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
Mrs JE Pease MP

Staff present:

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

PUBLIC HEARING—INQUIRY INTO THE MINERAL AND OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

MONDAY, 18 APRIL 2016

Brisbane

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Committee met at 8.07 am

CHAIR: Good morning. I declare open the public hearing of the committee's examination of the Mineral and Other Legislation Amendment Bill 2016. Thank you for your attendance today. I Jim Pearce, the member for Mirani and chair of the committee. The other committee members here today include: Mr Michael Hart, the deputy chair and member for Burleigh; Mrs Brittany Lauga, the member for Keppel; Mr Lachlan Millar, the member for Gregory; Ms Joan Pease, the member for Lytton; and Mr Shane Knuth, the member for Dalrymple.

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 application of the fundamental legislative principles. Today's public hearing will form part of the committee's examination of the bill.

Before we commence, may I ask that all mobile phones be switched off. Those here today should note that these proceedings are being broadcast to the web and that the media might be present so you may be filmed or photographed. Hansard will record the proceedings. Therefore, I ask that you please identify yourself when you first speak and speak clearly into the microphone at a reasonable pace.

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

MATHEWS, Mr Brynn, Treasurer, Management Committee, Environmental Defenders Office of Northern Queensland (via teleconference)

POINTON, Ms Revel, Solicitor, Environmental Defenders Office Queensland

CHAIR: I welcome representatives from the Environmental Defenders Office of Northern Queensland and the Environmental Defenders Office. Mr Mathews, have you got an opening statement?

Mr Mathews: Yes, I do.

CHAIR: Please proceed.

Mr Mathews: We welcome the opportunity to address the committee. I have addressed the committee in person before over the priority ports bill. It is a rather different situation doing it over the phone, but I will do the best I can.

Our main concerns with the MOLA Bill are ones that we have been voicing for over a year and a half now with the government. We believe that there needs to be some balance restored between the rights of landholders and the resource companies. At the moment the situation is very much biased towards resource companies getting access to minerals under people's land. We see that there is a real problem here because generally the people working the surface may well have been there for generations and they will be there for generations more. The mining companies are in and out potentially between 10 and 20 years. They often destroy the ability of the landholder to sustainably manage their property into the future.

We believe that many landholders would welcome mining on their properties if they were given the opportunity to negotiate access rights. All property holders should have access rights in dealing with mining companies rather than just the right to negotiate over compensation for damage caused.

CHAIR: Revel, do you have an opening statement?

Ms Pointon: Yes. Thank you for inviting us to appear today. EDO Queensland has been a leading community and legal voice in support of the reinstatement of community objection rights to mines. We are really glad to see the government finally fulfil this commitment. As the committee is aware, EDO Queensland is a community legal centre. We provide assistance to conservation groups, community groups, rural farmers and other landholders.

You might be aware that our office has produced a mining and coal seam gas handbook. Essentially this is to help community groups, rural farmers and landholders to actually understand the law behind mining and CSG and understand better how they can have their opinions heard effectively in the decision-making process around those projects. This not only assists farmers, landholders and community groups but also assists the resource industry itself and governments. So community concerns are well understood and able to be addressed and project impact assessments can be refined and tested for accuracy where the government may not always have the resources to do so thoroughly itself.

Currently, EDO Queensland is representing Oakey Coal Action Alliance in the Land Court in the hearing of our clients' objections and those of other landholders to the environmental authority and the mining lease for the New Acland mine expansion. These objections raise valid concerns—for example, impacts on the high-quality agriculture land, on air and water and pm the local economy. The community has a right to have their concerns heard and the assessment material tested by an independent arbiter.

We would like to note for the record—and our submission noted this clearly as well—that, contrary to claims made by representatives or stakeholders in the resource industry, there is no evidence that these objection rights have been used to commence frivolous or vexatious proceedings in the Land Court. In particular, EDO Queensland has never represented any clients or assisted any community members with objections which were considered to be frivolous or vexatious. The Australian Productivity Commission reported in 2013 that there was in fact no evidence of frivolous or vexatious litigation in relation to major projects and that the courts already have sufficient powers to deal with the litigants bringing such actions if they did arise.

We have to repeat this because the resource industry has been providing misleading information with respect to how objection rights are being used. We hope the committee understands the value of these community objection rights. EDO Queensland strongly supports the full reinstatement of community rights to have their concerns heard with respect to resource projects. We will gladly take questions from the committee on our submission.

CHAIR: I have heard what you have said that there is no evidence. Are there records kept of those types of submissions that are sitting on the edge or could be considered frivolous or vexatious? Why are the mining companies continuing to use this, besides for PR—because they want to turn public support around? There is no evidence at all, is that what you are saying?

Ms Pointon: You can check the court record to see where—

CHAIR: Do you guys do that?

Ms Pointon: We did it, but also I believe the parliamentary library did it and, as I mentioned, the Australian Productivity Commission itself did it back in 2013 as a review of all major projects. Quite a few objections are raised to mining projects; not an enormous amount, but there are quite a few. However, we have not seen any that have been thrown out of the court for being frivolous or vexatious. On the reason why the resource industry would be pushing this line, one could imagine that it would be because having your project and the concerns raised from community groups who are in the way of a project might not be in their interests.

CHAIR: Have you actually recommended to clients that there is not enough information?

Ms Pointon: Of course. It is our legal duty to actually not represent clients who are bringing any action that could be considered in any way frivolous or vexatious or have unfounded grounds. We only run where there is sufficiently strong grounds to bring an action before the court.

CHAIR: One of the issues that stands out is continuing access to water. What work do you guys do with regard to identifying the hydrology on the lease and off the lease? How strong is the evidence that you present?

Ms Pointon: As a normal process when we are representing a client, we will go through the material ourselves but also have an expert in the particular area go through the material. For instance, with the Acland mine I believe there are 10 experts in different areas. I am not sure if all of those are for our clients. We have an expert undertake a detailed analysis and normally there is a court process whereby the other mining proponents and the other objectors can also bring in experts to support their understanding of the material. Those experts usually meet and discuss where they agree on their opinion and where they disagree. It is an extremely intense process for debating the accuracy of the material that is presented. We have a lot of faith in that process, in view of the government

itself not having the resources to undertake this kind of level of analysis of the material. It is extremely technical. In the Alpha coalmine case, the assessment of the groundwater impacts off site was found to be uncertain enough for the Land Court to recommend refusal of the whole mine. It is a very thorough analysis that is undertaken through the Land Court process.

CHAIR: Brynn, did you want to add anything? I will keep coming back to you, mate.

Mr Matthews: Thank you. I am finding it really hard to hear Revel's evidence. I do not know if it is her microphone or where she is relative to it. I can hear the panel easily, but not anyone else speaking in the room.

As far as water rights go, we are very concerned about this. We have lots of comments on the Water Legislation Amendment Bill, which will be in parliament tomorrow, actually. We are very concerned that the rights of landholders need to be protected and that the proof of evidence should be with the resource companies, because they need to establish that their operations are not going to impact on existing groundwater users. The federal government took this so seriously that they actually made it a brand new trigger under the Environment Protection and Biodiversity Conservation Act, because they were concerned about impacts on both the Murray-Darling Basin and the Great Artesian Basin from the extraction of water by coalmining and CSG extraction. We believe that the onus of proof should be with the resource company that they are not going to harm the groundwater systems or the surface water systems. It should not be with the existing users, who have a right to expect a certain quality and quantity of water to be delivered to them. We believe it is down to the regulatory agencies—the DEHP and the DNRM—to be satisfied by evidence produced by the resource company that they will not be damaging existing users. We feel the make-good provisions are completely inadequate. We cannot see how they could possibly work. Thank you.

CHAIR: Thank you. Michael?

Mr HART: Revel, can you give us an idea how many times the EDO has taken action in the courts around mining leases? Do you have any numbers for us?

Ms Pointon: I could make an approximate guess.

Mr HART: Yes, have a guess. That is fine.

Ms Pointon: Obviously we are representing clients taking action; just for clarity around that. Maybe five times over the past six or seven years.

Mr HART: We will accept five times. How many times has the court recommended that the minister take some sort of action from those results?

Ms Pointon: I might take that on notice, so that I can properly reflect on it.

Mr HART: Any?

Ms Pointon: As I just mentioned, the Alpha court case is a great example.

Mr HART: That is one. How many times has a minister followed through with recommendations that come out of the Land Court?

Ms Pointon: Not all of the decisions have been made by the relevant minister in relation to the mines that we have taken action on so far, so I cannot give a definite answer in respect of that. I know that conditions have been amended as a result of Land Court recommendations. I can happily take the question on notice.

Mr HART: Conditions have been amended. Have any mines or mine applications been refused because of anything that has come out of the Land Court?

Ms Pointon: With respect, I do not think we can belittle the fact that conditions have been amended as a result of Land Court proceedings.

Mr HART: No, I am certainly not doing that. I just want to know what the results of the process are.

Ms Pointon: Sure. No mines have as yet been rejected because of a Land Court proceeding.

Mr HART: There are multiple processes that people can go through to object in various areas with regard to the environment. There is an environmental authority, the mining lease application and then there are some conditions under chapter 3 of the water legislation around the water area, as well. We are looking at the mining leases in this particular bill and the objection rights there. In your opinion, is the best place for someone to object to a mine in total in the mining lease application, are they better off objecting as they normally would under the EA or the water legislation, or should they object under all three?

Ms Pointon: All three of them actually involve different criteria that the decision maker is considering. For the environmental authority, obviously it is all of the environmental considerations and impacts. For the mining lease, there are actually other criteria that an objector can have their concerns heard with respect to, like the financial viability of the company. While that is a consideration at some level under the EA, it is not a specific consideration. It is a clear right to talk about the financial viability in the mining lease. The appropriate use of the land is also a consideration of the mining lease. There are definitely different criteria. Again, the water licence is obviously water specific, which we think is beneficial, but given that most landholders have the greatest concern about the water impacts posed by resource projects, we think it is valuable that there is a separate process. We definitely believe that it is valid to have these three different opportunities for comment, given that they do have different considerations.

Mr HART: I agree with you: there is absolutely good reason to have three different streams or ways that people can object. However, do you think that sometimes there is overlap and people object for the same reason in all three or at least two of those streams of objection?

Ms Pointon: I think by their nature, given it is the one project, there is a chance that objections will be overlapping in some respects. Water licences are normally applied for after the environmental authority and the mining lease have been applied for and objections dealt with. It might even be the case that whatever has come out of the Land Court process as part of that might go into a water licence objection.

Mr HART: What I am getting at is that, at the end of the day, the MOLA Bill basically reverses the position that the MERCP Bill put us into. The object of the MERCP Bill was to reduce red tape and green tape and speed up processes by trimming out things that overlapped in certain areas. We seem to be going back to having the same processes happen in different areas all the time. I just wondered whether you think it would be better to concentrate on one particular stream of objection rights down here and have those ticked off and then look at another section down there and a third section in the water bill?

Ms Pointon: As we mentioned in our submission, the fact is that they are separate authorities and, prior to these amendments, would normally have separate time frames for objecting. While in the sense of the resource industry's efficiency of knowing what objections are it might not be convenient to them, but for those communities that are affected by these projects it is convenient in that, if they happen to be away or unable to make submissions within the time frame of one, they will still have an opportunity to make submissions in respect of the other ones.

Mr HART: But both the EA and the mining lease run concurrent, don't they?

Ms Pointon: Normally they do, but not always.

Mr HART: Is it likely that the Environmental Defenders Office would use the same argument in an EA objection and the mining lease application, or would they be completely different arguments?

Ms Pointon: If we are assisting a client with their objections, we make them relevant to the considerations that are relevant to a mining lease or an environmental authority. By their nature, while we do help landholders as much as we can to produce submissions that are not overlapping and are relevant only to the considerations, obviously there are a lot of people interested in these things who might not have access to our resources as yet and would potentially put overlapping submissions in just because they want their concerns heard.

Mr HART: The way the MRA is written, which has now been amended and unamended, aren't there overlapping areas of objection in the EA and the mining lease application as far as environmental issues go?

Ms Pointon: There could be a small level of overlap. I do not think it is great, because the mining lease is concerned with different processes.

