INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

Members present:

Mr J Pearce MP (Chair)
Mr MJ Hart MP
Mr S Knuth MP
Mrs BL Lauga MP
Mr LL Millar MP
Mr RA Williams MP

Staff present:

Dr J Dewar (Research Director)
Ms M Westcott (Principal Research Officer)

PUBLIC BRIEFING—EXAMINATION OF THE MINERAL AND OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 16 MARCH 2016

Brisbane

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Committee met at 9.02 am

CHAIR: Good morning, ladies and gentlemen. I declare open the public briefing for the committee's examination of the Mineral and Other Legislation Amendment Bill. Thank you for your attendance here today. I am Jim Pearce, member for Mirani and chair of the committee. The other committee members here with me today are Mr Michael Hart, the deputy chair and member for Burleigh; Ms Brittany Lauga, the member for Keppel; Shane Knuth, the member for Dalrymple; and Rick Williams, the member for Pumicestone.

Those here today should note that these proceedings are being broadcast on the web and the briefing is being transcribed by Hansard. This briefing is a formal committee proceeding. As such, you should be guided by schedule 8 of the standing orders. The aim of the briefing today is for the committee to gather preliminary information in relation to the bill. I now welcome representatives from the Department of Natural Resources and Mines.

BELLAMY-McCOURT, Mrs Anita, Manager, Resources Policy and Projects, Land and Mines Policy, Department of Natural Resources and Mines

HALLAM, Ms Melissa, Manager, Resources Policy and Projects, Land and Mines Policy, Department of Natural Resources and Mines

HINRICHSEN, Mr Lyall, Executive Director, Land and Mines Policy, Department of Natural Resources and Mines

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

Mr Hinrichsen: I would like to thank the committee for this opportunity to provide a briefing today on the Mineral and Other Legislation Amendment Bill 2016, which for convenience I will refer to as the MOLA Bill. With me today are my colleagues from the Department of Natural Resources and Mines. My colleagues were involved in the detailed preparation of the bill, so if we get into any probing questions I will be more than happy to defer to their superior expertise on the detail.

CHAIR: Fair enough.

Mr Hinrichsen: For my opening statement, I would like to provide the committee with some background or an overview of the bill. I will outline its key components and outline the consultation that has been undertaken in the development of the bill that was presented to parliament by our minister, Dr Anthony Lynham.

The bill amends the Mineral and Energy Resources (Common Provisions) Act 2014. Forgive me for the acronyms, but we refer to that particular act as the MERCP Act. Pull me up at any time, Mr Chair, if I overload the committee with acronyms. The MERCP Act was the first step in Modernising Queensland's Resources Acts Program, and that is referred to as the MQRA Program.

The MERCP Act was passed by parliament on 9 September 2014. It received royal assent on 26 September 2014. A small number of provisions of the MERCP Act have commenced, but the absolute majority of the provisions of that act have not yet commenced. There has been a deferral of the commencement of that act. Statutorily it would automatically commence on 27 September this year, which is the statutory limit for commencement—two years after the bill first received royal assent.

The MERCP Act primarily served to establish a common act for resources tenures that are currently covered under four separate pieces of legislation. That was a key part of the MQRA Program, Modernising Queensland's Resources Acts Program. It also contained some additional policy objectives. The ones I particularly highlight were to exclude key agricultural infrastructure from the restricted land framework. It gave the minister the power to extinguish restricted land and to grant a mining lease over restricted land prior to a compensation agreement being reached with the landholder. It also imposed limits on public notification requirements and Land Court objection rights

relating to the assessment of proposed mines. Those provisions I refer to have not commenced. It is fair to say that those policy changes included in MERCP were not widely supported by landholders, environment and agricultural groups, and certainly were opposed by the current government while in opposition.

The MOLA Bill has been drafted with the key intent of, first of all, amending the definition of restricted land to include key agricultural infrastructure; to enshrine distances associated with the definition of restricted land in the primary legislation as opposed to in a regulation; removing the ability to grant a mining lease over restricted land where a landowner's consent has not been received; removing the minister's power to extinguish restricted land; and repealing provisions which would limit notification and objection rights for mining projects.

