Parliamentary Committees

Mining and Other Legislation Amendment Bill 2012

Report No. 18
Agriculture, Resources and Environment Committee
March 2013

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Abbreviations and definitions

Cwlth	Commonwealth
ASC	Aurukun Shire Council
DEHP	Department of Environment and Heritage Protection (Qld)
DNRM	Department of Natural Resources and Mines
DSDIP	Department of State Development, Infrastructure and Planning
FLP	Fundamental legislative principle
GOC	Government-Owned Corporation
ILUA	Indigenous Land Use Agreement
LGAQ	Local Government Association of Queensland
MP	Member of Parliament
NAK	Ngan Aak-Kunch
NSW	New South Wales
NTA	*Native Title Act 1993* (Cwth)
Qld	Queensland
QLS	Queensland Law Society
QRC	Queensland Resources Council
SO	Standing Order

Chair's foreword

This report presents the findings from the committee's inquiry into the Mining and Other Legislation Amendment Bill 2012, introduced on 28 November 2012 by Hon Andrew Cripps MP, Minister for Natural Resources and Mines.

On behalf of the committee I thank departmental officers who briefed the committee. I also thank the organisations and individuals who provided submissions to our work, and appeared before the committee at our public hearing.

I commend the report to the House.

Ian Rickuss MP
Chair

March 2013

Recommendations and points for clarification

Point for clarification **35**

The committee notes the advice provided by the department and invites the Minister to provide assurances that the new access arrangements proposed in the Bill will provide adequate protections for culturally sensitive sites and artefacts on lands that are subject to unresolved native title claims.

1. Introduction

Role of the committee

The Agriculture, Resources and Environment Committee is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.[1]

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect.[2] The committee also considers how departments consult with stakeholders and the effectiveness of this consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

The committee also considers the application of fundamental legislative principles. Fundamental legislative principles are defined in Section 4 of the *Legislative Standards Act 1992* as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

The referral

On 28 November 2012 Hon Andrew Cripps MP, Minister for Natural Resources and Mines, introduced the Mining and Other Legislation Amendment Bill 2012 (the Bill). The Legislative Assembly referred the Bill to the committee for examination, with the committee's report due by 12 March 2013, in accordance with SO 136(1).

On 8 March 2013, Minister Cripps tabled an Erratum to the Explanatory Notes to the Bill.

The committee's processes

For its examination of the Bill, the committee:

- identified and consulted with likely key stakeholders
- sought advice from the Department of Environment and Heritage Protection (DEHP) regarding the policy underpinning the legislation
- invited public submissions
- convened public briefings and a public hearing in the Parliamentary Annexe on 13 February 2013 to clarify points raised by submitters, and
- sought expert advice on possible fundamental legislative principle issues.

A list of submitters is at Appendix A.

Briefing officers and hearing witnesses are listed at Appendix B.

[1] Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland as at 1 January 2013.
[2] Section 93 of the *Parliament of Queensland Act 2001*.

2. Policy context and consultation

Policy objectives

The purpose of the Bill is to provide amendments to achieve the following objectives:

- reduce financial and regulatory measures for small scale opal and gemstone mining
- reduce regulatory provisions governing fossicking and the requirements regarding Indigenous Land Use Agreements when applying for fossicking licences
- allow co-location of infrastructure and activities on pipeline licences
- amend the definition of 'occupier' contained in the *Petroleum and Gas (Production and Safety) Act 2004*
- amend the resources Acts to change the approach to prohibited post-grant business transactions and changes of ownership ('dealings')
- amend the *Mineral Resources Act 1989* to make provision for multiple agreements for development over the Aurukun bauxite resource area
- amend the *Petroleum and Gas (Production and Safety) Act 2004* to make changes to the commercial tender process for coal exploration.[3]

Small scale mining

The Bill was introduced in response to lobbying from Queensland gemstone miners who have felt that administrative processes have been discouraging participation in their industry.[4]

The Minister in his introductory speech stated that the Bill:

> *..simplifies applications and removes ongoing administrative processes and fees for these miners.*[5]

And

> *...These new arrangements will allow the industry and the Queensland government to differentiate between small opal and gemstone mining and large mining operations and therefore apply a more appropriate level of regulation.*

Small scale mining activity is defined as mining activity that:

1. is carried out under a mining claim, for corundum, gemstones or other precious stones the area of which is not more than 20 hectares
2. is carried out under an exploration permit for minerals the area of which is not more than four sub-blocks, or
3. Is carried out under a prospecting permit.

The changes in the Bill will mean that:

- eligible small scale miners can transition from mining leases to mining claims

[3] Explanatory Notes, Mining and Other Legislation Amendment Bill 2012, pp. 2-7.

[4] Hatzakis M. & Roberts A. 2012, "Bill to cut red tape for small-scale miners", *ABC News*, 29 November, <http://www.abc.net.au/news/2012-11-29/bill-to-cut-red-tape-for-small-scale-miners/4398794 accessed 7.3.13>; Calderwood K. 2012, "Small miners call for better access to Gemfields", *Rural Weekly,* 7 December <http://www.ruralweekly.com.au/news/sparkling-ideas/1648853/ accessed 7.3.13>.

[5] Queensland Parliament, 2012, *Record of Proceedings*, Brisbane, 28 November, pp.2857-8.

- mining claims for corundum, gemstones or other precious stones can be granted for larger areas, and
- machine mining will be permitted.[6]

These reforms will also mean that small scale miners will have to:

- submit a work program every five years
- comply with a new Small Scale Mining Code
- continue providing financial assurance and to rehabilitate disturbed areas, and
- comply with the general environmental duty. [7]

Clause 6 of the Bill inserts a new section 4AA into the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012.* It includes a new definition of 'small scale mining activity' that will encompass some small scale exploration activities and small scale opal and gemstone mining activities that will be eligible to operate without an environmental authority.

Under the existing legislation, an environmental authority is required for all mining activities. The licensing scheme recognises that there are different types of mining activities that have different types of environmental authorities which are proportionate to their risks. Mining activities are currently described as level 1 (high risk) or level 2 (low risk) mining activities. Level 1 mining activities operate under an environmental authority and are subject to the highest levels of assessment. There will be no change to the processes that apply to these activities as part of the reforms in this Bill. Level 2 mining activities operate under a code of environmental compliance which sets out the standard conditions that apply to the activity. The code is taken to be the environmental authority for the mining activity and additional conditions may be applied if some aspects of the code cannot be complied with. Exploration activities and opal and gemstone miners are generally operating as level 2 mining activities operating under a code.

The reforms contained in this Bill will remove the requirement for some level 2 exploration activities and level 2 opal and gemstone mining activities to operate under an environmental authority (or code).

The definition of 'small scale mining activity' being introduced by the Bill includes criteria that will restrict the types of mining activities that will be eligible to operate without an environmental authority to low risk exploration activities and low risk opal and gemstone miners, negating the need for the additional rigour of an environmental authority. Activities that will no longer need an environmental authority are restricted in size and where they can operate, for example, not in watercourses.

Removing the environmental authority requirement will benefit small scale opal and gemstone miners and people undertaking exploration activities as they will no longer need to make an application, pay annual fees (if currently applicable) or comply with ongoing administrative requirements.

Fossicking

The Bill contains amendments to the *Fossicking Act 1994.* These amendments will:[8]

- **Remove** section 11 which currently requires the holder of a statewide fossickers licence to negotiate an Indigenous Land Use Agreement (ILUA) with any 'Determined Native Title Holders' of land prior to entry to that land, and

[6] Queensland Parliament, 2012, *Record of Proceedings*, Brisbane, 28 November, pp.2857-8.
[7] Explanatory Notes, Mining and Other Legislation Amendment Bill 2012, pp. 2-7.
[8] Department of Natural Resources and Mines, *Correspondence*, 10 January 2012.

- **Add** section 27 (1) (d) which will require the holder of a fossickers licence to seek consent for entry from those native title holders who have been determined to hold native title rights and interests over relevant land 'to the exclusion of all others'.

These changes are intended to make apply for fossicking licences more straightforward. Fossicking is seen as a low impact tourist and hobby activity, and the amendments will mean that those applying for licenses will no longer have to apply for an Indigenous Land Use Agreement from Native Title holders. Currently, a fossickers licence holder must obtain the written consent of a landowner before entering occupied land. The amendments in the Bill will give those native title holders with 'exclusive rights' the same rights as ordinary landowners, that is, a fossicker must obtain the Native Title holders' written consent before entering the relevant land.

Pipeline Licences

Currently, petroleum pipeline licence holders are not authorised to construct or conduct other infrastructure or activities (like electricity or telecommunication cables) on pipeline land where this infrastructure or activity relates to other petroleum authorities.[9]

The changes proposed in the Bill will allow industry, including petroleum and coal seam gas companies, to conduct activities for a petroleum facility licence, petroleum lease or another pipeline licence on pipeline licence land.