CHAIR: Brynn, do you have anything to add to that? I know it is difficult for you to hear.

Mr Matthews: Yes. I have a fairly unique position, because I had 10 years working in environmental operations for the precursor of the DEHP, between 1995 and 2005. I dealt with mining applications, as well as many others. Some of the problems with these things where you get multiple approval processes is that a lot of government agencies are very reluctant to say no. If you get a bad project on your desk, unless you have really severe and serious grounds to refuse it you hope that another agency will say no, but they are doing the same. Often, fairly dodgy projects get through because everyone is looking at everyone else to be the first one to say no to it. That is a real problem.

It is important to try to maintain the integrity of these separate decision-making processes and also the actual grounds of appealing and objecting to them. In Far North Queensland, I have been involved in EDO now probably for about six years. In that time we have dealt with two cases involving mining. One was a coalmine down near Collinsville where they wanted to expand outside the area they covered in their EIS and mine through a watercourse. That went to the Land Court and we lost that one. Another one was a minerals mine at Watsonville that had poisoned the local water supply and caused a fish kill and so forth. We helped the community group there lodge objections in the Land Court and various other avenues of appeal against that. That also got a bit messy because the company running the mine went into receivership. It was one of those operations where one company owned the lease and another company had the environmental authority, and trying to pin down responsibility for who caused what became very difficult. Then they all walked away from it and a new buyer came in.

We keep getting these real problems with mining, because of the fluidity of ownership, responses to world prices, et cetera. It is not that simple. The impacts on the community and the public can change enormously and very quickly, as a result.

Mrs LAUGA: What does it mean to landholders to have objection rights reinstated under the MOLA Bill?

Ms Pointon: Essentially it means that they are able to have all of their concerns heard with respect to these mines, and validly so. There are enormous impacts that mining projects can have on communities and our environment. We were very happy to see the reinstatement of the rights to object to environmental impacts last year which was also taken out through the common provisions act. The MOLA Bill is the fulfilment of the reinstatement of the rights to object to a mining lease. It is a demonstration by the government that they do respect the concerns of those affected by these mines and the communities' rights to have their concerns heard and this by an independent arbiter who is not influenced by politics or anything like that and has more resources to consider the impact statements that are provided before the decision is made.

Mr KNUTH: You state that the EDO Queensland have never represented any clients or assisted any community members with objections that were considered to be frivolous or vexatious. If that is the case, what was the reason for the introduction of the MERCP Bill?

Ms Pointon: What was the reason they decided it was necessary to take away community objection rights? I believe that the politics of the time were not very interested in supporting communities' rights to have their concerns heard with the respect to these mines. This led to a greater concern for the efficiencies of mining proposals to be approved quicker without community objection rights getting in the way. I would say it was a political decision that did not value community concerns.

Mr KNUTH: When the MOLA Bill was introduced, were your clients and landowners happy about the news?

Ms Pointon: That the MOLA Bill was introduced into parliament? In terms of the community objection rights being fully reinstated, yes, they were.

Mr KNUTH: If you were to look at something that needs to be improved, what would you recommend?

Ms Pointon: For the MOLA Bill?

Mr KNUTH: Yes.

Ms Pointon: In our submission we have pointed out a few areas. This has obviously been a long process in terms of commenting on the common provisions bill and the various iterations after that. We just pulled out a few recommendations for improvements. One we have dealt with already was the coordination of the objection process for the mining lease and the environmental authorities in the EIS. This was a result of the green-tape reduction act whereby if you comment on an EIS that is taken to be an objection to the draft EA as well. That is then referable to the Land Court without another opportunity being made to comment on the draft environmental authority. The draft environmental authority obviously contains all of the conditions of the mine. There might have been an instance where an objector was not concerned about the EIS necessarily, but when the draft environmental authority conditions came out they saw that these might not have been adequate enough to deal with the concerns that they did have. They have then lost that opportunity because there is no further objection process for that draft EA. The common provisions act seeks to also make this relevant to the EIS under the State Development and Public Works Organisation Act where it is a coordinated project. The same would apply. Where there is an EIS provided, that is referred directly to the Land Court without that extra opportunity to comment.

I know we do not have a lot of time, but we do have numerous comments on the inadequacy of that in our submission. We also mention opt-out agreements. They are not being repealed by the MOLA Bill. We are concerned about this because landholders are at risk of being bullied in certain circumstances where they are dealing with a mining proposal on their land. Opt-out agreements essentially mean that a landholder can opt out of having any rights at all when negotiating with a mine. We cannot see any benefit in this. It is a safety net to ensure that landholders have access at all times to their rights under the law. Having a provision in there that says that a landholder can essentially sign away those rights with a very short cooling-off period, we think it is irresponsible for the government to provide that. We would recommend repealing that. Finally, restricted distances seem highly inadequate.

Mr KNUTH: Is that the 50 metres?

Ms Pointon: Yes, that is right and also the 200 metres.

Mr KNUTH: Brynn, you mentioned the make good agreements and the access rights. You said you would prefer the access rights. What did you mean when you said access rights?

Mr Mathews: Whilst we applaud any restoration of landholder rights to object to mining leases, we think that there should be a much larger restoration of landholder rights. Resource companies need to have landholder approval for access. The Land Access Code as it is at the moment makes it illegal for landholders to obstruct a mining company when they have their paperwork sorted. We think there should be good agreement with the landholders actually having rights to negotiate those, not that they are forced to go to the Land Court to defend the ability to have the ongoing use of their property from a mining company that has been given short-term access because the mine is not going to last very long. We think there needs to be up-front negotiations between the resource company and the landholder to secure access, not the government saying, 'You have access. Go away and sort out compensation for damages with the landholder.'

In terms of the 50 metres, when you look at the EA issued for the Adani mine, the final pit bottom is going to be 400 metres below the surface. A 50-metre set back is frivolous; it does not mean anything. Some of these mines will write off all of the value of an agricultural property. There is no doubt about that. The owner needs to be prepared for that and agree to it, not just to be able to negotiate compensation and to be forced to take legal action to secure any rights for themselves.

Mr HART: Where did you get the 400 metres from, Brynn?

Mr Mathews: It is in the profiles in the environmental authority issued by DEHP.

CHAIR: Is that underground or open-cut?

Mr Mathews: It is open-cut. It is a void.

Ms PEASE: Brynn, could you give us any instances where you believe it would benefit landholders to be able to lodge an objection?

Mr Mathews: Yes, definitely. At the moment that is the only avenue they have because they cannot actually negotiate rights of access with a resource company. The Queensland government owns the resources under their land and the Queensland government can negotiate the access to those resources with the resource company regardless effectively of the wishes of the landholder who has been operating on the surface sometimes for generations, and they have invested large amounts of money into soil improvement, fencing, cropping or whatever. In the current situation it is really important that they have objection rights because it is all they have. That is why we are recommending the MOLA Bill as an opportunity to restore landholder rights and negotiate access agreements with resource companies, because we see that as critical. We do not believe it will shut down mining or the resource industry at all. Many landholders given the opportunity to negotiate with resource companies and vice versa will come to amicable agreements. At the moment we are effectively in a state of siege, with landholders defending themselves against resource companies. That is not a good situation. It has led to all sorts of family breakdowns and suicides. All sorts of issues have come out of this. It should not be like that. We can do it much better.

Ms PEASE: So you believe that farmers and resource companies can work together?

Mr Mathews: Absolutely. They have elsewhere and there is no reason why they could not here. It is just that this sort of incredible division has been created where landholders have very little power and right to negotiate and resource companies have the power of the government behind them.

CHAIR: We are running out of time. I would like to put another question to you. Some submitters expressed concerns that landholders may be bullied into signing opt-out agreements and thus give up certain rights. Do you have any evidence or can you give us an understanding of how prevalent that might be?

Mr Mathews: In talking to landholders who have been through this around Chinchilla some time ago, they do not talk about browbeating and bullying; they talk about continual coercion and offering of deals and this and that. One landholder speaking at an anti-coal seam gas rally in Mareeba said, 'Don't let them in your kitchen. Once you let them in they will sweet talk you. They will smooth talk you. They will bring PR people in. They will bring anyone in that they think will get you to sign on the dotted line. Once you have signed on the dotted line that is it. They will do whatever they want anyway.' That was that landholder's experience of it and it is not an uncommon experience either.

Ms Pointon: I would have to check this, but I do not know that the opt-out agreement provision is actually in operation yet. In terms of landholders being considered to have been bullied, I think George Bender's death is probably the best example we could turn to in terms of somebody who felt like they had a very rough time dealing with the resource industry and not had their concerns heard adequately. It is something that we do hear quite frequently.

Mr HART: you are right. The opt-out agreements are not in yet. You can delay that process but there is no opt-out yet.

Ms Pointon: You can delay what process?

Mr HART: You can delay the process of a compensation agreement. You can put it off until later but you cannot opt-out yet. How much consultation has the government had with the EDO on the MOLA Bill?

Ms Pointon: We have had reasonable consultation. We have been involved with the resources community round table with the government. We did see an exposure draft of it as well.

CHAIR: Time has expired. If there are no further questions, we will close this session.

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

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

OLIVER, Mr Jim, Expert Consultant, Overlapping Tenures, Queensland Resources Council

CHAIR: I welcome representatives from the Queensland Resources Council and invite you to make an opening statement. Is there one opening statement or three opening statements?

Mr Barger: I will make a brief opening statement and then rely on my colleagues to correct me if I have strayed too far from reality.

CHAIR: Okay. That sounds interesting.

Mr Barger: Thank you to the committee for the opportunity to appear this morning, and I want to start by acknowledging the traditional owners on whose country we meet today. To give you a sense of the QRC's submission, because it is quite different from some of the other submissions you have received and the arguments that we make will be quite different to what you have just heard from EDO, there are a couple of discrete parts of the submission. In terms of the issues raised in the explanatory memorandum, we were happy with the explanations of how it has addressed fundamental legislative principles. We think that MOLA has considered those and the potential to not meet the requirements of fundamental legislative principles has been adequately addressed, so we were happy with that. Like EDO, again the consultation around this bill has been a bit segmented. We have had really good engagement around the technical drafting around the overlapping tenures provisions—the industry delivered mechanism to help coal and coal seam gas companies work better together—but the actual exposure draft of MOLA was only available on a very short timetable. While the issues had been discussed over a bit of time, actually seeing the nuts and bolts of the bill was only a couple of days. It was a shame that that consultation was not in keeping with the more detailed engagement that had led into it. Essentially our submission breaks the bill up into five parts, so in the appendix there is a lot of detail around the overlapping tenures and some quite detailed drafting suggestions for how we think the bill could better give effect to the industry negotiated agreement. Again, it is important to note the department has been willing to work very closely with both the coal and coal seam gas industry to develop an appropriate legislative framework, so we thank them for that really good engagement.

Looking at the transcripts of your hearings so far, the issues that have occupied a lot of attention from other presenters have been around the election commitments that were made in the bill, for example the change of notice period and restricted land. I just wanted to step through some of the concerns that we have tried to address in our submission to give you some context because I guess I get a bit concerned when I hear people using dramatic language like 'landholders are under siege' and 'families are breaking up'. I think what has tended to happen around MOLA is what we saw around MERCP—that is, people get confused around a right to object, which is very clearly fundamental to democracy and really important, and a right to object to a mining lease. It is really important to understand that a mining lease is not a mine. I may not want a mine on my property, but I might be very happy to have a mining lease because there may be no implications for me at all. You heard a little bit of a flavour of that today of people being confused and saying, 'I'm worried about water, I'm worried about strategic cropping land, I'm worried about increased traffic so I've got to object to the mining lease.' In actual fact, what you want to be doing is engaging with the EIS—the environmental impact process—and saying, 'As a community, here are the things that concern me about a new operation coming into our community and here are the ways I'd like to see it addressed.' That engagement process is part of the land access process, and again you have heard some mixed messages this morning that the government somehow negotiates rights with the mining companies on your behalf.