The bill also inserts provisions into the Mineral Resources Act to regulate the activity of a person who is entering land to identify the boundary of a proposed mining tenure. The MERCP Act establishes a new boundary identification framework within the Mineral Resources Act. This includes the right for a person to enter land for the purpose of identifying the boundaries of a proposed mining tenement without holding a prerequisite tenure—for example, a prospecting permit—although the person entering the land under this new section in the Mineral Resources Act—section 386V for reference—must provide the owner with a notice of entry to the land. The MERCP Act did not establish any further statutory requirements. For example, it did not establish any compensation liability framework and it did not apply to restricted land.

The bill will set conditions on the conduct during entry and require persons to compensate a landholder for any loss, damage or injury sustained during the entry. It will also prohibit entry to restricted land without the landowner's consent and to fossicking areas. The chief executive of the responsible department will be given the power to investigate reports about breach of entry conditions of the act, to take compliance action, to impose or vary conditions associated with entry or to absolutely stop entry. In addition, the bill includes a number of minor transitional provisions that relate to land access framework.

Beyond those policy matters that I referred to, the bill also contains amendments to provisions for the industry developed overlapping tenure framework where you have overlapping coal and coal seam gas tenures. These amendments are not contentious. They have been developed in strong consultation with both the mining and petroleum and gas sectors, and streamline legislation to ensure effective operation of the legislation on commencement.

I would like to outline the consultation that the department has undertaken in developing the bill. We started with a targeted consultation forum for key stakeholders from the agricultural, mining and resources, and environmental sectors back in June 2015. At that time, stakeholders were given an overview of the proposed amendments and the government policy commitments that were driving the proposed changes.

We distributed a fact sheet to the stakeholders outlining the proposed changes and provided opportunity for formal submissions on the proposed approach. That was then used to inform the finalised government policy position. We followed up with targeted stakeholder consultation with the same organisations earlier this year on 3 February. We provided a preliminary exposure draft of the bill to those stakeholders and again sought their feedback before the bill was finalised. We talked through the proposed amendments with key stakeholders and gave them an opportunity to discuss any queries they had and provide input on any issues that they saw with the provisions as drafted.

I will not go on. I think that provides a very succinct overview of the bill that is before the committee. I and my colleagues are more than happy to field any questions that the committee might have.

CHAIR: Thank you. You said that the director-general has the ability under the act to look at complaints that are made—to investigate them or authorise officers to investigate them.

Mr Hinrichsen: That is in relation to the provisions that deal with access to land to identify mining claim boundaries. It was a new provision introduced in MERCP. I think, Marcus, it is fair to say it is largely to accommodate smaller mining operations where a prerequisite tenure was seen to be necessary red tape.

Mr Rees: Correct.

Mr Hinrichsen: That side of it I think was well accepted, but there were issues to do with the lack of any arrangements in regard to compensation for any damage that applied. As I mentioned, it also did not pick up restricted land. This brings in a framework that largely utilises existing mechanisms that apply elsewhere in the legislation to other forms of access under the resources legislation. It basically fills a gap that existed in relation to access for these particular provisions.

CHAIR: I am just interested to know how many complaints you get. Do you have a history of complaints? How have they been dealt with?

Mr Hinrichsen: In relation to this particular issue, it has not commenced but it was identified as a gap. I guess it is the old adage a stitch in time saves nine. More generally in relation to land access arrangements there were certainly issues raised and concerns between landholders and the resources sector. The chief executive, through their delegate, does have mechanisms to intervene in that. Most companies do the right thing, but certainly there are times when the chief executive does have to apply those powers to limit those access arrangements.

CHAIR: What happened to make you realise that there was a gap that had to be addressed?

Mr Hinrichsen: I might refer that question to Marcus.

Mr Rees: That was a drafting omission in the first instance. Once it was recognised we moved to correct the omission.

CHAIR: But something must have triggered you to take that action?

Mr Rees: It was just a review of the MERCP Act itself to make—

CHAIR: But somebody brought it to your attention?

Mr Rees: No, it was department instigated.

CHAIR: Were there two or three issues that really stood out to you with regard to the discussions you had with the different groups? Was there anything that really stood out for you as to why the changes were needed?

Mr Hinrichsen: I guess the key changes that were of much concern to stakeholders related to restricted land. That relates to the reinclusion of farm infrastructure within the definition of restricted land within the Mineral Resources Act. That has certainly been very positively received by rural stakeholders and environmental stakeholders.