The Minister will be required to give approval as to whether these activities are appropriate for the licence area. The integration of pipeline operations as proposed by the Bill seeks to benefit landowners, the environment and overlapping tenure holders.

Competitive Tendering Process

At present a competitive tendering process is possible under the *Petroleum and Gas (Production and Safety) Act 2004,* however the first tender round for petroleum and gas has highlighted a number of shortcomings in the legislative framework. The Bill, at clauses 48 and 49, makes amendments to the framework in the *Petroleum and Gas (Production and Safety) Act 2004* to achieve a more effective commercial tender process to be applied to future releases.

Under the *Mineral Resources Act 1989*, exploration permit applications are processed over-the-counter on a first lodged first serve basis. This over-the-counter process for coal exploration permits only applies to land that is made available once the Minister releases land held under Restricted Area 394 which was declared to enable Government to strategically manage coal exploration.

The aims of a competitive tendering process are to:

- allow the State to assess and compare the capabilities of a range of applicants and ensure land is allocated to the holder most likely to facilitate geological exploration
- improve the strategic management of coal exploration. Controlling the release of land would allow the Government to identify and assess the suitability of areas before they are released, and
- ensure the Queensland community receives a more appropriate return that reflects the in-ground value of resources.

The department has undertaken limited targeted consultation with industry representatives including the Queensland Resources Council (QRC) and the Australian Petroleum Production and Exploration Association (APPEA). QRC identified two areas of concern:

[9] Explanatory Notes, Mining and Other Legislation Amendment Bill 2012, p.4

- firstly, QRC believes that the Bill potentially reduces the discretion available to the Minister to grant an exploration permit where the Minister reasonably believes the applicant has at some time contravened any mining legislation.
- secondly, QRC is concerned that the Bill removes from the *Petroleum and Gas (Production and Safety) Act 2004* the requirement for the Minister to publish the weighting proposed to be given to each special criteria, work program criteria and capability criteria.

The department position is that while the most likely method of assessing a tender will be through evaluating tender responses against weighted criteria, there needs to be objectives to ensure that tenderers do not submit a tender that is driven by the weightings rather than their capabilities.

An alternative option such as using qualifiers against criteria such as 'essential', 'highly desirable', 'desirable' or 'optional' will help tenders to more clearly understand the fit of any particular tendered area into the government's broader economic objectives. For example, it may be highly desirable for a tenderer to demonstrate their experience with on-site resource processing for a particular resource type, innovative land rehabilitation or other practices.

There will continue to be regular land releases for under-explored areas of the State without a cash bidding component to support junior/smaller explorers.

In New South Wales, a competitive tender process with an additional option for direct allocation by the responsible Minister is applied to exploration rights for coal. As pointed out by the Queensland Resources Council (QRC), this process has generated significant media coverage at an ongoing Independent Commission Against Corruption (ICAC) inquiry.

The amendments proposed in the Bill do not include such a direct allocation option for Queensland.

Consultation

The Government conducted no public consultation on the Bill, though departments did conduct targeted consultation with key stakeholders on the general policy options and on Bill itself after it was tabled.

The following sections explain the targeted consultation by departments, and the outcomes. The information provided is based on a briefing provided to the committee by DNRM.[10]

Small Scale Opal and Gemstone Mining Amendments and Consequential and Other Amendments to Resources Legislation

The Department of Natural Resources and Mines (DNRM) and the Department of Environment and Heritage Protection (DEHP) undertook targeted consultation with key stakeholders on opportunities to reduce regulatory burden on small scale opal and gemstone miners, as well as a suite of amendments to resources legislation to remove unnecessary red tape and improve certainty and consistency of regulation.

On 28 and 29 August 2012, DNRM and DEHP held a workshop in Brisbane with representatives from several small scale mining associations that represent miners who will benefit under this Bill. The associations involved in the workshop were:

- North Queensland Miners Association
- Queensland Boulder Opal Association
- Queensland Sapphire Producers Association
- Queensland Small Mining Council

[10] Department of Natural Resources and Mines, *Correspondence*, 5 February 2013.

- Quilpie Opal Miners Association, and
- Yowah Opal Miners Community Services Association

Representatives supported proposed reforms under the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994,* and sought additional reforms to benefit small scale miners and explorers more broadly. The Bill addresses some of these additional reforms, while others require further consideration and are not included in this Bill.

Some representatives subsequently contacted departmental representatives to discuss proposed amendments, while a number of individual opal and gemstone miners were separately consulted on the proposed changes by DNRM including small scale opal and gemstone miners identified by the Member for Gregory and who are not affiliated to mining associations at the August workshop. Other miners commented separately by letter and email at various stages of the policy development.

Between 2 October and 7 November 2012, DNRM and DEHP undertook targeted consultation with a range of State, local government and non-government stakeholders across the resource, agricultural, indigenous and environmental sectors. These stakeholders were generally supportive of the Bill.

Ongoing consultation occurred with other key government agencies including the Department of the Premier and Cabinet, Queensland Treasury and Trade, the Department of Transport and Main Roads, Queensland Health, the Department of Justice and Attorney-General and the Office of the Queensland Parliamentary Counsel.

Fossicking and Native Title

On 2 October 2012, DNRM telephoned the chief executive officers of the Cape York Land Council, Carpentaria Land Council, North Queensland Land Council, and the Queensland South Native Title Services and the Queensland Indigenous Working Group to discuss proposed amendments to the *Fossicking Act 1994* and to request comment from each organisation. On 4 October 2012, DNRM wrote to each body summarising the proposed amendments.

The North Queensland Land Council and the Cape York Land Council provided comments to DNRM. The department subsequently provided responses to the issues they raised. These exchanges resulted in the amendments that give native title holders with exclusive possession interests a similar role in granting access to lands as that of freehold landowners.

Aurukun Bauxite Resource Project

According to DNRM, the amendments relating to the Aurukun Bauxite Resource Project are administrative in nature and, there has been no community consultation on them.

The amendments allow for the Aurukun Bauxite resource to be developed as multiple projects and under multiple agreements. The amendments also clarify the link between Parts 6A and 7AAA which are specific to the Aurukun project and the general provisions of the *Mineral Resources Act 1989*.

3. Examination of the Bill

Fossicking provisions

Part 4 of the Bill amends the *Fossicking Act 1994*, removing section 11 from the Act so that fossickers will no longer be required to negotiate an Indigenous Land Use Agreement before they can obtain a fossickers licence in respect of determined native title land. The Act currently requires the holder of a fossickers licence to obtain a landowners written consent to enter occupied land for fossicking purposes. A further amendment to the Act would require that the holder of a fossickers licence to seek consent from determined native title holders who have been granted native title rights and interests over certain land 'to the exclusion of all others'.[11]

It is intended that these amendments, by recognising that fossicking is not a commercial venture, will remove a regulatory burden from fossickers while still recognising the rights of holders of exclusive native title rights and interests to grant or refuse consent to fossickers wishing to enter their land.[12]

Clause 25 - Omission of s 11 (Act's application if approved determination of native title)

Currently, anyone wishing to use land for fossicking is required to enter into an Indigenous Land Use Agreement with native title land holders before being granted a fossicker licence.[13] Clause 25 omits section 11 and its requirements for an indigenous land use agreement to consent to fossicking over registered native land.

During the public briefing on the Bill, departmental officers stated:

> *The proposed amendments do not require a fossicker's licence holder to enter into any native title negotiations, and the grant of a fossickers licence does not create an interest in or priority to any land. The state's view is that the owner's consent can only be given or refused by an owner of the land on the basis of a legal precedent set by the Queensland Court of Appeal defined as someone normally able to charge rent for that land. As this definition does not apply to native title parties with non-exclusive rights and interests, fossickers are not required to seek their authority before entering upon land.*[14]

Several submitters raised concerns with this section. The Cape York Land Council Aboriginal Corporation (CYLAC) argued that the proposed amendments to the *Fossicking Act 1994* will impact on native title rights and interests, and potentially create a liability for holders of fossicking licences for non-compliance with the future act provisions of the *Native Title Act 1993* (Cth) (NTA):

> *If section 11 is removed, and there is no requirement for agreement to access non-exclusive native title land, there is a high potential for damage to cultural heritage. Many sites and objects of significance to the Traditional Owners remain unmapped or unrecorded on registers. If there is no requirement to consult with native title holders, then it is difficult to see how appropriate precautions can or will be taken in practice. We doubt that those conducting activities described as "intermittent small scale recreational activities" will have the ability, resources or awareness of appropriate cultural heritage processes.*[15]
>
> *We are concerned that the proposed removal of s.11 from the Fossicking Act will result in fossickers re-entering the native title process, and if accepted as parties to native title claims, withholding consent to any determination of native title unless and until they are*

[11] Explanatory Notes, Mining and Other Legislation Amendment Bill 2012, pp. 3-4.
[12] Explanatory Notes, pp. 3-4.
[13] Explanatory Notes, p 3.
[14] Skinner, J. 2013, *Draft Transcript,* 13 February, p. 4.
[15] Cape York Land Council Aboriginal Corporation, 2013, *Submission No. 3*, p.4.