The reality is the conduct and compensation process is a negotiation and, yes, if you only take your evidence from people who speak at anti coal seam gas rallies you are going to get a very skewed view of the industry. The reality is if you drive around the Darling Downs or the Bowen Basin there are people who have negotiated very sophisticated agreements whereby the companies do not come on to the property when the school bus is there or they do not come on to the property while they are harvesting, so really quite sophisticated agreements whereby two industries can coexist. The farming industry was there first and that is recognised, so the mining industry says, 'How can we operate in

and around that industry without getting in your way? If we do get in your way, how can we fix that up? Is there something we can do to compensate you? Can we put some irrigation in? What's the way that we can make sure that your farming business is recognised?' Ultimately if the two cannot coexist, then it is a negotiation such as, 'Can we buy the property because we can't keep you operating the way you'd want to.'

It is really important that objection rights to a mining lease, which is a very specific document, are not confused with objections to mining or to resources or to coal seam gas or to exploration because, looking at the transcripts, the committee has heard some very long bows being drawn such as, 'I heard a story about somebody having a problem with coal seam gas.' That is not really all that relevant to objecting to a mining lease. Again, we have attached to our submission—perhaps one of the most complicated diagrams in the world—which tries to set out some of the different approval processes that a mining project has to go through. There is a process of getting tenure and the objection process to that grant for a mining lease is what the MOLA Bill deals with. There is a separate process under the Environmental Protection Act which is essentially about conditioning the project to say, 'What consequences can this project have? How are we going to manage those consequences?' There is a stream of approval around cultural heritage and then in some areas there is a separate approval stream around the Regional Planning Interests Act, which is where you get into your high-value agricultural land or community infrastructure or some of those issues. You have up to four parallel streams of approval. We are not talking about all of them. We are not talking about removing objection rights to all of those processes. What we are talking about is removing the objection right to the grant of the mining lease.

Again, there has been a lot of discussion both in this committee and in the committee hearings before it about vexatious claims and you heard EDO repeat the very strong statement they made in their submission that they have never seen a vexatious claim and they have never represented somebody who has made a vexatious claim. Again, the previous committee that heard the MERCP Bill heard evidence research from both the Parliamentary Library and the Land Court to say, 'We've had a look. We can't find any evidence of vexatious claims.' That is right, but it is really important to notice that there is a little asterisk next to 'vexatious claims' and when you go down to the footnote it says vexatious claims according to the Act, so 'vexatious' meant not did I bring this objection in to slow a project or to try to strengthen my negotiating position but, no, did the court deem it to be vexatious under a very specific and narrow set of legal criteria that sit in another bill? We have stopped talking about vexatious claims because it leads you down that dry gully of asking, 'Is it vexatious under that Act?' What we are saying is the objection rights to a mining lease have created an ability to object to slow the project. I know that EDO talked about misinformation being distributed by the resources companies, so rather than perhaps repeat that offence in our submission we quote from the decision regulatory impact statement that the department of mines made at the time the MERCP Bill was introduced. I think that is a really good example of how mischievous or unproductive objections are made in the mining lease project, so not globally but just for mining leases. It states—

Under the MRA [Mineral Resources Act 1989]—

which is the legislation that grants mining leases—

it is possible for objections to the Land Court to be heard where only one party brings evidence before the Court. This results in the Land Court providing an administrative function in assessing the application rather than settling legitimate questions of law or arguments about the appropriateness of the proposed mine and its management.

It continues—

... often the objector provides no evidence to support their objection ... This can be attributed to the highly technical or confidential nature of the issue or alternatively the objection is speculative, made on the basis that the matter raised is one of the Court's considerations rather than there being any identified ground on which the objection has been based.

In some instances applications have been delayed for a number of years where no evidence is ever brought to the Court by the objector ...

I think that is the answer to the question that the committee put to EDO earlier to say, 'Why were the objection rights to a mining lease removed in the previous bill?' It was to deal with this process where you had unproductive processes where speculative objections were put in generating delays for the court but there is no evidence provided. So it is not a discussion and it is not a negotiation; it is a stalling tactic.

The QRC and the resources industry completely understand where the MOLA Bill has come from in undoing those changes. We understand that there has been enormous community outcry. Our point is that that community outcry was misplaced because it was informed by people saying, 'You've lost your ability to object to mining. You've got no ability to negotiate with mining.' That is not

the case. It was not the case with MERCP. It is not the case that MOLA is restoring those. I guess the request that we would make of the committee is that when you are hearing evidence or reading submissions you are very clear about what MOLA is doing and the very limited scope of the changes to the MERCP that it is undoing, because it is not the very broadbrush change that has been presented in some of the submissions and it would be a real shame to see the public debate get ahead of the facts around MOLA in the same way that it did with MERCP. I probably should not talk much longer or Katie and Jim are going to elbow me, so unless my colleagues have anything else to add specifically I would welcome some questions.

CHAIR: You talk about limit notification and objection rights for mining projects. I have just listened to what you had to say there and I am finding myself in a difficult position sitting here today because I have an electorate where I have a lot of contact with mining companies and I have to say that, in terms of a lot of the argument you put up for your position, I think there are people around who could put up an argument from the other side. I will just take it carefully, because I am starting to get a little bit emotional about it. With the limited notification objection rights for mining projects, why do you have this fear about people who are impacted on by a mining operation wanting to speak up? You have all the resources in the world behind you and you are dealing with a community that has no resources. You have had years to work on your arguments to put forward. The community has 28 days most times to be able to respond to an EIS. Why do you want to limit people's opportunity to put in an objection?

Mr Barger: Great question. Again, the reason that we want to limit objections is a limited objection to the mining lease—not to the mining project, not to the mining operations. MOLA talks about the mining lease, which is different from the mining project. This is a terrible example, but the mining lease is a bit like running a car over the blocks to get a pink slip to say that you can register it. It does not necessarily mean that with that pink slip you can jump out on the road and drive it around. There is a separate driver's licence process. That dual regulation is very similar. Please do not interpret anything that I have said as the industry does not want to hear from communities, because you are right: if you try to ride roughshod over communities and if you do not listen to their concerns about how they want you to operate, what they want to do and what they are looking for, it is going to end in tears at some point. The most efficient way of engaging with communities is not encouraging objections over a very technical assessment process over the mining lease but to say, 'Look, I understand your concern. Don't waste your time running around in the Land Court on the mining lease. Come and talk about the mining project. What are the things that worry you?' I think part of the reason that you get this willingness to argue with mining companies is that sense of frustration—'I put in an objection and it didn't go anywhere.' Was that the right objection? Were you involved in the EIS process?

Part of your question that is very relevant is how long is the EIS prepared for and what information is that based on? The really good EISs are not silent for two years and then a 28-day consultation process. There is a very detailed engagement with the community so the community has a sense of, 'These are the things we want you to look at. We're worried about traffic, noise, water,' or whatever they are. So the engagement with the community is absolutely essential, but whether that objection right to the mining lease is there does not affect that engagement process. We are saying you can remove that right to object to the mining lease and still have a really good detailed engagement whether you engage with the community, take them right through the process and they understand that their concerns have been heard and how the company is proposing to address them. That is the point where you have objections where you say, 'Actually, having seen how you're going to deal with traffic, I don't think that's adequate,' or, 'I'm still worried about water,' or, 'I'm not confident you're going to deal with my groundwater issues.' So it is getting the community to engage not around a legal process but designing a regulatory process where they are saying, 'This is how we want the operation to run in our backyard. These are the ways we want the operation to look for it to be acceptable to us.'

CHAIR: How often does a mining company take out a mining lease if they do not have an intent to mine?

Mr Barger: A mining lease is a pretty broad tenure, so it covers everything from the enormous mines that are proposed in the Galilee right through to very small opal and tin operations. Quite often what will happen is there will be tenure applied for as part of a project. It may well be that tenure is available in the same seam that an existing operation is operating in, so they may well apply for a mining lease in full knowledge that they are not looking to operate there for 10 or 15 years once they start mining. I do not have the exact numbers, but it is not the case that a grant open mining lease means that two days later a mine is going to spring up like a mushroom.

CHAIR: It does not?

Mr Barger: No.

Mr HART: Andrew, I understand from what you are saying that you think there is a lot of confusion out there about the processes involved and people's objection rights. I must say, on the travels that the committee has made, from my point of view you are right: there does seem to be a bit of confusion around that. In fact, in the last few days it has only been clarified in my head how this process works. I am wondering if the process of your EA and your mining lease application and the other bits, which could be running at the same time, causes this confusion and whether we should have them following each other or maybe even reversing. In my mind I wonder whether we should be talking about a mining lease first and then an environmental approval afterwards et cetera. I understand that may slow the process down, but it might clarify in people's minds where the possibility of fixing perceived problems with a mine could be taken care of and where they could either stop the mine or condition it.

Mr Barger: We would have to have a think about that. The only risk I can see is that perhaps if you made them sequential processes rather than concurrent, there would be a risk that somebody who is bursting to have their objection is frustrated during that technical mining lease process. You are right: if you stage them like that it would make it easier to be quite clear about what is the process you are engaging with.

Mr HART: With the environmental approval, the mining lease application and water and heritage issues, do you see cases where the same objection on the same grounds is being lodged in those four different areas, or are they always different?

Mr Barger: Often the motivation is similar. It is that concern, 'This is a really difficult change for me to consider. I may have to rework my business. I would really like it to just go away.' Having said that, the motivation behind the objections is often, 'I prefer the status quo. I just do not want the complexity of having to negotiate a complex interaction with a new industry that I may not be familiar with.' That is perfectly understandable, and the objection and negotiation process should be a way of providing information to those people so they can understand how to negotiate a path through to something that is going to work well for them. The basis or the standing for the objections is different under different acts, so you cannot just photocopy the 'I hate it. Go away' letter and send off four different copies. The concern that I think motivates them is fear and a lack of understanding.

It is important to acknowledge groups like EDO with their handbook, which is actually a really good source document that maps out how the process works. Similarly, AgForce do a great job with their AGFORWARD program. Rather than people panicking, 'I don't have the resources. I do not know how to do this. I am facing a great big multinational company. I am going to get negotiated into the ground,' they start to get a sense of how other landholders have dealt with things and hear how these issues have been dealt with, so they start to get a sense of, 'That might work on my place but this would not.' You start to move people away from fear, 'I have to stop everything,' to 'How can I engage? What are some changes that I could make on my property that might make it more productive?'

We have seen some investments around Central Queensland where cotton farmers, for example, have been able to get more effective irrigation systems, so their farms are more productive because the company said, 'We're going to affect your operations. You're in the farming business. We need to keep you in the farming business. What can we do to make your place more productive?' Once you start to get constructive conversations where you have moved away from a sense of being under siege or under pressure, you start to focus landholders on opportunities—the farming community particularly is very entrepreneurial and clever at seeing new solutions to issues—and you start to have constructive conversations quite quickly.

Mr HART: Do you think that if the areas where people could raise objections were clarified in each of the sections and nailed down a lot more specifically, it would help the situation? Can you point to anything that may be in the mining lease application that causes a real issue around that area? The feeling I get from people out there is that they think they have an objection right. We visited some properties where those people clearly should have an objection right.

Mr Barger: I think the headline message would be that objections are a second-best answer at best, so they are the safety net. Ultimately you do not want people objecting. You want them engaging earlier and saying, 'Here is how I could coexist with this project,' or 'Here is how your project needs to change to fit around what I am planning to do on my farming business.'

Yes, I think you are right: you could probably finetune the parts that deal with objections, particularly the grey areas of overlap between the four or five different bills that give an objection power, but ultimately what you need is a better engagement process. You need people sitting around the table during that EIS process to engage and communicate, and you want to be doing that in the very early days of the land access negotiations. The first contact with the companies needs to be that constructive engagement.

Mr HART: You do not think the companies are doing a good enough job of that?

Mr Barger: No. In a way it is the opposite of an arms race. You have seen better and better processes evolve through time, but it is really difficult to have that open, frank negotiation in an environment where people are saying, 'We are under siege' or 'under pressure' or 'there are no resources.' There are far more resources available now and a far better body of information about how to do this than there was 10 years ago. I am completely confident that in another 10 years it will be better again. It is a learning process: the companies are learning and the landholders are learning. It is not easy, but I think it is definitely improving. If you picked up a copy of *Queensland Country Life* eight or nine years ago, the first five pages were just genuine stories of anguish. Landholders really could not see a way through it. There is still a drip-feed of those stories, but nothing like the volume. I think it is because landholders have educated companies in how their businesses operate and companies have a much better at understanding how to work in and around those companies, so a lot of the angst is starting to come out of it.

