, which this bill supports, we would have liked to have seen a wider coverage of issues addressed. But given that this bill is supporting that as the prime area of conflict to be resolved—and obviously the discord between land uses has been a major source of discomfort for local, state and federal governments—we just want to make sure that this bill gets it right, gets the right balance and delivers an outcome for the people, because otherwise we have wasted a lot of time and energy to have the same outcome that we had before and it will not have addressed the issues we want to resolve.

Quite clearly, the message from our landholders across our region is: we do not want to have the upper hand; we just want to have an equal say. We just want to try to redress the balance so that at least when they come onto our land or there is a conflict of use we have some say in the matter and we are not being dictated to so there is an equal bargaining position. Quite clearly, the intent of this act is to deliver something close to that. Our intent is to make sure that is the outcome that is achieved for our residents.

CHAIR: The time allocated for Toowoomba Regional Council has expired. I thank you both very much for not only your submission but also your time here today. It has been of value to the committee. Mr Somers, we look forward to receiving correspondence on those issues.

GREEN, Mrs Vicki, President, Friends of Felton

McCREATH, Mr Rob, Committee Member, Friends of Felton

WHAN, Mr Ian, Committee Member, Friends of Felton

WOODS, Dr Georgina, Policy Coordinator, Lock the Gate Alliance

CHAIR: I would like to welcome you to this hearing of the committee. What we might do is start with an opening statement. I might ask Ms Woods to go first. If you could keep it to around five minutes and then we will invite the Friends of Felton to make an opening statement and the committee will question both of you.

Dr Woods: Thank you so much for the opportunity to present to the committee and I am sorry that I could not be there in person. The Lock the Gate Alliance has three broad areas of concern. The first one is really the core failing of the bill in its objectives to establish statutory protection for the matters that it claims it is supposed to be protecting. The bill essentially just creates a new piece of red tape that needs to be ticked off in order for mining to go ahead. There is no clear prohibition on mining and gas extraction for agricultural land, for residential areas, for environmental areas or for water resources.

The second core area of concern for us is the number of quite broad loopholes that mean companies trying to engage in coal or gas mining on important agricultural land or in water resource areas will not even need to obtain the new permit that is established by this bill. I can go through the list of loopholes that we have found in it, which are quite extensive. It has been difficult for us to estimate just how many applications would really be exempted by all of the loopholes in the bill but it seems to us very, very weak.

The third area of concern for us is the assessment process which seems to us to be wholly discretionary and subjective. If a mining company is actually required to obtain one of these permits to mine in an agricultural area or another area of regional interest, the assessment process is very vague and essentially in the hands of a single bureaucrat to determine. I hail originally from New South Wales and we had a lot of difficulty in having planning systems and statutory systems that were designed around the discretion of the bureaucracy without clear guidelines and standards that have to be met in the assessment process, without clear lists of matters that need to be considered and guidance for the bureaucrats that are implementing the bill. In the absence of having that, when you give broad discretion to a small number of people when it comes to the fossil fuel industry, when it comes to coal and gas, the outcome is always the same: it leads to poor decision making and it leads to the public interest suffering.

Essentially we believe that agricultural land in Queensland, water resources and residential areas need a hard and unequivocal statutory exclusion, and that is the key to providing certainty, protection and consistency. It means that there will not be millions and millions of dollars spent on red-tape processes that end up going nowhere and confirming mining and gas projects go ahead. It means that there is certainty from the outset that if you live, for example, in a town there will not be any mining within two kilometres, that if you farm prime important agricultural land you will be protected from being undermined or having gas drills imposed on your property and that our important water resources that both provide the backbone of the agricultural industry but also feed our towns and residential areas will not be compromised by mining and gas extraction. Those are the three very basic values that need to be protected from the impact of mining. There are some places where it is simply not appropriate to have coal or gas mining going ahead.

The sad truth is that this bill is a betrayal of the promise of the current government to not allow coalmining and coal seam gas activity in strategic cropping land or on any land if it is likely to have an adverse impact on the productive capacity of that land to produce food and fibre for Queensland and for export. It is going to wind back the only protection currently afforded to any cropping land in the state from coal and gas mining which is in the Strategic Cropping Land Act. That act is quite limited. There are only very small areas of the state that are protected in that act, but if this one goes ahead that will be repealed and there will be no protection at all. I think that is enough of my introductory comments. I am happy to answer any questions about our submission that the committee might have.

CHAIR: Thank you. I now invite Friends of Felton to make an opening statement.

Mrs Green: Thank you very much. What a godsend the Regional Planning Interests Bill should have been. On 21 August 2012 the Premier, Campbell Newman, wrote to the Friends and Felton and promised that statutory regional planning would provide certainty for communities like

ours in that it would clearly set out where it is appropriate and not appropriate for resource development projects to take place. Finally, we thought, here was a government prepared to make the hard calls with regard to resource developments and give absolute protection to irreplaceable agricultural precincts, the environment and, most importantly, people. But, sadly, by the time the bill to enact the regional plans was tabled in parliament on 20 November 2013 absolute protection had been watered down to promote co-existence, a term that to this day remains undefined.

A preference for behind closed doors negotiations between resource companies and landholders, and blatant disregard for people's health and rights of appeal and, in addition to this, the number of exemptions afforded to existing resource developments would suggest that this bill does nothing to ease land use conflicts or restore equity to landholders as promised by the Deputy Premier, Mr Seeney. I guess we should have expected the worst when the Darling Downs Regional Plan, which according to the Deputy Premier was compiled through extensive consultation with the regions that have been affected, failed to recognise a number of key communities as priority living areas and was completely devoid of any maps detailing strategic environmental areas.

We would like to stress that it is not acceptable for a government to allow miners and landholders to work things out. As stated in our submission, it is not uncommon for directly affected landholders to be willing sellers to a resource company and for the surrounding near neighbours to be thereafter subject to the externalities of the development. Legislation needs to define the no-go zones and people need to be reassured that these cannot be overridden by ministerial or departmental discretion. As it stands, the bill fails to absolutely protect key farming precincts; it fails to protect environmental areas that provide ecological and recreational value; and it fails to protect the health and wellbeing of Queenslanders. Thank you. I do have a copy of that if it is able to be tabled.

CHAIR: It will be in *Hansard*, so we are happy to have it there. You mentioned in your opening remarks your concerns with the phrase or the term 'co-existence'. Would you like to expand on that a little bit more for the benefit of the committee because it is something that is being talked about?

Mrs Green: Certainly. I would like to call on my colleagues at any point as well. Basically we feel that there is this underlying assumption that co-existence can happen everywhere. Our basic philosophy is that it cannot happen. There are some areas that are just too important and the externalities of a resource development too great for co-existence to occur.

Mr Whan: Let us take the example of Acland. We see no evidence of co-existence there. In fact, the term 'co-existence' has never been defined in any of the government's literature. It is a feel-good sort of airy-fairy notion that when it is tested in reality is extremely rare. You might be able to point to examples of CSG and large-scale grazing working in co-existence, but in more densely settled areas it is simply impossible because it compromises quality of life and it compromises the integrity of the farm and its functionality. We think the term 'co-existence' has not been helpful. It was thrown up years and years ago by Mitch Hooke from the Australian Minerals Council and it has stuck ever since. It has really derailed sensible debate about what we are trying to achieve.

Mr McCreath: I would like to point out that the notion of co-existence is one of the basic building blocks that this legislation is built on, yet the definition of co-existence is not here, it is going to be in the regulation. It is very hard to properly examine this bill without knowing what the definition of co-existence will be. Co-existence obviously depends on the level of impact of the development that is proposed and also the situation where it is proposed. There are big ranges and impacts of resource developments and there are big ranges in intensity of land use. A word like co-existence is a great one for politicians, if you will excuse me, because it means different things to different people. But to completely leave out the definition of co-existence from this bill I think is a big hole in it.

CHAIR: Georgina, would you like to pick up on that from Lock the Gate's perspective on the term 'co-existence'?

Dr Woods: I was not able to hear most of what the Friends of Felton representatives were saying, but certainly in our experience in New South Wales and in Queensland the agricultural industry comes off worse in any experiment in putting mining immediately adjacent to, underneath or surrounding agricultural enterprises. That is because of the impact on soils but also the impact on underground water and surface water. From our perspective it is really a public relations tag that the mining industry particularly attempts to promote in order to erase the realities of the impact that it is already having on agriculture in Queensland. One of the farmers that we work with, for example, used the phrase that co-existence between mining and agriculture is like co-existence between the lion and the zebra: one side is always going to come off worse.

CHAIR: Committee members, I open it up to questions.

Mr YOUNG: Georgina, you say that the bill fails to replace strategic cropping land with statutory provisions that provide protection for prime agricultural land. Can you elaborate on that, please?

Dr Woods: The Strategic Cropping Land Act very expressly states that you cannot approve an open-cut coalmine in an area mapped as strategic cropping land, confirmed as strategic cropping land in a protection area. So that is a very limited protection. You will only get that if you happen to fall within the mapped protection areas, and if you do it is not possible for a bureaucrat or a minister to approve an open-cut coalmine on that land. That is really the kind of unequivocal statutory statement that is needed to prevent the system being manipulated in favour of both the gas and coal industries who have much more power than farming communities do and certainly than individual landholders do.

In our experience, if we want certainty and if we want to avoid costly assessment processes that end up simply coming up with poor outcomes, let us put it in there from the outset and simply say, 'In areas that are mapped as priority agricultural areas you cannot approve certain kinds of activities,' and then there will be no need to go into these lengthy assessment process and tie up everybody's time and also emotional energy in uncertainty and conflict. It should be clear from the outset: 'Do not even bother applying to undertake these highly destructive activities in these important areas.' I think from our perspective that would give certainty to the mining industry just as much as it would to agricultural landholders and rural communities—that we are not going to have to continually have site battles over inappropriate mining proposals; mining proposals will be made only in areas that are not deemed inappropriate.

From our perspective, it is not just agricultural land that needs to have that unequivocal statement that this activity is not going to be permitted. Similar statutory perception needs to be provided for residential areas and also for important water resources that are used not just by the agricultural industry but also by towns. It is too late once the damage is done really to rectify it. If we can front-end load really clear directions to ministers and bureaucrats 'This is how to implement this policy', you would save a lot of people unnecessary heartache and waste of time and money.

CHAIR: Thank you for that. Are there any further questions?

Mr HOLSWICH: To either organisation, again on this theme of co-existence, when we had the public briefing from the department back on 13 December the question was asked about co-existence and, where there are conflicts between mining and agricultural, who will come out the winner. The representative from the department clearly stated that there could be instances where co-existence is not possible and stated that in that case the priority would go to the preservation of that priority agricultural land to agriculture. Just as a comment from either organisation, do you not see that as being the case under the legislation as it stands at the moment?

CHAIR: We might start with the Friends of Felton.

Mrs Green: It sounds great. The concern is that there are so many loopholes in the bill as it stands at the moment with the exemptions that in what would seem an absolute protection area—the incredibly valuable Cecil Plains flood plain—coal seam gas development would be exempt as it stands under the bill. So even though in that area co-existence you could argue would not be possible at all because of the nature of that intensive agriculture, it would not even apply in this instance. The bill would not even apply.

CHAIR: Okay. Is there anything else from others?

Mr McCreath: The reassurance from the bureaucrat is reassuring, but we do not know what the co-existence criteria are, because they are going to be in the regulations. We have not seen those yet, so how can we answer that question?

CHAIR: Okay. Ian, is there anything that you would like to add?

Mr Whan: No.

CHAIR: Georgina?

Dr Woods: We read in close detail the assessment process being written into this bill for the chief executive of the department of state development to give these approvals for activities and there was nothing in it that indicated that there would be strict guidance to that bureaucrat to reject a proposal in the instance of a conflict between agricultural interests and mining interests. There is no clear direction given; it is wholly discretionary in the hands of the chief bureaucrat. In our experience, without that very clear statutory guidance, there is no certainty and no protection to agricultural landholders.

CHAIR: Excellent, thank you. Rob?

Mr KATTER: There are some concerns over the appeal process. Can you elaborate on that, please?

Mrs Green: I guess if you read the bill as it is worded there is no capacity for a large number of people to appeal. It appears that the appeal process is very restricted. For example, a concerned group like the Friends of Felton, or a group like AgForce, because they are not an affected landholder, have no rights of appeal under the bill as it currently stands, and that is of great concern. Also, it states that you are only as a landholder able to appeal if the ability of your land has been affected. It does not give any recognition to closely settled communities to appeal a development or a decision if they feel that their mental or their physical health has been affected. We felt that the initial intent of the bill was also to protect people, but the way that it is written at the moment that is certainly not covered.

CHAIR: Georgina, would you want to add to that at all?

Dr Woods: Yes. Is this about the appeal mechanism?

CHAIR: The appeal mechanism, yes.

Dr Woods: Yes. We do think it is inappropriate to limit appeals simply to an affected landholder. That is because I think it creates a bit of confusion in this bill about the jurisdiction of the scale of interests being protected. Individual landholders need appeal rights for impacts on their land but this is supposed to be a regional interests planning bill. So there really needs to be a regional scale assessment and a regional scale ability to engage. So other landholders in the region or community groups that are affected by the decisions because they live in towns or in other areas within the region are not able then to challenge decisions because that challenge mechanism is limited only to their property's scale. So there seems to me a confusion in the intent of the bill. If it is intended to promote and protect regional interests, then there definitely needs to be a broader scale appeal mechanism.

I think the same goes for the specific loophole that we have a great deal of concern about, which is that a mining company would not be required to obtain one of these permits if there was already a compensation agreement in place with the affected landholders who are immediately impacted by the proposal. Again, we feel that that is really confusing the jurisdiction and the scale of what is the intention of this bill. The conduct and compensation agreements are designed to ensure that private citizens, individual landholders, individual agricultural enterprises, are protected, but to protect regional interests there has to be a regional scale approach. There has to be a wider perspective on how the region works—the geography of the region, the water resources, the land, the people, the tourism, the habits. There are so many matters that mining impacts more broadly within the region that an individual landholder with a conduct and compensation agreement cannot be expected to attempt to take account of in their negotiations with the mining companies.

Mr KATTER: I just want to go sideways a little bit from that question, if you would allow me the latitude. The human health issue comes up a bit. What is the bigger issue? I would have thought that it was more community costs where people left town, but are you talking more about physical health like the effect of coal dust?

Mrs Green: Without a doubt. There has certainly been a study done recently by Dr Jenny Moffat from the University of Queensland that shows that the very moment a resource development is proposed in an area there are direct emotional and physical impacts on the community. That is before the development has even started. So without a doubt once the development starts, you only have to look at communities in the Hunter Valley and even locally at Acland to know that people's physical health is affected without a doubt through dust, noise, light—all of those other externalities that do not stop at the border of a resource development.

Mr KATTER: But one is not more prominent—emotional or physical; they are both—

Mrs Green: No, they are both equally important and absolutely need to be addressed.

Mr HOLSWICH: Just on appeals, if you are saying that at the moment the proposed definition of who can appeal is too narrow, how wide should that go ideally? Should it be open slather or should there be a limit on who can appeal? Where do you see the line?

CHAIR: Are you asking that to—

Mr HOLSWICH: Either organisation.

CHAIR: We will go to the Friends of Felton to start with.