It is also fair to say that reinstatement of the notification and objection rights has been a significant issue of concern, particularly for rural stakeholders who are dealing with the resources companies and dealing with land access issues. I think it is fair to say that the resources sector, while not totally overjoyed with some of these changes, are quite—

Mr KNUTH: Unhappy.

Mr Hinrichsen: Maybe not happy, but they recognise that the government had a mandate for these changes and to reinstate existing arrangements. They can certainly accommodate those.

CHAIR: Could you outline why the amendments to the restricted land framework for the 50-metre rule and 600-metre rule were necessary? Can you provide some specific examples of the need for this amendment?

Mr Hinrichsen: I might refer that to Mr Rees.

Mr Rees: Could you repeat your question?

CHAIR: Could you outline why the amendments to the restricted land framework for the 50-metre rule and the 600-metre rule were necessary? Could you provide us with some specific examples?

Mr Rees: Just to be clear, there is no 600-metre rule for restricted land. The 600-metre rule refers to provisions that existed in the current resources act as they apply under the land access framework. What it means is that essentially any activity that is undertaken within 600 metres of a house and certain other infrastructure would trigger the need for a CCA, a conduct and compensation agreement, between the landholder and the resource company. So restricted land is a separate thing.

When the original MERCP Act was drafted the intention was that the restricted land framework would be expanded across all of the resource sector to include the petroleum and gas sectors as well as the mineral and geothermal sectors and it would replace the 600-metre rule with a 200-metre restricted land area around those particular pieces of infrastructure. That was the policy intent. The 600-metre rule would no longer apply to new tenures after the commencement of this piece of legislation. What was the second part of the question, sorry?

CHAIR: I just wanted some specific examples of—

Mr Rees: Of why it was needed?

CHAIR: Yes, I am interested to know who made the decision about the distances.

Mr Rees: It is a policy decision of government. We can look at some examples if you like?

CHAIR: Just one or two.

Mr Rees: I will take that on notice and come back to you.

CHAIR: Thank you.

Mr HART: Following on from the chair's questions, given that a lot of the provisions of the MERCP bill did not come into force how is it that we can say that we have problems with the MERCP provisions and make changes like this without them actually being tested?

Mr Hinrichsen: Thanks for the question. The changes are basically in line with government policy commitments that the government made at the 2015 election. As you point out, they have not commenced. From a departmental perspective, we cannot provide any analysis around the effect or otherwise of provisions that have not commenced. Suffice to say, there was significant concern expressed to the agency by those groups that I mentioned earlier.

Mr HART: There is no evidence base here at all? This is purely government policy driven?

Mr Hinrichsen: The changes are based on government policy.

Mr HART: You said before that the government had a mandate to make these changes. How did the government have a mandate?

Mr Hinrichsen: The government went to the election with these commitments and they are reflected in the bill.

Mr HART: The numbers in the parliament are even and the government was put in by an independent member. How is that a mandate?

Mr Hinrichsen: I will not get into the politics. The government is the government and it has introduced the bill accordingly.

Mr HART: It is all government policy just reversing the situation that the previous government put in place that had not actually come to fruition. It is not evidence based at all. I understand that. With regard to the distances that the chair was talking about before, what is the reasoning for putting it into legislation rather than regulation? If you create an unintended issue because of the distances that you set in legislation you are not going to be able to fix it quickly whereas if it were in regulation you could fix it quite quickly. What is the logic for putting it in legislation rather than regulation?

Mr Hinrichsen: Thank you for the question. It is a policy call but it is very much about the certainty around what the parliament requires as opposed to it being in a provision in subordinate legislation.

Mr HART: Another policy call with no evidence base at all?

Mr Hinrichsen: It is a policy call to put it into primary legislation and then there is absolute certainty that that is what will prevail unless the parliament decides to make an amendment as it opposed it being in subordinate legislation.

Mr HART: In your opening statement you were talking about the right of entry and you said that it did not apply to restricted land. I am a little confused by that. Can you explain that to us? Right of entry did not apply to restricted land and now it does not. I am just confused by that.

