INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

Members present:

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

Staff present:

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

PUBLIC HEARING—LAND ACCESS OMBUDSMAN BILL 2017

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 14 JUNE 2017

Brisbane

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Committee met at 9.18 am

CHAIR: Good morning. I declare open the public hearing for the Land Access Ombudsman Bill 2017. Thank you for your attendance here today. I am Jim Pearce, the member for Mirani and chair of the committee. Other committee members here with me today are: Ms Ann Leahy, deputy chair and the member for Warrego; Mr Craig Crawford, the member for Barron River; Mrs Brittany Lauga, the member for Keppel; and Mr Tony Perrett, the member for Gympie. Mr Shane Knuth is an apology today.

Those here today should note that these proceedings are being broadcast to the web and transcribed by Hansard. Media may be present, so you may also be filmed or photographed. The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. Witnesses should be guided by schedules 3 and 8 of the standing rules and orders. Before we commence could you please switch off your mobile phones and other devices or put them on silent mode.

BRENNAN, Ms Deborah, Manager, Environmental Policy and Legislation, Department of Environment and Heritage Protection

BUCHANSKI, Ms Nicole, Deputy Director-General, Policy Division, Department of Natural Resources and Mines

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

REES, Mr Marcus, Director, Resources Policy and Project, Minerals and Energy Resources Policy, Department of Natural Resources and Mines

Mr Hinrichsen: Good morning and thank you, committee chair and committee members, for this opportunity to provide a briefing to the committee on the Land Access Ombudsman Bill 2017. I welcome my colleague from the Department of Environment and Heritage Protection Deborah Brennan, who will be able to answer any questions the committee may have in relation to those parts of the bill that relate to the Department of Environment and Heritage Protection's responsibilities, and that is in relation to make-good agreements under the Water Act. As part of my opening statement I will provide a background and overview of the bill, discuss the components of the bill and outline the consultation that has been undertaken as part of the development of the bill.

By way of background, the Land Access Ombudsman Bill provides for the establishment of a Land Access Ombudsman to investigate and facilitate the timely resolution of disputes about existing conduct and compensation agreements—CCAs, as they are often known—and make-good agreements. These agreements between landowners and resource authority holders are key elements of Queensland's land access framework. They ensure that landholder rights are protected and, where impacts do occur, that compensation is paid in relation to those impacts.

By the end of May this year in Queensland there were 4,798 registered conduct and compensation agreements, and approximately 56 bores have been subject to make-good agreements. The CCAs are a formal agreement between parties associated with the conduct of activities undertaken by resource authority holders and any compensation that applies. A make-good agreement outlines how resource companies will address the impacts on any water bores that are affected by their activities. It is important to note that CCAs are not required if the resource authority has a prospecting permit, mining claim or mining lease. It otherwise applies to other forms of resource authorities. In the case of make-good agreements the framework originally applied only to petroleum resource holders; however, it was recently expanded to include the mining sector. That occurred with the commencement of the Water Reform and Other Legislation Amendment Act 2014.

In addition to the provisions relating to the Land Access Ombudsman, the bill also will save existing provisions contained in the Mineral and Energy Resources (Common Provisions) Transitional Regulation of 2016 that will expire in September of this year.

In relation to the Land Access Ombudsman, the bill gives effect to the government's response to recommendation No. 10 from the independent review of the GasFields Commission of Queensland. That review was led by Professor Robert Scott, a retired member of the Land Court. As part of his review Professor Scott also recommended changes to statutory negotiation processes to do with both CCAs and make-good agreements. Those recommendations have also been supported by the government, and it is anticipated that legislation will be introduced later this year to give effect to those particular recommendations. During the review process Professor Scott noted that, once the dispute resolution mechanisms that are contained within an agreement have been exhausted, the only legal remedy available to resolve a breach of a CCA is to resort to a claim in a court of competent jurisdiction. That process, of course, can be costly and time-consuming for both parties.