Mrs Green: I personally feel that anyone should have the right to appeal. How should we deny a peak body from appealing an issue that might affect agricultural productivity in the state of Queensland?

Mr HOLSWICH: Does that mean that someone who maybe has an interest in the topic but they live in New South Wales or New Zealand can appeal as well? How broad and how wide do we go?

Mrs Green: I think in the current EIS process anyone has the right to appeal. Whether we need to go that wide, I not 100 per cent sure, but it certainly needs to be expanded from where it is currently.

CHAIR: Just to tease out your earlier comment, would you feel that certainly peak bodies should be included in that right to appeal—Queensland peak bodies, for example? Would that be a fair extension?

Mrs Green: You are about to hear from QMDC. As it currently stands, QMDC would not necessarily be able to appeal a decision.

CHAIR: For the benefit of Hansard and the committee, QMDC is?

Mrs Green: The Queensland Murray-Darling Committee would not be able to appeal a decision that might affect a significant environmental area.

CHAIR: Georgina, do want to pick up on that question?

Mr YOUNG: Just going on that then, your answer is that peak bodies should be incorporated?

Dr Woods: Yes. I think it has been shown in the past that open standing for members of the public and for non-government organisations, community groups, to engage in judicial review and merit review of decisions made by the bureaucracy helps protect against corruption, helps the transparency, helps the public interest generally be at the forefront of governmental decision making. I do not think there is any doubt about that. Other pieces of legislation have criteria that are listed that ensure that anyone taking action under an appeal at least has in the last two years demonstrated some engagement with the area that they are appealing under, whether it is agricultural, or environmental, or community health. That is an option, I suppose. If it is an organisation, does the organisation have written into its objects some relevant matter that is pertinent to the question that is under appeal?

I do think generally there needs to be checks and balances to ensure that government is held to account for upholding things that are of interest to the public that are not necessarily of priority interest to private companies. That is just the reality. They are out to make money. We understand that. We need mechanisms that ensure that the public interest is upheld and to make sure that mechanisms like this will not fail the corruption test, do not fail the transparency test. Our view is that it is always good to have open standing—as open as possible—to provide for that check and balance to be there.

CHAIR: Thank you. This will be the last question. Kerry?

Ms MILLARD: This is more a question I think for Friends of Felton. When you talk about the human health impacts and the psychological and the emotional impacts, do you think that that should perhaps also extend to not just human health impact but also lifestyle impact?

Mrs Green: Absolutely, without a doubt. You only have to look at the make-up of our group to know that we come from all walks of life and everyone personally feels threatened by what was proposed at Felton and we are still continuing to this day to fight for what we believe should be absolute protection of people, agriculture and the environment. Sorry, can I just make a small addition to the appeals?

CHAIR: Sure.

Mrs Green: Currently, the only way you can appeal is by taking the resource company or by taking the decision to the Land Court. So the reality is that, if an individual is asked to do that, they probably will not because of the expense and the one-sidedness, I guess. The power still rests with the resource company in that situation. So what is also of concern to us, apart from who can appeal, is the process by which you do appeal.

CHAIR: Can I just pick up on that? The bill provides for it to go to the Planning and Environment Court as opposed to the Land Court. Do you feel that that court is better suited or less suited to hearing appeals on these matters compared to the Land Court?

Mrs Green: No, sorry—

CHAIR: Georgina, do you have a view as to whether the Planning and Environment Court is better or worse suited to an appeal compared to the Land Court?

Dr Woods: I think that it is really the statute that is a measure of whether a court has the power to act in the public interest. I feel like if the statutory provisions are there and the guidance is there and the open standing is there, then the court takes its lead from that, from what is written into the statute.

CHAIR: Thank you for that. The time allocated for this session has expired. I want to thank the Friends of Felton for coming along and Georgina for appearing via teleconference. We appreciate your involvement and also your submissions. They have been helpful for the committee.

Dr Woods: Thank you very much for the opportunity.

FLETCHER, Ms Kathie, Policy Officer, Queensland Murray-Darling Committee

PENTON, Mr Geoff, Chief Executive Officer, Queensland Murray-Darling Committee

CHAIR: I thank the representatives of the Queensland Murray-Darling Committee for appearing before the committee in these public hearings today. I invite you to make an opening statement for the committee.

Mr Penton: This statement highlights a few key dot points that we raised in our submission, and I am happy to answer any questions after that. One of our concerns is that the bill seems to have a number of vague and ambiguous elements, including statements that have few definitions, such as terms like 'environmental prosperity' and 'restoration' of an impact. There are a number of areas that have no real definition and that leave the bill open to too much interpretation, in our opinion. Another area is the number of exemptions—and clearly the exemptions which favour a particular industry sector over other industries.

Another concern is the level of discretion or potential unlimited discretion of the chief executive and the fact that a number of elements of the bill are well and truly open to interpretation and then that interpretation is left to the chief executive without clearer guidance. The public interest appeals, as you discussed with the last organisation, concern us as well. The limiting of appeal rights to just affected landholders—when the intent of the bill is regional level planning—seems in conflict and quite restrictive.

I guess our concern is the relationship between this bill and other regional planning mechanisms, including the development of the Darling Downs Regional Plan. There seems to be limited connection between the two processes and, again, there are a number of areas of definition and description that seem to be lacking in the bill. The bill seems to provide terminology about protecting the environment from development but there seems to be inadequate definition around what is environmental protection for key environmental assets, including agricultural land as well as environmental assets for future tourism development et cetera. I will leave it at that.

CHAIR: Thank you. I might carry on with the line of questioning of the previous group, because you alluded to this as well, and ask about the appeal rights. What would you like to see there? How broad would you like to see that with third party appeal rights being contained within this bill?

Mr Penton: I guess our view would be to have a pretty broad opportunity for access. You could look at some of the existing appeal rights, and there is a mechanism to deal with vexatious and mischievous appeals in current legislation—perhaps it could be Australian citizenship and limiting it to no vexatious or mischievous appeals.

Mr HART: Your submission says that you are concerned that the bill undermines the Environmental Protection Act. Could you expand on that for us?

Mr Penton: One element of the bill proposes to shift the responsibilities from the Department of Environment and Heritage Protection to the infrastructure and planning department. We would be concerned about where the environmental planning expertise would come from and how that would be incorporated into the actual planning and decision-making process. That is one key area that we would be concerned about.

Mr HART: I think the bill from memory allows for the information to go between departments and have responses back to the chief executive before he makes a decision. Wouldn't that alleviate any of those sorts of issues?

Mr Penton: It could do. We have had experience in the past with whether you are a concurrence agency or a decision-making agency with existing processes. This shifts the decision-making process when it comes to environmental authorities or environmental conditions on approval away from the environmental agency.

CHAIR: Is it more to do with clause 81 where it talks about 'authorised persons under the Environmental Protection Act'? Is that the issue of concern that you have?

Mr Penton: As well as the terminology around the level of discretion of the chief executive. It is both.

CHAIR: Sorry to interrupt, Michael. Do you have any other questions?

Mr HART: No, not at the moment.

Mr HOLSWICH: You raised the issue of the term 'restoration' of an impact. Can you expand a bit on what you would like to see that definition of 'restoration' actually include?

Mr Penton: I guess our ideal would be for that impact to be restored back to the condition the land was in before the development. That would be the ideal. We have had a number of areas of debate around the impact of mining and open-cut mining on good quality agricultural land and whether that land can be restored back to its productive state. So one of our key concerns is the long-term impact on the agricultural productivity of the region and our productive soils as well as some of our environmental assets, whether they are rivers, wetlands et cetera. We are also concerned about the impact on biodiversity, given that in a large part of this region we are already at a tipping point when it comes to a lot of our biodiversity due to the fact that we have less than 30 per cent of our existing remnant vegetation left et cetera. So now that we are down to that level, any further impact on the ability to restore it back is going to be quite important. I guess that is a key area. There is not a key definition in the bill, and it sounds like if the impact is less than 12 months in length then there is the potential for there to be a limited responsibility to restore, and that is of significant concern as well.

Mr HOLSWICH: So the main concern is, as you said, that you would obviously like to see full restoration but if it is some level less than that you just want to make sure it is actually clearly defined.

Mr Penton: Yes.

Ms Fletcher: Can I raise a point. There are a number of other bills and planning instruments which use the word 'rehabilitation'. I think it is about getting that consistency across the whole regional planning legislation and policy. If you start using 'restoration', what does that mean in terms of 'rehabilitation'? I think as drafters of the law it is good to have key terms that are—

CHAIR: Consistent.

Ms Fletcher: Yes, very consistent and have clear definitions.

Mr Penton: An area to do with that is water management at the moment. The current practice is that, if you are going to have an impact of a CSG development, you can have a make-good arrangement. That make-good arrangement is often an arrangement, a deal or an access agreement with the landholder. Quite a number of those do not necessarily make good on the water. There may well be other things that end up in that agreement that the landholders paid for the impact, but according to state government reports the reduction in water could be 50, 60 or 70 years of impact, given the loss of water. So the restoration, if you like, of groundwater is often not part of those access agreements. Landholders are paid or compensated in other ways, so the developer, the CSG company, is making good in other ways and not making good in water management. I guess we would be concerned if that started to flow over into other areas of impact as well—land, rivers, biodiversity et cetera.

CHAIR: Can I just tease that out. When you say 'making good in other ways', are you referring to cash payments that may be as compensation?

Mr Penton: That is one. It could be helping landholders with fencing, with access tracks or with a whole range of things that end up in those access agreements. So the company is making good on their impact but not necessarily saying, 'Yes, we'll figure out how to put the water back.'

Mr YOUNG: Geoff, you flagged the strategic grazing land. Do you want to elaborate on that?

Mr Penton: I think it is one of levels of priority. This region, given the infrastructure with Roma and the saleyards, is a big cattle region. This is the home of the most feedlots in Australia et cetera, so our first priority is our best cropping land. The cattle industry is an important industry to this region, so when it comes to economic prosperity and economic turnover, yes, we are seeing a significant economic turnover from the CSG sector and the resources sector generally. For the last 100 years and potentially the next 100 years, not just the next 30 years, we need to be looking at a number of industries being able to continue with their prosperity—be it the agriculture sector, the tourism sector as well as the resources sector—and not just preferentially treat one sector over another because that may limit the long-term prosperity and economic development of the agriculture sector or other sectors.

We are already seeing anecdotal evidence of landholders and agricultural industries stopping their investment in development, whether it is a development that will generate jobs in agriculture, because of the uncertainty of the resources sector on that agricultural land. We are just at the tip of the resources sector. We have got 4,000 active bores out there with a prediction of 40,000, so the potential of that limitation on economic development in other sectors is a significant concern for the region.

Mr KATTER: There was a reference made to a large number of outstanding issues with existing mining operations that have not been addressed. Do you want to explain what some of those are?

Mr Penton: I will give you an example of one. It relates to a part of the bill which says that if a development is less than 12 months it has limited responsibilities. The long-term history of this region is that historically we have over 430 abandoned mine sites where a mining activity—some were at the turn of the century and some were little tin mines as big as this room—was started but it did not go well, it went bust and then it left. That is the legacy of the industry. Perhaps times have changed with bonds and so forth in terms of the requirements, but our concern is that parts of this bill could mean that we go back to having a little development there for 12 months and it does some damage and then it leaves. We have had a long-term history of that in the past.

Ms MILLARD: You were talking earlier about the rehabilitation versus the restoration. Are you concerned that that example might go back and not be rehabilitated?

Mr Penton: That is certainly one example in the bill. It would seem that, if you are a CSG developer or an exploration activity and your only impact on a piece of land is less than 12 months in length, you have limited responsibilities for the impact you might have. What happens to the water, to the drill mud, to what you have done on that site, as small as that may be? Given the volume of exploration and the volume of drilling holes we are going to see and we are seeing already in this region, we are not talking cumulatively about a small footprint; we are talking about large numbers of hectares when you add up all the holes we are talking about—tens of thousands. The long-term history of those sorts of short-term mining developments is not a pretty one.

CHAIR: I am just looking at that section of the bill at the moment. The concern is for those that lie outside of the strategic cropping area? I am just looking at clause 23(1) (d) where it talks about the 12-month exemption 'for a strategic cropping area—the activity is being carried out in compliance with the management practices prescribed under a regulation'. Assuming that, there will be something for additional protection in that strategic cropping area, but is the concern more about outside of those areas or do you also have a concern with the strategic cropping areas?

Mr Penton: The primary concern would be outside. The co-existence criteria within the proposed regional plan is also not yet clear so, until we have got a clearer understanding of what the co-existence criteria will be and what the rehabilitation or restoration definition will be in that arena and in that plan and legislation, we are concerned about both.

Mr HART: I have a question on the matter of rehabilitation. It has been raised in other submissions with us that sometimes the legislation may require that land is put back to its original condition and that may take away the ability of the landowner to negotiate for something that might have been of benefit to them to actually stay. For instance, we might be talking about a dam or something like that that has been built to aid in the activity that may benefit the landowner once that activity is finished but it needs to be taken away and the land put back to its original state. Do you think we should be looking at some sort of negotiation process where those sorts of things could stay?

Mr Penton: My response would be I think the avenue needs to be there to allow for that, but the primary direction should be one of restoration.

Mr HART: Go unless it is negotiated that it stays.

Mr Penton: One of the reasons I say that is that our organisation is a community natural resource organisation. Our primary interest is one of the state of the natural resources—the state of our land, our water, our vegetation. They are managed by landholders. Those landholders come and go. The last census identified that in this part of the world the average length of ownership of a parcel of land is down to 15 years. The assumption that landholders are there forever—that there are generations of landholders; the same family owns a place forever—is actually becoming not the case anymore. We have lots of land changing hands much, much faster than it ever used to be and sometimes that land ownership is one of entrepreneurial and more company ownership of land, so there is more speculation around land use and people making money from changes in land values et cetera. The need to have some safeguards for the actual state of the resource is what we believe needs to be embedded in this bill because we are talking about regional interests not just the interests of individuals. There is also some conflict in the act where there is a lot of emphasis on the individual landholder, yet the intention of the bill talks about one of regional level planning.

Mr HART: You do not think we can leave it up to the individual landholder to negotiate that. It needs to be somebody else. Who else would that be?

Mr Penton: No, I think it can be, but there needs to be some bottom lines, some safeguards, so it is not just left up to that.

Mr HART: I see your point.

CHAIR: Can I tease out something you just said there? In your submission you do not support the bill's shift of governance across to State Development as the appropriate department. Just a moment ago there you were talking about the regional focus. Could you explain to us why you do not believe State Development is appropriate for the bill's governance?

Mr Penton: I guess certainly environmental considerations is the area where we are most commenting on in that arena. In relation to the ability to have a level of independence around putting environmental conditions on approvals, our preference would be for that to stay with the environmental agency.

Ms MILLARD: With regard to any development before it goes ahead, regardless of whether it is a private or a government development, it also has to go through an extremely strict criteria through federal levels as well. Do you feel that not having as much state interaction with regard to that is just a lessening of red tape, especially when there is already so many federal criteria it has to go through?

Mr Penton: It would be fantastic to see greater alignment between the federal Environment Protection and Biodiversity Conservation Act and the state environmental planning, consideration and approvals process so that we did not end up with developments that had a set of federal government conditions on approval and state government conditions; they were one and the same. That would be fantastic. I am not sure this bill is going to be able to achieve that level of collaboration and coordination between the two levels of government.

