REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 5

BRIEFING ON LEGAL ASPECTS OF THE INQUIRY INTO COAL SEAM GAS

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At Sydney on Friday 7 October 2011

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The Committee met at 10.45 a.m.

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PRESENT

The Hon. R. L. Brown (Chair)

The Hon. J. Buckingham
The Hon. R. H. Colless
The Hon. G. J. Donnelly
The Hon. S. MacDonald
The Hon. Dr P. R. Phelps
The Hon. P. T. Primrose

*Transcript published by resolution of the Committee, 8 December 2011.

Mr Whitehouse appeared before the Committee.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

Mr WHITEHOUSE: The Petroleum Onshore Act identifies three broad types of title under that Act, remembering that petroleum products are owned by the Crown. So that like most minerals—and there are some exceptions in relation to minerals—they are actually owned by the Crown.

CHAIR: The Crown being the State?

Mr WHITEHOUSE: The State, yes. So that like most minerals now, although there were some exceptions in the 1830s, the petroleum resources are owned by the Crown and therefore, in essence, are a property right belonging to the State and so can be distributed in accordance with whatever the State wishes to do. There are three types of titles. The first is an exploration licence, which can be given for between one and 140 blocks. You will notice that the allocations are all in relation to blocks, which are described by way of sections bounded by lines of latitudes and longitudes. So that one of the first things that your attention is immediately drawn to is the fact that there is a large level of inflexibility about what is actually granted; it has to be a block, which is simply, a pseudo square of a part of the earth's surface which is allocated. An exploration licence can be given for one and up to 140 blocks.

The next type of title is an assessment lease, which can be given for between one and four blocks, and the third type of title is a petroleum production lease, which can be given for not more than four blocks. Ultimately, an exploration licence can be granted for a very large amount of countryside, and in fact some of them have been huge, whereas an assessment lease and a production lease are limited to a maximum of four blocks. One of the issues that I will discuss later is that the difference between exploration and production in the context of the Petroleum Onshore Act is not as clear-cut as it is in the mining phase.

For example, if I could suggest that when you are exploring for coal resources, you will drill and find out whether there are coal resources and then you will come back in with a mining proposal, which is completely different and unrelated to the drilling. In petroleum and coal seam methane exploration the infrastructure that you use for exploration is similar as what you would use for production. You have got all of the drill holes there and all you are doing is, in fact, connecting them up and routing the gas to wherever you are going to sell it. You will find this separation between exploration and mining that exists in the Mining Act is not at all clear with petroleum production. The other issue that is important is that in the exploration phase for coal seam methane the holder of the title is on the property for a very long period of time.

The Hon. SCOT MacDONALD: The holder of the exploration title?

Mr WHITEHOUSE: Correct. Whereas if you are exploring for minerals under the Mining Act, they will have a drill site in there, they will drill and they will be all gone in a week; whereas with coal seam methane they will drill and of course leave the drill holes there both to monitor what is the gas production and, obviously, if they want to use it at the end of the day, use it. So rather than being an ephemeral and transitory use, as it is in the case of mining exploration, it is really the first stage of full production because the infrastructure is exactly the same. You will see that the difference in the legislative regime between what is exploration and what is production is unclear and that you have in fact many areas where there is exploration being undertaken, which, for all intents and purposes, you would think is production.

The other issue is that the planning approval regime in relation to production is unclear as well. The Petroleum Onshore Act in section 67 requires that there needs to be planning approval prior to the grant of a production lease by the Minister. However, exploration is excluded entirely from the operations of the planning law unless it is governed by a State environmental planning policy [SEPP]. So that unless it is governed by a SEPP—and I will come back to the latest SEPP that the Government introduced and it started last Friday where it controls some but not all—unless it is controlled by the SEPP you need no planning approval whatsoever for exploration.