Mr HART: Regarding opt-out agreements, can you give us the industry's perspective as to why they may be good? I do not see that they are good at all.

Mr Barger: It is interesting. I continue to be surprised to hear the way the opt-out process is characterised. That was something that came from landholders during the land access reviews. The land access rules came in in 2010, an independent review ran in 2012 and then there was another process reviewing how to implement those in 2014. In both of those processes we had landholders, particularly out west in Mount Isa in the hard rock areas, out in the Cooper Basin, saying, 'Look, I run a grazing property that is a third of the size of France. They have this tiny little bit of country that they have pegged that they want to explore. Unless they want to dig it all up, I am really not too worried about what they are up to. I am happy for them to come on and peg it, take some sampling and I do not need a compensation agreement, but I am required to negotiate one. That is really difficult and messy. Is there some way I can put it off?' It was really an attempt to go back to what we had perhaps 10 years ago where there would be handshake agreements: 'I am going to come on your place for a week, and when we leave I will grade your driveway for you.' It was much more of a handshake agreement for low-impact, dispersed initial exploration activity. It is just to deal with the situation where the landholder really is not concerned about the consequences of the initial activities, which might just be pegging some tenure, and to not force them into that negotiation process.

Mr HART: Would a deferral not be better than an opt-out agreement in that case?

Mr Barger: Essentially it works as a deferral. It is not, 'I will never have a compensation agreement.' It is way of saying, 'Given that you want to do these activities over the next 18 months, I am happy not to have a compensation agreement.' I think a lot of the semantics around vexatious, mischievous, opt-out and deferral is that a lot of people are jumping at shadows that are not there. They obtained their information from a source running a particular agenda, and they are reacting to that rather than reading what is on the page.

Mr KNUTH: Andrew, you talked about constructive conversations with landowners. With regard to the Queensland Resource Council, does the Queensland Resource Council have the opportunity to have dialogue with landowners, or are they representatives of the mining bodies?

Mr Barger: Do we engage with landholders?

Mr KNUTH: Yes.

Mr Barger: We certainly do, yes. I almost have a bit of a network of bellwether farmers who, when they hear my chief executive on the radio say something they do not agree with, ring me up and say, 'What are you talking about?' I guess it is through forums, whether it is the GasFields Commission or land access forums, where we do try and get out as a secretariat and hear from landowners a lot. That is really valuable. A good example of that in the MOLA bill is that one of the issues that we heard consistently from landholders was that boundary effect. The problem that was occurring was where there was an ability to put particularly coal seam gas infrastructure almost anywhere. What tended to happen was there was less impact on the landholder if it sat on the fence line. Which is great for them working their property, but if you are the neighbour on the other side of the fence you might not be too happy about that.

Up until these changes to restricted lands, if the tenure did not go into the neighbour's place they really did not have a say. There was a risk of creating conflict between neighbours where you could push infrastructure or impacts to the boundary, because that worked best for your farming property but might be creating problems for the neighbours. Now in the restricted land the neighbour's infrastructure and house and operations are recognised. That is an example of something that came up from landholders and was brought to the department, to QRC and to companies, and when you looked at it you went, 'That is a really sensible change.' That is a case where amending the bill will make it easier for people to exist because you are recognising there are two sets of landholders with an interest.

Mr KNUTH: You have the opt-out and the make-good agreements. What do you see as the best option for negotiations with landowners and the mining companies rather than going through the Land Court?

Mr Barger: There is almost a hierarchy of processes. The opt-out is designed for very early initial exploration where you might be taking some water samples or rock samples. The conduct and compensation agreement is for when I want to dig some trenches or I need to build some roads. That is an engagement process around how that might impact the landholder, making sure they have an ability to design that process so that it works for them. The objection process sits at the other end of the spectrum when you have been lucky to find something that looks economic and you are looking at recovering it. Again, in the public debate the three issues get mixed up. I have read some commentary about opting out of an EIS process as though somehow you could have a mining lease on your place without a say. That is just not the case.

Consistent across all of those, though, is having a really good engagement with the landholder where they do not feel railroaded. You are not rushing them, you have given them some information and they have the ability to check that with local people they trust—it might be an adviser or they might phone someone in Brisbane and confirm that that is the case. They can have a chat to their neighbours or friends about how they have designed an agreement with a similar operation.

Mr KNUTH: That would be workable under the present bill. Under the previous bill, even though it did not come into fruition, it would not have been workable.

Mr Barger: Sorry, you have lost me.

Mr KNUTH: What I am saying is that, in regard to these negotiations and discussions, the objection rights were moved out of the previous bill. That wiped communities and landowners from having a say. Are you saying there is optimism in this bill because they are able to enter into discussions and negotiations?

Mr Barger: What I was saying was that the previous bill removed an objection to the tenure process and this bill puts it back in. What I am saying is that if that consultation, engagement and negotiation process is running really well, the objection process is almost irrelevant because you are only going to have somebody objecting if they are not happy. If they feel like they are being given a fair crack of the whip, they will negotiate something that works for them and that is in everyone's best interests. That is the gold standard really.

What I am saying is that a lot of the debate around this bill and the one that preceded it was characterised as though there was no longer any ability to have a say. You opted out of everything; there was no objection right. That is very clearly not the case. It was one step in a 35-step process that was being removed. Part of the motivation for that was a lot of the objections that were being put in there were based on a misunderstanding because they thought they were objecting to an environmental impact statement or a land access issue. In a way, one of the reasons we supported the previous bill was removing that objection right makes it less confusing for landholders.

Mr MILLAR: Andrew, do you support this bill?

Mr Barger: The MOLA Bill?

Mr MILLAR: Yes.

Mr Barger: That is a tough question. I certainly like big slabs of the overlapping tenures which reflect a lot of industry work. I support the change about restricted land. That is a big change for the coal seam gas companies but they have sat around the table and agreed to that change. In an ideal world, a lot of the changes that are being undone from the original bill, the MERCP, I think are based in misunderstanding. I think in the cold light of reality a lot of people would say they are to deliver on a political commitment rather than the reality of an unbalanced system. Do I support the bill? There are some really good bits in it, but there is still a big chunk of the bill which undoes the previous bill which I do not think a lot of people advocating for the bill have fully understood.

Mr MILLAR: To give us some more information, what of the previous bill would you like to see remain?

Mr Barger: I have talked about objection rights probably to death. You are probably sick of me saying that I think objection rights to the mining lease could be removed. That is a streamlining in the process, as long as it is associated with sufficient information for people to understand how it would work. Another change that was made in the MERCP Bill was the ability to grant a mining lease over restricted land. It is very important to note there was no access granted to that land, but it was a way of preventing the case that this bill restores which is if there is restricted land that is excised from the mining lease and if the landholder subsequently agrees then you have to go through another mining lease application process with another objection process. That seems like an inefficient way of doing things. Again, for a landholder who has not yet agreed to access to restricted land, granting a mining lease over their place is going to be confronting so they need to get some really good advice about what that means. My argument would be they are in a strengthened position for their negotiations with the company because the company has a real incentive to secure their agreement.

Mr MILLAR: Surely the mining company would have an incentive if they allowed the landholders and neighbouring landholders to object to the mining lease. I guess it is democracy to be able to object to something. You mentioned your concerns over people having the ability to object to a mining lease; is that right?

Mr Barger: Yes.

Mr MILLAR: Would that not take away the rights of a landholder?

Mr Barger: No, I do not think so because the criteria that a mining lease is assessed on are quite narrow. They are quite technical and they are largely focused on the geology. It is really about the state satisfying itself that there is a potential for economic recovery of resources. It is not an assessment process to say, 'How would that mine operate?' I think it is really important that landholders, particularly neighbours upstream and downstream, understand that that process is afoot. I do not think you want surprised mining leases dropping out of the sky. Do they need to object to it? I cannot see how that adds anything, particularly in light of the department's own description of the way that objection process is often used where it generates 12- to 18-month delays and the person objecting does not bring evidence to bear. It is not the case of, 'I'm a landholder; I want to have my day in court.' It just looks like somebody throwing spanners in the wheels of progress.

Mr MILLAR: I would love to hear more about that, but my last question relates to vexatious claims. Can you give us an example of a vexatious claim?

Mr Barger: The textbook answer—

Mr MILLAR: What vexatious claims can you remember that you have come across?

Mr Barger: Again, I would go back to two parts, both of which we have quoted in our submission. There is the description of how to use the objection process that was made by anticoal activists, and we have quoted about the focus of causing economic damage to projects by delaying, creating uncertainty, frustrating communities—

Mr MILLAR: Can you give me an example?

Mr Barger: I might take that on notice because, given that a lot of these are before the court, I would like to have a list of ones that have been resolved rather than landing myself in a pickle. Would that be all right?

Mr MILLAR: That is perfectly fine.

Ms PEASE: Andrew, you have been talking a lot about there being no need to have objection rights and that you have a gold standard for resources companies to behave. Do you have any policing or ways of ensuring that mining companies always maintain those gold standards of dealing with the community, engaging with them and participating with them?

Mr Barger: That is a really good question. In terms of policing engagement, that is a difficult one.

Ms PEASE: Perhaps policing might be a bit hard. If we are removing objection rights for landholders and you are saying that the best practice is for mining or resource companies to engage in a gold standard, what is that gold standard? Do all resource companies adhere to that gold standard?

Mr Barger: Probably the best answer—which I might submit—is a document we prepared called *Listening to the community*. The reason it is a useful answer is that we have found best practice exists in Queensland but there is not a company that always gets it right all the time. There is always—

Ms PEASE: In that instance, how do we protect landholders when companies are not adhering to best practice all of the time?

Mr Barger: One of the best ways of protecting landholders—and 'protection' is not necessarily an objective word—or making sure that landholders are demanding the best engagement standards from companies is to talk to their neighbours, talk to their advisers and even look at industry documents from QRC, APPEA and AMEC. Look at how the company describes its own engagement processes. It is essential for landholders to say, 'When you bowled up on day one you said this is how you would engage. You have not done that today.' Hold people to account because there is a lot of documentation of the intention from companies. If an individual is slipping up, it is really helpful to pull them into line.

Ms PEASE: That brings me to another point. You have talked about what happens if landholders are not meeting their requirements or their expectations. What happens if the resource company is not as well?

Mr Barger: In a consultation process or once they have signed an agreement?

Ms PEASE: In the situation where landholders do not have objection rights. What happens if the resource company is not meeting what it laid out to the landholders? What happens to the landholders then?

Mr Barger: The objection right that we are talking about is the grant of the mining lease. If you are the mining company and I am the landholder, we have signed a conduct and compensation agreement and I do not think you are upholding what we agreed to, there will be a resolution process in it. You can come to me and say, 'You said you were not going to operate in this period and you have; why is that?' Contractual dispute is an ugly way of phrasing it, but there is a framework there for where they said they would do this and they have not, or they said they would not do this and they have. I am unhappy about that. It triggers another negotiation. It is an iterative process of managing.

Again, the gold standard is that you do not have those surprises but you say, 'We negotiated that we were going to do this, but we really need to come on in this period when we said we wouldn't. How can we work around that?' It is a productive, proactive engagement rather than surprises and compliance. When it is working really well, it is a partnership. There is a bit of give and take. Trust develops and it is all underpinned by communication.

Ms PEASE: What happens when it does not work really well? That is my concern.

Mr Barger: When it does not work well, there is a contract you have that has not been delivered so there is an ability to hold either party to account. Ultimately, you can take that to the mining registrar or to the Land Court. If the conduct is sufficiently serious, the tenure can be cancelled and the project stops. There are very clear escalation processes to say, 'You have to stop work now because I am concerned that you are not complying with our agreement.' That all happens completely independently of an objection right. The tenure sits in the background, and that is about the give and take of coexistence. None of those changes would be affected by the bill that the committee is looking at today.

CHAIR: Thank you very much. You have given us a lot of good information and you have presented it really well. I would like to see it applied at the local mine level where they are dealing with people. It sounds good here but it ain't the same out there in the bush.

Mr Barger: It is important to have regional leaders who will stand up and say, 'Actually, that's not up to standard. That's unacceptable.' That is a really important part of the process, because if you hold people to account they will do that only once.