In order to assist landholders and resource companies to quickly and amicably resolve these types of disputes, in his report Professor Scott recommended the establishment of an independent statutory office that has the power to investigate and facilitate the resolution of disputes between the parties to make-good agreements and CCAs. In his report Professor Scott suggested that the office be referred to as the land access moderator. As part of the consideration of Professor Scott's report government certainly supported the intent of his recommendation but considered that the best model to deliver it would be through the establishment of an industry ombudsman. While Professor Scott's GasFields Commission review recommendations focused particularly on the on-shore gas industry in Queensland, given the fact that make-good agreements and CCAs apply more broadly beyond just the gas industry, it certainly makes sense that the Land Access Ombudsman should be a service available to all resource authorities which require either a CCA or indeed a make-good agreement.

I would like to take the opportunity to expand a little on what an ombudsman is and, importantly, what an ombudsman is not. I guess the fundamental role of an ombudsman is to provide for the independent resolution and redress of disputes in a fair and timely manner. An ombudsman is not an advocate for any particular party and certainly is not a regulator. The term `ombudsman` originally applied to statutory officeholders who were appointed to safeguard the rights of the public by investigating and addressing complaints about government agencies particularly. In more recent years the concept of the ombudsman has been expanded to include industry ombudsmen such as the Energy and Water Ombudsman that exists in Queensland.

The proposed Land Access Ombudsman will provide a free service to resolve alleged breaches of an existing CCA or a dispute about an existing make-good agreement, so the role of the Land Access Ombudsman is intended to be facilitative and conciliatory in nature. It is about finding resolution. It will not have the power to make binding decisions on the parties. To be clear, it does not operate like a court or an arbiter. It is also important that I emphasise there is nothing in this bill that will prevent a party to a make-good agreement or a CCA from taking the matter to court or, for that matter, formal arbitration if that is their preferred course of action.

The Land Access Ombudsman will be established as an independent body to investigate alleged breaches of CCAs and make-good agreements and provide advice about the parties' position and make recommendations about how the dispute may be resolved. At the conclusion of the ombudsman's recommendation the ombudsman will provide a notice to the parties outlining the outcome of the investigation, and that notice will be admissible as evidence in either a formal arbitration or a court proceeding should the matter proceed to such a hearing. Either party to a dispute may refer the matter to the ombudsman, provided that they have first made some reasonable endeavours to resolve the dispute. It is not the first course of action; there needs to be some reasonable attempts to resolve a dispute. It is not necessary for the parties to exhaust dispute resolution clauses contained within their agreement prior to referring to the Land Access Ombudsman. It is envisaged that the ombudsman will produce a procedural guideline that will outline and clarify to the parties what will be considered to be reasonable endeavours associated with dispute resolution.

Within the bill, clause 18 sets out matters that the Land Access Ombudsman cannot investigate. These matters have been prescribed to clarify the ombudsman's jurisdiction and to avoid jurisdictional duplication, for example, with the functions of the Queensland Ombudsman. The ombudsman must also refuse to investigate a referral if the ombudsman is satisfied, for instance, that the matter is frivolous, vexatious or trivial; if in the circumstances the investigation is unnecessary or unjustifiable in the view of the ombudsman; or if the party making the referral has not provided reasonable help to the ombudsman in undertaking the preliminary inquiry.

It is important to note that the Land Access Ombudsman is not a regulatory body and does not have regulatory, disciplinary or prosecutorial functions. However, if the Land Access Ombudsman as part of the investigations reasonably believes that there has been a regulatory breach, then the

ombudsman can recommend that the relevant department investigate that matter further. Another role the ombudsman will play will be in the identification of systemic issues arising out of disputes brought before the ombudsman. This will be an important feedback loop alerting government agencies to broader issues that might require regulatory or other government intervention.

As I mentioned earlier, if a party remains unsatisfied after an ombudsman has investigated a matter, there is still an avenue to initiate action in a court where a binding determination can be made in relation to that agreement. In this regard the bill will confer the Land Court with exclusive jurisdiction to deal with any legal action associated with breaches of a CCA. Currently, any CCA dispute that requires a court determination must go to the Magistrates Court, the District Court or the Supreme Court depending on the quantum of the claim. Additionally, there are matters, mostly relating to specifics of compensation in CCAs, that are already within the jurisdiction of the Land Court. The amendments within the bill that ensure there is single jurisdiction for these matters will simplify the use of courts in resolution processes available to the parties to a CCA. That is above and beyond those that exist in relation to the Land Access Ombudsman's role.