Mr Hinrichsen: The MERCP Act established a new framework for entering land to identify mining area boundaries. That was basically to peg out an area for a proposed mining tenement. Previously there would have been a prerequisite tenure, usually an exploration type tenure. In many cases that was seen to be red tape and that was changed by MERCP to allow progressing straight to a mining tenure. To be able to mark out the proposed boundaries of that land access was required to that property. That access to mark out the boundaries did not cover compensation arrangements. It just provided for access. It required notification, but it did not cover any compensation obligations. It equally did not apply to restricted land—for example, access to an area next to a house to be able to undertake the activity of marking out the tenure boundaries.

Mr HART: I am still confused. Are we saying that somebody did not need to give notice that they were going to peg out somebody's house? Is that what you are saying?

Mr Hinrichsen: They needed to give notice that they were accessing the land, but restricted land is more than access. Restricted land requires consent from the landholder. If they wanted to undertake some activities—it might have been to do their exploring to find out where the best resource is that they wanted to cover with their tenure—with no restricted land framework they could potentially, through their notice, access within close proximity to, say, a dwelling house. By ensuring that restricted land applies to those access arrangements, they would not be able to encroach within 200 metres of the dwelling house.

Mr HART: How did we miss that before?

Mr Hinrichsen: That is a good question, but it was overlooked in the MERCP legislation.

Mr HART: That is a big problem.

Mr Hinrichsen: It does address that issue.

Mr HART: Correct me if I am wrong, but it was MERCP that had the two per cent effect on land or am I thinking of another bill?

Mr Hinrichsen: You might be thinking of the regional planning interest framework or even strategic cropping land which is about the impact on the agricultural land.

Mr HART: Did the department consider those sorts of provisions rather than a distance type provision in this particular bill?

Mr Hinrichsen: No, it did not. The government's policy commitment was around establishing those distance from buildings, such as dwelling houses, and farm infrastructure as restricted land.

Mr HART: So we already have a situation in place in other bills where we handle this in one way, but we are not considering that in this bill because it is all government policy—just government policy?

Mr Hinrichsen: The government policy was around reinstating a framework for restricted land that basically applied previously and still does apply under the Mineral Resources Act.

Mr HART: The changes to the Land Court objection rights and notifications, were there any issues with that before this policy change came about? Were we seeing any benefits from that at all, as far as the department was concerned?

Mr Hinrichsen: Marcus might like to answer that question.

Mr Rees: Those provisions have not commenced yet.

Mr HART: So they had not actually come into force yet? We are just changing this because of government policy?

Mr Rees: Correct.

Mr KNUTH: With regard to restricted land, this legislation amends the MERCP Act and undoes what has been put in place. I know that it has not been given consent as yet. What are the main things added here—I think you mentioned them—besides undoing what was there?

Mr Hinrichsen: Just to clarify the question, if I could—

Mr KNUTH: This was a very controversial issue—that is, removing stockyards, bores, artesian wells out of restricted land. I understand that. This is undoing what was put in place. What other amendments have been added besides the amendments that relate to undoing what was done previously?

Mr Hinrichsen: I think I understand the question. The restricted land framework per se previously, or currently given that the MERCP Act has not commenced, only applies to the Mineral Resources Act—so only to mining projects. The MERCP framework proposed that restricted land apply to all resources tenures including those related to petroleum and gas. In expanding it to all tenures—and, again, recognising that the MERCP Act has not commenced—it was not going to include farm infrastructure such as you have mentioned—primary stockyards and water facilities such as bores, dams, troughs and tanks. The proposal is for that to be universally applicable. It will apply to all resources tenures—so across the four pieces of resource legislation. The key thing that this bill does is it expands the definition of restricted land to specifically include for all of those tenures the farm infrastructure that was omitted from the MERCP Act.

Mr KNUTH: In regard to where the bill provides for a protection zone of 50 metres, was that the same as what it was before the MERCP Act? Could you explain the protection zone of 50 metres? What does it mean? If you have a bore, does that mean you can possibly mine up to 50 metres of the bore? Was it 300 metres before or 600 metres before?

Mr Hinrichsen: I might get Marcus to answer the question.

Mr Rees: My understanding was that it was 50 metres under the Mineral Resources Act for those particular pieces of infrastructure—50 metres laterally from those pieces of infrastructure. It is like having a little circle around the piece of infrastructure that is protected from any resource activity, any authorised activity under the mining tenure.