Ms MILLARD: Is that something you would like to see?

Mr Penton: Yes, particularly if similar levels of protection for environmental assets that are in the Environment Protection and Biodiversity Conservation Act, the federal act, were reflected in the state and vice versa: if there were synergies between those two, which there are not always. The state process often focuses on different things. The federal one focuses on Ramsar listed wetlands, which we really do not have any of in this region, but there are other important environmental assets that it does not pick up on.

Ms MILLARD: There is a lot that sometimes is doubled up on.

Mr Penton: There are limitations in both, but there is also a lack of collaboration between the two that does generate more red tape for industry, no doubt.

Ms Fletcher: I guess the new term 'strategic environmental area' is kind of a new planning term to do with the region that we have not discussed, that we have not teased out yet. We have our own ideas of what they are, but they are not reflected in the Darling Downs Regional Plan and they are not reflected in this bill. So it is like 'what are you talking about and have you considered these?' We put a list of those in our submissions. They were not even considered.

CHAIR: Submission to us or submission in the formulation of the bill?

Ms Fletcher: Submission to the committee. That is another area.

Mr YOUNG: That rigour is still there—the EIS and the referral to the Environment Protection and Biodiversity Conservation Act. Those things are still there. They will not be extinguished. Those processes are still there.

Ms Fletcher: There are some exemptions around that though as well.

Mr Penton: Certainly we would be concerned about a few of the proposed exemptions in here that may not trigger those processes.

Mr YOUNG: Did you want to talk about them?

Mr Penton: Yes. Going back to the previous question, I think the idea would be to have, between those state and federal processes, better collaboration and coordination. If that could be achieved, there would be a reduction in red or green tape, if you like, for industry. I will come back to the exemptions in a moment. Overall, our view—and we have made this submission through the regional planning process a number of times—is that there are potentially mechanisms to streamline regional planning and reduce the burden of planning and EIS processes et cetera for industry, and that is to have some clearer thresholds and threshold limits when it comes to some impacts. An example of that is around water and water quality. If your industry is going to discharge water and you live within a certain water quality limit then go for it. You should not need to pay a

consultant $100,000 to do water quality testing et cetera for you. That is clear cut. However, if you are going to go beyond that, at some point the answer should be no—clearly no and no early. The same with strategic cropping land. If you are going to have a long-term impact, do not go through a whole EIS process—say no early.

That has been our view for a number of years: let us try to figure out what those thresholds and threshold limits are. When we have reached the limit of the capacity of our natural resources, whether it be land or water, and we do not have more water and no-one is making more for us—even the CSG water is going to run out one of these days—we should be in a position to be able to say no early. That concept is a challenge and has seemingly been a challenge for a number of governments for a number of years: that you do not say no to any potential development and you let it run through a merit process. That merit process at the end of the day does not generate certainty for anyone. It means that anything is possible; let's go through a long, protracted planning and EIS process, go through appeals et cetera.

One of the principles that was proposed in the regional plan and that this legislation is also talking about is generating more certainty for development and for the region. Leaving it open slather for merit based assessment of everything and anything actually does not do that. It has a negative impact on the community not knowing what is going to happen, because anything is possible. It also has a long-term financial impact on industry spending lots of money not knowing whether the development is or is not going to get approved or whether they are going to have a whole list of environmental conditions that they have not thought about earlier. The need to have some clearer definitions around what is possible and what is not has been part of our submission, as opposed to leaving the door open for potentially everything and anything.

Going back to the exemptions, our concern particularly around the exemptions relates to one particular clause—I think they are clauses 22 to 25 in division 2 of the bill—that sounds like particularly CSG developments that have reached the exploration stage may not necessarily go through a fuller planning process. That is of significant concern, particularly given virtually all of south-west Queensland has some form of exploration permit for both coal and coal seam gas over almost every square inch of the region.

CHAIR: The time allocated for this session has now expired. I wish to thank you both for your presence here today and for your submissions. It certainly assists the committee in looking at this bill.

Mr Penton: Thank you for your time.

Proceedings suspended from 11.00 am to 11.15 am

HAMILTON, Mr David, Chairman, Basin Sustainability Alliance

SHANNON, Mr Peter, Committee Member, Basin Sustainability Alliance

CHAIR: The committee will now continue and I welcome representatives from the Basin Sustainability Alliance. Gentlemen, would you like to make an opening statement for the benefit of the committee?

Mr Hamilton: Thank you very much, Chairman. I would like to table some documents, if I may, as well.

CHAIR: The documents are—

Mr Hamilton: The documents are brief notes about my opening remarks and what we say are our co-existence criteria for agriculture and CSG mining.

CHAIR: Is leave granted? There being no objection, leave is granted.

Mr Hamilton: Thank you very much for the opportunity to speak with you today. The BSA strongly agrees with the stated intent of this bill, which is designed to empower landholders and give them certainty and ultimately ease land use conflicts by managing the impacts of resource activities. We are very concerned, however, that the bill in its current form does not achieve all of those things, although that was the stated intention of the Deputy Premier when he spoke about the bill. We hold the view that landholders should be able to say no if resource activities unreasonably impact on their land. We also think that resource activities permitted on prime agricultural land should be permitted only on the basis that at the conclusion—and during—the resource activities the land is restored to full productivity.

The cumulative impacts of proposed resource activities must be considered before any approval is given for mining to proceed. BSA is very concerned about the overriding power of this act with the Environmental Protection Act and the Water Act. We do not want to see any diminution of landholders' rights or any protection of the environment in the process. Land protection must extend beyond prime agricultural land and include other intensive agricultural production pursuits. Do you have any other comments that you would like to make, Peter?

Mr Shannon: Not by way of opening.

CHAIR: Excellent. Thank you for that. We appreciate your submission. I appreciate the fact that you not only identified shortfalls but also provided us with some potential solutions. I would like to just tease one of those out, if that is okay. You talked about a concept that should be introduced—high productivity operation. Would you like to just elaborate on that for the benefit of the committee?

Mr Shannon: Yes. The focus at the moment is on soil productivity et cetera. A lot of highly valuable operations in the bush are integrated operations or feedlots, piggeries—things like that—some of which contribute significantly to the overall agricultural income. Poultry operations, piggeries, feedlots might be integrated over a series of different areas, but in particular the idea is that this is infrastructure already in place, operational, proven productivity. They need to have a consideration as well, in our view.

CHAIR: And is the concern that the bill in the way that is currently structured does not recognise that, particularly when you are talking about the vertically integrated, where a feedlot may have three or four properties that are all essential to its operations? Is that the concern that you have?

Mr Shannon: Yes, that productivity can also be a guide to the importance of food production, not just potential productivity. In other words, if you have a proven operation that is high value and going forward has established infrastructure et cetera, it, too, is worthy of protection if we are talking about protecting our food productivity.

CHAIR: David, would you like to expand on that at all?

Mr Hamilton: Only just to say that in our co-existence criteria we make the point that individual properties need to be treated as individuals, because they are unique businesses.

CHAIR: I will open it to committee members. Michael?

Mr HART: Gentlemen, we heard from some people before that co-existence cannot possibly exist. That is not your opinion, obviously.

Mr Hamilton: I think co-existence can exist provided both parties have power in the relationship so that it is a power shared business relationship and provided, as a result, both parties benefit and the resources are protected and nurtured. We believe that is possible. I believe, for example, that resource activities can be undertaken without detrimental impact to our land and water resources but far more needs to be done than is being done at the moment.

Mr Shannon: Can I add to that? I think co-existence is just such a broad topic. It really comes down, as does the entire problem of resource and energy and landholder issues, to a case-by-case proposition. Really, it is like this: if I say that I am going to come and sit in your lounge room and I have a right to come and sit in your lounge room and contemplate or do whatever and I say, 'I'm not going to have much impact on you because I am only occupying 0.5 per cent of your house,' then obviously how you are going to react to that will depend on your attitude to those sorts of things. What I do and how long I stay for is going to have a permanent impact on your impression. So if I go down the backyard and I am only there for a little while as opposed to I am in there while you are having tea et cetera, you would think an owner of a house in that situation would say, 'I have the right to say no. This is my home. Stay out.' Alternatively, if it is to be forced upon him, then presumably government is going to say, 'We're going to make sure. We're not going to leave it to the house owner to protect himself. He might be old, infirm, poorly educated, or whatever. We're going to make sure that there is a protection here that co-existence is not some ethereal concept; it is a case-by-case situation. We are going to the protect the landowner and, if need be, in some cases we will say, "Yes, they are okay. You are in the lounge room." For others it will be, "You have to be right down the back and you can only come between three o'clock and four o'clock because that is when they are at the dentist, or whatever."' That to me is the whole issue. It is about enforced co-existence and it is about making that work where you can.

There are some circumstances in which you just cannot. Part of the problem with farming and resource activity is, unlike grazing and things like that, farming needs to be very flexible. So it does not have rigid infrastructure et cetera. It can also really come down to how individual operations are conducted. So whatever you do here it has to still preserve the right, as is in some areas, for the landowner to be able to say, 'Wait there. That's just too much in this particular operation' and they have the right to be able to do that.

Mr Hamilton: Co-existence is one issue, too. As Peter said, it is very much dependent on the individual business, individual property, but we also have to protect the land and water resources and the cumulative impacts of resource activities. So co-existence might be between a landholder and a resource company. We still have the state's interest that must be maintained as well.

Mr HART: So where should this co-existence criteria be specified and who should be involved in the negotiation process?

Mr Hamilton: We have given you what we think sensible criteria co-existence criteria are. Ultimately, the negotiation needs to be between the landholder and the resource company. It needs to be freely entered into, but it needs to be underpinned by requirements like looking after strategic cropping land.

Mr HART: Right.

Mr Shannon: I think you have to bite the bullet and you ultimately have to say either a landholder has a right to say no or they do not. If you are going to say they do not, is that in all capacities or are there some circumstances in which they can say no or that they should be able to say no. We keep on putting principles up that we are going to empower landholders and that we are going to give them more power et cetera or equalise the imbalance, but all of those ethereal concepts do not translate into the drafting of the legislation that comes through repeatedly.

Mr HART: I have only had a chance to quickly look at this. Do you have a specific example where you think the landholder should be able to say no to something that might be acceptable to a mining company? I probably have not worded that right, but do you know what I mean?

Mr Shannon: From my part, the fundamental—and I am deviating a little—problem with this bill to me is its creation of a regional interest authority that overrides the EPA and the Water Act. That to me just has enormous potential problems for us moving forward. I think it will destabilise the existing relationship that is developing unless it is addressed seriously, and I would like to talk on that.

In terms of the individual landholder rights, there are provisions in the agreement for the company and the landholder to reach agreement and be exempt, which obviously will be a major incentive to the companies to deal with landowners. My concern there is what that will do is increase that driver on the part of the companies to be dealing with landowners to get those agreements in place without there being adequate protection, as there is not yet, for the landowner to ensure that they get legal assistance, valuation and accounting assistance. It is provided there, but a lot of them do not use it, assume that things are being looked after for them, and then they are

stuck with it. We have a situation at the moment where the company is saying, 'They should have looked after themselves in the CCA.' Those people had no representation, did not understand the industry whatsoever and so now they are stuck with what happened.

Mr HART: So is there a lack of education? Is that what you are saying?

Mr Shannon: There needs to be an ability for landowners, regardless of the situation, to be able to go before a tribunal and say, 'This is not fair.' They should not be locked in forever by their lack of sophistication or their lack of assistance. There needs to be consumer protection and I am absolutely disgusted by the Law Society's failure to address that.

CHAIR: Thank you for that. Can I just tease something out. You talked about going before a tribunal. We have heard from others—and I am not sure if you were in the audience as we were teasing out the issue with regard to the appeal rights that are contained within the bill. Could you share with us your views on those appeal rights? Are they too broad or too narrow? Do they get the balance right?

Mr Shannon: There are two fundamental problems there. As I read it, the only party with an appeal right is the landowner, in effect, or the assessing authority et cetera. In other words, you have excluded, I think, neighbours who might be impacted—

CHAIR: No, I think neighbours—proximity is in there.

Mr Shannon: Okay. Then I would have concern about the broader community interest—for instance, activity over the Condamine Alluvium. They might reach agreement with an individual landowner but that could have a broader impact beyond that. So to me the community should have the right to have a say there. I know the problem with that that is perceived by many is that that bogs down the process and that we need to cut through that. But surely there are ways that you can streamline that process and at least still have the fundamental protections that we all take for granted in there. Sure, they have to be addressed, because there is no doubt that legitimate business interests with legitimate capacity to co-exist should not be held up for years to be able to get in and get moving, but nor should this come at the cost of landowners. To me, they are the last in the queue at the moment and they have been from day one and until that gets right it is going to be a very difficult process, the whole thing.

CHAIR: The bill provides for appeals to go to the Planning and Environment Court whereas currently people go to the Land Court. What are your views as to the suitability of the Planning and Environment Court versus the Land Court?

Mr Shannon: I would prefer probably the Land Court, but I think it is going to be a bit of a new discipline and whoever inherits that jurisdiction will need people with some insight into the problem, because we are out of traditional town planning type of things. Part of the problem for the Land Court has been that, historically, the Land Court has been dealing with quite remote applications with landowners with large properties seen as whingeing and complaining, whereas now we are down into cumulative impacts that we never anticipated for a lot longer than we ever anticipated and far greater than we ever anticipated. I think the Land Court needs education about the issues. I just do not think it is anywhere near it. There have been no cases on gas, for instance, at all.

CHAIR: Are there any questions? Seath?

Mr HOLSWICH: I just wanted to ask you about your 10 commandments of co-existence and the first one you mention there—and I know you have mentioned this already—that resource activity must not occur unless a landholder agrees. Let me play devil's advocate for a moment. You mention there that you recognise that the community owns the underground resource and, I guess, by extension obviously the state owns it. You would also say it is true that the state owns the land that pastoral leaseholders farm on. As I said, just playing devil's advocate, does it put too much power then into the hands of landholders to have the ability to say no when ultimately the state owns the resources both under the ground and on the ground?

Mr Hamilton: We make the comment there that the state does own the resources or the community owns the resources and they should be exploited for the benefit of the community. But I think one of the coal seam gas companies already has, as a policy of its own, to work with landholders who are in agreement. There are any number of landholders who have reached what they see as satisfactory agreement with coal seam gas companies. What we are trying to do with that proposition is balance the power relationship somewhat. My own view is that such agreement

should not be unreasonably withheld, but they are fine details beyond the overriding statement. Ultimately, if the landholder does not agree and they are always in conflict, then it is not going to be a good relationship anyway, particularly with coal seam gas activities which spread over the whole property.

Mr HOLSWICH: I am trying to work out whether that just tips it all the other way rather than finding somewhere in the middle.

Mr Shannon: It is an excellent question and it is one that I think everyone in this space has grappled with. We all want energy and we all want the benefits that go with that. By the same token, we all value individual property rights, and you get criticised whichever side of the fence you fall on there. It just seems to me from my personal viewpoint that if we say the community owns a resource and if we say the communal benefits outweighs that then we still have to make sure that we do absolutely everything to protect that landowner and to make sure they are totally compensated. One of the problems we have at the moment is that in terms of the compensation regime the law has never dealt well with compensating you for hurt feelings. It just does not know how to do it. If you have a diagnosable condition, then we get there. But that is a fundamental problem with the compensation regime.