In addition to the provisions that deal with the establishment of the Land Access Ombudsman, the bill also amends the relevant legislation to save provisions contained in the MERCP transitional regulation, which as I mentioned will expire in September this year. These provisions relate to the land access framework for resource authorities and the industry developed overlapping tenure framework for coal and coal seam gas tenures.

The land access provisions address gaps in the transitional arrangements for the land access framework in the Mineral and Energy Resources (Common Provisions) Act 2014. Those amendments ensure that the original policy intent is achieved. As I mentioned, they replicate the provisions that are already operational in that transitional regulation. The provisions for overlapping tenure clarified the operation of the framework in circumstances where a petroleum lease is released through a competitive tender process over an existing coal tenure; there were overlapping production applications at the time of the commencement of the MERCP Act and a coordination arrangement was already in place; and to ensure that any pre-existing safety legislation continues to apply when overlapping coal and petroleum parties are negotiating a joint interaction management plan and have referred a safety dispute for arbitration which had not concluded before the expiry of the transitional regulation.

The bill will also insert additional provisions into the Mineral and Energy Resources (Common Provisions) Act 2014 and the Petroleum and Gas (Production and Safety) Act 2004. These provisions are required as a consequence of saving the provisions in the MERCP transitional regulation on the overlapping tenure framework.

In relation to consultation, extensive consultation with various stakeholders occurred during Professor Scott's independent review of the GasFields Commission of Queensland. In total, 58 stakeholders were invited in writing to participate in that review. Targeted stakeholder consultation was undertaken through face-to-face meetings and telephone interviews with key stakeholders including coal seam gas companies, private landholders, community and interest groups, peak bodies, chambers of commerce and local governments, particularly those within the Surat Basin.

Throughout the development of the Land Access Ombudsman Bill, the Department of Natural Resources and Mines, along with the Department of Environment and Heritage Protection, has continued to consult with key industry and landholder peak bodies. These groups have included the GasFields Commission of Queensland, the Queensland Resources Council, the Australian Petroleum Production and Exploration Association, Association of Mining and Exploration Companies, AgForce, Queensland Farmers' Federation, Environmental Defenders Office, Lock the Gate, Australian and New Zealand Ombudsman Association, the Queensland Law Society and the Local Government Association of Queensland. Overall, stakeholders are very supportive of the concept of establishing the Land Access Ombudsman. However, it must be said that stakeholders do have some differing views on the scope and extent of the ombudsman's powers and duties.

That concludes my overview of the bill. My colleagues and I are certainly happy to take any questions the committee might have.

CHAIR: Thank you for that contribution. Ms Brennan, do you have anything you wish to contribute as an opening statement?

Ms Brennan: No, thank you.

CHAIR: When do you expect the appointment to happen, what will the appointment process be and will there be an interim appointment in the meantime?

Mr Hinrichsen: I will predicate my response by daring not to presume that the bill will be passed. That is the first prerequisite. Beyond that, the minister is certainly keen to have these arrangements in place. We have started to do some preliminary work in relation to arrangements to establish the ombudsman.

The bill obviously outlines a process by which that appointment will occur. There will not be any interim arrangements in place, and I guess that does reflect the significant powers that this legislation would confer on the ombudsman. Certainly, with the passage of the bill, within a matter of months the minister would expect to have the Land Access Ombudsman appointed.

CHAIR: Presuming that the bill will be passed, have you any idea what staff allocations will be, what the actual costs involved are?

Mr Hinrichsen: The ultimate case load that will go to the Land Access Ombudsman is difficult to predict. If we look at the current mechanism to resolve these disputes formally through the courts, there have not been any matters that have been taken to the court, and there are a number of very legitimate reasons identified in Professor Scott's report as to why that is. We certainly do not take that as an indicator of workload.