> *given a guarantee of access for fossicking activities post-determination. …This will add to the cost and timeframes for all parties.*[16]

CYLAC submit that AREC should conclude that the Fossicking Act provisions should not proceed.

The North Queensland Land Council (NQLC) and the Queensland Murray-Darling Committee (QMDC) also raised concerns about this Clause in relation to the impact on Native Title. The NQLC submitted:

> *If the re-evaluation of "fossicking" as being "a future act passing the freehold test in the NTA" is solely based on the fact that fossicking is a hobby and a recreational non-commercial activity, that re-evaluation should be revisited. Aboriginal cultural sites such as middens and graves may be disturbed in the activity of fossicking on land that may still contain native title and it should also be taken into account that in some cases visiting the area may not be permissible from a cultural perspective. Accordingly, the impact of the act on land that may still contain native title is a matter that needs to be taken into account in any re-evaluation of "fossicking."*[17]
>
> *The proposed changes to the Fossicking Act do not accommodate native title holders of non-exclusive native title rights and interests, prescribed bodies corporate that hold native title on behalf of native title groups or registered native title claimants.*[18]

The QMDC submitted:

> *The removal of the requirement to obtain Indigenous Land Use Agreements is of concern to QMDC. The constitutional rights and standing of Traditional Owners and Aboriginal people must be respected and honoured.*[19]

The department provided the following response to some of these concerns:[20]

> *The State has re-assessed the original interpretation of 'fossicking' used drafting (sic) in the Fossicking Act 1994 and has subsequently formed the view that 'fossicking' is not 'mining' as defined by the Native Title Act 1993 (Cwth) (NTA). Consequently, the grant of a fossickers licence is not a future act conferring a right to mine as defined by the NTA, on the licensee.*
>
> *The State's view is that section 24MD of the NTA applies – Acts that pass the freehold test, to the grant of a fossickers licence and gives Native Title holders and claimants the same procedural rights as landowners. In the Fossicking Act, landowners receive no procedural rights in the application and grant process for a fossickers licence. The granting of the licence includes a condition which requires the holder to obtain written consent from owners of occupied land before entry for fossicking activities.*
>
> *The granting of a fossickers licence provides the licensee a right to fossick over the whole of the State of Queensland, subject to the prior written consent obtained from the owner of occupied land to enter upon the land. There is no guarantee that a fossicker will obtain permission to enter land, and there are no appeal provisions for a fossicker refused permission to enter land.*
>
> *The proposed amendments do not require a fossickers license holder to enter any native title negotiations and the grant of a fossickers license does not create any interest in, or priority to, any land.*
>
> *The State's view is that the owner's consent can only be given or refused by an entity that is an owner of the land, that is, someone normally able to charge rent for that land (see*

[16] Cape York Land Council Aboriginal Corporation, 2013, *Submission No. 3*, p.4.
[17] North Queensland Land Council, 2013, *Submission No 7*, p. 2.
[18] North Queensland Land Council, pp. 2-3.
[19] Queensland Murray Darling Committee, 2013, *Submission No 12*, p. 3.
[20] Department of Natural Resources and Mines, *Correspondence*, 12 February 2013.

Queensland Construction Materials P/L v Redland Shire Council & Ors [2010] QCA 182.) As this definition does not apply to native title parties who hold non-exclusive rights and interests, the requirement for fossickers to seek their authority has not been provided for.

The Fossicking Act limits fossicking to the use of hand held implements like spades and sieves and prohibits the sale of fossicking materials for commercial gain, reflecting the nature of fossicking as a relatively low impact hobbyist activity.

Point for Clarification

The committee invites the Minister to advise whether any legal advice was obtained to confirm that 'fossicking' is not considered to be 'mining' under the *Native Title Act 1993* (Cwth).

Changes to the definition of 'occupier'

Under the land access framework, resource companies are required to compensate each owner and occupier of private land or public land in a tenement or authority area where a compensable impact (effect) occurs as a result of resource activities. The definition for 'occupier' therefore holds the key to specifying liabilities and rights to compensation that apply.

Clause 42 of the Bill seeks to amend the definition of 'occupier' following confusion over recent and confusing changes made under the *Mines Legislation (Streamlining) Amendment Act 2012*.

According to the Explanatory Notes to the Bill, the intent of the amendment to the definition is to:

- *provide that an 'owner' (freehold title or leaseholder) or person with a 'right to occupy under an Act or lease registered under the Land Title Act 1994' is able to confer a right to occupy to another person or entity (e.g. children, other family members, family trust) and that this right be recognised as a legitimate 'occupier' under the definition and compensation provisions of the Acts, and*
- *ensure that the definition would enable the recognition of legitimate business arrangements such as family trusts, partnerships and companies associated with managing rural businesses on both leasehold and freehold land.*[21]

The Explanatory Notes also state that the amendment will resolve community concerns about the potential ambiguity of the definition and will ensure that persons with a legitimate business or residential interest in the land are recognised as occupiers for the purpose of the compensation provisions of the land access framework.[22] However, this view is not supported by the Queensland Law Society or the Queensland Resources Council which criticised the treatment and coverage of 'landowners' in the provisions. The Queensland Law Society submitted that the amendment proposed may not achieve its stated objective due to an omission:

The Society notes that the changes foreshadowed in the Explanatory Notes relating to a person with a right to occupy a place under an Act or a registered lease have been implemented. It appears, however, that the amendment relating to an 'owner', as anticipated by the Explanatory Notes, has been omitted.[23]

In their advice on the points raised in the submission, the department told the committee the Government has taken advice and is satisfied with the amendment to the definition as it is drafted:

The Queensland Government has sought advice in relation to the drafting of the definition of 'occupier' contained in the Bill and maintains that the definition as drafted adequately

[21] Explanatory Notes, Mining and Other Legislation Amendment Bill 2012, p.7.
[22] Explanatory Notes, p.7.
[23] Queensland Law Society, 2013, *Submission No.9*, p.2.

> *reflects the policy intent that an owner (including a holder of freehold title holder and leasehold land holder) are considered to be occupiers for the purpose of the conduct and compensation provision of the resources legislation.*[24]

At the public hearing, the QLS explained that its concerns with the proposed amendment to the definition reflect concerns raised by its members working for both sides (ie resource companies and landowners), and that uncertainties needed to be further clarified.[25]

According to the QLS, the nub of its concern with the amended definition is about:

> *… situations where the owner of the land is one entity and it is a different entity that is actually occupying the land and operating the agribusiness and there is not a formal registered lease between those parties in the circumstances.*
>
> *The relevant part of the section to look at in the Mineral Resources Act I think is section 78. It talks about a person who under an act has a right to occupy a place or is under a lease registered under the Land Title Act, so if it is a lease there is no problem. That is fine, as long as it is registered. There are a lot of leases that are not registered because they do not need to be. So our key point was simply that under that legislative drafting a person who is occupying the land with a licence from the owner is not someone who then is caught within that particular definition. The reason for that is that we say that, in order to get to limb A, which is the part that says that a person who has a right to occupy a place under an act then gives this right to another person in limb B—we say that limb A does not quite catch that degree of freehold owner because we say that the right to actually occupy the land does not come from an act; it comes from the common law. So what we say is that the Governor in Council, through legislation, has given the government the right to issue freehold title to people, but it is not that act that gives people the right to occupy and exclude others; it is actually the common law that does that.*
>
> *So we have suggested that a simple and very minor amendment is made to the second limb*
>
> *of that definition just to clear that up, simply to say that where an owner has given another a right to occupy the place that person should be considered an occupier in the circumstances because we just do not think it quite gets there.*[26]

The table below lists the series of changes to the definition of 'occupier' since 1994, including the proposed amendment in the Bill and the further amendment proposed by the Queensland Law Society in their submission.

In their closing briefing for the committee, DNRM reiterated that the proposed amendment to the definition are clear and suitable:

> *The department is satisfied that a freehold owner would be covered by the definition. We have consulted on this point. The issue of occupier and trust et cetera was raised previously. That is why we went back and revisited it. It is always a challenge that industry raises about land access and the process that sits around that—again, as was mentioned, who is known and who is not known et cetera—and certainly keeping that balance in terms of the expectations of an explorer who wants to undertake activity versus keeping landholder rights. That is why we recently had a land-access review. We now have a working group looking at some of these particular issues surrounding land access to ensure we continue to keep that balance right between encouraging exploration and respecting landholder rights.*[27]

[24] Department of Natural Resources and Mines, *Correspondence*, 11 February 2013.
[25] Dunn, M. 2013, *Draft Transcript*, 13 February, p.26.
[26] Dunn, M, *Draft Transcript*, pp.26-7.
[27] Skinner, J. 2013, *Draft Transcript*, 13 February, p.29.