CHAIR: Thanks again. Time has expired.

Mr MILLAR: Are you going to report back to us?

Mr Barger: When would you like it—the vexatious thing and the *Listening to the community?*

CHAIR: Are you able to get it to us by Wednesday, because we are running out of time.

Mr Barger: Okay.

CHAIR: Thank you very much for your input.

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

HUTTON, Mr Drew, President, Lock the Gate Alliance

CHAIR: Would you like to make an opening statement?

Ms Flint: Yes. I was going to read an opening statement, if that is all right. We appreciate the opportunity to present here today. I want to focus in my opening statement on three main points. We have more substantive issues in our submission. The key points are, firstly, that we support wholeheartedly the reinstatement of community objection rights proposed in this bill; secondly, that we support the identification of restricted land, but believe that the distances involved are not sufficient to prevent undue impacts on landholders; and, lastly, we believe that the bill should go further and amend a number of other measures contained in the Mineral and Energy Resources (Common Provisions) Act, particularly the opt-out agreement provisions.

In relation to community objection rights, we believe that the importance of community objection rights has been highlighted recently during the Oakey Coal Action Alliance challenge against the New Hope Acland stage 3 expansion on the Darling Downs. The hearing is still continuing, but the case to date has already revealed new and important information and led to revisions of key facts on which the government must base its ultimate decision as to whether to grant a mining lease for the project.

CHAIR: That is open to the public, is it?

Ms Flint: Yes, it is public hearings. In relation to jobs, under cross-examination the New Hope economic expert admitted that the company's jobs claims had been overestimated and that the mine would also damage local employment in agriculture. The initial EIS estimated an average of 2,953 jobs per year, but during the hearing the New Hope expert in court revised this down to 680 jobs or fewer.

Similarly, the hearings provide an opportunity to reveal more accurate information about the benefits of the case to Queensland taxpayers. For example, it has led to the disclosure of royalties that are likely to be paid by New Hope Coal. In court, New Hope's expert had estimated that, of the total $596 million in royalties predicted from the project, just $39.9 million would go to the state government and, hence, to Queensland taxpayers. This restricted royalty flow is the result of the dominance of pre-1910 property titles in the area. Where that occurs, the royalties flow to the landowner, which in this is mostly New Hope Coal itself. Largely, the royalties from that project will be going to the company rather than to the government.

Lastly, the hearing has identified significant sources of uncertainty in relation to groundwater impacts. It is notable that this type of very crucial information did not emerge from the EIS process, or the Coordinator-General's report, or prior to the grant of an environmental authority for the project.

Therefore, we believe that this indicates again how important community objection rights are, for really three reasons, because Queensland has a quite permissive mining approvals process, which generally leads to approvals for almost 100 per cent of projects, and has relatively weak processes, which are driven by and based almost solely on the information provided by the proponent. Land Court hearings lead to a degree of rigour in relation to the factual aspects of the mining project, which would not otherwise be exposed through standard approval processes. Lastly, the exposure of new and important facts and information through the Land Court provides a more factual and rigorous basis on which the Queensland government can then make a decision that properly weighs up the costs and benefits of a project.

In relation to restricted land issues, we put substantive concerns and issues in our submission, but I want to really highlight the new scientific evidence emerging from the USA in relation to the impacts of unconventional gas mining on human health, which raises issues about the kind of offsets that are being applied particularly to homes and residences. There has been, particularly in the last year, a growing body of health evidence included in peer reviewed papers in relation to health impacts. One notable one is the Washington County study, which found that rashes and upper respiratory problems were more prevalent among people living less than one kilometre from gas operations and a University of Pennsylvania study, which analysed 95,000 inpatient records and found that proximity to gas operations was associated with increased rates of hospitalisation and significant associations for cardiology and neurology.

In relation to restricted land, we believe that it is a step forward, but we do not believe that it goes far enough. We believe that the restricted land buffer distances should be longer, they definitely should be expanded somewhat and that pipelines should not be a prescribed activity that is exempt from restricted land constraints.

By far our greatest concern with the bill is the failure to address many of the other aspects of the Mineral and Energy Resources (Common Provisions) Act. Our greatest concerns relate to opt-out agreements, which we believe represent an erosion of landholder rights and will provide an avenue for gas companies in particular to put extra pressure on landholders to accept weak uncodified agreements instead of conduct and compensation agreements.

It is not just us saying this. Shine Lawyers in its submission to the original MERCP bill made it very clear that there was nothing good for landholders in the opt-out agreement framework and that there was a grave risk that they would be railroaded into signing things that would not offer them any protection. There are a number of other changes—very detailed—introduced by the MERP Act which Shine Lawyers listed as leading to an erosion of landholders' rights in the access negotiation process. Given the pressure and stress that a lot of landholders are under already through these process, we do not believe that any further erosion should be happening at this stage. We would like to see those restored to ensure that there is no weakening of landholder rights in that process and that they are not put in an even worse bargaining position than they frequently already find themselves in.

Finally, in relation to the changes to public notification procedures in the bill, we do not really have a clear view of what the department is trying to achieve with those. Community groups find it difficult to do repeated submissions. It is a lot of work and effort. We do not necessarily want repeated submission periods on the same project but we would like the overall time available for people to comment to remain. In that case, when they get a submission period and the EIS and the EA, we would like the full total of that to remain, whether it is at the EIS stage or the EA stage. Thank you.

CHAIR: Thank you. You have just spoken about the massive erosion of landholder rights. Could you expand on that so that the committee has a good understanding of where you are coming from?

Ms Flint: In relation to opt-out agreements in particular? Basically, what landholders find is that there are all sorts of mechanisms and pressure that is brought to bear on them. Obviously, in relation to land access, they do not have the right to say no.

CHAIR: What sort of pressure?

Ms Flint: They get constant phone calls at night, at home, they get told, 'This is your last chance. If you don't sign this today we'll take you to the Land Court.' They get myriad of ways that pressure is brought to bear on them. Other people—

CHAIR: If I treated my staff like that I would be a bully, would I not?

Ms Flint: That is right. You might say that. It is intense pressure. It is constant phone calls at night, at home, people at your door and threats of legal action when you know that you are in a difficult position, because you do not have the same money or legal resources behind you to be able to ward off those pressures. Shine Lawyers put it well. They called it tactics, tricks and pressure to sign documents that are not in their best interests.

The opt-out agreement framework, as far as we can see, broadens that dramatically. I heard the Queensland Resources Council say that it is only for low-impact, early exploration, but, in fact, that is not what the MERP Act does, as far as I can see. It seems to offer a broad opt-out agreement to be used at any time in the process.

CHAIR: Okay. What concerns do you have regarding the public notification provisions in the bill?

Ms Flint: We were concerned that there appeared to be in relation to the mining lease the ability for the minister to reduce the time frame in relation to leases. We were concerned that, previously, there has been a public submission period on the EIS and on the environmental authority. This appears to bring those together into one but it does not extend the length of time available. These are massive projects and incredibly complex documents that the community has to respond to. You will often get 15 volumes of thousands and thousands of pages. Everyone has their lives to get on with and they often have to get expert advice, because they are dealing with water and biodiversity and health issues. We do not want to see any reduction in time, or any discretion to reduce time in any of those parts.

Mr Hutton: We understand that resource companies want to get their applications and approvals done as quickly as possible. That is important for them, but it is equally important—in fact, probably more important for a farmer who is going to be living next door to a coalmine for the next 30 years of his life—that the whole thing gets done right. So they need time for that.

Mr HART: Carmel, the committee is looking at the mining lease applications. That is what the MOLA Bill looks at specifically—not environmental impact statements or environmental authorities. With regard to the opt-out, with regard to timing and things like, I am sure you are aware of the restrictions that the Mineral Resources Act puts on the Land Court as to what sort of criteria can be fed back to the minister. I have just been reading through those. I just wonder, because they are very prescriptive, whether opt-out agreements really, in the case of this particular bill, are that harmful—although, after listening to the some of the people we have been talking to in the last couple of weeks I tend to think that they are and maybe we should just have a deferral situation, as I said to the QRC before. Because of the prescriptive nature of what the Land Court can come back to the minister on, is there any harm in limiting some of these things? That is my question, because everything is covered by EAs and EISs anyway. Do you know what I mean?

Ms Flint: I think so, but in relation to opt-out agreements it is about the one-on-one relationship. It is just about access. It is not about the broader environmental or social impacts of a project; it is about negotiating access one on one. It is an entirely separate issue and it relates to an individual landholder rather than a full project—just negotiating around impacts on their property. That is the scope, which is entirely different from a mining lease application and a mining lease objection process, which brings opportunities for the community to look at the broader impacts on their local environment and on the public interest. That is why it is so important to have both.

Mr HART: The Mineral Resources Act limits the scope that the Land Court can feed back to the minister. It talks about whether the land is mineralised, whether the company has the financial infrastructure, whether they are capable of doing the job—all of those sorts of things. It does not cover a lot of the stuff that the EISs and the EAs cover.

Ms Flint: I believe it does cover land use issues.

Mr HART: It covers some of those aspects, yes.

Ms Flint: It covers the very important issues that landholders would have an interest in in terms of mine rehabilitation, land use conflict. At the moment they run together in the Land Court—the EA objection process and the mining lease objection process. There is no added time impact.

Mr HART: That leads to my next question. I want to ask you a similar question that I asked the QRC. Given that there seems to be a lot of confusion about the separate processes and whether the previous legislation took way objection rights completely to a mine—and some people seem to have in their head that objection rights had gone completely when they were still there for EAs and EISs; this was about mining leases purely—do you think that these things should be running concurrently or do you think that they should run one after each other so that people have a clear idea of where their objection rights or the grounds that they have to object should be?

Ms Flint: I think people have a relatively clear idea. There are not masses of opportunities for objection rights. You have to put aside the land access negotiation which is entirely separate and where a landholder cannot really say no. Objection rights to project approvals, as they would happen under these amendments, basically allow a landholder to object to the EA and the mining lease and that goes through the Land Court concurrently. It is not a hefty impost in terms of time. As far as I know, there has never been any evidence of vexatious complaints. The Land Court already has powers to strike out any vexatious litigation. We have never seen any evidence. Very few communities are able to get enough resources together to challenge a project in the Land Court. Almost all mines go unchallenged and go right through the process. This is for a very small number of cases where the impacts on the environment and the community are so immense that the community feel they have to challenge it.

Mr HART: I do not know about you, but I struggle with the word 'vexatious' and what it means. What do you think vexatious means?

Ms Flint: I can only presume that it means where there are no valid grounds under the law to challenge a case and it is just an attempt to delay or obfuscate on the part of a community group. What we are dealing with here are very large mines with very substantial impacts on water resources, land use, public health. It is a fair thing that such contentious and controversial projects should be subject to objection rights.

Mr HART: How far do you think objection rights should extend? At the moment under the MERCP Bill they extend to adjacent land and land that is affected around the area. How far should they extend? Should they extend for 10 kilometres from a mine? Should they extend for 20 kilometres from a mine? Should they extend to the whole of Queensland, the whole of Australia, the whole world? What is your view?

Ms Flint: Do you mean as to who can challenge?

Mr HART: Who can object?

Ms Flint: We believe in open standing provisions. Any third party who has interest in the public interest impacts and the environmental impacts of a project of that scale should be able to challenge it.

Mr HART: The whole world.

Ms Flint: I think they would be constrained to Australian citizens generally. I do not really know. The laws as they stand currently, as they stood previously to the MERCP Bill, have not led to a huge flood of litigation. If there had been a flood of litigation then perhaps it would be an issue but there has not been. There are so very few mines that are actually challenged.

Mr Hutton: Some of these projects are huge. They are massive projects which have Australia-wide connotations.

Ms Flint: Some will last for 60 years.

Mr HART: If some of these projects are caught up in the courts for eight or 10 years, that is not an issue, you don't think?

Ms Flint: That has never happened.

Mr Hutton: That has never happened.

Ms Flint: They are pushed through very quickly. The Oakey Coal Action Alliance with the Darling Downs objected late last year and court started early in April. In fact, if you look at the length of time that mining projects occur, it is mining companies delaying themselves for their own reasons relating to their corporate interests that leads to five- or six-year delays. The court process takes a maximum of about a year. The actual legal democratic process is small compared to the decisions they make which lead to a lot of uncertainty for landholders.