For exploration to occur there is a requirement that there be an access agreement with the owner under section 69C. The other thing I would note is that while you need an access arrangement to conduct exploration, there is no provision for an access agreement in relation to production, which is rather curious. The law provides

in section 69D (1) (a) for a template agreement with New South Wales Farmers for an access agreement, and I understand that New South Wales Farmers have withdrawn from those arrangements. So there currently is no agreed template for a landowner to be able to deal with if they are confronted with a request by a holder of a petroleum exploration licence.

There is a process for arbitration where if a holder of a petroleum exploration licence wishes to access land for the purposes of exploration they can obviously simply enter into an access agreement directly with the landowner. If there is no agreement there is a provision that enables arbitration by a person on a panel of arbitrators appointed by the Minister—each side would select one. The usual experience is that whoever side A nominates side B objects to, so that you never get agreement. Then either party can ask the Minister to appoint an arbitrator, in which case that person is the arbitrator.

But the arbitrator is, in fact, not really an arbitrator; he is more of a conciliator. There is no binding requirement for either party to observe the decision of the arbitrator. If you do not like what the arbitrator says you go off to the Land and Environment Court. Certainly, in the mining field, where this model is the same, I have seen these processes last four and five years before you get an outcome. The other important issue is that in the process of seeking access agreement, subject to some exclusions, the holder of the title has an absolute right to get one. So that, subject to some exclusions, the issue is not can you get an access agreement, the issue is how much and what are the conditions.

The Hon. SCOT MacDONALD: Can you just backtrack that point?

Mr WHITEHOUSE: Unless land is specifically excluded, and there are some exclusions, the holder of an exploration licence is entitled to an access agreement. The owner cannot simply say "Go away", because the holder has a right to pursue the matter and ultimately a right to obtain one, except in certain circumstances. Those certain circumstances are that there can be no prospecting or mining within 200 metres of a dwelling, 50 metres of a garden, a vineyard or orchard, or on land on which there are any valuable improvements. So that deals with both prospecting and mining production. In addition, for production, there can be no mining operations on land under cultivation.

The Hon. JEREMY BUCKINGHAM: Could you repeat that?

Mr WHITEHOUSE: Section 71 says that there are no mining operations permitted on land under cultivation except with the agreement of the landowner.

CHAIR: Including exploration?

Mr WHITEHOUSE: No, that is only mining operations, not prospecting. The difference is no mining and prospecting 200 metres from a dwelling, 50 metres from a garden, vineyard or orchard, or on any land where there are any improvements, and when you get to the production stage in addition to those constraints, subject to agreement, none on land which is under cultivation.

The Hon. SCOT MacDONALD: You are talking about mining, you are not talking about petroleum?

Mr WHITEHOUSE: By mining I am talking about petroleum production.

CHAIR: He is talking about production but not exploration. So you can put an exploration well down but you cannot then move to mine that gas unless you get agreement.

The Hon. Dr PETER PHELPS: Well, why not, if you have already got the exploration footprint carved out?

Mr WHITEHOUSE: It is what the Act says. But, of course, you need to understand what all this means, because when you apply this to mining operations, if you are opening up a coalmine in the Hunter Valley you cannot dodge around vineyards and houses. Ultimately, if you are there you have got to buy the property if you are going to open-cut mine.

The Hon. SCOT MacDONALD: Thereby giving yourself the access agreement?

Mr WHITEHOUSE: Yes, because ultimately you cannot run a coalmine like a piece of Swiss cheese, wandering all over the countryside.

The Hon. SCOT MacDONALD: I am still just struggling a little bit. I was out at Moree earlier in the week. Their great concern is a well in the middle of a 500-acre wheat cultivation paddock. From what you are saying, unless there is an access agreement that cannot happen.

Mr WHITEHOUSE: Correct, no production can occur on land under cultivation but, as you will probably see in your tours of the State, there is a lot of pilot production going on under the guise of exploration.

The Hon. JEREMY BUCKINGHAM: In effect, what you have said is that you cannot deny access; you have got no legal right to deny access for exploration so you go to conciliation, as you have called it, then you end up in the Land and Environment Court but you are going to lose. The access is granted, the exploration occurs, the person who holds a licence can apply for a production licence so that the person who owns the land that is under cultivation, which I assume is defined—

Mr WHITEHOUSE: It has got to be cultivation. It is not pasture improvement.