Changing definitions of 'occupier'

Petroleum and Gas (Production and Safety) Act 2004

'occupier'—

1. Other than for chapters 9 and 10, a person is the "occupier" of a place only if—
(i) under an Act, the person has a right to occupy the land, other than under a mining interest; or
(ii) an occupier under subparagraph (i) has given the person the right to occupy the land.

2. For chapters 9 and 10[28], an 'occupier' of a place includes any one who reasonably appears to be, claims to be or acts as if he or she is, the occupier of the place.

Mines Legislation (Streamlining) Amendment Act 2012 at s.122(2)

***occupier**, of a place, means a person—*

(a) who, under an Act, or, for freehold land, a lease registered under the Land Title Act 1994, has a right to occupy the place, other than under a mining interest, petroleum tenure, licence, GHG authority or geothermal tenure; or

(b) to whom an occupier under paragraph (a) has given the right to occupy the place.

Notes: This amendment was to bring the *Petroleum and Gas (Production and Safety) Act 2004* into line with other resources Acts.

Mining and Other Legislation Amendment Bill 2012 (Clause 42)

***occupier**, of a place, means a person—*

(a) who, under an Act, or, a lease registered under the Land Title Act 1994, has a right to occupy the place, other than under a mining interest, petroleum tenure, licence under the petroleum and gas (Production and Safety) Act, GHG authority or geothermal tenure; or

(b) to whom an occupier under paragraph (a) has given the right to occupy the place.

Notes: This amendment is intended to resolve public concerns that the previously amended definition may interfere with the ability of landholders to access compensation from resource companies where multiple parties are involved in land management and formal business arrangements such as family trusts, corporations and partnerships.

Alternative wording proposed by the Queensland Law Society

***occupier**, of a place, means a person—*

(a) who, under an Act, or, a lease registered under the Land Title Act 1994, has a right to occupy the place, other than under a mining interest, petroleum ten ure; or

(b) to whom an:
i. owner; or
ii. occupier under paragraph (a)
has given the right to occupy the place.

Note: This wording is proposed by the Queensland Law Society to articulate more clearly that where an owner has given another a right to occupy the place that person should be considered an occupier in the circumstances.

Committee comment

While noting the department's advice on clause 42, the committee remains concerned that the amendment to the key definition for 'occupier' may not achieve its stated objective. The committee considers, that it would prudent given the previous history of changes to this definition, to include the further changes proposed by the Queensland Law Society to provide greater certainty to landowners and resource companies. According to the Law Society, this amendment reflects the views of its members working with the legislation.

[28] In the *Petroleum and Gas (Production and Safety) Act 2004* Chapter 9 relates to 'safety' and Chapter 10 to 'investigations and enforcement.'

The committee suggests that the difficulties with resolving the wording of the definition for 'occupier' in resources legislation highlight the pitfalls of not consulting with stakeholders on Bills before those Bills are presented to the House. While consultation on the policy intent may generate strong support, there is no guarantee that this support will apply to the provisions that are included in the Bill.

Recommendation 1

The committee recommends that clause 42 be amended to provide greater certainty of the coverage for landowners and resource companies.

Practically identifying occupiers of land

The second issues raised by QLS and the QRC is about the 'occupier' definition is process by which resource companies identify occupiers for the purposes of providing compensation.

The QLS submitted that in many circumstances it may be the owner of the land who is best placed to identify the relevant parties with whom a mining tenement holder should engage.[29] On this premise, the QLS proposed a two-staged process for practically identifying occupiers.

The QRC supported the QLS proposal in their evidence at the public hearing:

> *…we echo the Law Society's concerns in that the way that has been articulated does not necessarily mean that for a resource company looking to negotiate a land-access agreement it is immediately discoverable who those occupiers are. I think the Law Society mapped out a solution of a two-stage process where you say, 'Well, here are the occupiers that are discoverable,' and you have a process of engaging with them and then you have a second round of finding where the occupiers on title who may have then granted other occupying rights can be discovered and brought into the process.*[30]

Given that the department did not address this issue in their advice and briefings on the Bill, the committee invites the Minister to comment on the proposal put forward by the QLS and the QRC during the second reading debate of the Bill.

Point for clarification

The committee invites the Minister to comment during the second reading debate on the proposal put forward by the Queensland Law Society and the Queensland Resources Council for a two-tiered system for mining tenement holders to identify occupiers of land.

Competitive Tendering Process

Under the *Mineral Resources Act 1989*, exploration permit applications are processed over the counter on a 'first lodged first served' basis. While exploration permits for coal are processed through this over the counter process, they can only be applied for land released by the Minister and held under Restricted Area 394[31] which was declared to enable the Government to strategically manage coal exploration.

At present, a competitive tendering system is in place for petroleum and gas resources under the *Petroleum and Gas (Production and Safety) Act 2004*. The Bill introduces competitive tendering for

[29] Queensland Law Society, 2013, *Submission No.9*, p.3.
[30] Barger, A. 2013, *Draft Transcript*, 13 February, p.12.
[31] Department of Employment, Economic Development and Innovation, 2012, *Restricted Area 394 – Improving the management of coal resources in Queensland*, p.1. <http://mines.industry.qld.gov.au/assets/mines-pdf/Restricted-area-394-jan-12.pdf accessed 7.3.13>.

coal exploration and other minerals with the current tendering system for gas and petroleum to provide the basis for the new tender system.

As set out in the Bill's Explanatory Notes, the aims of the competitive tendering process are to:

- allow the State to assess and compare the capabilities of a range of applicants and ensure land is allocated to the holder most likely to facilitate geological exploration
- improve the strategic management of coal exploration by controlling the release of land to allow the Government to identify and assess the suitability of areas before they are released and
- ensure the Queensland community receives a more appropriate return from these resources and reflective of their in-ground value.[32]

Cash Bidding

A cash bidding component to the competitive tendering process, as recommended by the Henry Tax Review,[33] will be introduced for highly prospective coal, petroleum and gas areas. This represents a significant change to the system for mining companies that will be required to bid for the right to explore highly prospective land made available through the tender process. A successful tenderer will continue to be required to meet environmental approval requirements and comply with land access, cultural heritage and native title laws.

The Bill also introduces the option of applying a competitive tender process to exploration permits for minerals other than coal. It is anticipated that an exploration permit for minerals will usually be obtained via the over the counter process, however, competitive tendering could be applied if the Minister considers it is in the State's best interests.[34] If this is the case the Minister will publish a gazette notice inviting tenders over the prescribed area.

In determining what land is highly prospective, the department[35] advised that it would rely on land identified by the Geological Survey of Queensland (GSQ).[36]

Non-cash tenders

The proposed competitive tendering system will take into account land of unknown or limited 'prospectivity', also known as 'greenfield areas'. These areas will be released through a non-cash competitive bidding process and is designed to help facilitate continued interest in greenfields exploration in Queensland from the smaller mining sector.

The process for non-cash tenders will follow the existing process where an exploration authority is allocated after an assessment of a tenderer's detailed work program including their ability to optimise the resources and area the subject of the tender.

At the committee's hearing, the department provided a summary of the competitive tendering process:

> *The proposed amendments to the Mineral Resources Act 1989 and the Petroleum and Gas (Production and Safety) Act 2004 will modernise the approach to managing resource*

[32] Explanatory Notes, Mineral and Other Legislation Amendment Bill 2012, p.7.

[33] Henry, K. (Chairperson) 2009, *Australia's Future tax System: report to the Treasurer,* Chapter 12, Recommendation 49. <http://www.taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/publications/papers/Final_Report_Part_1/chapter_12.htm accessed 7.3.13>.

[34] Department of Natural Resources and Mines, *Correspondence*, 23 January 2013.

[35] Skinner, J. 2013, *Draft Transcript*, 13 February, p.28.

[36] Geological Survey of Queensland (GSQ) as part of the Department of Natural Resources and Mines, provides geoscience and resource information to improve the understanding of the geology and minerals and energy resource potential of Queensland, and promotes the geoscientific data and exploration potential to attract investment. (http://mines.industry.qld.gov.au/geoscience/about-gsq.htm accessed 7.3.13>.

exploration in Queensland through the competitive tendering framework for petroleum and gas, coal and minerals. Granting exploration rights through a controlled release of land and competitive tendering process will ensure that those most capable of developing the state's resources are given the opportunity to do so. Where appropriate, a cash bid component will be included to ensure the community receives an appropriate return on this access to potentially highly prospective areas based on the in-ground value of Queensland's resources. Only a few small areas in well-developed basins will be released with a cash bid component. The vast majority of tenements in the state will still be released through the non-cash-bidding process, an area which is important to small miners.[37]

Consultation

The department advised that limited targeted consultation took place with the Queensland Resources Council (QRC) and the Australian Petroleum Production and Exploration Association (APPEA) in relation to the proposed competitive tendering process.