We have looked at existing industry ombudsman models. We have spoken to the various existing ombudsmen in Queensland. We think there will probably be an office of around four people including the ombudsman and, notionally, a budget of around $1 million, but it will be subject to the demand for the ombudsman's services. There are mechanisms within the bill for the ombudsman to bring in officers from elsewhere within the Public Service if the workload does necessitate. While those officers are on secondment, they would be directly accountable to the ombudsman. It would be up to the ombudsman to approach the government and identify particular skill sets that the ombudsman was looking for in investigators. Those arrangements are similar to those that exist for other industry ombudsmen that have been established in Queensland.

CHAIR: The committee notes that the bill includes a provision allowing parties to be represented by another person at a meeting by leave of the ombudsman. Presumably, this would include legal representation. We also note that Mr Scott in his review recommended against allowing legal representation at ombudsman meetings. Could you explain what considerations were given to allowing parties to be represented and if any stakeholders raised concerns with this during the consultation process?

Mr Rees: Certainly there were issues raised with that throughout the consultation. People were concerned that it was a mechanism that would prevent legal representation being afforded to parties during the process. In the course of the consultation process the drafting was changed slightly to give the ombudsman further discretion as to whether legal representation should be allowed into the dispute resolution process and the ombudsman would not be unreasonably allowed to withhold that representation or refuse that representation.

CHAIR: Could representation be for either party?

Mr Rees: If the ombudsman consents to it, yes.

CHAIR: Have you considered whether allowing representation, particularly legal representation, would disadvantage the other party involved in the land access dispute? You have more or less covered that by saying that they could have legal representation anyway, so it does not disadvantage anyone. It is the ombudsman himself or herself who decides if that representation is necessary?

Mr Rees: Correct.

Ms LEAHY: The ombudsman only has jurisdiction where there is a conduct and compensation agreement in place or a make-good agreement in place and there is a dispute over either one of those; is that correct?

Mr Hinrichsen: That is correct.

Ms LEAHY: Can I ask, then, why consideration was not given to maybe a mediation process prior to going to the Land Court and there was a decision made to go to an ombudsman process?

Mr Hinrichsen: Professor Scott's recommendations—and as I mentioned in my introductory statement, there is a further tranche of reforms that the government is proposing—are very much about the process prior to an agreement being put in place. That has a significant focus on the use of mediation and, for that matter, binding arbitration between the parties prior to the Land Court in that instance making a determination to strike an agreement, if you like, between the parties. While

identifying that that is an improvement to the up-front process, Professor Scott in his recommendation No. 10 identified a gap in terms of the process to facilitate a resolution post the striking of an agreement. While an agreement is basically a confidential commercial arrangement between the parties—and that has been the historical reason for it needing to go to a court for a determination as to the merits of the case of both parties and, of course, going to court can involve mediation as part of the process. However, Professor Scott recognised that going to court or even initiating a process that may end up in court is a pretty onerous and costly process. There was a need to establish an office that he referred to as the Land Access Ombudsman to facilitate resolution of those disputes before it needed to get to a court making a judgement.

Within the provisions of the bill there is an outline of how the ombudsman would approach the investigation, and it has a significant focus on resolution of a dispute between the parties. In most instances we would envisage that would mean that by the time the ombudsman concluded his or her investigation there would be a resolution agreed to by the parties as to how the dispute should be dealt with. If there is not, the ombudsman will document, through a notice—and that notice is issued as a draft before it is finalised and it provides both parties with an opportunity to check the facts and provide any right of reply before that notice is formalised—recommending to the parties how the dispute should be resolved. As I mentioned, that notice, those recommendations from the ombudsman, would be admissible in any subsequent formal arbitration or court proceedings.

Ms LEAHY: Is there not a risk here, though, that landowners may sign up to a standard CCA or a make-good, then hear about some different provisions that maybe some other neighbours might have and then go to the ombudsman and try to renegotiate that CCA? Is there not a risk in this process where that might occur?