At the end of the day, the whole problem with the compensation regime is that it does not allow any premium. What you are doing is filling a hole, so you never quite fill it—and that is the problem. The landowner is not one cent ahead and there is no provision for all the social impacts that go with that—the fact that the kids now are dislocated about their future and all of that sort of thing or all the planning that has gone into that is dislocated. So if you are going to say the communal interest overrides then (a) you have to make sure that it is not at the cost of future generations, which is what this is all about and (b) you have to make sure that it is not the landowner bearing the brunt and the cost of it in reality. You can give all you like to the communities and you can have all sorts of wonderful roads around the place, but at the end of the day if they are the ones paying the price it is completely inequitable.

The practical effect of it has been that the companies have realised that if the relationship is not sound we are going to have trouble all the way through. So all but one of the companies generally says, 'Well if we don't have an agreement, we're not going there.' But of course it is easy while they are still in the early phases. When we come to the commercial pressures, we will find a different attitude. One of the companies already has a very poor attitude in how it deals with that.

Mr YOUNG: Does there need to be an understanding that there are two groups out there? There are people out there who are very unhappy about what has happened and there are also other people out there who have embraced it as part of their business plan. Do we need an organisation—and do not ask me whether it is the GasFields Commission or someone else—that then represents them so that if they are going to come on to your property the charter says that you will deal with this organisation that then maps out your rights so that they have a clear understanding. As I understand it, we have seen some people getting very well reimbursed and they embrace it as part of their business plan and some people who say, 'I only got X amount of dollars out of this.' Is that an avenue?

Mr Shannon: I could almost identify—most of the people who are generally happy with their arrangements are dealing with one or possibly two companies. One of the companies Origin have taken it upon themselves to say, 'We have to make this work financially.' They have been far more practical in that approach and they have reaped the rewards of that, but they are already tightening back on that. They are already resiling from some of those kinds of arrangements.

One of the fundamental problems in this is that you as MPs are all individuals and you are probably used to dealing with people on a one-on-one basis. Landowners are used to one-on-one relationships. Here what you are dealing with are corporate entities where the person you are dealing with probably only has approval to do this much and then if you want something extra they have to go back and it has to go through a chain of command. Until you understand how difficult it is to deal with corporate entities like this, it is impossible. Landowners generally work on the good neighbour principle: if I have an arrangement with you and it does not work then I can let you know in no uncertain terms that that is not working. That just does not work when you are dealing with a monolithic or a huge company that has procedures in place because I can talk you to death for the next two days about the problem but it will mean nothing because when it gets to board level whatever we talked about is not approved.

That really is a fundamental problem in having the relationships work. You have country people expecting country relationships but dealing with organisations who even at the highest levels generally intend that and are really disappointed that it is not working but it is a fundamental cultural difference. You have to empower these people to be able to address that.

Mr Hamilton: To add to that, more often than not the person they relate to in the company is different every month or every six months. They do not have a consistent person within any company to build a relationship with.

CHAIR: Are there any other questions?

Mr Shannon: Would I be able to make what I think is the most important point about this particular drafting to date?

CHAIR: This is to do with the RIAs?

Mr Shannon: Yes, absolutely.

CHAIR: I wanted to draw that out from you. So, please, take that opportunity.

Mr Shannon: It unfolds only when you connect the dots with the legislation. If you go to section 5, it says—

This Act applies despite any resource Act, the Environmental Protection Act, the Sustainable Planning Act ...

So that gives it some degree of precedence. If you go to section 50, it says that this section applies where the local government is the referral agency. It says in subsection (2)—

If the local government has given its response to the application ... the chief executive must give effect to any recommendations in the response.

Then at section 51 it says that a regional interests condition may limit or restrict the carrying out of the activity and basically require mitigation et cetera. If you then go to section 56—and this is critical—it says—

If there is any inconsistency between the conditions of a regional interests authority and a condition of the relevant authority—

for example, an environmental authority—

the conditions of the regional interests authority prevail to the extent of the inconsistency.

Then we go to clause 100, which inserts a new section 212A into the Environmental Protection Act. It says—

(1) This section applies if an environmental authority for a resource activity or regulated activity is inconsistent with a regional interests authority ...

(2) The administering authority may amend the environmental authority to ensure it is consistent with the regional interests authority.

In other words, a local authority here has absolute precedence over the Environmental Protection Act, the Water Act and pretty well whatever it likes, and the chief executive must implement those conditions. Now that is just mind blowing to me because we have an Environmental Protection Act that is there for a purpose. You can tinker with it and you can make it better and streamline it et cetera, but it is there for a purpose. It has expertise. It is mature legislation. It has been interpreted extensively. You could get councils here who are driven by their own particular requirements, such as they want better roads or they want a university in their electorate or whatever, and so they make a condition of an approval, 'Yes, you can go ahead and operate in that area regardless of consequences as long as you contribute to a university fund or as long as you contribute to roads et cetera.' I really worry about that. I worry about undermining the Environmental Protection Act. It even overrides the Water Act. The Water Act has in it make-good provisions in respect of landowners et cetera.

Aside from the obvious part of it, what really concerns me is the Xstrata decision—which was not appealed—in which the President of the Land Court basically interpreted 'inconsistent' as meaning touching the same area. In other words, a local authority could say, 'You can go ahead provided you do X, Y and Z.' That may touch the same area as an environmental authority and the resource company would be perfectly entitled under the law at the moment to say, 'That has precedence.' I think we would be generating a whole new power in local authorities where vested interests or the powers within local authority would determine state matters. These are interests that affect us all. You have to dilute—in my respectful opinion, we cannot let that go through. There has to be protection against that kind of interplay.

The other fundamental problem with the bill is that it just does not deal with cumulative impacts. You can have 100 activities that are small mining activities and destroy an area or you can have 100 going for 12 months and set it back 20 years.

CHAIR: Can I just pick up on what you have said there, Peter, with regard to local government. Is the concern primarily about the precedence that this bill gives to the powers over the other areas or is the concern more about the powers that it gives to local government to then impact on those other areas?

Mr Shannon: I think they are necessarily together. With the best of intent, they might be saying, 'You can do X, Y and Z,' but that might be inconsistent with something in the EA. As I say, the Xstrata decision interpreted 'inconsistent' extremely broadly. So then the companies would be saying, 'We override all that.' The problem with the bill is that it does not have in it what the criteria is. When you are filling in an application to say, 'I want a resource activity,' you could totally bypass the EIS type detail. In fact, you could put in a two-page letter under the way it is framed at the moment. Council could be imposing all sorts of granting and mitigation streams et cetera and be totally uneducated in what the water impacts and what the Environmental Protection Act issues are. The potential for that conflict to me could totally undermine the purpose of the bill, let alone other acts.

CHAIR: Thank you for sharing that with us. We appreciate your insight into that. The time allocated for this session has now expired. Are there any final comments you would like to make?

Mr Hamilton: Could I just make one quick comment about page 37 where they talk about mitigation measures—'Mitigation measures are the carrying out of activities to address the loss of productive capacity'. I think philosophically we all need to be committed to full restoration of productivity of prime agricultural land wherever there is mining activity, and that is to me quite unclear. The other point I would close with is that we have not seen the regulations. I have not read them. Because I do not understand the detail, it is very difficult to have an intelligent comment about a fair bit of the legislation.

CHAIR: That is a fair comment. It is framework legislation. Whilst it is presumptive to bring in a regulation at the same time, because the bill may or may not pass, certainly when you rely on the regulation to have so much detail it would assist all in our considerations if that was available.

Mr Hamilton: Fully understood.

CHAIR: Unfortunately it is not at this point in time. I thank you for your attendance here today and for your submissions as well. We genuinely appreciate it. I now call forward the Southern Downs Protection Group.

MOLES, Ms Sarah, President, Southern Downs Protection Group

SHEARING, Mrs Maureen, Honorary Treasurer, Southern Downs Protection Group

CHAIR: Thank you both very much for being here. Would you like to make an opening statement?

Ms Moles: Thank you for having us and for the opportunity to speak with you today. The southern downs is a very beautiful and very fertile part of the world. Much of the area is characterised by very fertile cracking clay soils, some of which are regarded as amongst the most fertile in the world. As a small child I learnt that 25 per cent of Queensland's agricultural production came from four per cent of its land area. At a time when the global population is growing at an enormous rate and when we are losing hundreds of thousands of hectares of good farming land every year, it is extremely short-sighted to be allowing the loss of prime farming land, some of which is the world's best, for short-term profits from mining. Thank you.

CHAIR: Thank you very much for your opening statement. I am not sure how long you have been here today as to whether you have been able to hear the other people's representations to us, but I would like to hear your concerns with regard to the bill and co-existence. Could you expand on that for the committee?

Ms Moles: My major problem is that there is a complete lack of definition of what co-existence is, and this is both with the bill and with the Darling Downs Regional Plan, yet the bill and the regional plan are based on the premise that co-existence is possible. It depends a great deal on what you are talking about co-existence with and between. My personal belief is that there is no kind of farming operation that is able to co-exist with a great, big hole in the ground if that is where your farm used to be. Some kinds of farming may be able to co-exist with longwall mining provided there is not interference with underground water supplies and that land does not subside and those sorts of things. In this part of the world where there is intensive cropping and very highly mechanised and high-tech techniques used in agricultural production systems, it is very difficult to see how intensive coal seam gas production can co-exist with those kinds of farming. If, however, you are talking about extensive grazing operations, then that is fairly different in terms of what is and what is not able to co-exist nearby or even over the top of it.

CHAIR: To expand on that, is the lack of a definition of co-existence a reflection of those unique case-by-case examples, or do you feel that in having a definition of co-existence it would make it easier to have those assessments on a case-by-case basis?

Ms Moles: I think it would give the bill some credibility if there was a definition of co-existence, but my personal view is that the way the Darling Downs Regional Plan and the bill are framed very much suggests that co-existence is going to be imposed on landholders and it does not really matter what kind of farming operation or what kind of resource extraction is going to be involved. Co-existence will happen; that is it.

CHAIR: I open it to committee members for questions.

Mr HART: Sarah, your submission says there are a number of loopholes in the legislation. Would you like to outline some of those for us and what sorts of issues you think they will create?

Ms Moles: The first one I will pick is section 17(3) where there is no indication provided of what a major amendment to an existing environmental authority is. Section 18 provides an exemption for resource activities and section 23 provides a 12-month loophole for restoration activities, but it does not talk about monitoring of any kind, while sections 24 and 25 create more loopholes for resource authority holders to damage priority agricultural areas if they are doing it in accordance with a resource activity work plan. There are lots of gates, if you like, through which the resource sector can walk it would appear that landholders have no recourse and no alternative but to live with that. There does not appear to be any comeback.

Mr HART: Are they actual loopholes or is it more a case of 'if you have this, you do not need to do that' sort of thing?

Ms Moles: That is not my interpretation of the reading. I should add that I am not a lawyer but my reading of many of these bills seeking supposedly to provide protection to prime farming land has been that ultimately there is a gateway process and there is always a way through.

Mr YOUNG: I might add that in section 18 there is a penalty in the event that people do not comply. It is 4,500 penalty units.

Ms Moles: Again, having followed those sorts of developments for quite some time, it is an extremely unlevel playing field. All the legislation, all the policies and all the regulations are tilted very strongly in favour of the resource sector. Challenging decisions by landholders is an extremely expensive activity. For people, many of whom are carrying significant levels of debt, that is not somewhere where they feel they can afford to go.

Mr YOUNG: So what you are saying is you need to restore the balance so the property owners get that reclamation work done?

Ms Moles: In terms of this bill I think the whole thing needs to go back to the drawing board. What we really need is legislation with no ifs, no buts and no maybes: the best of the best farming land is off limits for everything. That means urban development and industrial development. It is food-growing land. That is its highest value use. It is the same for water resources. There should be no ifs, buts or maybes about wrecking, contaminating or diminishing water supplies on the driest inhabited continent, for God's sake. It is just not sane to have government legislative and policy frameworks that allow that sort of thing to happen.

Mr HOLSWICH: You talked about the balance being completely in favour of the resource companies. As I read through the various submissions I noted there are two points of view and, unsurprisingly, the resource companies do not agree with that. I want to get your thoughts on this. I will give one example. I know Guildford Coal will be appearing before the hearing later today. From its reading of the bill it talks about a clear preference for the protection of agricultural land over the interests of the resources sector in the way that the bill has been framed, whereas you are saying it is completely in the opposite direction and it is a preference for resources over agriculture. I think one has to be the case rather than the other. I do not know what your thoughts are on that, whether you saw areas where the balance is definitely in agriculture's favour or, as you have already stated, you think it is all in the favour of resources companies?

Ms Moles: From my point of view it is very much in the favour of the resources companies. We currently have a Strategic Cropping Land Act that protects the best farming land in Queensland from open-cut mining. My reading of this bill is that that will repeal the Strategic Cropping Land Act. So the best farming land in this state will potentially be available for mining. What a retrograde step. There is no certainty in any of this. It does not solve any of the problems discussed in the lead-up to the consultation about the Darling Downs Regional Plan. It is all rubbish. There is no certainty in this. There is never going to be any certainty in this. Unless you guys step in and insist on some very strong amendments to this bill and even the regional plans, there will always be a gateway or a process through which the resource sector will find its way, be able to mine the best farming land in Queensland and potentially damage our water resources beyond repair.

Ms MILLARD: Sarah, how do you think the bill can best address the land use conflict between the agriculture and resource sectors?

Ms Moles: I think the bill needs to go back to the drawing board, but a definition of co-existence would be a very good start and a clear, real commitment about the intent and purpose of the regional planning bill; that it is going to protect the food-growing capacity of this state into the future, let alone double the value of agricultural production by 2040. How are you going to do that when the best farming land in the country has been dug up?

Mr HART: I am a bit confused because you seem to be talking about co-existence but on the other hand talking about locking the whole place up and not allowing any resource activity or quarries or anything like that at all.

Ms Moles: I am not talking about locking the whole place up. I am saying there is four per cent of Queensland that is prime farming land and that should be off limits.

Mr HART: That four per cent?

Ms Moles: Four per cent of the state.

Mr HART: So no co-existence at all in that four per cent?

Ms Moles: Let us have some criteria. What are we talking about here? That four per cent of the state. How much of that is subject to open-cut mining for coal? How much of that is subject to the possibility of coal seam gas development? Let us have a conversation around what is possible, what is appropriate and where.

Mr HART: So you are saying that four per cent should be completely locked up and then co-existence after that for the rest of the state?

Ms Moles: Probably.

Mr HOLSWICH: Can I ask about that four per cent? You may not have done this but I will ask anyway. Have you done a comparison of that four per cent to see what amount is subject to mining permits at the moment? Do you know whether that has been done?

Ms Moles: I have not looked at the state of mining exploration permits or granted permits in a while, but you heard earlier this morning from the Queensland Murray-Darling Committee Inc. I used to be a board member on the Queensland Murray-Darling Committee. As you heard, the disconnect between QMDC's regional NRM plan and the likelihood of mining and coal seam gas developments over much of the area in which QMDC conducts its business is a massive constraint to QMDC being able to meet the targets in its own endorsed by state and federal governments' regional natural resource management plan. At the time I was a board member I certainly did look at those maps from time to time, and vast areas of QMDC's area of interest was certainly subject to coal and coal seam gas exploration permits.