The Hon. JEREMY BUCKINGHAM: The person can then say "I revoke that".

Mr WHITEHOUSE: They simply refuse consent to the issue of a production licence in relation to land under cultivation and even if an EL is granted, no production can occur without the owner's consent.

The Hon. SCOT MacDONALD: Your point is that it is a bit grey moving from EL to production?

Mr WHITEHOUSE: Correct.

The Hon. JEREMY BUCKINGHAM: That well already exists?

Mr WHITEHOUSE: Absolutely.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

The Hon. PETER PRIMROSE: I was going to wait until the conclusion, but the Chair has raised the issue about infrastructure. One thing raised with us consistently was issues to do with pipes.

Mr WHITEHOUSE: Correct.

The Hon. PETER PRIMROSE: For example, at one location we met with the residents and their concern was not about the wells going on their particular property; it was about the pipes that would come through. Can you address rights in relation to that?

Mr WHITEHOUSE: They are exactly the same. What I am saying in relation to the wells is exactly the same as the infrastructure. I think you are correct because in many instances the distribution networks are more obvious and noticeable and probably are of more concern to landowners than the wells themselves.

The Hon. SCOT MacDONALD: To continue from what the Hon. Peter Primrose said, if we go out to Mullaley, Gunnedah or wherever their exact point is that has pipelines running through cotton paddocks or whatever, why could they not stop that?

Mr WHITEHOUSE: They could have because they would require the consent of the owner because you cannot have mining operations, production, unless there is consent of the owner.

The Hon. SCOT MacDONALD: Particularly in this cultivation situation?

Mr WHITEHOUSE: Yes. Certainly, you can negotiate so an applicant might well say, "Well, if you don't let us do that, we'll do it here and this'll be twice as worse." But certainly legally they can say "No" at that point in time.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

The Hon. JEREMY BUCKINGHAM: For the purposes of the Act, when they apply for the production licence it assumes that that exploration infrastructure does not exist?

Mr WHITEHOUSE: Yes, because it is modelled on the Mining Act where you would have done your exploration and left. It does not recognise the fact that the wells are all still there. So ultimately they have the foot in the door pretty well because it is already there. What I thought I would do now is identify what are the major issues of concern with the operation of the Petroleum (Onshore) Act. We have talked about some of them, but I would like to try to crystallise them. The first problem is that the Petroleum (Onshore) Act has been modelled from the Mining Act in circumstances that are really inapplicable to the coal seam methane industry. When the Petroleum (Onshore) Act was drafted it was dealing with potential gas resources similar to Moomba and the Cooper basin where you were looking at gas reserves, which would be very much equivalent to mining where you would simply drill down and extract the gas rather than this slow seepage and extraction that occurs with coal seam gas. The fundamental regime of the petroleum Act is actually designed by copying a model that is quite inapplicable and inappropriate to dealing with coal seam gas.

The second issue is that there is no clear distinction between exploration and production. Installations for exploration are exactly the same as those required for production. So you have this incremental creep of development that once you have approval to explore it is very difficult to turn the clock back because the infrastructure is already there. The time scale is a very critical issue. Unlike for mining where exploration is a transient and ephemeral use that is done and gone, usually in a matter of days and weeks, petroleum exploration for coal seam methane gas is a process that can go on for many, many years. So when your land is subject to exploration, you have not just got a drill rig there for a day or two; you have the infrastructure there for years and years.

The third issue is that there is absolutely no public notification of the granting of an EL other than the cryptic little notices in the newspaper, which, if you have ever seen, are unintelligible. A property owner or a citizen would have no idea that their property has been granted. Even when you look at some of them, if you see there is an EL granted for all of metropolitan Sydney, how it relates to your house in Blacktown, nobody has the slightest idea. Fourth, there is a need to have some standard template for access agreements. You are leaving a very unequal bargaining position between a major corporation and an individual landowner. Certainly, if the model with New South Wales Farmers is not going to be revived, perhaps it really is a responsibility for government to put out what would be a fair industry standard for what would be an appropriate access agreement.