Mr KNUTH: Because it is restricted land, it means that if the mining company wanted to take out that dam or bore that would trigger compensation. Would that be right?

Mr Rees: A compensation agreement would be required. First and foremost, consent to undertake the activity on that particular restricted land area is required and then compensation would follow should consent be obtained.

Mr KNUTH: The previous legislation basically took away the rights of restricted land, the rights of compensation. Would that be right?

Mr Rees: Under the MERCP Act?

Mr KNUTH: It has not been signed off, but that is what it was intended to do.

Mr Rees: It has never commenced, but for those particular pieces of key farm infrastructure they would no longer have received the protection of restricted land under the MERCP Act and this bill rectifies that.

Mr KNUTH: When that provision was put in to remove restricted land status, it caused a lot of concern amongst farmers and graziers.

Mr Rees: That is correct.

Mrs LAUGA: With regard to the changes to the restricted land framework, could you explain how this bill compares to other jurisdictions?

Mr Hinrichsen: It is difficult to get a direct comparison with every other jurisdiction. Most jurisdictions have restricted land frameworks that operate similarly. There are some significant but subtle differences jurisdiction to jurisdiction. The approach of restricted land is one that most jurisdictions do utilise. Compensation arrangements equally apply to the access of resources companies to private land as part of their operations.

Mr HART: Can you take that on notice and come back to us with an answer to that?

Mr Hinrichsen: Yes.

Mrs LAUGA: That would be great. With regard to notification and objection rights, having worked in planning for many years I know that when a developer lodges a development application it is open to public notification and objection not just to adjoining landowners but to anyone who wishes to make a submission. Is this bill essentially applying the same policy that we have in our development industry?

Mr Hinrichsen: It expands the provisions of the MERCP Act to allow anyone with a relevant ground for objection to make a submission and then to have that considered by the Land Court in relation to the grant of a mining lease. The MERCP Act provisions in relation to the grant of a mining lease itself restricted that ability to just the immediately affected landholders which were the landholders within the footprint or those who were immediately contiguous to that.

Mrs LAUGA: So the objection has to be relevant to the proposal. It cannot just be on the basis of 'I don't want this mine.'

Mr Hinrichsen: It has to be relevant grounds. The grounds in the MERCP Act were limited to those that related directly to the access issues. The grounds will be reinstated to those that currently apply under the Mineral Resources Act.

Mrs LAUGA: Could you just explain how under the proposed bill what the relevant grounds are?

Mr Rees: They are quite broad. What the MOLA Bill will do is reinstate the matters that the Land Court can consider under section 269 of the Mineral Resources Act. That includes such things as whether the provisions of the act have been complied with, the area of the land applied for is mineralised or other purposes for which the lease is sought are appropriate. I can provide this in detail if you like rather than read through it.

Mrs LAUGA: That would be great. What was the justification for removing those objection rights under the provisions that are not yet commenced?

Mr Rees: My understanding is that the policy intent was to narrow the scope of those people who could make an objection to those who were immediately or directly contiguous to the actual footprint of the mining area.

Mrs LAUGA: Was there a history of vexatious appeals lodged or objections lodged?

Mr Rees: The Land Court advised the previous committee that considered the MERCP Act that there was no evidence of any vexatious or frivolous appeals.

Mrs LAUGA: There was no evidence of any objections that have been submitted on the grounds that you mentioned.

Mr Rees: As far as I am aware, yes.

Mr HART: Are you sure that is right, that the previous committee were advised there were no vexatious claims in court—really?

Mr Rees: That is my understanding. We can check that and confirm that, if you like.

Mr HART: Would there have been hold-ups to mining tenures because of these appeals? At the end of the day the whole intent was to speed up the process, wasn't it?

Mr Rees: Yes.

Mrs LAUGA: There is no doubt, I am sure, that removing regulation can speed processes up but at the detriment of perhaps the communities' democratic right to object or to appeal. I think that comes down to a fundamental policy difference.

Mr HART: Is there a question there?

Mrs LAUGA: Are those appeals that have been lodged more on environmental grounds? Are they literally because there are concerns by objectors about the environmental, social or economic impacts of those mining proposals?