Mr HOLSWICH: Thanks.

CHAIR: We have been asking this of a range of different presenters. You may have heard the question being asked earlier. With regard to the appeal right provisions that are contained within the bill, would you care to share with us your views as to whether you feel they are satisfactory or not?

Ms Moles: I confess to being very ill-informed about the appeal rights. However, I would say that third party appeal rights should be in there. These are issues that are of interest to all Queenslanders and not just people whose properties may be at risk from mining and coal seam gas development.

CHAIR: Thank you for that.

Mr HART: Do you think this legislation might contain a number of orbiting initiatives as such?

Ms Moles: Orbiting?

Mr HART: Things that are hidden. You mentioned loopholes before. I am thinking of things that may be well intentioned but out of context for the sort of land that you are talking about.

Ms Moles: Not that I can think of. I would say, though, that the whole of the Darling Downs regional planning process missed a massive opportunity to achieve some other environmental outcomes. There is a major issue around weed and pest control that is very often associated with mining and coal seam gas development. There was an opportunity there to address it but it was not taken up. It was all about just ramming this through.

CHAIR: Would you like to wrap up with anything that you have not addressed?

Ms Moles: Thank you for the opportunity to speak with you today.

CHAIR: We really appreciate it. Quite genuinely, I think it is important as part of our process as committee members who are looking at it that we engage widely. We appreciate both your written submission and the time you have taken to come today and share you views very frankly and honestly.

Ms Moles: May I add one thing that I should have added earlier?

CHAIR: Please.

Ms Moles: One of the gaps that I see in this is the lack of appreciation of there being any downstream or upstream or cumulative impacts both within the regional interest area and outside. That is something that would certainly improve the bill.

CHAIR: Thank you both very much.

HOUEN, Mr George, Consultant, Landholder Services Pty Ltd

LINDSAY, Hon. Peter, Chairman, Guildford Coal Queensland Development Committee

MOONEY, Mr Tony, General Manager, Stakeholder Relations, Guildford Coal

CHAIR: Gentlemen, thank you for your appearance here today before the committee. We might start with opening statements. George, if you would like to commence and then we will go to Guildford Coal.

Mr Houen: My landholder clients, the submitters, appreciate the fact that there is a parliamentary committee to whom they can express their views about important legislation like this. Thank you for this opportunity to say something in person to your committee in addition to the written submission. The three submitters are landholders whose position is I think unique in this context in that to the best of my knowledge they are the only landholders who are currently facing proposed mining on strategic cropping land. So pretty much everything we have got to say arises from their experience over the past several years with the current process. They are really a guinea pig. They are about the first people off the mark to test the operation of the strategic cropping land provisions, and it is somewhat complicated by the fact that in the Strategic Cropping Land Act the particular project was given an exemption from the restriction on permanent impacts on strategic cropping land.

The critical issue at Springsure Creek is subsidence caused by the longwall mining of, the proponent says, up to 2.3 metres. The fundamental difference between the landholders and the proponent is that the landholders, who put forward expert scientific advice about this, say that with that subsidence the land's cropping capability will be gone forever. One of the reasons the submitters are deeply disillusioned about the whole process—and I think it illustrates how you have to be so careful when planning something like this; that is, that you look at the practicalities of how things actually work in practice—is that Environment and Heritage Protection approved the EIS on the basis of the boast, I would call it, by the proponent that the subsidence would not have any lasting effect on the cropping capability of the land and in fact they could improve it in some instances. The EIS was approved by Environment and Heritage Protection despite the fact that the landholders put forward expert evidence using the proponent's own subsidence data to show that the slopes on that land after subsidence would be far in excess of what can be safely cropped in that climate with those soils. The experience in the US with similar levels of subsidence was completely irrelevant; it is a totally different climate with totally different soils so it is not relevant whatsoever. Here is the state's environmental watchdog saying, 'We'll accept the proponent's claim,' despite there being not one scintilla of evidence to prove that it is actually true.

It goes wider than that. There is a general passive acceptance by government departments of this boast by the proponent that the subsidence will not kill the cropping capability of the land. It is going to be interesting to see what happens with the decision that is coming up reasonably soon, we believe, by the chief executive of Natural Resources and Mines on the strategic cropping land protection decision applications that are currently before DNRM. From my contacts and my perspective, it is not a matter of looking at how good it looks on paper; it is a matter of considering how well it will actually work, given what I know about how government collectively through its departments reacts to these sorts of issues. It is not what you would expect it should be a lot of the time.

One of the other background issues is that the responsible departments—Environment and Heritage Protection for the environmental authority, and Natural Resources and Mines—have allowed this single project to be split into three separate applications all compartmentalised, when it should be just one. As a result of that, there are three sets of mining lease applications and environmental authority applications that are each going to have their own separate timetables and their own separate costs. The difficulty for the landholders in trying to use the existing system is greatly magnified by an incompetent decision by the departments to allow that fragmentation to occur. How we can possibly hope to ever look at cumulative impacts when they have allowed it to be divided up into three separate applications, I do not really know. The landholders put a lot of resources into the EIS process, a lot of money, with expert advice, but they might as well have gone on a world cruise because they would have achieved just as much.

The submission that we want to make is that the bill is not an improvement on the Strategic Cropping Land Act. We would suggest that the Strategic Cropping Land Act should be polished up and whatever steps that are necessary should be taken to integrate it with the planning process and keep a separate, clearly identifiable law that protects the good agricultural land. The beef of my landholder clients is that this bill hardly even mentions protecting good agricultural land. The whole thing is dumbed down to some sort of vague part that is tagged on to a real big merry-go-round of planning process that is never going to deliver for the landholders. They need to see that the government is actually fair dinkum about that—that it is prepared to put it up in lights, if you like, and make it work, but not as just some add-on bit to a huge planning process that is so opaque and even terribly more opaque due to the fact that the bill has been prepared so that many vital issues that control the application of the act are not even there because they are going to be by regulation. I have maintained that that is seriously defective under the Legislative Standards Act and should not happen. I personally, having had a lot to do with legislation, have never seen an act that had such reliance on regulation as the basis of how the power is going to be applied.

CHAIR: Thank you for that. Would the representatives from Guildford Coal like to make an opening statement?

Mr Lindsay: I find myself in agreement with a lot of what my colleague George has been saying. The key point in that is that when you get both sides of this basically in agreement on certain issues it means there is something wrong and the committee has to have a look at those particular issues and why that uncertainty exists, and I am sure you will.

I have a couple of things to say about Guildford and then I want to talk about practical concerns and practical solutions. Guildford is a small exploration company. We are not a BHP; we are not an Anglo. We are not environmental vandals. We are operating on our tenement in Springsure and we do so with a voluntary agreement with the landowners. We support the thrust of the government's four-pillar economy. We support the thrust of the government's interest in protecting prime agricultural land but also in protecting the resources industry. They are both hugely important for the state, as you know, and nobody would want to do anything that might damage that importance.

We are a strong supporter of the communities in which we operate. We formed our own community consultative committee in the Hughenden and Pentland area, which Mr Katter will know about, and we are very highly regarded. We acknowledge that resource activities must be regulated, and that is what will happen, but this draft legislation will have a significant impact on the tenement that we have in Springsure. We have an EPC1674. We worry that the bill will introduce further layers of regulation at a time when the government's intention is to reduce red tape and green tape, and we do not want more delays.

I want to show you a map and it will show you what the problem is. This is our tenement in Springsure. It is cattle grazing country but it is classified under the legislation as prime agricultural land. It will never be used for agriculture; it will just be used for cattle. So we are captured by that. I wanted you to see that map to see that, even with the best will of the government in doing everything, there are always issues. When you look at what you might do in this instance, you cannot fix this problem, so I will go on and talk about those particular issues.

First of all, exploration is very different from mining. This bill does not differentiate between the 25 million tonnes of product that an open-cut mine is producing per annum and an explorer who is not doing anything except drilling a little hole somewhere. It does not differentiate. It treats both kinds of resource companies exactly the same. Exploration has a minimal impact on prime agricultural land, whether it be coalmining, hard rock mining or exploring for coal seam gas—there is minimal impact on the PAA.

Explorers already have to meet a raft of conditions, including agreement with the landowner, because you cannot go ahead without that. There are other issues such as cultural heritage, environment and so on. This bill is a disincentive to exploration. You are putting up a wall that says that it is all too hard so do not explore. You will find that companies will say it is easier to go and spend money in Bhutan than spend money in Queensland to explore. Without exploration, you do not know the potential of your state, and nobody wants to see that happen. The exploration stage is not the correct time to assess the potential for co-existence of certain activities, because exploration can co-exist quite happily with any other land use. So I put it to the committee that you have to look at exempting exploration from this bill. That is a big step, but it is a very practical thing to do because there is really no impact on anybody from drilling three holes over the course of two years on an EPC.

You will say to me that exemptions are already available for explorers, but they are not practical and I will tell you why. Currently, under the exemption provisions, you have got to do the self-assessment as to whether you are captured. There is a huge risk in a company doing that. There are fines of over $3 million for a company if somebody can show you are not exempt. What are explorers going to do if they face that risk?

What we are talking about is clause 22, the landholder agreement exemption. In December one of your committee members, Mr Mulherin, was told that the guidelines on what is exempt could be developed but there is no certainty that they would be. Where does that leave an explorer? You need to have a pretty good reason to proceed to spend your money and not face huge fines. So in practice the landholder agreement exemption does not work without further certainty. Moreover, voluntary agreements that you do with landholders under the bill introduce the potential for the process to become a field day for lawyers, and who wants that? Nobody wants that.

The solution is to set up a template for what an agreement might be, to remove the ability for legal delay and to remove the legal risks. You will say to me clause 23, which is activities in a 12-month period, says you can go and do your activity over 12 months. There are two problems with that clause. It appears to say you can only get a once-only 12-month period, but you might be wanting to do other exploration. That needs to be clarified. But, also, 12 months is too strict a time frame. If you get a wet season, if you get an equipment breakdown in a remote area, if it is boggy in your exploration program, you may not be able to complete your drilling program and then complete the rehabilitation that is required within 12 months. There is a simple solution. Make the exemption period 24 months and provide clear and practical guidelines. It is easy to do, it puts nobody's nose out of joint and provides certainty for the explorer.

If there is no exemption available, there is a raft of new concerns. The time frame of the process is really open ended if you have looked at it. There is no certainty; there is more delay; there is no consistency with the EPBC Act. It opens the floodgates for vexatious appeals. You know what that does to boards making investment decisions. There is a simple solution: tighten the mandatory time frames in the bill and have consistency with other acts so that you cannot have people dragging out appeal processes and legal processes—you have got to get on with it. Queensland has to be open for business. I think that is the will of every Queenslander. But it will not be so if there are no clear guidelines or mandatory time frames as there are in the EPBC Act, which works really well and everybody agrees with.

In relation to this matter, I think it is probably going to go to local government to determine. Appeals would go to the Planning and Environment Court, but I would submit to you that it is not a Planning and Environment Court matter; it is really a Land Court matter which has the expertise. So just as an aside, please look at sending the appeals process to the Land Court rather than the Planning and Environment Court, which deals with normal council matters.

In relation to this, the PAA cannot be changed. There is no mechanism to change it. If a mistake has been made in the maps, there is no mechanism to review the PAA boundaries other than re-gazetting the statutory regional plan. You are in government; you know how horrible that is. It is not going to happen. There has to be a mechanism where, instead of looking at photographs and saying, 'Well we will put that in the PAA,' if people affected find that they should not be in the PAA you have got to have a mechanism to take out that particular block, whatever it is. I do not think anybody would be concerned about that, and I think both sides of this particular debate would actually support how this could be changed. So please provide us with a mechanism to challenge the current proposed boundaries—both sides agree with this—and give the minister the power, on advice from his DG, to change the boundaries. Do it simply.

In relation to consultation, this is something I think both sides of the debate would have spoken to you loudly and long about it. Both sides have provided feedback to you about the lack of consultation. My colleague Mr Houen has indicated to you in relation to the regulations that he has never seen that kind of thing before and he does not know what it is going to mean. I think all of us on both sides have the same view. There is no clarity and significant uncertainty with regulations that have not been seen creating greater risk for investment. There is a solution to this: all of the regulatory process should be tabled first. I think probably the responsible minister would be amenable to doing that. Then do some consultation with industry and agriculture. Set up a working group of all sides to get the best outcome from the regulations. If you leave it to the department—I hope there are no department people here—you know what you will get. I think, from what I see, the department is struggling to get its mind around what it is we are trying to achieve here because it is such a huge and important matter; it really is. We want to get the best brains on this, not just departmental brains. You need to convince the minister that he should set up working groups after

he proposes regulation and then those brains from all sides can have a look and say, 'Look, we think this; we think that. We will get a better outcome if we do so-and-so.' There does not have to be a long time frame. I know the government wants to get this in place, but it is really, really important that it be done. I am going to close there, but I am going to observe that Mr Mooney and I have left North Queensland and left a cyclone behind to come and give evidence and I hope you appreciate that. Thank you for your time.

CHAIR: Hopefully the cyclone will not cause either of you or North Queensland anything more than a good drenching. Before I go to a question that I would like to pose to both of you, could I just pick up, Peter, what you were saying there with regard to priority agricultural areas. Clause 8(1) (a) provides either via a map in a regional plan, as you quite rightly pointed out, or (1) (b) prescribed under a regulation. You do not feel that that is flexible enough? We do not just rely on the regional planning process. There is also the way for a map to be prescribed under regulation. Is your view that that is not flexible enough?

Mr Lindsay: Chairman, it is not. Because someone will come up with a map and then someone else will say, 'Why did you do that? Don't you understand that this and that and so on?' You need a mechanism where it can be changed if necessary, but it has to be a mechanism that is practical and simple. That does not exist at the moment.

CHAIR: Regulations can obviously be changed far more quickly than a regional plan or an act. You do not feel that that has that flexibility there?

Mr Lindsay: But is the map part of the regulation? Can you go back to parliament and say, 'We want to take this little piece out of that map and therefore change a regulation'? I think that is cumbersome, I really do.

Mr Houen: Can I just add something to what Peter said? If I remember correctly, there is provision in the Strategic Cropping Land Act for the review of maps and such reviews are then open for public comment before they are fixed. That is a point that we have made in our submission. The bill says that the trigger map will be published on the DNRM website—under what authority I am not really quite sure because the Strategic Cropping Land Act would have been repealed—but it makes no provision for it to ever be amended or reviewed and it is frozen in time which does not seem at all sensible.

Mr Lindsay: Mr Chairman, I agree with what Mr Houen has just said.

CHAIR: Can I now pose a question to both of you because it ties in with what you have each said separately in your opening statements. We are reviewing framework legislation, so we recognise that this bill, should it pass as it currently sits, will rely upon regulation to provide a lot more of the detail in that area. Government does that in varying degrees. I take your point, Mr Houen, where this is perhaps, in your view, the most that you have seen a bill relying upon the regulation to provide the detail. Could I ask you all what you would like to see to be contained within the bill that is currently proposed being in the regulation?