CHAIR: After the Brown and BHP case and we amended the Act, at that stage there was a requirement to produce a standard access agreement for the mining industry. Was that done?

Mr WHITEHOUSE: I do not think, to my knowledge, it has actually been done. Remember, the legislation that followed the Brown case was dealing with the issue of who constituted a landowner, do you notify the mortgagees et cetera?

CHAIR: That is correct. But I am saying that as a result of debate in the House there was an agreement by the Government at the time—I am not sure whether it was caught up in any amendments—that there was to be a standard.

Mr WHITEHOUSE: There is a provision calling for it, which was put in there. But I do not think anything has occurred.

The Hon. SCOT MacDONALD: Can we revisit this later?

CHAIR: Yes.

Mr WHITEHOUSE: The issue with access agreements is that most companies require them to be confidential. It is not only confidential as to the quantum of money involved, which is a matter I will come to later, but also to its actual terms. Nobody actually has a clue as to what is the standard for operator X in a

particular area and whether that is in fact one that has inbuilt protections. The fifth issue is that rights for owners to say "No" are significantly different from the reality that occurs in the mining industry. There is no general right to say "No" at all for any of these things.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

Mr WHITEHOUSE: Yes. Can I respond to that issue by saying that it has not been a problem with the open cut coal industry.

The Hon. SCOT MacDONALD: To say no?

Mr WHITEHOUSE: To say no, because ultimately the issue is money. It is a question of money. We talk about the general right to say no. There is a specific right to say no if it is 200 metres from a dwelling, improvements near an orchard et cetera. With an open cut coalmine, a mine plan is not so flexible that it can easily move. Effectively, that gives landowners a right to say, "No, absolutely."

The Hon. Dr PETER PHELPS: What happens if you have a nail house situation where someone simply refuses point blank to sell their land to BHP or whomever and they have all the surrounding blocks? What happens in that instance when you have a nail property like that?

Mr WHITEHOUSE: By and large, I am only ever aware of one that is really like that, which is one in the Lemington mine near Singleton. Ultimately, the mines had to be built around them. By and large, shall we say, most people are persuaded by the contents of the wallet.

The Hon. Dr PETER PHELPS: But there is no provision to compulsorily acquire?

Mr WHITEHOUSE: No provision at all.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

The Hon. Dr PETER PHELPS: I understand the history. In England the traditional common law was that the right of silver and gold was with the Crown.

Mr WHITEHOUSE: Was a royal mineral, yes.

The Hon. Dr PETER PHELPS: The royal minerals?

Mr WHITEHOUSE: Yes.

The Hon. Dr PETER PHELPS: You are saying that the Crown's purported control over all other minerals only came about in the 1980s?

Mr WHITEHOUSE: Oh no.

CHAIR: Under certain properties.

The Hon. Dr PETER PHELPS: When did they start to purport that they had beyond the royal minerals?

Mr WHITEHOUSE: You need to start at 1788 because the assumption, subject obviously to native title questions, is that all land was owned by the Crown and, therefore, it came into private ownership as a result of Crown grants. If you look at your CT, schedule one tells you what you have and schedule two is the reservations from title—that is, the things the Crown has not given you. There is an automatic assumption that the royal minerals are reserved to the Crown. But progressively in all land titles minerals were reserved to the Crown. In the case of coal, it was always the case, except for a gap between about 1820 and 1850. They are the only ones where, when the Crown grant was given for ownership of a piece of land, the coal rights went with it.

The Hon. JEREMY BUCKINGHAM: Is that what they call Kings title?

Mr WHITEHOUSE: No, the Kings title is the royal minerals: gold and silver.

The Hon. Dr PETER PHELPS: Only?