At the committee's public briefing, the department advised that both organisations raised a number of issues about competitive tendering including the justification for the cash bidding component of the process as well as issues of transparency and impartiality by government in determining a successful tender.[38]

Clause 50 - Insertion of new ss 136 and 136A, pt 5, div 3 and pt 5, div 4, hdg

Clause 50 of the Bill amends the *Mineral Resources Act 1989* by inserting new sections 136 and 136A-136M in relation to the new competitive tendering process.

Section 136 - Grant of exploration permit on application

Section 136 allows the Minister to grant an exploration permit, with or without conditions, and to refuse the application. Before the exploration permit can be granted, the Minister must be satisfied that the prescribed criteria for the granting of the permit are met.

Section 136A - Obtaining exploration permit by competitive tender

Pursuant to section 136A the Minister can allocate an exploration permit for a mineral other than coal by conducting a competitive tender process if the Minister considers that it is in the State's best interest. This will involve the Minister calling for tenders by notice in the Government Gazette. This is the same process to be used for exploration permits for coal.

Section 136C - Call for tenders

Under section 136C the Minister may publish a call for coal exploration permit tenders by gazette notice. The Bill's Explanatory Notes advise that the call must state the following:

- the proposed area of the permit
- the closing time (the day and time) by which a tender responding to the call must be made
- that the tenders must be lodged before the closing time for the call, and
- that details are available at a stated place about any conditions likely to significantly impact on exploration in the proposed area, the period of not more than five years for which the proposed program of work for the permit must apply, any special criteria other than prescribed criteria, that are proposed to be used to decide whether to grant the permit or to

[37] Skinner, J. 2013, *Draft Transcript*, 13 February, p.5.
[38] Skinner, J. 2013, *Draft Transcript*, 13 February, p.5.

> decide the provisions of the permit, and whether a competitive tender process involving a cash bid is to be used for deciding the preferred tenderer.[39]

Subsection 136C(3) allows that the call may state matters relevant to the special and prescribed criteria. In circumstances where there is a cash component to a competitive tender, the call may ask tenderers to provide information as to how they will deal with land use conflicts in the area in question.

Requirement for making tender

Section 136E requires that a tender for coal be accompanied by a statement providing a description of the program of work to be carried out while also setting out the human, technical and financial resources the tenderer proposes to commit to the exploration work during each year of the exploration permit if it is granted.

A tenderer must advise the financial and technical resources they possess, which is separate from the statement that must be provided about the proposed work program on the area in question.

A tenderer must also provide a statement as to how and when they will liaise with, and keep informed, each owner and occupier of private or public land where authorised exploration activities are likely to be carried out. Other requirements include proof of the tenderer's identity and the payment of any application fee prescribed under regulation. If there is a cash bid component to the tender, then the tender must include the tenderer's cash bid.

Section 136I Process for deciding tenders

Section 136I allows the Minister to apply any process considered appropriate to determine a call for coal exploration permit tenders. The section gives two examples of the type of process the Minister may use, however this does not limit the Minister's power to decide a process. The process ultimately used by the Minister will be set out in the tender documentation provided to all tenderers.

The Minister may also ask the tenderer for further information to assist in the tender process.

Section 136J Provisions for preferred tenders

Under section 136J the Minister may require a preferred tenderer for a coal exploration permit to pay the cash bid amount as well as any amounts incurred to enable an exploration permit to be granted. An example of this could be the right to negotiate provisions contained in the *Native Title Act 1993*.[40] If a preferred tenderer does not comply with this section, or does not do all things reasonably necessary to allow the tender to be granted, the Minister may revoke the tender and the tenderer's appointment. However before revoking the tender, the Minister must provide reasons to the tenderer and allow them a reasonable opportunity to respond and rectify the issues identified.

Section 136K Deciding whether to grant exploration permit

Pursuant to section 136K(2) the Minister must be satisfied that the prescribed criteria for the tender have been met or the tender cannot be granted. The Minister must also consider any special criteria under section 136K(3) for the call in deciding whether to grant an exploration permit.

Clause 51 – Replacement of s 137 (Grant of exploration permit)

Clause 51 replaces current section 137 which granted exploration permits for both coal and non-coal permits.

[39] Explanatory Notes, Mineral and Other Legislation Amendment Bill 2012, p.30.
[40] *Native Title Act 1993* (Cwth), Part 2, Division 3, Subdivision P.

Section 137 Prescribed criteria for grant of exploration permit

Pursuant to section 137(3) the Minister must have regard to certain criteria before approving a program of work. These criteria include:

- the proposed activities to be carried in the area of the exploration permit
- where and when the activities are to be carried out and
- the technical and financial capabilities of the applicant to carry out the work.

In accordance with section 137(4) the Minister may disqualify a person from being granted an exploration permit if the Minister believes that the person has contravened the *Mineral Resources Act 1989* or any other mining legislation.

Submission comments

In their submission on the Bill, the QRC expressed concern that the competitive tender process will adversely affect smaller mining companies who will not be able to compete with the cash bids submitted by larger companies.

As submitted by QRC:

> *QRC is also concerned the cash bidding changes will adversely affect smaller explorers who do not have the up-front capital to bid for tenure. QRC understands the current intention is that only areas known to be highly prospective will be selected for cash bidding. The explanatory notes state that land releases will still happen for areas which are 'under-explored', which suggests a two-tier system of tenure in Queensland where the small innovative entrepreneurial exploration companies are effectively precluded from the most prospective country.*[41]

The QRC's concern is shared by the Association of Mining and Exploration Companies (AMEC).

As submitted by AMEC:

> *Exploration, particularly 'greenfield' exploration, which breaks new ground to discover mineral wealth, is overwhelmingly carried out by mid-tier or junior exploration companies. Contrary to the view expressed by the Minister for Natural Resources and Mines in the Queensland Parliament that cash bidding will ensure that mineral resources are developed, AMEC considers that this process simply allows the companies with the access to the largest amount of cash to warehouse tenements. In AMEC's view the proposed cash-bidding tenure process enshrines a system where those companies with the largest cash reserves win the most prospective tenure, not the company most-likely to develop any discovery.*[42]

In response to this concern, the department advised that there will continue to be regular land releases for under-explored areas of the State without a cash bidding component in order to support junior explorers.[43] At the committee's public hearing, the department expanded further on this issue:.

> *Clearly small entrepreneurs and small miners are important and remain important in this state. That is one of the reasons amendments are being put forward, particularly in relation to small miners. Small explorers who go out there and traverse large areas and explore are critical in that they are the ones doing the cutting-edge exploration that then becomes of interest subsequently to other players in that space, unless they grow themselves. The state values their contribution—it is very important—and we would be looking to maintain a strong small-explorer activity and presence.*

[41] Queensland Resources Council, 2013, *Submission No.9*, p.2.
[42] Association of Mining and Exploration Companies, 2013, *Submission No.5*, p.6.
[43] Explanatory Notes, Mining and Other Legislation Amendment Bill 2012, p.66.

> *Clearly, in administration of these arrangements we are very conscious of keeping the balance right, maximising the development of the resource and providing the community with an appropriate return on the access to potentially prospective areas based on the in-ground value of Queensland's resources. I want to reassure that there is balance in the administration of the process surrounding this in terms of the balance between the junior, the mid-level and the major players in our very active resource sector. How we are seen in this is important.*[44]

External probity advisor

The QRC also pointed to the problems experienced in New South Wales, the only other state that has implemented a competitive tendering process.

In New South Wales, a competitive tender process with an additional option for direct allocation by the Minister has been applied to exploration rights for coal. This process has recently generated significant media coverage at an ongoing Independent Commission Against Corruption (ICAC) inquiry where it is alleged that the then Minister benefitted a family mining company known to the Minister.[45]

In their submission, the QRC argued that the current ICAC inquiry is an example of how a competitive tender process can undermine community confidence in the government's role as gatekeeper of a state's resources.

The QRC submitted:

> *As QRC has outlined a number of times, the industry does not support a cash bidding process for exploration tenures. Accepting payments for tenure generates moral hazard, compromising the Government's ability to be seen to impartially regulate these projects.*
>
> *QRC watched the former New South Wales Labor government implement a similar cash bidding process which has generated community concern that exploration rights are 'for sale' to the highest bidder. QRC understands that the normal tenure approval process would still be applied, whereby the proponent must prove its ability and capacity to meet its work program commitments however introducing cash bidding in NSW undermined community confidence in the government's role as the steward of the State's resources.*[46]

In light of the problems experienced in New South Wales, the committee, at its public briefing on the Bill, asked the department whether it had concerns about the competitive tendering process being proposed. The department noted the differences between the process in NSW and the process proposed for Queensland. The department further advised that in order to eliminate any suggestion that a tendering process will be compromised, it will engage an external probity advisor to ensure that each competitive tendering process is carried out according to the requirements proposed under the Bill.