Mr Hinrichsen: It is important to highlight that this refers to objections to the grant of a mining lease. Quite separately there are submissions that will be made to our colleagues in the Department of Environment and Heritage Protection in relation to the environmental authority. Those matters are generally heard concurrently by the Land Court. Certainly matters relating to environmental impact are routinely raised in relation to significant mining projects. They are dealt with under the Environmental Protection Act. This is in relation to the grant of the actual mining tenure itself. Sometimes there can be a significant overlap in terms of the ground that somebody raises. It can be relevant to both pieces of legislation. It is for that reason that the Land Court does concurrently hear matters in relation to both the grant of an environmental authority and the grant of a mining lease.

Mr MILLAR: How does compensation work with the landholders now? What is the framework? Can you take us through an instance where compensation would come into play?

Mr Hinrichsen: The question is relating to compensation for land access?

Mr MILLAR: Yes.

Mr Hinrichsen: Under the Mineral Resources Act currently—and this is not changed by this bill—there is a requirement for a compensation agreement to be reached with the landholder. The Land Court can make a determination on compensation. That can be a matter raised by either party or it can be as a statutory referral. If an agreement has not been reached within the designated time frames, the Land Court will make a determination around compensation amounts.

Mr MILLAR: If I am a grazier and it looks like there needs to be access to a bore or a trough or a stockyard, how is that compensation calculated? To give a general understanding of the compensation, how do we calculate the compensation to the grazier?

Mr Hinrichsen: The compensation is generally determined by agreement between the resource tenure holder and the landholder. If agreement cannot be reached, the act provides criteria for the Land Court to apply in determining the compensation amount that would be, if you like, fair and reasonable for the impact on the landholder's operations.

Mr MILLAR: That is the make good agreement. Would that be right?

Mr Hinrichsen: The terminology 'make good' generally applies in relation to the impact on underground water. Under the Water Act, that is a separate mechanism. Quite often the negotiations around a resources development being undertaken can cover those water issues through a make good agreement, as well as compensation in relation to the mining tenure.

Mr MILLAR: That compensation has always been in the act; is that right?

Mr Hinrichsen: As long as the act has been there—since 1989, certainly.

Mr KNUTH: Marcus, you might have already said this; I am not too sure. When I was talking before about restricted land and 50 metres, for some reason I thought it was 300 metres. Was that the case before this and now this bill is making it 50 metres?

Mr Rees: My understanding is that there is a 300-metre restricted area that applies for geothermal tenures. That is the only instance that we have currently on the statute book that provides for a 300-metre restricted land area.

CHAIR: In my years of experience I have had quite a few landholders complaining about the way that mining companies behave. Do you have any sort of register or means of investigating the complaint and what the outcomes were? I want to be frank about this. Mining companies will do

whatever they can to get people to sign on the dotted line. Once they have signed on the dotted line they become very aggressive. I am interested in how those people are supposed to be kept under control.

Mr Hinrichsen: Complaints that are made in relation to operations of resources companies can cover a number of things. They can cover issues to do with the environmental authority under which the company is operating. Those matters are dealt with by our colleagues in the Department of Environment and Heritage Protection. Issues to do with the mining tenure itself and land access arrangements are our department's responsibility.

We have regional hubs. We have the coal hub based in Rockhampton that deals directly with those issues, our minerals hub in Townsville and our petroleum and gas hubs with people in Toowoomba and in Brisbane that deal directly with those issues. Quite often that can involve a facilitated discussion between the landholders and the companies but, as I mentioned earlier, there are mechanisms where significant disputes can be adjudicated on by the courts.

Mr HART: Can I just expand on the chair's question a little bit further? Given that the government made a policy decision to expand the category of people who can go to the Land Court about these issues, are you able to give us a breakdown of the cases that have gone to the Land Court? How many were successful and how many were not? You can take that on notice if you need to.

Mr Hinrichsen: We certainly could take that on notice. I just make one point of clarification. The bill is not expanding; it is reinstating in terms of the ability of individuals to take a matter relating to a mining lease.

Mr HART: Sorry, the MERCP Act shrinks the number of people who can go to court and this bill is expanding it again. So reinstating, expanding; it is semantics.