Mr WHITEHOUSE: Only. The rest is an artifice of how Crown land was distributed.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

Mr WHITEHOUSE: There is a regime for solving land owner issues with pipelines under the Pipelines Act. There is actually a separate legislative regime that deals with linear infrastructure and land owner issues. It is a problem if you get one that says no. The Pipelines Act addresses that issue of overcoming land owner issues with pipelines.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

The Hon. JEREMY BUCKINGHAM: The issue I am interested in exploring is the template access agreement. Surely that seems like a sensible thing to have, and surely that access agreement should deal with the full range with the assumption that it will be moving to production. You have an access agreement that deals with exploration; shouldn't the Act have a template that acts as a pathway that tries to militate against having to be dragged into arbitration and all these types of things?

Mr WHITEHOUSE: Given the fact there is no clear distinction between exploration and production you need to look at the consequences of that. At present you need an access agreement to explore but you do not need one to produce, which is quite bizarre.

The Hon. JEREMY BUCKINGHAM: Yes.

CHAIR: Based on the fact that the Petroleum (Onshore) Act was pretty much crafted on the basis of the mining Act.

Mr WHITEHOUSE: Yes.

CHAIR: There is a clear distinction. You are down to five.

Mr WHITEHOUSE: Number six is that the approach towards compensation is unregulated, secretive and puts land owners at a significant disadvantage. At present the legislative regime talks of compensation in relation to damage. When I look at the experience of the Warden's Court and judgments dealing with compensation for both mining and petroleum, the Warden's Court adopted two various approaches: One is a compensation approach which is to make good any losses or damage which has occurred as a result of the holder of a petroleum exploration licence exercising their rights.

On a number of other occasions the Warden has adopted a rental approach. That is, what would be the rent of the land usually based on comparable agistment rates for that land? That is an issue which the Act is largely silent on. To the extent that it proposes something it is a compensation-based approach.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

The seventh issue is that the planning regime for approvals for coal seam methane gas is centralised and totally within the hands of the State Government. Essentially, despite the Parliament's repeal of part 3A, under the revised version and the new State policy issued by the Government last week, all petroleum production is State significant development requiring approval. So the Minister approves all of those.

The Hon. SCOT MacDONALD: Part 4?

Mr WHITEHOUSE: Part 4.1. That approval process gives a high presumption in favour of the grant of approval. The other issue is that the only third party right of appeal under the legislation is development which would otherwise be designated development. With part 4.1 the only time you have a right of appeal is if it is petroleum works under schedule 3 of the Environmental Planning and Assessment Regulation and the triggers there are that if you are actually producing crude petroleum or shale oil—that is not gas. If you are refining crude petroleum, shale oil or gas, that is not you. The only trigger is if you are producing more than five petajoules per year of natural gas or methane.

CHAIR: That is the catcher.

Mr WHITEHOUSE: Alternatively, if you are within 40 metres of a wetland, drinking water catchment or a flood plain.

The Hon. SCOT MacDONALD: Forty?

Mr WHITEHOUSE: Yes.

The Hon. JEREMY BUCKINGHAM: Within a drinking water catchment?

Mr WHITEHOUSE: Yes.

The Hon. SCOT MacDONALD: You cannot do a merit appeal through the Land and Environment Court?

Mr WHITEHOUSE: No. If you are designated development you have a right of merit appeal against the Minister's decision on the assumption that the Planning Assessment Commission has not held a public hearing. If the Planning Assessment Commission holds a public hearing you have no right of appeal at all. Ultimately the present approval regime for coal seam methane gas is still totally controlled by the State and essentially the rights of individuals for appeal in that process are largely illusory and there is a high presumption in favour of you giving them approval. You might like to check but I am not aware that the Department of Planning ever refused a part 3A application for coal seam methane gas extraction.

The Hon. JEREMY BUCKINGHAM: I do not think they have ever had one.

Mr WHITEHOUSE: Yes, they have.

The Hon. SCOT MacDONALD: I think they have been on hold since—

Mr WHITEHOUSE: An approval was given in Gloucester.

The Hon. JEREMY BUCKINGHAM: Yes.