[44] Skinner, J. 2013, *Draft Transcript*, 13 February, p.28.
[45] McKeith, S. 2013, 'Macdonald denies lying about Obeid land', *Couriermail.com.au*, 11 February, <http://www.couriermail.com.au/news/breaking-news/obeid-mine-licence-just-luck-macdonald/story-e6freono-1226575578631 accessed 7.3.13>.
[46] Queensland Resources Council, 2013, *Submission No.8*, p.1.

The department advised:

> ***Mr Costigan:*** *Mr Skinner, what is the minister's role in the competitive tendering process? Do you have any concerns there, full stop—any concerns whatsoever, particularly given what we are hearing from other states at this point in time?*
>
> ***Mr Skinner:*** *As I mentioned before, obviously we read newspapers as well. As I said, I have consulted our probity auditor. His response was that they are different processes. Therefore, we are running a different process here in this state. The probity auditor, who has been auditing continuously what we have been doing right throughout the whole process, will write a report on the process at the end of it as an independent probity auditor and it will be made public. As I said, in any major exercise where government is making decisions where it has tenderers, not just in these sorts of processes, you have probity auditors. The probity auditor's advice is that the process is completely different here to other places. Therefore, we are confident that this will comply with full probity processes, including the role of the minister.*[47]

The QRC also expressed concern about the removal of published weightings and special criteria used to decide a tender as contained in the *Petroleum and Gas (Production and Safety) Act 2004*.

According to the Explanatory Notes to the Petroleum and Gas (Production and Safety) Bill 2004 this was designed to 'ensure the openness of the tender process.'[48]

The QRC submitted:

> *QRC is not convinced the removal of the published weightings from the P&G Act (and therefore not replicating them in the MRA) that were designed to communicate how the assessment is calculated (and ultimately the choice for the winning application) achieves a more open tender process, especially where there is a cash bid component. QRC requests information be made public on how the new process for deciding the allocation of the State's resources will incorporate the cash bid component. Not only is it essential for industry to understand the process of cash bidding, but also ordinary citizens of Queensland. The removal of weightings on decisions without adequate explanation of how the cash bids will be taken into account is simply unacceptable public policy. QRC strongly disagrees with the explanatory notes (page 66) of this Bill which state that the removal of the weightings (s 35(2)(e)(iv) 'will strengthen the integrity of the tender process.' QRC's fear is in fact the opposite will be the case.*[49]

The department advised that an independent external probity advisor will be used to evaluate and scrutinise each tender to ensure that the company who best meets the criteria is granted an exploration permit. The department submitted at the committee's public briefing:

> *To maintain the highest level of integrity, the current competitive tender documentation includes all legislative and administrative requirements of the process, including the criteria for evaluating tenders and selecting the preferred tenderer, and the department has in place a comprehensive probity plan with an independent probity adviser to scrutinise the tender evaluation process. The probity report at the end of each competitive cash tender will be made public to ensure transparency.*[50]

[47] Skinner, J. 2013, *Draft Transcript*, 13 February, p.31.
[48] Explanatory Notes, Petroleum and Gas (Production and Safety) Bill 2004, p.14.
[49] Queensland Resources Council, 2013, *Submission No.8*, p.2.
[50] Skinner, J. 2013, *Draft Transcript*, 13 February, p.5.

Committee Comment

The committee notes that the competitive tendering process proposed in the Bill does not include a direct allocation option by the Minister that was operational in New South Wales.[51] The committee considers that the exclusion of a direct allocation option along with the appointment of an experienced, external probity advisor should avoid the problems experienced with the New South Wales competitive tendering process.

Revenue from competitive tendering

The forecast revenue from the competitive tendering process for prospective land exploration is set out in the table below:

	2011-12	2012-13	2013-14	2014-15
Net Revenue from Cash Bidding for Prospective Exploration Land	($2.5 M)	$35.0 M	$95.0 M	95.0 M

Source: Queensland Treasury, 2012 State Budget 2011-12, Mid Year Fiscal and Economic Review, p.26.

In their submission to the committee the QRC have expressed doubt that the forecast revenue will be achieved. The QRC submitted:

> *The headline revenues from the new cash bidding process have been emphasised in forward estimates ($95 million a year pa from 2013-14), but unfortunately the methodology for estimating these revenues remains opaque. Industry is concerned that the policy's genesis in meeting a fiscal need has lead to substantial shortcomings in the usual policy development process including neglecting any assessment of the impact on exploration activity, the impact on the exploration industry, the impact on Queensland's ability to attract and retain explorers and other key considerations of the impact, including community confidence in the process of the grant of resource tenure.*[52]

Point for clarification

The committee invites the Minister to clarify how the projected revenue from cash bidding for prospective exploration land was calculated.

Changes to restrictions on pipeline

One of the Bill's primary objectives is to amend the *Petroleum and Gas (Production and Safety) Act 2004* to allow co-location of infrastructure on pipeline licences in order to reduce the impact from, and provide support to, petroleum and gas projects.[53]

At the committee's public briefing the department commented on why the changes to the Act were necessary. The department advised:

> *Consultation with the CSG-LNG industry identified an opportunity for a common-sense reform to also reduce the impact of CSG-LNG projects on landholders and communities and reduce red tape for project proponents. Currently, holders of pipeline licences under the Petroleum and Gas (Production and Safety) Act 2004 are entitled to conduct activities in the area of the licence incidental to the construction and operation of the pipeline. Project proponents are unable to use pipeline licences to co-locate linear infrastructure such as powerlines and telecommunication cables incidental to the authorised activities of other*

[51] Explanatory Notes, Mining and Other Legislation Amendment Bill 2012, p.12.
[52] Queensland Resources Council, 2013, *Submission No.8*, p.3.
[53] Explanatory Notes, Mining and Other Legislation Amendment Bill, p.1.

> *petroleum authorities. There are also restrictions on other activities such as: work camps on one pipeline licence cannot be used for construction of infrastructure on other licences potentially resulting in multiple camps. The amendment allows activities on the pipeline licence that are incidental to a petroleum lease, petroleum facility licence or other pipeline licence to be undertaken once the activities are approved and the safe operation of the pipeline considered.*[54]

The following clauses of the Bill amend the *Petroleum and Gas (Production and Safety) Act 2004*.

Clause 179 - Amendment of s 403 (Incidental activities)

Clause 179 amends section 403 to allow a pipeline licence holder to carry out pipeline licence incidental activities[55] related to construction and operation on pipeline land as well as activity that is reasonably necessary for carrying out the authorised activity for a petroleum lease, a petroleum facility licence or another pipeline.

Clause 180 - Amendment of s 409 (Requirements for making application)

Clause 180 amends section 409 whereby an application for a pipeline licence must state the extent and nature of any proposed stated pipeline licence incidental activities proposed to be carried out. It must also address the criteria set out in section 415(2).

Clause 181 - Amendment of s 412 (provisions of licence)

Clause 181 amends section 412 whereby a pipeline licence must state the pipeline incidental activities that the holder is entitled to carry out.

Clause 182 - Amendment of s 415 (Criteria for decisions)

Clause 182 amends section 415 in relation to criteria for decisions. The Bill proposes that this must now include the nature and extent of the stated pipeline licence activity proposed to be carried out. In considering this activity the Minister must consider whether the activity carried out on the pipeline licence would have the overall effect of reducing impacts of authorised activities on land, landowners and the community. In determining an authorised activity the Minister must also consider whether it is reasonably necessary to be carried out for a petroleum lease, petroleum facility licence or whether it would be more appropriate to have the activity carried out on another petroleum lease, petroleum facility licence or pipeline licence.

Clause 185 - Amendment of s 428 (Costs of pipeline works caused by public road construction)

Clause 185 amends subsection (1)(b) that applies to a situation where changes to a road affects the infrastructure carried out for a pipeline licence.

Clause 188 – Amendment of s 669 (Making safety requirement)

Clause 188 amends section 669 which will allow a safety requirement to be made through regulation in relation to incidental pipeline activities.

[54] Skinner, J. 2013, *Draft Transcript*, 13 February, p.4.

[55] Examples of incidental activities as contained at section 403(2) of the *Petroleum and Gas (Production and Safety) Act 2004* include: i. constructing or operating plant or works, including, for example, bridges, powerlines, roads, trenches and tunnels; ii. constructing or using temporary structures or structures of an industrial; or iii. technical nature, including, for example, mobile and temporary camps removing vegetation for, or for the safety of, the pipeline construction or operation.