Mr HART: With regard to restricted land being set at 50 metres and 200 metres, do you have a view on how far that should be set?

Ms Flint: We think it should be more like 600 metres because there is a lot of evidence coming out of the US which suggests that you should not have particularly coal seam gas infrastructure so close to family homes. We think it should be a strict prohibition because at this stage it requires the landholder to consent, but again there is a lot of pressure put on them in order to give that kind of consent. If it were a clear prohibition, that would be a stronger protection for landholders.

Mr HART: I am just looking through the recommendations the Land Court can make to the minister. From a quick reading it does not appear as though the Land Court can respond to health issues.

Ms Flint: I am not suggesting they should. What I am suggesting is that government in this bill has a power to create a precautionary distance that is as best as it could be to prevent impacts from mining right up against people. I think that is the intent of it. If you are going to do that, I would have thought you would take into account the actual scientific evidence that is available at this point as to how you set those distances.

Mr HART: Should that condition be in a mining lease application or should it be in an environmental impact statement?

Ms Flint: At the moment it is nowhere, so we just think you should do it—and this is an opportunity to do it.

Mr KNUTH: When you said 600 metres, are you saying 600 metres from a home?

Ms Flint: Yes, that is right.

Mr KNUTH: Is that coal seam gas or both coalmining and coal seam gas?

Ms Flint: Definitely both. Usually coalmines buy out land within a buffer of about 600 metres, so landholders are usually further removed anyway.

Mr KNUTH: In regard to restricted land, when it comes to bores and stockyards, do you feel that 50 metres is too short?

Ms Flint: We do, yes.

Mr Hutton: Most of the evidence that is coming out about health impacts would put it out much further than 600 metres. You are talking about 10 kilometres away is not a safe distance from a coalmine.

Ms Flint: Yes, but we are concerned about the 50 metres from water bores and other water infrastructure.

Mr KNUTH: Do you have a recommendation of what you think the distance should be—200 metres or 400 metres?

Mr Hutton: From a bore?

Mr KNUTH: Yes.

Ms Flint: The landholders that we have been working with think that 600 metres is a minimum that they would be interested in. Because there was the previous 600-metre rule in relation to adjoining landholders, they see that as a bit of a yardstick. That is something that seems doable and fair.

Mr KNUTH: There is not much evidence of vexatious complaints. If that is the case and you see that that is the case, what was the reason for the MERCP Bill being introduced?

Ms Flint: Good, question. We can only assume. I cannot really make assumptions on that.

Mr Hutton: That is a good question, Shane.

Ms Flint: I cannot really understand why a basic right for communities to object is a problem. We cannot understand that.

Mr KNUTH: Your constituency see the MOLA Bill as a step in the right direction.

Ms Flint: Yes.

Mr KNUTH: It just needs a few adjustments.

Ms Flint: That is right.

Mr Hutton: With regard to distances especially.

Mr KNUTH: You had concerns with the opt-out agreements. What is the reason for those concerns? Rather than going through an objection process through the Land Court, what other options do you feel are best to negotiate between a mining company and a landowner? What are your concerns about opt-out agreements?

Ms Flint: Our concerns about opt-out agreements are that they do not really codify in any way or provide any backup protections for landholders, so they are open to be pressured into signing things which are incredibly weak. The concern there is that they will end up much worse off. In terms of going to the Land Court versus one-on-one negotiations I think you were talking about—land access negotiations—they are very separate things. Both are required because they deal with the project on different scales. The land access negotiations are on the property scale and the objection to the approval is on the scale of the whole approval and its overall impact. They are separate and both important. We believe that landholders should have a clear right also at the land access stage to say no to mining and to reject access. At the moment they really cannot do that. They are forced to negotiate under often very difficult circumstances. We think that if you were going to take a step to dramatically improve the situation for landholders you would look at that land access process as well and strengthen it for landholders rather than weaken it.

Mr MILLAR: Carmel, you mentioned before about tactics by mining companies. Do you have any proof of that? Is that hearsay? Is there proof that there are tactics where people end up having a knock on the door at night-time, as you said?

Ms Flint: Certainly a lot of landholders talk to us about it. We could document them. I have not documented them, but we could give you some examples in writing.

Mr MILLAR: Is there proof out there that that is happening?

Ms Flint: There is proof—

Mr Hutton: If you ask landholders.

Ms Flint:—if you ask landholders.

Mr MILLAR: I have asked the Resources Council about vexatious claims. I have asked them to give us some evidence on that. I am asking the same thing to the Lock the Gate Alliance. Do you have any clear evidence that that is occurring?

Ms Flint: We certainly have landholders' statements to that effect.

Mr Hutton: We have not chronicled them in a report. We could do so if you want to follow up on that.

Ms Flint: We could provide some information.

Mr Hutton: We are more than happy to. We could get dozens of landowners to give you examples and not just in coal seam gas by the way; in coalmining you get the same thing. The agents come in. The land access people come in. They look around a community. They go especially for an old couple who do not have kids that they can pass the farm on to and who are desperate to get out to a place with better health services or whatever. They offer them three times what the property is worth. That immediately sets up divisions in the community. The landowners then start thinking, 'I don't want to be the last one left.' Every time you go out from there the price for the property goes down. The last person to get a buyout of the property gets it at less than market price. Then the worst place to be is the one who is left and does not get a price at all. They have to live right next to the coalmine. The whole thing is set up so that you divide the community. You get them competing with each other instead of against the company itself.

Mr MILLAR: Do we have proof of that?

Mr Hutton: Once again, if we went and talked to people who have been subjected to this, yes, we could do that. It would be a time-consuming process. We have not done it yet.

Ms Flint: There are plenty of submissions that people have written to various inquiries where landholders have documented what has happened and how they have been treated. We would be happy to pull a few of those out and submit them.

Mr MILLAR: Yes. I would like to see some proof of vexatious claims.

Ms Flint: I do not think you will find any on that.

Mr MILLAR: You can see where I am coming from. There are two arguments always out there.

Ms Flint: Yes, absolutely.

Mr MILLAR: I would love to see them on paper.

Mrs LAUGA: Can I point out, member, that there is a big difference in the time? The Lock the Gate Alliance is run by volunteers. At the Resources Council people are paid to put these things together.

Mr MILLAR: If they can, it would be great to have that proof there from both sides.

Ms Flint: We are happy to have a look at that.

Mr Hutton: We will do what we can. I think it is a worthwhile project.

Ms PEASE: Were you involved in the review of the legislation in terms of the consultation process?

Ms Flint: With the department, yes, we were. We appreciated that. It was really good.

Ms PEASE: What I wanted to ask you—the member for Gregory has already talked about this—was what experiences have you had with landholders who have engaged with you and their relationships with the resource companies who have the mining lease? Have the landholders felt that they have been in a position where they have been able to negotiate?

Ms Flint: No. A lot of the landholders who come to us are very stressed. They feel like they have no options. They are often at the end of their tether. They feel harassed and bullied. They do not feel that they have anyone they can turn to who is an advocate for them.

Ms PEASE: Are they aware of their rights and what options they have open to them?

Ms Flint: They do not have that many rights under the land access laws.

Mr Hutton: Where they do have rights it is a matter of enforcement by the regulatory authorities too. That is just not all that forthcoming. The department is not all that well resourced. There is a culture in the department anyway of not enforcing the regulations against mining companies. People who have to live next to a coalmine, for example, are constantly harassed. Whether they were not told that something is going to happen or they worry every time there is a big downpour and what is going to come down the local creek, it is just a matter of how much stress you can put up with over a 20-year period.

CHAIR: The time for this session has expired. Thank you for your time.

Mr MILLAR: There were a couple of things they were going to get back to us with, if they can.

Ms Flint: Yes, definitely. We will get that back to you by—

CHAIR: Next Wednesday.

Ms Flint: Yes, we can do that.

STORK, Mr Tim, Legal Counsel, Planning Environment and Property, Ergon Energy

CHAIR: I welcome Mr Stork from Ergon Energy. Do you have an opening statement, Tim?

Mr Stork: I do.

CHAIR: Please proceed.

Mr Stork: Ergon has frequent interactions with resources tenures. It is common for a tenure to be proposed in an area where we have substations or lines or both. Many tenure holders are also our customers. We strive to work very cooperatively with them. We would love to connect them and give them supply to the network.

We have had mixed experience on some occasions with proponents of mining leases near our infrastructure. For the vast majority of the time mining companies are very proactive in engaging with Ergon early in the process where they might wish to mine under or around infrastructure. Sometimes they propose works above ground that might have an impact on, for example, an access track or a pipeline or things like that. Small things can actually have an influence that was not necessarily thought of at first. We have entered into co-use agreements with a number of resource entities about how we will interact with each other on the tenures around our lines and substations.

We have had a few—and it is only a few—examples where entities are less proactive in their engagement. What we have found is that in those instances the ability to object to a mining lease provides a trigger to ensure that negotiation occurs over how mining will progress. Without that right we found that there is not a level playing field effectively because we are negotiating with one arm behind our backs. There is no incentive really to negotiate. I should emphasise it is the minority of instances; it is only a few instances.

We do acknowledge that we are a big company and we have rights at law. We could sue for damages. We can get injunctions and things like that. Our experience is that those are all reactive rights. We really do not want to do reactive things for what is essential community infrastructure.

To put this into some context, we have had some dealings where we have said, 'We think additional protections are necessary to ensure infrastructure is protected during mining.' Without an objection right those protections might not have been put in place. Ultimately they were and mining ultimately proceeded in a different way to originally proposed and in a way we think better placed the infrastructure in terms of not being at risk. This infrastructure might supply other mines in the area, townships, rural areas and things like that as well.

I should emphasise that we have never been to a hearing—I do not think we would ever want to go to a hearing—on an objection. It does not mean we would not if we absolutely had to. I think it would be very surprising if we ever did.

It is probably important to understand the tenure that Ergon has over land. Where we have a substation it is pretty much a freehold block of land or it is a reserve or a deed of grant in trust or something like that—we are effectively an owner under the legislation. Larger powerlines or higher voltage powerlines typically have an easement, but there are many lines where there is no easement whatsoever. We would rely on statutory rights under the legislation that protects those lines and our right to be there.

What that means is a few things. Firstly, it means that there is no right to a compensation agreement. That, in itself, is not a big deal, but it does mean that we are not triggered for any objection rights as well under the common provisions legislation. It really means that the only instance in which there is an objection right is where there is a substation on land because that is where we are an owner of land. For lines we are no longer an owner under the legislation because we do not own the land underneath.

We are very pleased to see in the bill the reinstatement of objection rights. It provides that trigger to effectively provide an incentive to negotiate on a level playing field with Ergon about a co-use agreement. We have a standard form co-use agreement that we use.

One thing that did come through to us when we were reviewing the bill was that where we have significant powerlines on land we will not get a right to be notified directly of a proposal because we are not an owner. Effectively, we would be relying on the newspapers or on our own knowledge of the area and discussions with customers and things like that. Sometimes that is enough, but it is not fool proof or a trigger for Ergon.

We think there are two pretty simple solutions to this. The first is that electricity works could be prescribed under regulation for the definition of restricted land. We think that is pretty consistent with the regime for restricted land which is designed to protect significant or important pieces of

infrastructure. We think ours probably meets that criteria. Secondly, the replacement of the uncommenced section 252A of the common provisions act required notice to an entity that had infrastructure wholly or partially on the land the subject of a mining lease application. That actually covered Ergon, but of course there was no objection right that came with it. The notice was good, but the lack of objection right was not good. We would prefer the provision in relation to notice stay, but that it be coupled with an objection rights.

Mr HART: Is it removed under MOLA?

Mr Stork: That was my understanding, yes. Our view is that that direct notification right should be retained. We would be happy to work with the department on drafting around that sort of thing if that is of assistance to them. In our submission we outlined a sensible approach to working with resources entities but also protecting community infrastructure that ultimately provides other resources entities and communities with power.

CHAIR: Do you have a situation at the moment where you have a powerline corridor that runs through a mining operation?

Mr Stork: There are plenty of instances where they do, yes.