Mr Houen: There is a list of 10 issues which the bill says are to be determined by regulation. I would stick with that. They were selected from the bill as a whole to try to give you a list of the things which are objectionable. I will say again that from my clients' point of view it is not just that we are considering this bill without knowing what would be in those regulations. It is primarily that the government has the hide to put forward a bill which hides the great majority of the really, really important factors that determine how the bill will operate. They want to create the power without telling us how it is going to be applied, and to me that is just not on.

Mr Lindsay: Mr Chairman, I think it is not practical to go down the track of what you are suggesting. I think the government wants to get on with it. I have no objection to the government getting on with the bill, and in terms of trying to put more of what is in the regulations into the bill I think that that time has passed. That is why I have said to you as a practical solution let us see the regulation and let us then get working groups working on that. That gives everybody a fair go. I think the government will find there is a lot of commonality in the views on what the regulations should be. As long as that process happens I think all of us can achieve the outcomes we want.

CHAIR: Thank you. I open it up to questions from committee members.

Ms MILLARD: Peter, with regard to your comments about exploration versus mining, you are very distinct with the way that you say you believe that there is no differentiation in the bill between the two. You also made the comment you believe that there should be a complete exemption of exploration in the bill due to its minimal impact. That goes completely against what some other people this morning were actually saying to us, and that is that exploration is a problem with regard

to impact because we are not just talking about one hole. Possibly over the next 20 to 30 years there will be tens of thousands of exploration holes, and their concern is the drilling mud and the impact on the little bit of land around it. If you think it should be taken out of the bill, where should it go?

Mr Lindsay: I think there is a misunderstanding here. Where it comes from is the difference between coal seam gas mining and coalmining or other hard rock mining. With coal seam gas the exploration is the same as other minerals, so you only need small numbers of holes—minimal, minimal impact. However, once production occurs with coal seam gas that is where you get your thousands of holes. So you should not misunderstand that exploration is nasty, because it is not. What do you do when you go on a tenement to explore? You get the approval of the landholder, which you have to have.

Ms MILLARD: I do not need an explanation of what exploration is versus mining. I understand that. My question to you is if you think that exploration should be taken out of this bill where do you think it should go within government legislation?

Mr Lindsay: It is already covered. The approval processes that are required are already covered. You do not need to do anything in relation to having exploration processes proceed. It is already covered by government legislation.

CHAIR: If the bill were to contain an exemption for exploration because of the existing provisions that are provided, that would meet your concerns?

Mr Lindsay: Yes. Could I add, in relation to the member for Sandgate's comments, in Springsure we already have requirements before we can start drilling to comply with the terms and conditions of our instrument of permit issued by the government, to comply with existing environmental authority and all existing layers of environmental constraint, to comply with the land access code and negotiate conduct and compensation agreements with landowners, and to comply with cultural heritage duty of care. All of that is encompassed right now. So in removing exploration from the bill, the government does not need to do anything further.

Mr HART: Peter, if exploration was removed from the bill, would there be any need for the 12-month exemption or the proposed 24-month exemption that you talked about?

Mr Mooney: We believe that it should be exempted. When we spoke about 24 months, that was only in relation to a situation where we have not got a removal of exploration from the legislation as drafted. Peter has proposed a couple of solutions—that is, extending from 12 to 24 months—but our preferred position is to have it removed entirely.

Mr HART: So if it was removed entirely, is there another reason that we would need that 12-month exemption? Is there anything else that you can think of that might be required?

Mr Lindsay: No.

Mr HART: I assume the 12 months is there for the exploration side of things.

Mr Mooney: We do not think that is a workable proposal. I will give an example of Springsure—our own position. Last year we ran only a three-drill program and we were flat out completing that and getting the site rehabilitated in the year. We had weather conditions; we had difficult issues in terms of negotiations; we had to get contractors and different drill operations in there and out. So even for a very small program, we struggled to get that completed in that 12-month period. We think that is impractical.

Mr Houen: I would not want you to leave here believing—and there is absolutely no inference whatsoever about Guildford Coal's activities—that there really is not an impact problem with exploration. Let us just take coal exploration, because it was mentioned. In my consulting career, I have done a lot of audits of exploration compliance and they were all done because there was not compliance, and it is not unusual to find an exploration project which has not complied with a single one of the 40 or so conditions in the code of environmental compliance for exploration.

I said before that you need to be very much attuned to how things really work in practice and I was having a grumble about Environment and Heritage Protection and its handling of a particular EIS. How about this one. There has been some publicity recently about open drill holes that emit gas and they are a hazard. There are tens of thousands of mainly coal exploration drill holes left open in breach of the environmental code of compliance for those projects all over the coal areas. You might have noticed that in the recent past Clive Palmer's company got pinged for failing to plug those drill holes—the problem being, of course, that wherever they intersect water there is a risk that the bad water may be mixing with the good water or the good water may be escaping to

somewhere from where it is not recoverable. This is a huge issue which Environment and Heritage Protection and in its former guise as DERM or the EPA has known about, has had endless complaints from landholders—my clients—about, has never, ever acted before and never shown any interest in acting. The state's groundwater resources are undoubtedly being severely damaged every day and government has not done a thing about it. At Wandoan coal, Wandoan coal admitted in the court that it had drilled over 2,000 holes and not plugged any of them, and that is a really serious issue.

CHAIR: Thank you for that.

Mr Lindsay: Mr Chairman, I might point out that, whether or not exploration is covered in the bill, that does not ameliorate the problem that Mr Houen has just articulated.

Mr Houen: No, it was in a slightly different context. I agree with what you are saying.

CHAIR: No, I understand that. Thank you for that.

Mr YOUNG: Peter, you have your mining lease, but I would have thought that under the Strategic Cropping Land Act there was a criteria for making the determination that it was. Even though it is only a cattle property now, they look at all of this criteria like soil samples to determine whether it is?

Mr Mooney: Under the strategic cropping land regime, five per cent of that particular tenement was noted to be affected. Under the proposed new boundaries with a PAA, it is 95 per cent. We think that the datasets have been misaligned in some way. There is no rationale as to how that has happened.

Mr YOUNG: So there is a mapping issue?

Mr Mooney: We believe that there is a mapping issue, yes. We acknowledged and we advised our shareholders that there was a small impact on the northern tip of our tenement that was affected by strategic cropping, so we took no further action. We were prepared to live with that. We knew that that had been quarantined. This, however, is a much bigger impact covering 95 per cent of the tenement.

Mr Lindsay: But, Mr Young, the mapping issue applies to both sides of this debate and that is why your committee needs to address that.

CHAIR: Seath?

Mr HOLSWICH: Mr Houen, I just want to ask you about co-existence. Obviously, from what you have relayed of the landholders who you are representing, co-existence there does not appear to be something that is possible. Are you suggesting that it is not possible anywhere and that is why that reference should be removed from the bill?

Mr Houen: It is interesting, actually, if I can digress a little bit. In the early 1990s I had a whole series of bitter disputes and a number of court cases with one of the major coal companies, and that was occurring in a situation where they had lost the guy who used to do their landholder liaison who was particularly good at it and they were doing it through their mine managers, who for a number of reasons are not really likely to be the appropriate people for that. So it was really going pear shaped. Anyway, we won more of the court cases than they did. To their credit, some years after that they said, 'There has to be a cause for this problem,' and one guy who happened to be one of their surveyors was appointed to look after the landholder liaison. Over the following 15 years he probably dealt with more landholders by way of agreements to buy country or to pay compensation than the whole of the rest of the coal industry put together and there was never a single failure to agree. You would not find a single one of those landholders who he dealt with who would have anything but a good word to say about this guy. So it can be done and it happened spontaneously in that case.

I think the term has crept in there on an inappropriate basis. It is there as I see it because it is the term that was applied to the sort of state which it was envisaged the arbitrator would decide was satisfactory where resource activities were going to be allowed to occur on good quality land and somebody was going to decide that there was a balance and the impacts were acceptable, so the landholder could be judged to be able to continue pretty much operating the property as they wished and the resource company was going to be able to do what it wanted to do as well. But this was something that the decision maker was going to decide—that there was a satisfactory balance—which got to be spoken of as co-existence.

I have said at length in the submission that co-existence is really about individuals living together, in spite of their differences, on a basis that is roughly equal. I am not the only one who has said, 'Look, they are not equal.' I have said, 'Let's face it: three of the four participants in this system

are screwing the fourth one'—not screwing, but they are exploiting the fourth one—'because each of them draws a benefit from the fact that the land is being occupied for these resource activities and the landholder ultimately is required by law to submit to that.' So that cannot be co-existence—it is the wrong word—because what we are really talking about is that some arbitrator is going to decide, 'Because the parties have not been able to agree, we are going to decide that, on balance, this is acceptable.' That is what it is. It is not co-existence. Co-existence is a motherhood term that people feel comfortable about and they can go home and sleep at night because, no worries, the new bill is going to ensure that there is co-existence. But that is really not the case.

Mr HOLSWICH: So again it is not necessarily that peace and harmony is possible; it is the definition of co-existence.

Mr Houen: Yes, it is whether the land use—

Mr HOLSWICH: So whatever you call it, it is possible.

Mr Houen:—can continue and the land and the soils and its other attributes will not be unacceptably damaged.

Mr HOLSWICH: Thanks.

CHAIR: I am conscious of the time. Is there a final question that anyone would like to ask?

Mr HART: Tony, I do not know whether you are comfortable talking about this, but you said five per cent of your land was affected by the strategic cropping act and now 95 per cent by a PAA. If this legislation goes through the way it is at the moment and the regulation comes through the way maybe you are thinking it will, what effect will that have on your company?

Mr Mooney: There will be a number of significant impacts, the most important Peter has mentioned, which is adding another layer of decision making before we can go and do a simple exploration program. We are very concerned that the exemption provisions will add a new level of risk to our operations. So it will be a disincentive for people to invest in our company. It will make it harder to undertake exploration activity and it will be harder to find new deposits to be able to make projects commercially viable. What is happening there with us will be repeated right throughout that strategic plan area. So that is really important—the fact that it covers so much. If we cannot challenge or at least argue about the areas that have been included under that priority agricultural area, then I very concerned about the viability of how we go forward in that area and there will be many other small exploration companies that will be in the same boat.

Mr Lindsay: And you have to be mindful, committee, that there will be other plans that are produced in other areas of the state. Mr Katter, in your area, the gulf country, where hopefully there is some prime agricultural land, you will be subject to a plan. I was talking to MITEZ yesterday. They are very concerned. Nobody disputes that there should be protection for prime agricultural land. That is why this process is so good. In a sense a lot of us are on the same page—the mining industry and the agricultural industry. It is just really gratifying to see a committee that knows what is going on and can actually get a better outcome for everybody—for both sides. Then we all win. So I would like to congratulate you on what you have been doing.

CHAIR: Thank you very much. The time allocated for this session has now expired. I thank all of you gentlemen for coming forward. I want to commend you in that you have not just identified shortcomings but also identified ways in which we can address those. As a committee, we appreciate that very much. The committee will now break for lunch.

Proceedings suspended from 12.46 pm to 1.30 pm

MANNING, Mr Lestar, Lawyer, Property Rights Australia

STILLER, Mr Dale, Vice Chairman, Property Rights Australia

CHAIR: It being 1.30 pm, I now reconvene this public hearing and I welcome representatives from Property Rights Australia. Would you care to make an opening statement for the committee?

Mr Stiller: Property Rights Australia supports the intent of this bill. We believe the overall concept is quite good. It is needed in the light of the changes to planning law that have been made throughout 2013 to determine what should be protected and what should not be. This is a very powerful bill. It is very important to get it right. It is overriding various acts. It is of concern that landowners' rights may be eroded with the overriding of the Environmental Protection Act, and thereby the environmental authorities that give landowners' protection with things like dust and noise, and also the Water Act where we have make-good provisions.

We need to look at what we are actually wanting to protect when we are talking about agricultural production and/or land use—that type of thing. When it gets down to it it is about soils. It is about good quality soil. It does not matter whether it is currently cropped or not. It can be cropped in the future. It is about soil that has potential to be highly productive. This bill is for the entire state of Queensland. It is so easy here sitting in Toowoomba to think about the Condamine Alluvium out here, but this bill is for the entire state of Queensland. When you travel Queensland the good soils are fragmented. You do not often see—such as on the Condamine Alluvium; there are no fences there—continual cropping from boundary to boundary. When you travel across Queensland you drop in and out of good pockets of soil. So determining a regional interest has to take into account that fragmentation and that here is a pocket of good land amongst a ridge line or other type of country.

Not only do we need to think of this bill for all of Queensland; we need to think of it in the context of the present government's initiatives as in doubling agriculture by 2040 and also the reform of the Vegetation Management Act last year, where part of that was to look at those good pockets of country in the far north that have not been developed like in the southern part of Queensland and to allow those good pockets of land to be developed. The Vegetation Management Act allows those pockets of land that have been left behind to be developed; in this bill we are also looking at how to protect them.

While talking about Vegetation Management Act, eminent range land scientist, now retired, Dr Bill Burrows wrote a paper called 'Bushland at risk of continued tree and shrub thickening in Queensland' in 2013, answering some criticism to that vegetation management reform. This paper points out those pockets of good country. He said—

... a common maxim of rural landholders is to develop the best country (that capable of the greatest productivity improvement) first. Yet in generally marginal country there can often still be found what I call "pockets of viability" on most holdings ... Development of these zones can often turn a marginal enterprise into an acceptable living area.

Crucial to this bill is the regional plans. They are used to determine what a regional interest is, certainly when we are talking about farming country. On 18 October, the Central Queensland and Darling Downs regional plans were passed. We have the Cape York and South-East Queensland regionals plans coming up later this year. But there are other areas that have no regional plan at the moment. There are parts of the Central Queensland area that are outside the Central Queensland Regional Plan that have resource activity but are not covered. So I suppose that is why we have the strategic cropping land soil criteria there, too. But we have this accumulation of different land classifications happening here.

I would like to point the committee back to decades ago so we do not lose that old soil science work of the DPI and the lands department where they went out on a grid pattern and determined what was good land and what was not under a classification called 'good quality agricultural land'. So we have that developed science from the past. The previous government developed the strategic cropping land soil criteria, which I have criticised in the past but I am starting to like it a bit in light of the PAAs because I am very critical of them. So we have an accumulation of these different layers and none of them are completely adequate and it is complicated. I would like to ask the committee to consider whether to ask a specialist group to come up with a single coherent land classification to deal with determining a regional interest instead of having this multi-layered accumulation of things. It is like using a series of bandaids from the past. What we might need to come up with is a single coherent policy instead of having all of these different layers.

I failed in my submission to include concerns, and strong concerns, about clause 50 and the words 'must give effect' there. In this regard I strongly endorse the statements on this subject by Peter Shannon from Basin Sustainability Alliance. If for one reason or another I may not be able to answer all of your questions, if you wish me to reply I am prepared to provide a written statement later.

CHAIR: Excellent. Thank you.

Mr Manning: Mr Chairman, if I may, what I would like to do is run through various headings that I think need to be addressed and to answer a question that you have put to other speakers by identifying parts of the legislation that I think could be amended and hopefully that will be of use to you by specifically identifying relevant provisions. I am going to run through a little bit about exemptions and the regulations that we have all spoken about that are there that we need to see; look at 'owner' and 'occupier' and what that means; look at the assessing agent and the assessing agent's powers just as Peter Shannon has but also giving some examples; look at some of the time lines that I think are a bit clunky in the legislation; look at the criteria for decisions and where I think they should be included; look at the conditions power; and, as a lawyer, talk to you about the court. You have asked questions of others about whether you think the Land Court or the Planning and Environment Court is the right court, and I have some strong views about that. Then I will conclude with the importance of the Environmental Protection Act and Water Act provisions in relation to protection of the farming and agricultural communities. So if you bear with me I would like to run through that.