Comments in submissions

In their submission to the committee the Western Downs Regional Council (WDRC) were supportive of the proposed changes dealing with pipelines however cautioned that the monitoring of pipeline licences was necessary. As submitted by WDRC:

> *The WDRC is supportive of co-location of infrastructure and activities on pipeline licenses. However, with co-location comes greater risk. WDRC therefore believes approvals must include a condition for increased monitoring on these licences.*[56]

The committee sought comment from DNRM in relation to the concerns raised by WDRC. The department provided the following advice:

> *The Bill includes an amendment to section 669 of the P&G Act which will enable a regulation to be implemented that addresses safety issues that may arise in relation to the conduct of incidental activities under the authority of a pipeline licence. This regulation will be in place when proposed amendments to the P&G Act come into force. The regulation will provide that the conduct of pipeline incidental activities is not to compromise the safety of the pipeline itself.*[57]

The Queensland Murray- Darling Committee (QMDC) submitted that they support the co-location of infrastructure however they have concerns that the Bill does not address the potential risks and impact that petroleum and gas pipelines can have on the environment, community and landholders.

As submitted by the QMDC:

> *The principle of co-location of infrastructure if it reduces the overall footprint is supported by QMDC. The route of co-location should still avoid strategic cropping land and other areas of significant environmental or socio-economic value. However the proposed new legislation fails to articulate how allowing co-location of infrastructure on pipeline licences will reduce the impact from petroleum and gas projects in terms of potential risks e.g. increased fire hazard or pipeline rupture. Without a full risk analysis and assessment, the proposed amendment to the Petroleum and Gas (Production and Safety) Act 2004 may in reality create the opportunity for greater impact because it permits more and more development with less scrutiny or regard for environmental risk and protection.*
>
> *The statement that co-location will reduce impact needs to be based on a solid analysis of the potential impacts and their associated risks to the environment, to human health and wellbeing, to stock, to neighbouring businesses etc. QMDC argues that the Bill is making an assumption that any inherent risks associated with co-location are acceptable.*
>
> *Not addressed or even acknowledged is the level of risk community and landholders are prepared to live with or accept from the industry. QMDC believes the assumptions made by the State government within this Bill do not align to current public concern and the value communities place on preventing harm minor and serious to the environment, to themselves, their families and communities, to the future generations.*
>
> *Risk assessment assumes humans and the environment can absorb a certain amount of pollution or danger and render it harmless. This is known as "assimilative capacity". QMDC's major concern is that eliminating risk altogether is not the goal of this Bill. QMDC believes the industry is at the stage where the cumulative impacts of all its activities, operations both exploration and production need to be more than mitigated or managed, they need to be prevented from creating any more hazards, risks or harm.*[58]

[56] Western Downs Regional Council, 2013, *Submission No.11*, p.1.
[57] Department of Natural Resources and Mines, *Correspondence*, 12 February 2013.
[58] Queensland Murray Darling Committee, 2013, *Submission No. 12*, p.2.

The committee sought comment from DNRM in relation to the concerns raised by QMDC. The department provided the following advice:

> *The Bill provides for consideration of the potential impacts of proposed incidental activities on landholders, the environment and safety.*
>
> *In the first instance, the Bill provides criteria the Minister will use to decide an application to conduct incidental activities on a pipeline licence for another petroleum authority. These criteria include consideration of whether the proposed incidental activity will have the overall effect of reducing impacts on land, landowners and the community.*
>
> *In addition, before a licence is granted, under existing provisions the applicant for the pipeline licence will need to obtain an Environmental Authority (EA) that covers the conduct of the proposed incidental activities. The EA will consider the environmental risks associated with the proposed activities and provide for appropriate measures to mitigate and manage these risks.*
>
> *The Petroleum and Gas Inspectorate of the Department of Natural Resources and Mines has also been closely consulted regarding the proposed amendments. The Bill includes an amendment to section 669 of the P&G Act which will enable a regulation to be implemented that addresses safety issues that may arise in relation to the conduct of incidental activities under the authority of a pipeline licence. This regulation will be in place when proposed amendments to the P&G Act come into force. The regulation will provide that the conduct of pipeline incidental activities is not to compromise the safety of the pipeline itself.*[59]

Committee comment

The committee is satisfied by the advice provided by DNRM in relation to the issues raised by WDRC and QMDC.

Small-scale mining reforms

The Bill seeks to remove financial and regulatory burden placed on the small scale (opal and gemstone) mining industry. As the legislation currently stands, small scale mining for opal and gemstones that doesn't fit the scope of a mining claim are classed as mining lease tenure types. Being classed as mining leases places a heavy financial and regulatory burden on the industry.[60]

Amendments to the *Mineral Resources Act 1989* and *Mines Legislation (Streamlining) Amendment Act 2012* modify the existing mining claim tenure to allow small scale miners of opal, corundum, gemstones, up to 20 hectares in size, to instead convert to a mining claim. This will allow small scale gemstone and opal miners to take advantage of the simpler administrative process and lower fees associated with this tenure type.[61]

For a mining claim for opal and gemstones that has been converted from a lease, or a new mining claim where the area has been decided by the Minister, machine mining will be authorised. The current restrictions on size and use of hand mining on existing mining claims will remain.[62]

Clause 133 Insertion of new S 391C

New section 391C provides that a regulation may make a code for managing the impacts of small scale mining activities carried out under a mining claim or exploration permit.

The purpose of the new code, as provided for in the new section 391C, is to ensure that:

[59] Department of Natural Resources and Mines, *Correspondence*, 12 February 2013.
[60] Explanatory Notes, Mining and Other Legislation Amendment Bill, pp. 3-4.
[61] Explanatory Notes, Mining and Other Legislation Amendment Bill, pp. 3-4.
[62] Explanatory Notes, pp. 3-4.

- the activities are carried out in an environmentally responsible way
- ensure land subject to the activities is managed responsibly
- minimise conflicts about land use because of the carrying out of the activities, and
- ensure land is rehabilitated; and improvements on the land are restored to an appropriate condition, after the small scale mining activities carried out on the land are completed.[63]

Both the Wildlife Protection Association of Australia and the Queensland Murray-Darling Committee (QMDC) raised concerns regarding the potential impact of mining activities on the environment.

QMDC raised concerns specifically about the risk assessment process under the Small Scale Mining Code:

> *Risk assessment is fundamentally undemocratic. The risk assessment process is most often confined to agency and industry scientists, and consultants. It traditionally does not include public or community perceptions, priorities, or needs, and does not use widespread public participation. This tradition prevails in this case see page 10 of the Explanatory Notes and the list of those organisations consulted.*[64]
>
> *It is acknowledged some environmental protection measures will remain but QMDC and the wider public are not privy to the new Small Scale Mining Code and its intended provisions nor are we confident that the work programs submitted every 5 years will be successfully implemented or complied with. Lots of things can go wrong or change in 5 years, water quality, best practices market forces, technology, policy priorities, weather patterns, soil condition etc.*[65]
>
> *Applying a code for managing impacts of small-scale mining. QMDC supports mandatory conditions being stated as a regulation if they reflect the potential extent and severity of risk. These conditions must be stringent and regularly monitored for breaches.*[66]

The department provided the following response, and noted QMDC's last point above regarding mandatory conditions:

> *The framework for the Small Scale Mining Code will enable mandatory conditions to be imposed if necessary. This will act like any other condition of the tenure, in that the Minister will be able to take compliance action against the holder which may include a fine or cancellation of tenement.*[67]

Aurukun Resource Area

Amendments are proposed to Parts 6A and 7AAA of the *Mineral Resources Act 1989* that relate to the Aurukun Resource Area. These amendments:

- clarify that the State may enter into more than one Aurukun agreement for the development of RA 315 (the Aurukun bauxite resource project)
- confirm that the granting of a mining lease for an Aurukun project under Part 7AAA also covers the grant of a mining lease referred under section 234(1)(b) and section 316 of the MRA, and
- clarify the process for the cancellation of a mineral development licence and mining lease for an Aurukun project and the links to the Aurukun agreement.[68]

[63] Explanatory Notes, p 55.
[64] Queensland Murray Darling Committee, 2013, *Submission No 12*, p. 2.
[65] Queensland Murray Darling Committee, 2013, p. 3.
[66] Queensland Murray Darling Committee, 2013, p. 4.
[67] Department of Natural Resources and Mines, *Correspondence*, 12 February 2013.
[68] Department of Natural Resources and Mines, *Correspondence*, 23 January 2013.

During the public briefing on the Bill, departmental officers outlined the effect of the amendments:

> *The proposed amendments remove any doubt that the state may enter into a commercial arrangement with more than one proponent for development of different parts of the Aurukun bauxite resource; clarify that a mineral development licence and mining lease granted in respect of an Aurukun project may be cancelled where an Aurukun agreement has been terminated—this provision is additional to the normal cancellation provisions under the Mineral Resources Act and addresses a technical issue identified during the cancellation of Chalco's mineral development licence; and remove any doubt that an Aurukun proponent can transport bauxite mined across an adjoining tenement to an export port on the western coast of the cape.*[69]

Aurukun Resource Area – Amendments to *Wild Rivers Act 2005*

Clauses 190-192

The Aurukun project is currently exempt from the *Wild Rivers Act 2005* (legislation that was put in place to preserve the natural values of wild rivers). The Bill effectively extends this exemption, so that if there are multiple approvals for developers in the Aurukun Resource Area, they will all be exempt from the *Wild Rivers Act 2005*.