CHAIR: What is the relationship like between you and the responsible company?

Mr Stork: There are probably three types of relationship. The first is the mining company will come to you and say, 'We want to do this. We think it could actually impact your infrastructure. We would like to work with you. Here is our report that says this is what it is going to do.' Primarily we are concerned about things like ground movement that might make a pole unstable or things like that. They have a fair bit of tolerance in them, but the concern is around over ground movement primarily. Those are proactive approaches. We have had examples of that and that works fine.

There have been instances where we have been able to negotiate about how those sorts of things might happen. That is probably the second example. We have had instances where we have really had to push very hard to ensure that the protections that we think are necessary are put in place and information is given. I should say that the majority is certainly the proactive approach. We are concerned primarily about the small number of instances where it is not the approach.

CHAIR: Why are you concerned?

Mr Stork: Effectively, we would not want the poles to fall down. They may not. The mining company might be right. We would like to be proven—

CHAIR: What do you do to ensure that they do not?

Mr Stork: In those instances?

CHAIR: Without the restricted land either side of the line or in proximity to the mine itself—

Mr Stork: It can vary. Going forward it is about an objection right in order to get a co-use agreement in place that will set up a framework going forward. Where we have not necessarily had a co-use agreement in place it is about having a good working relationship—and we do—with the resources holder and ensuring that we enforce the rights that we do have or point out the issues that we might see coming from a proposal. In terms of the submission on the legislation, we saw this as an opportunity to ensure that that framework can be put in place going forward for all instances.

CHAIR: Do you have an ideal distance between your corridor and the mining operation?

Mr Stork: There really is not. It depends how they are going to do it. They can demonstrate that there will be no impact from mining right up to next to a pole in some instances. It depends on the strata, I think. This is a lawyer talking about geology. That is my understanding from this. Anything is possible in an engineering sense, but it does depend on the individual situations. We would not necessarily prescribe a particular distance. We would want some sort of geotechnical engineering report that would prove one way or the other whether or not a distance is safe. That is what we have done.

CHAIR: It is pretty important to you?

Mr Stork: Yes.

Mr HART: My understanding from the legislation is that a water supply would be protected if there were a dam on one corner of a property and then a big water pipe going to some other place on a property. Are you saying that the electricity supply is not?

Mr Stork: Would that be protected as restricted land? It might be protected as restricted land because it is—

Mr HART: There may need to be a make-good agreement on that water pipe. That may be part of the legislation.

Mr Stork: My suspicion is that that comes about because the owner of the land is the owner of the pipeline and the water supply whereas we do not have that benefit because we do not own the land. For a substation, yes. The substations are very concerning if it happens.

Mr HART: Would that circumstance be protected under the regional interests bill at all, do you know?

Mr Stork: No, I do not think so.

Mr HART: If it were to be restricted land I would see a need for ministerial discretion to either approve that if it were missed in the process or to remove it if that electricity supply were relocated. One of the things I think this bill does is take away that ministerial discretion. Do you think that the minister should have discretion over these sorts of issues?

Mr Stork: I guess the position is that we would not think it would be necessary. If it were possible—and I cannot remember whether it is—to pull restricted land back into a mining lease then that would be fine by Ergon Energy, provided there was consent from—

Mr HART: I do not think there is any retrospective suggestion here for restricted land.

Mr Stork: I guess the way we would see that is that if there is an agreement with us that works on restricted land we are big enough and ugly enough to look after ourselves. We are not worried about being able to get agreement or not. If there is agreement on it then we would have no objection to it being in the mining lease.

Mr HART: Thinking logically, if you have power going through the middle of a coalmine it would be better if it were relocated rather than restricted, would it not?

Mr Stork: In many instances, yes. It is would be simpler for everybody but it may not be cost effective. It can be quite costly to move powerlines.

Mr HART: I think you have made a good point, Tim, and we will certainly consider that.

CHAIR: Do you have any other concerns with the bill itself?

Mr Stork: No, it is literally just that it would be useful to retain that right to be notified and to include lines as part of restricted land.

CHAIR: How do you find out at the moment?

Mr Stork: It usually comes through the team that specifically deals with what we call major customers. The resources companies are major customers. We find out about it because they come to us to say that they need supply at some time in the future and we say, 'Let us talk about how we work through these things as well.' We might find out about it that way. That is generally the way it comes through.

CHAIR: You do not have any major disputes with the companies at the moment?

Mr Stork: No. There is a matter before the courts, but we are not an active participant in that proceeding anymore.

CHAIR: Thank you very much for that, Tim. That was good.

Mr Stork: Thank you very much for your time.

CHAIR: It was something we did not realise.

HOGAN, Mr Bernie, Regional Manager, Eastern States and North Territory, Association of Mining Exploration Companies

CHAIR: I now welcome Mr Bernie Hogan. Do you have an opening statement?

Mr Hogan: I do. Thank you for the opportunity to appear before the committee's inquiry into the MOLA Bill. For those members of the committee who may not be aware, the Association of Mining and Exploration Companies is the national peak body specifically representing mineral exploration and the mid-tier mining companies in Australia. The membership of AMEC comprises hundreds of exploration companies, the emerging miners and the companies that service them. Many of those organisations obviously operate here in Queensland.

AMEC has taken a keen interest in the changes of the mining policy in Queensland with the passing of the MERCP Act and now the following MOLA Bill set to repeal and reverse some the policy positions. AMEC members in general are dismayed at this situation after extensive consultation with all parties was undertaken prior to the MERCP Act and very little with the mineral exploration and mining industry for the reversal under the MOLA Bill. The Department of Natural Resources and Mines definitely invited AMEC and the wider industry to information sessions on the changes that would occur under MOLA, but those sessions were essentially delivered as a fait accompli to many of our member mines, as the proposed bill was based on election commitments that would be delivered regardless of support from the mineral exploration and mining industry. As such, I would limit our comments to three areas.

Objection rights and notification rights: unsurprisingly, the return to the broader objection rights is of great concern to developing miners. Whilst AMEC is aware that the more targeted objection rights for directly affected landowners have not commenced, it was a policy intent that was thoroughly supported by the industry. Project proponents are well aware of their responsibility to develop a productive working relationship with affected landowners. However, the unintended consequence of the more expanded rights is that it allows the Land Court to be used as a stalling tactic for any antidevelopment campaigners. AMEC recommends that the government should not allow a vocal minority to affect the broader economic development in Queensland and stop those providers of regional jobs from developing projects. The granting of a mining lease is only possible after exhaustive and thoroughly rigorous assessment processes, including the obtaining of an environmental authority, where objections based on the effects of those proposed projects on the surrounding community is best considered in our opinion.

Restricted land: as with notification objection rights, AMEC encourages the formation of those good relationships with its neighbours and all the industries. The changes outlined in MOLA to repeal the ability to grant a mining lease over restricted land was based on the opportunity to reduce costs, administration and duplication for the government, landowners and proponents. It should be noted that the intent was that mining activity still could not occur in restricted land without landowner consent. AMEC understands that by allowing the mining lease to be granted it would reduce the number of additional administrative processes that had to be undertaken at a later date, should that access be agreed. Mining lease applications are time consuming expensive exercises for all concerned and AMEC suggests that the policy intent can still be achieved by leaving the MERCP provisions in place.

Finally, overlapping tenures: the MERCP Act sought to enact an overlapping tenure framework between coal and gas titleholders in Queensland. This had been a longstanding issue that, after extensive communication for several years, was actually looking like it would land in a cumbersome yet workable arrangement. AMEC would seek that these provisions pass to ensure commercial arrangements between the production titleholders can continue with some certainty. As noted by the department, these amendments were largely uncontentious, but supplied a framework for companies to work within.

Certainty and clarity are the lifeblood for our industry. In the economic conditions that we are currently experiencing, with depressed commodity prices and limited investment available to new explorers and mines, AMEC recommends that we shoot for certainty rather than a repetitive changing of policy, if it can be achieved.

CHAIR: Thanks for that. What aspects of the bill does your organisation support?

Mr Hogan: Parts of it we do, particularly—sorry, that is not fair. I think those three areas are the areas that we have most concern with and I would rather stick to those areas in there.

CHAIR: I would like to know what you do support in the bill. Not much?

Mr Hogan: Not much.

CHAIR: What is your view of the proposed amendments to the notification and objection provisions in the bill?

Mr Hogan: We understand that basically it is perpetuating what is currently in play. We supported the more targeted objection rights under the MERCP Act, that the directly affected landholders should have a right to objection. We understand that. The broader objection rights we do not support. We think it has too many unintended consequences. It is too broad to allow people to object to a mining proposal. I suppose it enables them to object on an ideological ground rather than on the effect that that mining proposal may have on the local community.

CHAIR: Do you have a definition of 'directly affected'?

Mr Hogan: We always worked on the directly affected landowner where any mining proposal might happen and the adjoining landowner, the first neighbours of the contiguous land around it where they would be affected.

CHAIR: If you put that in place, what about a person who lives five kilometres away, on a creek where the flow is affected by the mining operation?

Mr Hogan: That would be affected, I would assume, when they have to do an environmental impact statement. We see that, under the Environmental Protection Act, should be considered under the environmental authority, rather than the mining lease, the title itself.

CHAIR: Do you have much interaction with landowners themselves or are you just talking to those companies that fall under your organisation?

Mr Hogan: We talk to some landowners. Obviously they are not members of ours, though.

CHAIR: So what would draw you to talking to a landholder?

Mr Hogan: In a public forum or something like that. As AMEC, they are not our key stakeholders, obviously.

CHAIR: Would it be fair to say that you do not really have a good understanding of how things operate on the land and how people feel they can be affected?

Mr Hogan: Personally, no. I come from a farming background myself, in Mirani. However, as an industry organisation, that is not our representative; I agree with you there.

Mr HART: Bernie, do you think that, with the process that is involved with EISs, EAs, mining leases and water legislation, people are confused by the multiple stepped process?

Mr Hogan: It is a double-edged sword in that it is complicated; absolutely, it is complicated. However, it has to be rigorous to allay fears of other stakeholders. As I said, AMEC is very keen on a good neighbour policy. We cannot just turn around and say, 'Yes, it's fine'. We do have to give opportunity. What we do not want, and it is something that the Minister for Natural and Resources and Mines says all the time, is that people can have their day in court but not their four years in court. It concerns us greatly that every opportunity can be taken—that is not to say it is always taken—to delay a good project. Eventually, that investment will become unattractive. Queensland cannot afford to do that if we want to have a mining industry that supplies jobs, royalties and economic opportunities in the future.

Mr HART: The Queensland Resources Council said that issuing a mining lease was only one step in a multiple stepped process. How important a step is a mining lease to a landholder?

Mr Hogan: I am sorry; I do not know if I can comment for a landholder.

Mr HART: The whole process is obviously important, but let us look at objection rights to the whole process. Say a coalmine is going ahead. How important do you think the actual issue of a mining lease is versus an EIS, an EA, water requirements and all those sorts of things, including heritage?

Mr Hogan: I would expect that it is of significant interest to them, absolutely, because without that mining lease nothing can go ahead. To the affected landholder, as well as the landholders around them, we see that as a significant issue. We tend to quickly go to a coalmining lease and we have to consider here that this is going to affect somebody who is doing a small goldmine or a sandmining lease. We cover all commodities; we do not cover oil and gas, but all other commodities. I encourage the committee not to get stuck on an open-cut coalmine, because that is a completely different thing to a lot of the hard rock mineral mines, which have a completely different footprint and different effect.

Mr HART: With regard to restricted land, say somebody has a house in the middle of a property and this legislation says that you cannot go within 50 metres of that. Why would a mining company need to go within 50 metres of somebody's house? Can you give us some examples?

Mr Hogan: It is very difficult. I would struggle to do that with some sort of voracity. The way we look at that part of the bill is that essentially, as you say, if it was over an area that was given to a mining lease it becomes a Swiss cheese effect, that some restricted land was taken out of that mining lease.

Mr HART: So it is the accumulative effect, not necessarily the—

Mr Hogan: The individual effect. If it becomes that Swiss cheese effect, at some point in the future if access is granted or the landowner sells the property or whatever it may be, which would often occur, then an additional mining lease would have to be applied for, for that small area which is already surrounded by a mining lease. We see it as duplication.