CHAIR: It sounds like a fairly comprehensive list. Would you mind if we perhaps at the end of each section allow some questioning, rather than hold off until the end?

Mr Manning: Certainly, Mr Chair.

CHAIR: Thank you.

Mr Manning: So I will start with exemptions. One of the exemptions is for the activities for 12 months, and this is a suggestion for a change in the legislation. Section 23 provides for that. We have had a lot of difficulty in matters that I have been involved in acting for farmers about defining what an activity is. Recently I have been in a mediation where a farmer has come to me having had a conduct and compensation agreement entered into, and it is to do with mainline pipe construction. The mainline pipe construction activity has been identified as a separate activity to restoration of the soil surface area after the pipe has been laid and it is a separate activity to things like rehabilitation. So the general language of section 23 referring to an activity gets broken down. If you look at the documents supporting the tenements, the environmental authorities, if you look at the codes, actually break those activities down into different steps. The code will break it down into the digging, the laying of the pipe, the major construction component and then there will be perhaps an 18-month period provided for restoration and rehabilitation. They are treated as separate activities. Now if that is allowed to occur through those provisions, that is going to mean that the 12-month activity will not be 12 months; it will be 12, 24 or 36 months. So that is a matter for consideration for an amendment.

CHAIR: So your concern is the term a 'resource activity' could be broken down.

Mr Manning: That is correct.

CHAIR: Rather than being comprehensive, it could be broken down into a series of different activities in that space.

Mr Manning: And that has occurred and that is the concern. So that means that your 12-month period blows right out.

CHAIR: If we go to clause 12(2) where it provides a definition of a 'resource activity', do you feel that that is not comprehensive enough?

Mr Manning: I do because that same sort of language is used in the current legislation, yet when you are talking about conduct and compensation agreements and when you are talking about what actually happens on the ground, those activities are broken down. So it is just a case of picking it up.

Mr HART: The clause actually says, '… the activity is not likely to have an impact on the area after the 12-month exemption period'. It does not get the exemption if it carries over past 12 months.

Mr Manning: That is correct but that is if you assume the whole of the digging, construction, restoration, rehabilitation and reinstating of that land to its previous productive capacity is all going to occur within 12 months. But if it gets broken down in steps—and I came out of a mediation yesterday where we had an argument about that breakdown, so I am just flagging it as a matter—

CHAIR: It is a good point. Please continue.

Mr Manning: With the regulations, there have been numerous people who have commented to say that we need to see the full package. I endorse that comment. There are a few of those matters that accord in regulations that I would prefer to see in the legislation because I actually think they are a higher order component and should be part of that framework legislation. I will start with the identification of priority agricultural areas and strategic environmental areas where they can be done through a prescribed regulation. One of the things that has been discussed before you today is the need for certainty in relation to what areas are to be protected and what are not. That is deferred and I can understand why it is deferred where this is trying to implement regional plans and there are areas without regional plans but, again, I think that is better off in a higher order position. For example, if a council tried to put out a planning scheme for public notification and did not put the plans that go with it which identified the zoning and the different areas of constraints, it would not be allowed to go out to public consultation. So it really needs to be brought forward.

The other part that I think ought to be brought forward is section 16, which refers to regulated activities. They have to be prescribed regulated activities. They are one of the things that are caught by this. Having read the explanatory notes, I have no idea what sorts of activities they will be. Again, if it is something that is going to be caught by this legislation as an activity, I would like to see it brought forward into the framework legislation.

In terms of the identification of assessing agencies by prescribed regulation, I know it has been a practice in other acts to allow that to happen, but with the breadth of power that the current drafting gives to assessing agencies—and I am talking about what Peter Shannon went through—it makes me nervous that they are not identified.

CHAIR: If they were identified within the regulation, would that address that concern?

Mr Manning: It would. The regulations are going to prescribe under section 39 what is referable. What is referable is going to allow a matter to be referred to an assessing agency. I think that is very important. I have no concept of what matters will be referable or will not be referable. I think that ought to be brought forward into the act. It is not like listing those parties that are going to be the assessing agencies. You are going to be telling us what matters are going to be given to another party who can come along and impose conditions that the chief executive must abide by. I think that is important and I would bring that forward.

Section 40 of the legislation refers to the assessing agency's functions prescribed under a regulation. Again, what function? I am not fully understanding what that is when the assessing agency will be given an assessment criteria to assess. What is their function if not to assess? Does it mean there is going to be some prescription around what they can and cannot do? If it is, I would like to know more about that. I thought that probably ought to be up in the substantive framework legislation rather than down below.

Section 41(2) (b) indicates there will be criteria by which decisions will be made. So once the matter is referred your decision-making criteria are going to be provided under regulation. Most legislation sets out the criteria in the act. If I use the Sustainable Planning Act as an example, I have the things that I have to address set out in that legislation. This is going back to the regulation. I would prefer to see it brought forward. That is the preference with that.

I was a little concerned that the wording of the regulatory power is somewhat limited in that in section 88 you have the power to make regulations. Then it says the regulation may be in relation to fees and something else of an administrative nature. I would have thought some wording is needed to say that the regulation power is power to provide for regulations required under this act and also those other things.

CHAIR: I am looking at section 88. It does not quite match with what you are saying.

Mr Manning: I am trying to do this from memory, so if I have misled you please forgive me.

CHAIR: No, that is okay.

Mr Manning: I have it here.

The Governor in Council may make regulations under this Act.

That is fairly broad.

A regulation may provide—

so it is telling you what the regulations may provide for—

for fees payable under this Act ... for a maximum penalty ...

I think some language is needed to say 'or for matters required under this act' because you have all of those other topics that are required for a regulation-making power.

CHAIR: Thank you.

Mr Manning: They are the regulatory components that I think should be brought forward into the act.

Looking at the definition of 'owner' and 'owner/occupier', one of the problems in the legislation that I see is that if I have a leasehold interest I am not entitled to receive the rent from the land. If it is a state lease, the state is entitled to receive the rent from the land. I am therefore not an owner. That means that any time there is a notice given to an owner, there is an appeal right given to an owner, the leasehold person does not have that right. I think that is a substantial abrogation of someone's rights. I think that ought to be changed. I suspect you would not look at trying to change it by changing the definition of 'owner' but you should change it by including something about an occupier and perhaps a class of occupiers.

CHAIR: You would see that class of occupier being limited to someone who has a leasehold—

Mr Manning: I think that is probably an appropriate class to start looking at. I would look at that question more broadly but define the class. I am not suggesting that everyone who is an occupier would necessarily fit the class who ought to have those rights, but it is a matter that needs to be addressed.

Mr Stiller: Another example of occupier can be family arrangements where retired parents have gone to the coast and a child is back on the farm but the parents still own the deed, or it could be an aunt down in Sydney. One no longer has an interest in the farm and the other one is copping all the grief. That is another example of occupier. The use of the word 'occupier' should be standard in dealing with these matters between landowners and resource companies.

Mr HART: Do you have any concerns that the reverse situation could be a problem where the occupier actually agrees to something that the owner does not?

Mr Stiller: Both have got rights. The problem with this bill is that they have excluded the occupier in many cases. They both have rights.

Mr YOUNG: To take one step back, when we are talking about land tenure, are you talking about freehold land only?

Mr Stiller: No.

Mr YOUNG: You are talking about even if it is a Crown lease?

Mr Stiller: Yes, that is correct. There are people affected by resource activity reasonably close. It is not out in the far west and far north. I know there is leasehold land in north Yuleba. People are affected by coal seam gas and related infrastructure.

Mr Manning: In section 31 of the act an owner of land is given a copy of an assessment application. Section 32 then says there is capacity to amend the application but the amended application is not required to be passed on to the owner and/or occupier. I think that is a defect. If someone is going to make an amendment to the application, then it is appropriate that the party whose rights are affected would see it. There are a few things around that owner/occupier.

The next topic I wanted to discuss was the assessing agent. I have mentioned under section 40 that the functions are prescribed under a regulation. I am not quite sure what is intended by that. Section 41 specifically refers to criteria under a planning scheme where the local government is the assessing agent. That language should probably be married up with whatever the new planning legislation language is going to be. At present the Sustainable Planning Act talks about assessing against, not criteria. I think there ought to be consistency of language running through those areas.

Section 42 for the assessing agent provides that conditions can be recommended and a refusal can be recommended. The term there is 'recommended'. The third thing that they can do is provide advice and the advice is about the application. I am not quite sure what 'advice about the application' means. Is it about the process of the application or is this advice in relation to the decision to be made on the application? So there is some language there which is a bit difficult.

Section 50, which is the section that Mr Shannon took you to this morning, indicates that if the local government has given a response to the application other than just advice—so it is differentiating between the advice and the recommendation—the chief executive must give effect to any recommendations in the response. Again, it is making that distinction. So the chief executive has to give effect to the recommendation in relation to conditions and has to give effect to the recommendation in relation to a refusal. That is the strength of the power given to that assessing agent. I was not sure whether it was intended that the assessing agent have the power to effectively direct the chief executive in relation to the decision. I was not sure whether that was in fact the intended consequence. That distinction is important. It comes into play.

There are a couple of things that are clunky in the legislation in relation to time lines. Section 42(3) says that the assessing agent has 20 business days to decide but a longer period can be given. Section 44 has that really sensible capacity to require information so that if the assessing agent says, 'I need some more information,' they can ask for it and have it come back. Section 45 says the assessing agent does not have to decide the application if they have not received that information back, yet we still have this 20 business day time line sitting there. I think there needs to be a bit of tidying up through those provisions.

There was also some tension in the legislation between when the decision takes effect. Section 55 says that the decision should take effect and it provides for that to occur—a regional interests authority takes effect on the later of the following days. The first point it says is the day after the appeal period for the decision ends or another day stated in the authority. Section 72 then provides for a stay of operation where there is an appeal and that appeal process kicks in. I would have thought that section 55 should have been talking about the day after the appeal period for the decision to grant the authority ends if there is no appeal or if there is an appeal when the appeal is decided, withdrawn or dismissed, which is the final part of section 72. It is just tidying up, again.

CHAIR: You do not feel the wording 'appeal period' would capture an appeal that is live?

Mr Manning: No, because the wording, as I currently read it, is that a regional interests authority takes effect on the later of the following—the day after the appeal period till the authority ends. The appeal period is 20 business days from the date of a decision. That is when my appeal period ends. If I do not file in that time, I lose my appeal rights. That is when my appeal period ends. That is how I am reading it. I stand to be corrected, too, because this is draft legislation. We have all read this pretty quickly. Hopefully it is correct and I am not misleading you.

In terms of criteria for the decision, this is a core component of this legislation. As I said before, I have some difficulty in understanding whether it is in fact intended that the chief executive is going to have the ultimate say or whether it is in fact the assessing agent. There is another difficulty with the chief executive. You have two definitions of chief executive in the bill: one is for Environment and one is for DERM. It does not specify in those provisions who—both or one or the other—is to make the decision. You have a decision to be made by the chief executive and you have two chief executives. Who makes it? Who has directed the application? Where does it go? I could not follow that through. That may be something that is dealt with in the regulations, but certainly at this stage I do not know and it is a question mark for me.

I have mentioned the criteria prescribed in the regulation for decision making. I think that ought to be in the act. I have talked about the advice. I have mentioned, as Peter Shannon has, that section 52 says the chief executive must give effect to any recommendation in response from the assessing agency. So that has given that body the ultimate power under this legislation. If it is local government, as currently worded, they have the ultimate power.

Combined with that, if you look at the approval process, there are conditions that can be imposed. The conditions power is very broad. It talks in terms of conditions that may be imposed. It talks about stated criteria and other things, but it does not have criteria by which the reasonableness of the condition can be assessed. If I am a local government and I do not want something to go ahead, I might impose a condition which says that you have to pay for the roads to be fixed from point A to point B and it may actually be something that it ought not do, but there is not a standard test. We have a test in the Sustainable Planning Act that conditions have to be reasonable, relevant and not an unreasonable imposition on the development and as a

consequence of the development. So it is trying to limit the conditions power because it is not a power at large. I think there is possibly a need for some kind of wording in there to actually limit what the conditions power is. Otherwise what you are doing is giving the assessing agent the power to impose conditions. They are going to be very broad. That is an overuse of power, in my view.

You have asked a few people about the Land Court and the Planning and Environment Court. I am hoping that matters like the powers of the court will be dealt with in regulations—what they can do and what criteria they have to decide by—because you have different assessment people under this legislation. You have the chief executive plus you have the assessing agent. What is the court going to do? Is it going to be standing in the shoes of the chief executive or in the shoes of the assessing agent? Those sorts of things need to be clarified. They probably can be clarified through the regulations but they all really need to be spelt out.

As for the nature of the hearing, are we going to go into it like a Planning and Environment Court hearing where there is new evidence adduced, or are we going to hear it on the papers? All of those things need to be fleshed out. We need to know the nature of the case that is going to be met. There are basic things too. There will always be disputes with someone saying, 'That's a minor change and that's not a minor change.' Can that go to the court and what are the court's powers? There are those sorts of things.

Coming back to the question of which court, my strong view is that the Planning and Environment Court is the court where this matter ought to be taken. The purpose of the legislation is talking in terms of land management, and the whole thrust of it was to help implement the regional plans that had been done. The regional plans were put in place to try to sort out the major conflicts between the urban development, the mineral resources and the good quality agricultural land. It is around that mix—and that is a land planning use mix—that this legislation has been crafted, and it is trying to say, 'How do we fix that up?'

The Planning and Environment Court is the court which has been established to deal with planning and the environment. It has dealt with that land planning mix. It currently deals with all of the things we are talking about because the hierarchy of documents set out in the Sustainable Planning Act provides for the regulatory provisions of the state to prevail over all other documents below it that are inconsistent. The current state planning provision is the next highest document and it prevails over all other documents. So we have this hierarchy of documents which fits into the need to actually do the balancing act, which you have to do when you are actually identifying whether you are going to put more weight on agricultural use or more weight on the rural communities. That is all part of that planning. So that is what the Planning and Environment Court currently does; it runs through that process.

CHAIR: Sorry to cut you short, Lestar, but I am conscious of the time. I am sure some committee members have some questions they want to ask that are broader, so you might want to address those key points for us succinctly and then we will ask a few questions before we conclude.

Mr Manning: Again, the Planning and Environment Court deals with good quality agricultural land and different land uses. It has done that for a long time.

The last thing I want to talk to is the importance of the Environmental Protection Act provisions. Peter Shannon expressed it to you. I go to court acting for farmers where I cannot enforce things under their conduct and compensation agreements because they have not been written well enough because they have been done by others in the past. The thing that I can use to help those farmers out is often the conditions of the environmental authority. I actually go to the Planning and Environment Court to deal with that and it has jurisdiction to deal with that. That is another reason why the Planning and Environment Court can be one court that can deal with two things.