Mr Hinrichsen: I guess an agreement is an agreement and it is certainly not within the remit of the ombudsman to look at the merits or otherwise of that agreement. It is only an alleged breach of an existing agreement that the ombudsman will be able to formally investigate. There are significant protections that the bill puts in place not to prevent the legitimate use of the ombudsman but to make it very, very clear what is within scope and what is not. In my opening remarks I did note that some parties believe the powers of the ombudsman should go further, and that is probably one of the examples, where some stakeholders believe the ombudsman should have powers to investigate merits of existing agreements. That goes beyond what Professor Scott recommended and hence the provisions of the bill are very tightly defined to limit the powers of the ombudsman to a dispute in relation to an existing agreement—not about the merits of that existing agreement, not about any other matters that, say, are more relevant to either regulation by the Department of Natural Resources and Mines or regulation by the Department of Environment and Heritage Protection as the case might be.

Ms LEAHY: One other concern I have with the way the bill is drafted is that the ombudsman is required to accept, investigate or decide land access disputes, but there are no time frames on when the ombudsman reaches a conclusion. Some of these disputes have been going for generations. Will they continue for generations to come in this ombudsman arrangement?

Mr Hinrichsen: It is a good question you ask and certainly it is one that has been raised by a number of stakeholders. We did turn our minds to that issue of time bounds. Many submitters argued that the process should be time bound. We turned our minds to that and had discussion with existing ombudsman offices. It was really difficult to come up with a time frame that would fit all of the types of disputes that might go to an ombudsman. Some of those disputes by their nature I think you could expect to be resolved in a very short period of time, a matter of days. Others, if they are more substantial, could take several months to investigate.

Rather than putting arbitrary time bounds within primary legislation, the bill does emphasise the imperative of timeliness in the decision-making process and sets up an ability for the ombudsman to establish guidelines and, as part of that process, what we would consider to be key performance indicators so that a party going to an ombudsman as part of seeking a resolution can reasonably know what to expect in terms of the time frames that it would take for the ombudsman to conclude their investigation. Again I emphasise that none of that stops the party from going to a court for a formal determination, in which the process leading to a determinative decision is much more definitive than the processes for the ombudsman, which are focused on timeliness, certainly, but they are about getting resolution first and foremost rather than having a dispute becoming protracted.

Ms LEAHY: Following on from that, there are some parties who do not seek to ever have a resolution in some of these sorts of matters. Would the department give consideration to some time frames?

Mr Hinrichsen: Right up-front, if the nature of a dispute was vexatious or a party was not reasonably assisting the ombudsman, the ombudsman would have the discretion to take that into account in, first of all, deciding whether to investigate a matter or whether to refuse to investigate that matter. Rather than the department stipulating the time frames that the ombudsman should complete their investigations in, we think a preferred approach would be for the ombudsman to develop those key performance indicators, which is consistent with processes that are utilised by other ombudsmen within Queensland.

Mr CRAWFORD: My question is around the legal representation issue. What were Mr Scott's reasons for recommending against legal representation?

Mr Rees: There is not a lot of detail in Mr Scott's report around that. There is a line to say that it would be discouraged, and one can only assume it is probably about reducing costs.

Mr CRAWFORD: Did you say that the ombudsman would not unreasonably refuse representation? By allowing legal representation, which will not be unreasonably refused, will we end up with two parties sitting there lawyered up? Does this come back to what Lyall mentioned before about some people's expectation that this is an avenue to go further and seek further decisions and that sort of thing?

Mr Rees: There is nothing in there that would obviously prevent people from going further. It is obviously a mechanism to prevent people from lawyering up, incurring those costs and moving away from the focus of the investigation process, which is dispute resolution rather than that escalating adversarial process. I guess that is the intent there.

Mr CRAWFORD: I have never had any dealings with other ombudsmen. Do other ombudsmen allow legal representation?

Mr Rees: I will have to take that on notice and get back to you. I would assume that some may be similar; some may not. We have not looked at every single ombudsman across the country.

Mr PERRETT: How will stakeholders, including landholders and authority holders, be informed of the establishment and commencement of the ombudsman's services and what communication is planned?

Mr Hinrichsen: Obviously there are a lot of mechanisms in place already with the Queensland GasFields Commission, and I know this committee is already considering a bill to amend that commission's governing legislation. Our representative departments still have regulatory functions. We see it being very important to communicate not only the fact that this ombudsman's office has been established, but to make it very, very clear as to the roles and functions of the various participants in this process.