Mr HART: This bill takes away ministerial discretion to extinguish restricted land. What are your thoughts on that?

Mr Hogan: Specifically, we do not have a policy on that. On most occasions we think it is necessary that there is some way of having an appeal to a minister for a company. Yes, we would support it.

Mr HART: You would support ministerial discretion?

Mr Hogan: Yes, we would support ministerial discretion.

Mr HART: On the subject of overlapping tenure issues, can you give us an example of where they may be a problem between coal and gas?

Mr Hogan: Certainly. This was a very long process to arrange or get a framework that may work. The Surat Basin is the most obvious one, where both coal seam gas and coal had tenures overlapping, where it is production tenure. As you could imagine from the name 'coal seam', it is where the coal is as well. If you mine one before the other has had a chance to extract, that becomes a commercial issue for the overlapping tenure. There were many occasions in that area where it became a very contentious issue over who applied first, what level of production they were up to. We needed that framework to say if they are both overlapping and there is a time frame, it cannot be 10 years in arrears that somebody has put another tenure across a coal lease. There is a time frame in there and then they have to work together to get a co-development agreement. The Surat is a perfect example of that.

Mr HART: I can see the issues.

Mr Hogan: It becomes a real commercial issue. It would end up capturing one of the resources, one way or another, if the decision was one way or the other.

CHAIR: What would your organisation do to address those issues?

Mr Hogan: We work very much with the other stakeholders on the overlapping tenure framework that was put forward. We are comfortable with that. Our organisation does not represent gas, so obviously we were leaning on the side of the coal operators. It is that coexistence. We believe that coexistence can work for many different industries. That is where there had to be a framework. The good thing about that framework was that if the two companies had a commercial arrangement and they could figure it out and make it work, fine. This was the default position and we liked the idea that there was a default and that it had to be sufficiently uncomfortable for both to encourage them to actually work it out prior to you having to fall to that default. We thought that was a good arrangement.

CHAIR: Positive.

Mr Hogan: Positive arrangement, yes.

Mr KNUTH: With regard to the positive arrangement, how would that really exist if there is no legislated framework there?

Mr Hogan: We support that framework. We want that framework in there. Without it, it would be very difficult and protracted. It ends up being where we were before, and it particularly affected our small coalminers. A lot of people envisage coalminers as very large companies with big yellow pieces of equipment, but they are often small explorers. A lot of the exploration and production is done from very large companies, and they have a lot bigger space when it comes to a petroleum lease. It is just by nature they are larger, so it may pick up a small coal company in that lease. We found that our members, the smaller coal companies, would really struggle to get access because they would be fighting against a larger gas company who had time, money and resources to work their way through it, and it became a very contentious issue which we hoped this framework would solve.

Mr KNUTH: If you are fighting against a larger company with regard to access, but when it comes to access to properties that will affect landowners, how do you negotiate with them without having legislation there to support them?

Mr Hogan: The landowners?

Mr KNUTH: Yes.

Mr Hogan: There should be an access arrangement and we believe that still has to continue on, but we are saying we support that there is a framework with the directly affected landowners. The example I was talking about there for overlapping tenures, which is two resource companies, that was the issue that we had there. The smaller companies would be outlasted and essentially often would run out of cash.

Mr KNUTH: Do you see that the MOLA bill goes too far with regard to a framework for negotiation with landowners that may be impacted by your smaller mining operations?

Mr Hogan: We say that they have to negotiate, but we think who has an objection right should be defined rather than broad. Are we talking about overlapping or objection rights?

Mr KNUTH: Objection rights.

Mr Hogan: With regard to objection rights, our view is that it should be the directly affected landowners and those neighbouring. They should have the opportunity to object against a mining lease which is over their property, because that is who we see as being directly affected and not someone who is objecting to the mining lease. Not under the Environmental Protection Act; I am talking about with the mining lease. To get a title, we think it should be negotiated between those directly affected.

Mr KNUTH: With regard to Lock the Gate and the Environmental Defenders Office, they indicated that there is no evidence of vexatious complaints anywhere and they have not fought a vexatious case. If that is the case, what would you be worried about?

Mr Hogan: I had a very long discussion when the MERCP act was brought in—I have a funny feeling you were in the room—with our now Deputy Premier about this exact vexatious claims point. They put forward that information that there has been something thrown out as a vexatious claim, but that is what I was saying with regard to the Land Court being used as a slowing technique. It can be on a different point of law each time and whether it is ignored or progressed, it takes up time and money. For a mining company which has limited resources, the object is to outlast them. It is a tactic that has been written. We have seen it from the Greenpeace document, which I am sure the QRC has put in front of you already. We understand that. Absolutely it is our members who say that they face this on a regular basis. I cannot tell you, 'Here is a vexatious case. This one has been thrown out.' We all know that. That has never been proven.

Mr KNUTH: It is about how to resolve the issue of a mining company that has an impact on the bores, the stockyards and the homes, and what sort of agreement can be put in place when you do not have these mining companies that are prepared to enter into a proper negotiating process.

Mr Hogan: We say they should be entering into a proper negotiating process in good faith. The restricted land outlines specific farm infrastructure. I think there is probably good clarity around that. Our members can then go, 'Okay, we understand what is being claimed as restricted land. That makes obvious sense.' Those rules of engagement are the only way that you are going to have the good working relationship that we are talking about, but what we say is that it has to be with the people who are truly affected.

Ms PEASE: Can you provide me with some clarification as to why you believe that properties in the immediate vicinity are the only ones who are entitled to object and not neighbours?

Mr Hogan: We said neighbours. Those ones and those immediate neighbours.

Ms PEASE: Why not the neighbours further down?

Mr Hogan: I think it comes to a point where you have to draw a line on the mineral titles. When it comes to an EIS and the environmental protection, we think that is the more appropriate place for that discussion. It is a policy decision. We as an organisation believe that the people who are directly affected on the title, not necessarily in the environmental, should be the ones, because the further away—

Ms PEASE: Could the neighbours further away not be affected as well?

Mr Hogan: I would imagine that is where it should be covered by the environmental protection.

Ms PEASE: I am talking about with the mining lease, the ML.

Mr Hogan: It would depend on the actual location.

Ms PEASE: Potentially they could be.

Mr Hogan: It depends on the location. If it is an underground mine, there would be a very different set of circumstances. It may be that you find another key stakeholder such as the local government saying there is increased traffic. I do not know. There are a lot of different variables here so I cannot say yes or no. Maybe I sound evasive, but I cannot say yes or no.

Ms PEASE: I think there seems to be a lot of emphasis put on the fact that it is only the people where the mining lease is going to impact and their immediate neighbours. I am just trying to understand why it cannot be expanded out further.

Mr Hogan: The 'further' is the problem, I suppose. If you draw a line at 100 kilometres, people at 102 kilometres are going to say, 'Hang on, why can't we?' We went through a lot of this discussion. If you make it five kilometres, that is too small in some areas because you are all on one actual property. By giving a number, it will never make one size fits all. It just does not work with a place as large as Queensland. That is why we eventually had to draw a line at how you effect it. By opening it up completely, our biggest concern was that somebody in Adelaide can object to something in the Bowen Basin on ideological grounds. That is what we are most concerned with. Does that make sense?

Ms PEASE: Yes.

Mr HART: Where does the ideological ground fall into the places that the Land Court can recommend to the minister that an objection has been carried forward?

Mr Hogan: Sorry?

Mr HART: There is a list in the MRA that gives what the Land Court can come back to the minister and make recommendations on. Where do ideological grounds fit into that?

Mr Hogan: It can be presented saying that there is an issue in a court of law saying whatever the line is. Very often you will see that an objection is put forward and it goes to the Land Court, and there will be one area that is to be heard which falls within those. There may be others that are attached to it, but they must each be mentioned and heard, and it takes up time in the Land Court even if the Land Court says, 'That will not be progressed and we will go with the main objection.' This is what our members are concerned with. There may be one main objection that they need to handle, but anything else in there is going to just take up time. If you are a small mining company that is legal time, that is preparation time and time that you are not attending to your business.

Mr HART: You were asked about vexatious claims before. Do you think they are subjective and that something can be vexatious in somebody's mind but not in somebody else's?

Mr Hogan: Yes, that is exactly going to be the problem. I agree with you.

Mr HART: Is the definition of what is vexatious and what is not something the committee should be looking at as far as the Land Court goes?

Mr Hogan: I am not a lawyer and I do not want to comment on that. I think there is a case to be made about what would be regarded as vexatious, but it also has to do with how the Land Court can handle things. If something is presented to the Land Court, it must hear it and make a decision. That ties up time. Things moving quickly through the Land Court is another thing that AMEC does speak with the Queensland government about and how we can ensure that the Land Court is working efficiently and fairly amongst all participants. That is the problem. If it is tied up it just drags on, and that just drains money out of a small mining company.

Mr HART: Going back to overlapping tenure for a second, this bill tweaks some things that the MERCP did. Do you agree with those tweaks?

Mr Hogan: Which ones specifically? It is such an omnibus bill.

Mr HART: Is there something in there you do not agree with?

Mr Hogan: Not drastically. We have heard nothing from members who have come forward and said, "Throw that out' or 'Stay with that.' They want to keep that framework alive and working. Whilst, as I said, it was cumbersome, it works in that they have a rule book to work with and to start with as a baseline. They want a rule book to work with. Not necessarily that they are all going to be carbon copies, because it is a commercial arrangement, but they can have that going forward.

CHAIR: Do you think that as a committee we should get a good understanding of the difference between a small mining company and a big mining company? I see where you are coming from with the small mining company, which can be a quarry or anything like that; is that right?

Mr Hogan: We do not represent the quarries. We call them extraction industries; that is what we call a quarry. When we talk about midtier miners—or people may call them juniors—our definition tends to be a company that is perhaps only Australian based. It is the more entrepreneurial company, one that cannot offset its operations here in Australia with operations offshore. You will tend to find they may only have one or a few mines here in Australia, and the effect of Australian conditions is the absolute lifeblood of that company. It is hard to give you a market cap. They will be ASX listed most probably. Market caps will vary extraordinarily from millions to probably in the low billions. I know that sounds like an enormous amount of money, but in a mining company that is really not when you consider that multinationals are much larger.

CHAIR: In some circumstances you could say it is the difference between an elephant and a mouse.

Mr Hogan: You also have to understand that exploration is something that is very different again. An exploration company derives no profit. It has probably raised money on the ASX or from some very entrepreneurial backers if it is a private company. They go and find the deposit. Ninety-five per cent of the time they will not be the miner. They will find it and sell that deposit on if it is not economical, because I think it is one in every 10,000 drill programs that actually finds an economically viable deposit. It is pretty low odds, but as you can imagine these guys are very committed. An exploration company is very, very different to a mining company.

CHAIR: Some submitters expressed concerns that landholders may be bullied into signing opt-out agreements and thus give up certain rights. What is your view on that?

Mr Hogan: I really dislike the term 'bullied' into an opt-out agreement. We are one of the major proponents of an opt-out agreement. We think they are very beneficial where there is a well-informed landowner and an explorer—it would be an explorer who would be in an opt-out agreement—who has a longstanding relationship with them and has proven to be a good performer. AMEC and our membership would never support somebody being bullied into anything. That is why we think there should be a framework sitting there—the land access framework—that ensures they have the opportunity to have an opt-out agreement should they feel that they can make that commercial relationship work with an explorer. However, there should be a default situation that the landowner can rely upon to give them a floor of confidence to say that these are the types of issues you should be considering before land access and the conduct you should expect of that resources, exploration or mining company.

CHAIR: A well-informed landowner.

Mr Hogan: Yes.

CHAIR: How does he or she get well informed?

Mr Hogan: Maybe over many years. We have some exploration tenements that have been granted in Queensland for many years—20-plus years. They may have started with that exact same landowner. By the time they come up for renewal seven or eight years down the track, they have an eight-year-old or a 10-year-old relationship. That may be a well-informed landowner. A brand-new one is a different story. That is where we said there needs to be that default for somebody to depend upon.

CHAIR: That is it for today. Thank you for your attendance. I believe that the committee has gathered a lot of information today and some good evidence has been provided. I declare the hearing closed.

Committee adjourned at 10.47 am