If you water down or have the ability to water down those environmental authority conditions, you are going to take away a large part of my ability to help my clients, the farmers, actually protect their rights. They pick up the rubbish, they pick up the failing to lock the gates, they pick up a whole raft of things through those environmental authority conditions. They pick up the major things, like the water. They pick up the environmental impacts. I strongly endorse what Peter Shannon said in relation to that being a real danger.

Mr YOUNG: I thought it was going to be referred to the Planning and Environment Court anyway. I was a bit taken aback when they said it was going to be the Land Court.

CHAIR: Lestar, that was particularly helpful, thank you. You have addressed it in a very comprehensive manner and we really do appreciate that. Dale, thank you as well.

Mr Stiller: There is one last point I would like to make. When it comes to rehabilitation, I would prefer the use of the word 'restore', and it has been used in the bill in at least one place—restore to the productive capacity of the land. I suggest that in clause 22, I believe it is, where it talks about exemption with the agreement of the landowner, that should be added—that when the activity is over the land must be restored to its full productive capacity.

CHAIR: Excellent. The time allocated for Property Rights Australia has expired. Thank you very much, gentlemen. It has been of value to us. I really do appreciate it. We also thank you for your submission.

BREMNER, Mr Kim, Water Policy Spokesperson, AgForce

MILLER, Dr Dale, Senior Policy Adviser, AgForce

CHAIR: I welcome the representatives from AgForce. Thank you for appearing before the committee at our public hearing today. Would you like to make an opening statement for the benefit of the committee?

Dr Miller: We thank the committee for their time this afternoon and for listening to our views on the Regional Planning Interests Bill. AgForce is the peak representative body for broadacre beef, sheep, wool and grain producers in the state. As a result, we have a very keen interest in the bill and how it is structured. In terms of the coverage, according to the government's land audit and ABS figures, since 1980 the area used for agriculture has fallen by 17 per cent to cover 77 per cent of the total land area of Queensland, with broadacre cropping now covering just 2.06 per cent. In that same period, mining tenements have expanded from around seven per cent to cover more than 50 per cent of the state, and CSG production has doubled within the last decade and the number of wells has quadrupled in the last five years. So with this expansion comes a number of serious land use competition issues, as well as social and other pressures.

High quality agricultural land is a limited and valuable resource, supporting food production for current and future generations. It is the best land that we have and it is irreplaceable. As a result, AgForce strongly supports the protection of these strategic agricultural resources as well as current and future agricultural land uses to meet the food and fibre needs of both the current generation and future generations. To achieve certainty in investor confidence, AgForce is looking to the government to provide both a comprehensive and robust framework of protections for these agricultural resources from developments that threaten to compromise their current and future productivity. However, there are a range of identified issues within the bill and we would like to address those in this opening statement.

For AgForce, a key element to the success of this framework is providing an opportunity for a greater say for landholders, both landowners and leaseholders, on what proposed resource or other development is reasonable in the context of their land or water enterprise structures and operations. For AgForce, the term 'co-existence' implies a relationship, and for any relationship to be successful it needs to involve an equal exchange of views and an equal capacity to influence decisions. Currently, we do not see that that capacity is existing within the bill, and the exemption for a pre-existing resource activity in the case of a recognised agreement is not sufficient for this equity to be achieved, particularly as a landholder can be bypassed in that assessment process that is currently proposed.

So AgForce has developed a framework by which such a co-existence conversation could occur, and that was attached at the back of our submission. I have printed off further copies for the committee if you are interested in browsing that now. It should be noted that what is proposed is not an absolute right of veto in terms of the decision making, but it is about providing a more equitable balance between an affected landholder and a resource business in such decision making. We would certainly encourage the committee to consider that framework in its deliberations.

As the bill is currently drafted, unless the regional interest application is notifiable, there is currently no requirement for a landholder's views on a regional interest application concerning their land to be considered short of an appeal to the relevant court. Failing inclusion of the framework that you have got in that handout, for a greater say for landholders the bill would be improved by, firstly, defining both agricultural leaseholders as owners consistent with the definition of landholder using the Vegetation Management Act 1999 and other natural resource acts. Currently, an agricultural leaseholder would not be covered under that definition of owner.

Exemptions should only apply where the specific resource activity is agreed to by the landholder and that agreement was in place at the date of tabling of the bill. That is really to avoid extra pressure coming on landholders to sign agreements in the intervening period. An exempt resource activity notice should be provided to potentially affected landholders and they should be able to make a submission to the chief executive on that exemption because their views should be considered in that process. The bill should include an avenue for potentially affected rural landholders to provide a submission for all regional interest applications which the chief executive should be required to consider. So AgForce does support appeal rights for all primary producers affected by a resource activity that is subject to an RI assessment, but certainly an appeals process is less desirable from our perspective than having that effective engagement of landholders and having their views considered in that decision-making process.

I think there has been a lot of discussion in the media, but primary producer landholders want the same level of investment certainty as the resource sector in terms of how their land and operations are managed. From our perspective, to achieve that certainty it is far preferable for the key elements of protection of agricultural lands to be included in the final act itself, rather than in a range of subordinate regulations of which we have not seen the essential detail and, I guess importantly, which could be changed by future governments without necessarily consulting stakeholders effectively in that process. From our perspective, there are a range of key provisions that should be in the enabling act that are currently intended to be contained in regulations within the bill. Regrettably, many of those regulations have been unavailable. As a result, that has severely constrained our capacity to evaluate the bill and its likely implications both for our sector and for others.

There should be a further opportunity to provide feedback to the government after those regulations are available, because we believe that detail is essential to understanding the effectiveness of this framework as it is proposed. Such elements would include: information about the assessing agency for a regional interests decision; criteria for referrals to referring agencies and identification of those agencies; prescribed criteria for deciding on assessment applications as well as impact definitions—and the co-existence criteria, which we spent a lot of time discussing previously, have not made it into the bill as such; the criteria by which applications are identified to be notifiable—and that is important if the landholder's say cannot be increased through this process; the identification processes for the priority agricultural areas, strategic cropping land as well and the review time frame that might apply to those because, as you would understand, agricultural land uses are not static over time; importantly, from the environmental perspective, the identification of those strategic and environmental areas and the values are that are involved with those; any other regulated activities within those strategic environmental areas, particularly as they relate to agriculture; and which agricultural activities would be exempt from those provisions should they be regulated. I will hand over to Kim to continue.

Mr Bremner: Continuing on from the existing protections and the certainty that we want as landholders to be able to run our business as we see fit, we are concerned that the Strategic Cropping Land Act will be repealed and that some of those provisions will be in subordinate legislation. We are opposed to that and we think they should be keeping that act because we do not want to see this going backwards in that the existing rights that we have under that Strategic Cropping Land Act are stripped away in the new bill. Certainly, we are aware of the government's policy of doubling food production in the next 20 or 30 years and we cannot do that without land. So if we are going to see land taken away for the resource industry retrospectively then AgForce cannot see the positive in it. That is just not on.

One of the important things that I want to highlight today being the water spokesman is the fact that we need water to do our farming in arable land. We are concerned that those water sources need to be protected under this act as well. So the aquifers, overland flow, rivers and creeks need to be protected as much as the strategic cropping land—in particular, the Condamine Alluvium. Just going off the paperwork, I was getting reports five years ago that drillers were taking shortcuts on drilling above the Condamine Alluvium. I actually believe that that alluvium has already been damaged. We will not know that for 25 years, but I think the government and the coal seam gas companies should be making plans to make good for that water. That is my own personal opinion from the reports I was getting some time ago. I strongly emphasise that the water infrastructure that we use on our land needs to be included in that protection.

In terms of the significant environmental areas, I had been involved with the wild rivers back when it first started and spent a lot of time arguing against those declarations. It looks like we are going to have an alternative framework to replace that, but it needs to make sure that the areas are actively managed and that landholders benefit from those frameworks. We do not want to see any legislation that duplicates. Wild rivers was basically a duplication of the acts that already existed. It did not change anything in the Water Act or the vegetation act; it was just a double layer of paperwork on top of that. So we would strongly advocate that, while we need to look at some sort of management areas, particularly out in the western area, it needs to be simple and backing off from that wild rivers legislation type of stuff.

In conclusion, we support the protection of valuable agricultural land, given that it is only two per cent. I just cannot understand why the government allowed the coal seam goes companies and the mining companies to come on to the good land first instead of using the other 96 per cent and then, when we have used that up, you make a properly informed decision about whether you want to destroy the good agricultural land. The problem with this bill is the lack of detail, because a

lot of it is in the regulations. We have yet to see that. So that does not give us any certainty in what we want to see. We do not support any reduction in the current rights of landholders under the Strategic Cropping Land Act. Where those lands occur, they should be prioritised for agricultural use. High quality agricultural land is very limited and a valuable resource in supporting food production for current and future generations. It is the best land we have. It is probably the best land in Australia and it is irreplaceable.

CHAIR: Excellent. I thank both gentlemen for their opening statements. Dr Miller, if I could just pick up on something that you said. I would like to tease it out a little bit because it is of concern to me. You mentioned the exemptions and the landholder agreements being dated back to when the bill was tabled. Are you aware of any situations where extra pressure has been applied to landholders since the bill has been tabled?

Dr Miller: Not since the bill, no—

CHAIR: Okay. So it is more a general concern—

Dr Miller: A theoretical concern. There is a possibility that, where there is a time frame and the final act comes into force, there is a window there for additional negotiating pressure to be placed on landholders.

CHAIR: But you could not provide the committee with an example?

Dr Miller: I do not have a specific example.

CHAIR: Nothing anecdotal that has been provided to you; it is just a theoretical—

Dr Miller: Not that I am aware of.

CHAIR: That is great. Kerry?

Ms MILLARD: This is a question for either of you—whoever wants to answer it. In relation to co-existence, which has been a big topic of conversation all day, how do you think both sectors—agriculture versus resources—could measure what co-existence is and the mutual benefits of that?

Dr Miller: I guess we would be supportive of trying to find some objective measurement. I think the easiest way to do it is having the agreement of both parties that what is being proposed is acceptable on those areas. In that way, you capture the local impacts of resource sector proposals and what those implications are likely to be for the landholders there.

I think the more challenging thing to try to come up with—and we have certainly grappled with it—is how do you manage the cumulative impacts. So if you can have landholder agreements that would probably cover maybe 95 per cent of the issues. It is the longer-term impacts from an industry perspective that are harder to gauge. I think with the process that we have put forward is to have an independent panel. They can monitor how things are progressing, what agreements are being made and where the friction points occur. That might be one avenue by which those cumulative impacts can be addressed.

I think it is hard to just put a footprint percentage on that, although that may be the easiest way to measure what those impacts are from the perspective of just measuring the physical footprint. But there is a whole range of other impacts on landholders, not just where those resource sector activity infrastructure et cetera is located on their property.

Mr HOLSWICH: Do you think there is sufficient in that cumulative impact in actually—

Dr Miller: The way I read it is that I think that has been left for the regulations to resolve. So I guess it is hard to comment on that.

Mr Bremner: From a landholder's point of view, co-existence is where a landholder has an equal say in what happens on his property, he is no worse off than what he was before they came on to his property and there is a mutually beneficial agreement that helps both the farmer and the resource company. If that does not happen, if the landholder is being forced to do something that he does not want to do, then that is not co-existence; that is what is happening now.

Mr HART: Do you think, Kim, that there is any benefit in having, say, a template agreement that maybe AgForce could send out to its members to negotiate some sort of co-existence agreement?

Mr Bremner: We have talked about that for a number of years now. The problem is that each individual farmer is so different from the one next door to them. It really needs professional help to make sure that you are covering all the bases when you negotiate with the companies rather than having a template. You really should not be negotiating with a company without professional help at all.

Mr HART: So some sort of education program maybe?

Mr Bremner: No. I think it is the lawyers and the solicitors and the consultants that the farmer needs to have on his side to make sure that the checklist of everything that needs to be covered when you are doing your negotiations is done for you. In some cases, the companies are paying for that professional help.

I know we were approached to put a monitoring bore on our property a few years ago by Arrow and they offered us $7,000 for the well and $3,000 for the solicitor's fees. They actually gave us the option of whether we could do that and we decided not to for a number of reasons, including the time that we would have to put aside to negotiate that agreement. The second one was there are lots of reports coming in where people come on to your property and they end up getting lost—and we have only a small property; it is only 1,500 acres—but people getting lost and being at sheds where they should not be and that sort of thing and we just did not want to have to worry about that control over our property. So we said no and they have not come back to us. So I think that is the first time Arrow has actually done something that they said they would, in my experience.

I will give you some history. I was the first guy to get a letter about the water coming from coal seam gas back in 2004, because I was water spokesman and a consultant contacted me. I thought, 'This is great.' The Downs is always short of water and I thought, 'This is a great way to get water.' A group of farmers spent nearly two years negotiating with Arrow to use the water from the Grassdale plant, and they walked away from us. They said, 'No, we've got a better deal from the council' and just left us after we had spent 20 grand of our own money in trying to get a deal done. So there is some history behind the comment that I make.

CHAIR: Sure.

Dr Miller: Just to add to that, AgForce has been running education courses for our members and other members of the public and that has been quite well received and been supported by the gas sector as well as the GasFields Commission. So we have made large efforts to get information about landholder rights out to people so that they understand what the process is likely to look like and what their rights are. So we have taken that educational approach.

Mr YOUNG: There is a lot of history there with wild rivers and now you seem to have gone full circle. Do you want to elaborate on that?

Mr Bremner: Just that we opposed wild rivers right from the start. I did not see it as necessary at the time. It was a deal done back in those days. I spent a lot of time as AgForce water spokesman arguing that it should be repealed; it does not need to be there. In terms of, for example, the western rivers, the water resource plans cover all the water use in that area. The vegetation act covers the vegetation. Why double up with another framework on top of that? If you are going to regulate, if people in the west think that regulating mining through some sort of wild rivers framework is going to help them, then I think they are wrong. I think the framework for helping decide where mining goes is in the mining part of the legislation, not an extra framework that says, 'You can't mine here; you can't mine there.' A decision needs to be made by the government where they mine, not what some sort of framework is coming up with.

CHAIR: Are there any other questions? Excellent. Gentlemen, thank you very much. Is there anything that you would like to conclude with? We have a little bit of time so is there anything that we have not touched on that you wanted to address?

Dr Miller: I think in our opening statement we tried to be comprehensive to get across all the information—hopefully not too comprehensive.

CHAIR: I think it was that comprehensive that we did not need to ask any questions. Well done.

Dr Miller: I guess our emphasis would be that a lot of the framework is in the regulation. We have not had an opportunity to examine that. So we are operating from a position of ignorance largely as to how this might operate. We would certainly like to see quite a significant part of the framework that is intended to be implemented through regulation actually in the act so that people have certainty that those protections will continue and future governments will not be changing it at whim—that there will be actual proper processes and consultation by which any changes would occur.

CHAIR: That has been a consistent point. We recognise that this is framework legislation and detail in the regulation, but there appears to be very clearly an appetite for having some of that detail sitting in the bill as opposed to just waiting in the regulation. Thank you very much for your time. We really do appreciate it.

I would like to thank everyone for their appearance at the public hearing today and, for those who have travelled, for taking their time to be here and also to those who have taken the time to sit down and listen to what has occurred. As always, these public hearings benefit the committee and enable us to gather available information that will assist in our inquiry into the Regional Planning Interests Bill 2013. I now declare the public hearing closed.

Committee adjourned at 2.23 pm