Mr WHITEHOUSE: The eighth issue is that the process of allocating exploration leases [ELs], which essentially starts the process, is somewhat obscure. There is no public involvement whatsoever. There is no evidence that there is any regional environmental screening of the appropriateness or otherwise of putting those areas out. More importantly, the application of the duties under the Environment Planning and Assessment Act under part 5 is obscure. Part 5 applies a general duty on government authorities to consider and have regard to environmental effects and produce an EIS if the effect is significant on developments that do not require planning approval. As I said previously, the Petroleum (Onshore) Act says that the Planning Act does not apply, and override all LEPs, everything, but not State policies. So that an LEP that requires development approval for exploration for petroleum you can just ignore, you do not need to bother. But there is a requirement under the new State policy that came out last Friday for certain types of exploration to require State significant development.

The Hon. JEREMY BUCKINGHAM: What SEPP is that?

Mr WHITEHOUSE: This is the SEPP for State and Regional Development 2011, which was gazetted on 1 October. It says that all development for petroleum production is State significant, so that is in. Then it says, "Development for the purposes of drilling or operating petroleum exploration wells, not including stratigraphic wells, monitoring wells or a set of five or fewer wells that is more than three kilometres from any other petroleum well".

CHAIR: That is exempted from the automatic—

Mr WHITEHOUSE: If you are not those, then you require a part 4.1 approval. If you are also drilling and exploring in the areas defined as environmentally significant—there is a list of those, wetlands and areas like that—when the Department of Industry and Investment [DII] hands out an EL, they have no idea whether it requires planning approval or not because that is in the hands of the operator. So there is no cue as to whether or not they are to do an environmental assessment under part 5 of the Act. I suspect that probably they are left in a position that they will do nothing.

The Hon. SCOT MacDONALD: Unless they are pulled up?

Mr WHITEHOUSE: Yes.

The Hon. JEREMY BUCKINGHAM: Are you saying with the new SEPP for State and regional development there are these triggers that cover exploration which may require, if they are not exempt or do not have these five wells three kilometres apart and so on, an EIS under part 5?

Mr WHITEHOUSE: The obligation is on the DII. But the problem is they have already granted the EL at this stage, so it is all too late.

The Hon. JEREMY BUCKINGHAM: The obligation is on the—

Mr WHITEHOUSE: The obligation is on the DII to have an EIS if there is a significant impact. But the problem is that at the time they grant it they have no idea or any possible way of finding out whether this is going to happen.

CHAIR: Because they do not know in advance whether those exemptions are going to apply.

Mr WHITEHOUSE: So you have a test that is impossible for them to ever meet.

The Hon. JEREMY BUCKINGHAM: Because they are not required to do that when they are applying for the EL?

Mr WHITEHOUSE: Right. I would assume if I were the DII I would do nothing and leave it to the operator. Of course, what it means is that there is no assessment of these things at all. If they are exempt from State significant development they are exempt from everything, including every form of environmental assessment.

The Hon. JEREMY BUCKINGHAM: Would you say that one more time?

Mr WHITEHOUSE: If they are exempt from State significant they do not need planning control and then there is no possibility of the application of the environmental assessment provisions because it is all too late, it has happened.

CHAIR: At the EL phase?

Mr WHITEHOUSE: Yes.

The Hon. JEREMY BUCKINGHAM: The key point is that the EL has a significant impact because the exploration infrastructure is the same?

Mr WHITEHOUSE: Correct.

The Hon. JEREMY BUCKINGHAM: Or can be.

Mr WHITEHOUSE: When you do an EIS for the production you are doing an environmental assessment on the existing environment, which has all the production wells already there.

The Hon. PETER PRIMROSE: You need another box on the application.

Mr WHITEHOUSE: You need another box.

The Hon. PETER PRIMROSE: Asking the question.