Mr Hinrichsen: It depends on your starting point, but the legislation that is currently in effect, it reinstates that—just to make that point. When it comes to statistics around success, it is probably not as black and white as that. The role of the court in relation to the mining lease is not to determine whether a mining lease should be granted. The role of the court is to provide recommendations to the minister in relation to whether the minister should grant and conditions under which the grant should occur.

Mr HART: If you could come back to us with a breakdown of that that would be really good. That was my next question. How much power does the Land Court have to adjudicate on these issues? You just said that it can make recommendations to the minister. Can you give us any idea of how many decisions have come out of the Land Court that the minister has followed through with?

Ms Henry: The minister is obligated to consider the advice of the Land Court in his decision-making.

Mr HART: Sure, but obligated to take into account?

Mr Hinrichsen: Indeed.

Mr HART: But how much of that flowed through to the minister—changing the government's position because of something that the Land Court said?

Mr Hinrichsen: Obviously, that depends on the case itself. It is one of the criteria that the minister must follow in making his decision on both the grant of the tenure and the conditions.

Mr HART: But surely, if at the end of the day there is no change made after somebody takes a mining tenure to a Land Court, whether it is vexatious or not, what is the point of this?

Mr Hinrichsen: If it is about people with legitimate concerns, having those concerns considered by the court, it is obviously very considerable to those people concerned.

Mr HART: It is about airing their concerns more so than getting a result at the end of the day?

Mr Hinrichsen: It may well be, but people go to court and that can be at considerable expense to get an outcome.

Mr HART: Yes. There is considerable expense involved for both sides of this as well. Are we not increasing the expense for government and the expense for people taking these things to court? I take the member for Keppel's point before about how far away somebody might live or how distant from the issue the person is who is bringing the claim. We have seen cases before where somebody in Sydney is complaining about a mine in North Queensland because they think that it may have an effect on the world's climate. Where do we draw the line on these things? It is a government policy decision. I know.

Mr Hinrichsen: It is obviously up to an individual. They need to have grounds. The bill retains provisions in the MERPC that provide the court with the power to knock out frivolous and vexatious appeals.

Mr HART: But they have always had that, have they not?

Mr Hinrichsen: They have not had that power previously. MERCP gave them the power to knock out frivolous and vexatious issues. This bill does not change that.

Mr HART: Good.

Mr Hinrichsen: Those types of matters, if they were brought before the court, could be struck out without, obviously, significant cost. Otherwise the court would hear matters on the grounds and, depending on whether those grounds were considered to be relevant, either provide an appropriate recommendation for additional conditions to the minister or otherwise.

Mr HART: Was that one of the provisions of the MERCP that has not come into play yet—the vexatious claims in court?

Mr Hinrichsen: It is.

Mr HART: So we have been sitting on that one for 18 months as well, have we?

Mr Hinrichsen: It is—

Mr HART: If the government is not changing its policy position on that, why has that not come to fruition already?

Mr Hinrichsen: The bill has not yet commenced and that has been a decision of the government.

Mr HART: Government policy has put it on the backburner for the minute until they come up with their own policy?

Mr Hinrichsen: It has been the government's decision to defer the commencement until this bill has been dealt with by the parliament.

CHAIR: We will leave at that, I think.

Mr KNUTH: I just want to clarify something.

CHAIR: Okay.

Mr KNUTH: The previous government removed the objection rights and the restricted land, which included stockyards, bores and dams. In regard to removing those rights, just say the mining company mines over their dam. Under the act, they had no rights to object—that is the MERCP Act—and no rights to compensation; is that what happened?

Mr Hinrichsen: No, the landholder certainly still had the right to object. The MERCP framework in relation to the mining lease limited that objection right to directly affected landholders—the landholder within the footprint and directly adjoining landholders. This bill will expand the ability to object in relation to the mining lease to other parties.

Talking about the issue of the dam itself, the restricted land would not have applied to that. Compensation still would have. It would have been dealt with as a compensation matter. But restricted land goes further than compensation. It provides a right of the landholder to say no and that area would be specifically excluded from the mining tenure under this bill until the landholder has given its consent. The mining company cannot take the landholder to court to try to get a resolution on that as they could on a compensation matter outside of restricted land.

Mr KNUTH: Thank you.

Mrs LAUGA: Why do we give people the right to object?