We are working very, very closely in this space in relation to landholder representation, particularly with AgForce. The department sponsors a program where AgForce works with landholders in raising their awareness of the whole regulatory framework associated with land access. This component will be a very, very important part of that, raising awareness that this service, these functions do exist. We do not want to get ahead of the game, of course, because the ombudsman's office does not exist yet. In the meantime, if there are disputes there are other resolution processes that people should be able to avail themselves of.

Once the ombudsman is established there will be a significant communications campaign to raise awareness of the role and processes for accessing these services and how it fits with broader regulatory functions that already exist within the statute.

CHAIR: I refer to make-good agreements. For the benefit of the committee, could you describe a make-good agreement? Is the ombudsman able to determine the integrity of that agreement, whether we are comparing apples with apples or apples with bananas? In my work I find that there is a lot of imbalance with regard to the make-good agreements that are often put forward.

Ms Brennan: I will give some background on make-good agreements. They are a requirement of chapter 3 of the Water Act to be entered into between a resource tenure holder and the owner of a bore when that bore becomes impaired by the resource activities being carried out. Impairment typically involves a draw-down in the water level of the aquifer that the bore is tapped into which has the effect that the bore is no longer providing sufficient quantity or quality of water that is required for the activity. They are required as a process under the Water Act under which the resource tenure holder will do a baseline assessment to understand the baseline conditions of the bore and the types of water it is yielding and subsequently a requirement to do a bore assessment when there is a suspicion that the bore has become impaired or is likely to become impaired. At that point you have a baseline and a subsequent assessment to compare. If the bore is impaired then the parties need to enter into a process where they negotiate a make-good agreement.

The intent of the make-good agreement is to put the landholder in a position similar to the one they would have been in had their bore not become impaired. Make-good agreements are typically confidential so we do not have access often to information about exactly what type of make-good is being offered. Anecdotally, we understand it is more likely to be the provision of a new bore or a deepening of the existing bore to tap into an unaffected aquifer or the payment of cash compensation. There is a process under the Water Act where if a make-good proves to be inadequate there is an opportunity for the landholders to reopen the make-good agreement and have it re-looked at and renegotiated. However, the Land Access Ombudsman's role is not so much looking at the adequacy of the make-good agreement; it will just be about resolving disputes about the existing make-good agreement. Those landholders who feel their make-good agreement is inadequate would need to be looking at the provisions of the Water Act that might give them recourse around the adequacy of the make-good and the possibility of reopening the make-good agreement.

CHAIR: What direction may the ombudsman take in an attempt to resolve any dispute with regard to the agreement not meeting the expectations of the landholder, for example, which happens on a lot of occasions? I am concerned about the confidentiality of it, too. That does not allow the ombudsman to properly understand what the issue is if he does not have all the information available to him.

Ms Brennan: I should clarify on confidentiality that they are confidential between the parties but there will be a provision in the act that will allow the ombudsman to get access to those agreements. They will not be confidential from the ombudsman, but they are not things that we at the department see. One of the functions of the ombudsman will be to provide the departments with advice about systemic issues. If, for example, the ombudsman found through a number of disputes that there was a systemic problem in make-good agreements, the ombudsman could make a recommendation back to the department that action be taken on that type of systemic issue.

CHAIR: With regard to the consultation process, were there any views that stood out that the committee should be aware of? Was there consistency across the consultation process with the views put forward?

Mr Hinrichsen: The issue that the member for Warrego touched on was probably the most significant, in relation to timeliness. As part of the drafting process there was added emphasis put in the bill around the objective of timely decision-making and the mechanisms for the ombudsman to define those performance standards through a statutory guideline.

The other issues that were raised were particularly around the determinative powers of an ombudsman. There have been suggestions that the scope should be increased. The ultimate guidance on that was the advice that Professor Scott provided, which was to limit the power of this office to disputes in relation to existing agreements—and I guess he was identifying a gap in the framework—whereas for other issues there are existing mechanisms to address those concerns rather than providing for forum shopping. It was very much around addressing that gap that Professor Scott identified rather than providing an alternative mechanism to what are existing processes.