Mr WHITEHOUSE: Yes. The ninth issue is that the interaction with the coal industry is extremely poor and is unaddressed other than in the requirement that disputes between holders of mining title can go to the Land and Environment Court. There are clearly issues of timing disputes. For example, if I have an approval for coal seam methane which requires extracting gas for 21 years and company Y comes in and says, "I am going to open cut this next year", then it is all gone. Clearly, the value of their investment has just disappeared. Secondly, there can be significant damage—

CHAIR: Two titles can be granted—a mining title and a coal seam gas title—over the same area?

Mr WHITEHOUSE: Correct. There is a provision in the Mining Act that enables the Minister to add petroleum to a mining title because often, clearly, methane control is a major issue in underground coalmines. We had the Appin mine disaster in New South Wales in 1975 and the Pike River one recently in New Zealand. Most mines are required to degas as part of their occupational health and safety requirements. Some of them utilise that. For example, BHP Billiton at the Tower colliery has a fully operational gas power plant which is degassing in advance of the mining operation. But, of course, those things are not a matter of much interest to people exclusively in the coal seam methane gas and there is a high potential for conflict. The other issue is that the process of exploration and production of coal seam methane can seriously damage coal resources. That can be by way of the drilling processes and the casings used. For example, in the Wyong deposit where the former Government rejected a development proposal they had used metal casings when Sydney Gas explored the area, which basically damaged—

CHAIR: Was that Centennial Coal?

Mr WHITEHOUSE: No, it was a Korean company. Sydney Gas had used steel casings, which affects adversely longwall mining. When you are also involved in fracking and other processes you are significantly changing the operational issues for underground coalmines. So the question may well be that we are adversely affecting the long-term value of the State's interest in coal.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

Mr WHITEHOUSE: The other issue with this interaction is that it creates a large level of concern and confusion with landowners, with the coal company and the coal seam gas methane company both approaching them, both seeking access arrangements, both wanting to explore for different types of things. Of course, if one is handled poorly, no matter how good the operator is that follows, they are left with the detritus of the last person.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

Mr WHITEHOUSE: There is no evidence that the DII actually looks at this issue of interaction. I think Gloucester is a classic example of an active mining area with now an approval for a production lease and no clear idea how they are going to inter-relate.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

Mr WHITEHOUSE: I think there is going to be a long-term legacy of those intersectional disputes between the coal industry and the coal seam gas industry. Ultimately we need to look at the efficiency of extracting gas concurrently with mining operations where mining is to occur because clearly that is the most economically efficient for the interests of the State.

The Hon. JEREMY BUCKINGHAM: Are you saying mining is?

Mr WHITEHOUSE: Having them concurrent rather than totally unrelated.

The Hon. JEREMY BUCKINGHAM: Degassing areas where we are going to coal mine anyway?

Mr WHITEHOUSE: Yes.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

Mr WHITEHOUSE: The tenth issue is that the dispute resolution process is cumbersome and user unfriendly. The change from the mining warden to having the jurisdiction in the Land and Environment Court has simply made the process more costly, more bureaucratic and with no special knowledge of mining in the court, as opposed to the previous system. It certainly is a lot friendlier to the companies, but not so friendly to the operators. The process for resolving access agreements by arbitration, compulsory arbitration and appeal to the Land and Environment Court can go on for years.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

Mr WHITEHOUSE: I think it is giving people access to information that they can either take or leave. Ultimately, you are trying to ensure that all parties, and particularly landowners, are well informed. So, there is a template with some discussion about various clauses and people can either take that or not adopt it. It is a matter for negotiation but it is an issue that people need to be informed about what can be in these agreements, what has been the experience elsewhere and probably also there needs to be some level of information about the money involved.

CHAIR: It is almost a combination of the model rules, which is a minimum set of standards that apply to everyone, and almost a checklist. These are all the things you could consider in an agreement with party A or party B and you can tick off the things you think are important to you and then you negotiate?

Mr WHITEHOUSE: Rather like a contract for the sale of land, where there is a standard Law Society contract and the parties can add and change clauses as they like, but at least you have a base that people are working from and a lot of the basics are covered.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

(Mr Whitehouse withdrew.)

(The Committee adjourned at 12.01 p.m.)