Mr Hinrichsen: It is to afford them natural justice opportunities, quite clearly.

Mrs LAUGA: So why not just say, 'No objections.'

Mr Hinrichsen: Is that a policy question you are asking me?

Mrs LAUGA: If it is a discussion about natural justice, how far do you go?

Mr Hinrichsen: You are asking for my opinion? I am finding it hard to answer the question.

Mrs LAUGA: We are talking about policy and the Queensland policy for years has been to afford people the right to object to mining developments and that fundamental principle of natural justice underpins that. I just wanted to explore that more. What is natural justice? Why do we give it to people?

Mr HART: Is that a departmental question or an opinion?

Mrs LAUGA: It is about policy.

Mr Hinrichsen: I would find it hard to answer that, Mr Chair.

CHAIR: I think that is fair enough. I think that is overstepping the mark. We cannot let that question go.

Mrs LAUGA: Fair enough.

Mr WILLIAMS: I am more concerned about the objection process. I know that the MERCP has not come into force yet. Entering a property without consent or without compensation, can you outline the changes between the MERCP and MOLA with respect to that? I think you mentioned something about the DG being involved in that process.

Mr Hinrichsen: Thank you. This relates to a new access arrangement that was provided in MERCP, which deals with pegging out a mining tenement without a prerequisite tenure, such as an exploration permit. This was a mechanism to reduce red tape for small miners who are looking to peg out their tenement area. It provided them with the ability to enter land, requiring notification, but did not establish a framework for compensation in relation to that entry of land. It did not exclude restricted land from the area that they could access in undertaking the pegging out of their tenure area.

This change will ensure that, like other tenures, restricted land applies—so distance from house and other farm infrastructure. That will mean that they cannot access that area without the agreement from the landholder. It provides then the chief executive with powers to take action if there is a breach of conditions under which entry occurs by the resource tenure holder, ultimately allowing the chief executive to stop entry in certain circumstances.

Mr WILLIAMS: And more specifically the process, please?

Mr Hinrichsen: Sorry, the process for—

Mr WILLIAMS: I am a landowner. Someone wants to come on to my property. I do not want them on my property, or I want compensation for that. Give me the process, please.

Mr Hinrichsen: In relation to these particular tenure types, they are required to give you notice to say that they intend to come on the property to peg out their proposed mining tenure area. Compensation would apply to any loss. So if it is going to have a financial impact on your operations, if there is damage to any property that you have—it might be damage to an area that is cropped—or any injuries sustained, it would create specific obligations in relation to that compensation for that entry on to the land. As a landholder, only on restricted land do you have an absolute right of veto, an absolute right to say no. Otherwise, access arrangements are as outlined in the legislation.

Mr HART: With the restricted land, is that in legislation or regulation?

Mr Hinrichsen: Restricted land is in legislation. The key change will be the distance associated with restricted land—so setbacks from houses, for example. Under this bill, those distances will be prescribed in the act itself within the primary legislation. Under the framework in MERCP, the distances would have been determined through regulation.

Mr HART: Is there a mechanism for changing the definition of 'restricted land'? If you suddenly come up with something else that should have been restricted land, does that have to go back to legislation?

Mr Hinrichsen: There is a mechanism to include additional infrastructure as restricted land, but not to change those primary issues that are covered as restricted land.

CHAIR: What consideration is given when you are forming legislation? What consideration is given to simplify it as much as you can so that those people who work on the land can understand it without having to get a solicitor to work it out? I think that is a failing of government all round. I think they forget about those people out there—farmers, railway workers, or whomever.

Mr Hinrichsen: It is a significant challenge that we always face in developing policy—to make it as simple and in plain English as possible. But lawyers have a significant role to play in our society, because some of these issues are very complex. While simplicity is desirable, you cannot be so simplistic that it does not cover the types of real-world scenarios that will be encountered in what can be a pretty complex issue.

CHAIR: I appreciate those commitments to respond to those questions on notice. If you could get them back to us by the 29th—next Tuesday—thank you. Thank you for your attendance. The committee looks forward to your continued support as we go through this bill and other bills. I declare the hearing closed.

Mr Hinrichsen: Thank you, Mr Chair and thank you committee members.

Committee adjourned at 10.00 am