The timeliness issue is something that I think all parties are striving for in this process, but when we sat down with stakeholders on both sides and asked, 'What do you think would be a time frame that would equate to a timely resolution?,' the answer was invariably, `It depends.' I guess within that context we think the preferred approach is that it is taken in the bill to emphasise timeliness in terms of resolution but not try to prescribe time frames which might ultimately be too long for particular types of disputes or not enough time for the ombudsman to properly resolve the issue. The last thing we want to see is the ombudsman being forced to deliver a recommendation without proper resolution of the issue.

CHAIR: Will the ombudsman have the power to determine what he thinks are fair and reasonable time frames?

Mr Hinrichsen: Absolutely, and to publish that in terms of a guideline and key performance indicators, yes.

CHAIR: You mentioned earlier the power to investigate. Can you give the committee an example of what type of investigation the ombudsman may need those powers for?

Mr Hinrichsen: First and foremost, as my colleague mentioned, while these agreements—both CCAs and make-good agreements—are confidential, obviously for the ombudsman to investigate a dispute the ombudsman needs to be able to take a look at the agreement, understand how it has been applied and understand the basis for the dispute. In some cases we imagine that would involve getting access to the site, and there are powers within the bill to do that. Importantly, when resource activities are being undertaken there may be safety considerations, so those safety considerations need to be taken into account as part of access to an operating site.

The ombudsman will be able to request information from the various parties, and that might be technical information in relation to assessments and any result of analyses if it is a make-good arrangement, or if it is in relation to how compensation was determined, or records that were kept in relation to conduct—that type of information that the ombudsman will ultimately need when putting his or her mind to whether the contract has been properly acquitted by either party—and then what is an appropriate resolution to that dispute, again within the framework of that agreement.

CHAIR: You have probably already made this point clear, but I just want to get an understanding for myself. The ombudsman will do the investigation and get a good understanding of the background to the particular issue. Does he then make a directive with regard to how that could be best resolved?

Mr Hinrichsen: Ultimately the focus is on resolution. The objective is for the ombudsman to facilitate a resolution to that dispute. We acknowledge that that will not always be possible, so at the conclusion of his or her investigation the ombudsman will draft a recommendation—it is referred to in the bill as a notice—outlining how the ombudsman believes the dispute should be resolved and the basis for the ombudsman coming to that conclusion so that their thought process is very clear. That notice will be produced first of all as a draft, and that will be provided to each of the parties so they can check the facts, that the ombudsman is relying on an accurate understanding—you would hope that is the case—a final right of reply, and the logic that the ombudsman has applied in that recommendation.

You would expect that most reasonable parties, having had a statutory office holder with the skills and expertise that this ombudsman obviously will need to have, would abide by those recommendations but they are not binding. It is a recommendation, albeit from a statutory office holder, as to how a dispute should be resolved. The notice that the ombudsman produces, after giving each party a final right of consideration, receiving their feedback and concluding the investigation, will be admissible to a court as evidence. If either party decided to take a matter to the Land Court for resolution and their position was contrary to the position of the ombudsman, then you would want to be pretty sure of your case.

We do not dictate the weight that the Land Court applies to that. It would be wrong to limit a judge in that case in how they consider the various pieces of evidence, but we are saying it is admissible as evidence and will be given the weight that the court determines it should have. The ombudsman will not have to appear as a witness; it will be admissible in its final form as evidence. If either party wanted to contradict that or suggest an alternative, they would need to lead evidence to that effect.

CHAIR: To the Land Court itself?

Mr Hinrichsen: To the Land Court itself, yes.

Ms LEAHY: If I am a landowner with a CCA in place and there are contractors about to do some trenching across a creek crossing and there is a dispute about how erosion might be dealt with and the landowner says, `I think there is going to be a breach here of the CCA,' does the ombudsman have any power to issue a stop-work order?

Mr Hinrichsen: No, the ombudsman does not have any of those powers. If it were the case that there were works that were going to cause unacceptable erosion on the landholder's property, you would expect that that would be a matter that would be covered by the resource authority holder's environmental authority. If there were any breaches of those regulatory responsibilities then that would be a matter for, in that case, the Department of Environment and Heritage Protection. If it was in relation to land access and the Land Access Code, that would be in relation to our department's regulatory responsibilities.

If in the course of his or her investigation it became apparent to the ombudsman that there was such a breach of the regulatory responsibilities, the ombudsman would have the ability to refer that information, that concern, to the relevant regulator to undertake appropriate investigation of those matters. Rather than those matters that arise as part of the ombudsman's investigation being pushed back to the landholder and saying, `Go and take it to the regulator to investigate,' the ombudsman could act in referring that information to the relevant regulator.

CHAIR: Is there anything limiting the parties from bringing the same matter or the same issue to the ombudsman on multiple occasions?

Mr Hinrichsen: The framework does not allow for re-litigation. If the ombudsman thought it was done on a frivolous or vexatious basis, he could kick it into touch. If it is the same issue, if you like, that has reoccurred, that matter could certainly be brought to the ombudsman's attention. If the

ombudsman dealt with a particular breach and dealt with it, then it could not be put back into the other end to see if you could get a different outcome. It is only if there is a legitimate dispute and the ombudsman is satisfied it is a legitimate dispute in relation to that agreement that a second investigation could be commissioned.

Ms LEAHY: Obviously there are lots of different CCAs out there. There are CCAs that were negotiated probably 10 or 15 years ago. Some companies do renegotiate the CCAs. For the benefit of the committee, could you outline what assistance there is to landowners in helping them to get a very good, useful CCA?

Mr Hinrichsen: The CCAs have been in place now since 2010, so over seven years. A template agreement was originally developed by the Queensland government. The reality is that that agreement was probably used as a guide, but it has evolved. Most legal firms or particular landholder representative groups have their own position on what should and should not be in the agreement. In more recent times our department has facilitated a process that is quite advanced between APPEA and AgForce in developing an industry based agreement. It will not be compulsory to utilise that agreement. People can enter into their own agreements of their own form if they so choose, but it is a bit like buying real estate, where most people would use the recognised REIQ standard template agreement. You do not have to, but most people would utilise that as being a tried and tested approach.

AgForce and APPEA have been doing a lot of good work, with input from the legal fraternity through the Queensland Law Society, in framing up a template agreement which, I guess from APPEA's side, its members would commit to utilise. Equally from AgForce's side, they would endorse that their members utilise it also. It would take away the need to negotiate and check things that ought to be in the standard agreement and put the focus more on the things that are particular to the particular negotiation, the metes and bounds of how that agreement would apply on a particular property in the circumstances that are particular to that parcel of land. That framework hopefully can roll out soon. I know that industry and AgForce are already using and recommending key elements of it, but it is not officially sanctioned yet. Both parties have indicated that by later this year they hope to reach a position on that.

Within Professor Scott's report he also recognised that there were many industry participants in that space, if you like. Many law firms will offer services, not necessarily always with expertise on this very particular issue of land access. One of the recommendations—and it is already being rolled out—is that there be panels of practitioners that are identified. If you look at the Queensland Law Society's `find a lawyer' website, for example, they go through a process of vetting their membership in terms of their qualifications and skills and abilities to provide these types of services. That is one avenue where, if you want to get good legal advice about a CCA, you can go to that independent register and find a practitioner with that speciality. There is also the intent for the Land Court to establish a register of parties with alternative dispute resolution specialities in this area. That is in addition to the information that is already available through departments and their websites. The GasFields Commission would provide that as part of those broader communications that the member for Gympie referred to which would be required as part of the rollout of this. The ombudsman and the establishment of this statutory office is a small piece of that much broader package of recommendations that arose from Professor Scott's report.

CHAIR: The time allocated for this briefing has now expired. We have one question on notice. Could the response be returned to the secretariat by 21 June, next Wednesday?

Mr Hinrichsen: I am sure we can do that, Mr Chair.

CHAIR: Thank you for your attendance here today. I really appreciate the detail that you have gone into in responding to the questions, because it is important that we get the detail. I thank Hansard. The transcript of these proceedings will be available in due course. I declare this briefing closed.

Committee adjourned at 10.17 am