The Wilderness Society and Queensland Conservation strongly opposed the Aurukun exemption when it was first introduced in the *Wild Rivers* legislation, and continue to express their opposition to the extension of the exemption in the Bill.

> *The Wilderness Society wholeheartedly rejects the proposition that exemptions to valid environmental protection laws should be made simply to make development proposals more attractive to investors….the project(s) now on the table for Aurukun are of a fundamentally different order of magnitude than the 2005 Chalcoa (sic) project, which was the catalyst for the original statutory exemption…*[70]

> *…In summary there is nothing in either the Explanatory Notes or in the documentation for the current Aurukun EOI process – in terms of either the overall economic benefits of the project or the specific benefits for local indigenous communities and native title holders – that would justify a continued exemption to valid environmental protection laws.*[71]

> *…the current exemptions (under the Wild Rivers Act) are entirely based on flawed out of date approaches, insubstantial economic assessment, was driven by the previous government's political agenda and ignore valid concerns of Traditional Owners.*[72]

In contrast to the views of the Wilderness Society and Queensland Conservation, the Aurukun people were extremely supportive of the Bill's amendments affecting the Aurukun area. Mayor Dereck Walpo advised the committee at its public hearing:

> *The Aurukun Shire Council and the Ngan Aak Kunch [NAK] directors from the Wik Way TO clan group have been working together with the state in relation to the development of the Aurukun bauxite resource.*

> *The Aurukun Shire Council and the directors want to work together on this project and show other outside our community that we do not want others to speak on our behalf. As the newly elected mayor of this community, I want to see these opportunities for my community and see that the young people have a real future.*

[69] Skinner, J. 2013, *Draft Transcript*, 13 February, pp. 5-6.
[70] The Wilderness Society, 2013, *Submission No. 4*, p.2.
[71] The Wilderness Society, 2013, *Submission No. 4*, p.3.
[72] Queensland Conservation, 2013, *Submission No. 6*, p.2.

> *I am saying that I and the community of Aurukun want the development of the Aurukun bauxite resource to go ahead so we can have the best opportunities in the future.*[73]

The department responded to these concerns by highlighting that the extension only applies to the Aurukun resource area:

> *The amendments do not result in an extension of the existing exemption for projects beyond the Aurukun resource area (RA315) as limited by the definition of Aurukun project.*[74]

The department indicated that Wik and Wik Way people the Aurukun Shire Council were consulted on this amendment:

> *The Wik and Wik Way people, through their NAK directors and the ASC have expressed their full support for the timely development of the Aurukun bauxite resource. The ASC and NAK directors have been meeting regularly with DSDIP officials since the announcement in Aurukun and Cairns to discuss all aspects of the retender, including the proposed amendments for the Aurukun project set out in the Bill.*[75]

Committee Comment

The committee is satisfied by the advice provided by DNRM in relation to clauses 190-192.

Errors in the Bill

During the course of its examination of the Bill, the committee identified a number of errors which will need to be corrected through amendments before the Bill can be passed.

Clause 96 Amendment of s 81 (Conditions of mining claim)

References in clause 96(3) to section 81(1)(g), (j)(iv) and (n) are incorrect and should be amended as those subsections of the *Mineral Resources Act 1989* do not have the words 'mining registrar.'

Clause 96(7) contains incorrect paragraph references. The reference to Section 81(5), 'subsection (1)(d), (f)(ii) and (k)' should read 'Section 81(5), 'subsection (1)(e), (g)(ii) and (l)'.

The committee recommends that clause 96 be amended to correct the error.

Recommendation 2

The committee recommends that clause 96 be amended to correct errors.

Clause 101 Amendment of s 93 (Renewal of mining claim)

The reference in clause 101(6) to 'licence' in section 93(8) of the *Mineral Resources Act 1989* is incorrect as the term does not appear in that section.

The committee recommends that clause 101 be amended to correct the error.

Recommendation 3

The committee recommends that clause 101 be amended to correct the error in the amendment proposed in 101(6).

[73] Walpo D. 2013, *Draft Transcript*, 13 February, p. 15.
[74] Department of Natural Resources and Mines, *Correspondence*, 12 February 2013.
[75] Department of Natural Resources and Mines, *Correspondence*, 12 February 2013.

Clause 109 Amendment of s 141 (Conditions of exploration permit)

Clause 109(1) amends section 141(1)(aa)(i) of the *Mineral Resources Act 1989* so that it reads:

> *…comply with the mandatory provisions of the land access code and the small scale mining code to the extent the codes applies to the holder.*

'Applies' is grammatically incorrect and should be replaced with 'apply'.

The committee recommends that clause 109 is amended to correct the error.

Recommendation 4

The committee recommends that clause 109 be amended to correct a grammatical error.

Clause 110 Amendment of s 148 (Rights and obligations upon application for mining lease or mineral development licence)

Clause 110(4) amends section 148(1) of the *Mineral Resources Act 1989* to omit the word 'chapter'. However, the word 'chapter' does not appear in this subsection.

The committee recommends that clause 110 is amended to correct the error.

Recommendation 5

The committee recommends that clause 110 be amended to correct an error in the amendment proposed in 110(4).

Clause 126 Omission of ch 13, pt 4 (Chief executive) *and* Clause 127 Renumbering of ch 13, pts 5 and 6

These clauses seek to omit Chapter 13, part 4, and renumber parts 5 and 6 of *the Mineral Resources Act 1989*, however the Act does not have a chapter 13, parts 4, 5 or 6.

Recommendation 6

The committee recommends that clauses 126 and 127 be amended to correct the incorrect references to chapter 13, parts 4, 5 and 6 of the *Mineral Resources Act 1989.*

Clause 142 Amendment of sch 1A (Native title provisions)

Clause 142 proposes a number of amendments to sch 1A (Native title provisions) of the *Mineral Resources Act 1989*. The *Mineral Resources Act 1989* does not have a schedule 1A.

The committee recommends that clause 142 is amended to correct the error.

Recommendation 7

The committee recommends that clause 142 be amended to correct the incorrect references to schedule 1A.

Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the form and policy intent of the Bill.

After examining the Bill, the committee determined that the Bill should be passed subject to the amendment proposed to clauses 96, 101, 109, 110, 126, 127 and 142.

Recommendation 8

The committee recommends that the Mining and Other Legislation Amendment Bill 2012 be passed subject to the amendment proposed to clauses 42, 96, 101, 109, 110, 126, 127 and 142.

4. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

Section 4 provides examples of whether legislation has sufficient regard to those two principles, and the sub-headings are paraphrased from those examples in s.4.

The following sections discuss fundamental legislative principle issues with the Bill based on advice from the Technical Scrutiny Secretariat, and advice provided by DEHP in a letter dated 25 January 2013.

Clause 20 - Definition 'small scale mining activity'

Clause 20 inserts a definition of 'small scale mining activity' into section 62 of the *Environmental Protection Act 1994.* There are concerns about the clarity of two of the three limbs of this definition – that is, paragraphs (a) and (b) use subjective terms, require reference to other legislation and depend on subordinate legislation.

Sub-paragraph (a)(i) and (b)(i) use a subjective term – 'significantly disturbed'. One person's interpretation of the term 'significant disturbance' could be different to another person's.

Further, sub-paragraph (a)(ii) and b)(i) use the term 'potential SCL' under the Strategic Cropping Land Act 2011. To decipher the meaning of this term requires recourse to the Strategic Cropping Land Act 2011 and the trigger map under that Act.[76] The former Scrutiny of Legislation Committee was critical of definitions requiring the community to refer to other pieces of legislation.[77] It is expected that legislation should be user-friendly and accessible so ordinary Queenslanders can gain an understanding of the relevant laws without having to refer to multiple Acts of Parliament.

Sub paragraphs (a)(iv), (v), (vi), (vii), (b)(iii), (iv), (v) and (vi) of the definition are dependent on regulation. A definition including matters set out in regulation was regarded as an inappropriate delegation of legislative power by the former Scrutiny of Legislation Committee.[78] This was especially significant if sanctions arise from the term defined. The term 'small scale mining activity' is an important one. For example, under section 318AAX of the *Mineral Resources Act 1989* (as amended by the Bill), whether a mining tenement is for small scale mining activities is a factor in determining whether approval may be given to an assessable transfer. Therefore it is important that the definition of the term 'small scale mining activity' is clear.

The committee's request for advice

The committee sought assurances from the department that the definition for small scale mining activity that clause 20 proposes to insert into section 62 of the *Environmental Protection Act 1994* is sufficiently clear so as not to jeopardise the rights of persons who may be subject to its provisions.

The committee also sought assurances that sub-paragraphs (a)(iv), (v), (vi), (vii), (b)(iii), (iv), (v) and (vi) of the definition which are dependent on regulation are an appropriate delegation of legislative power.

[76] *Strategic Cropping Land Act 2011*, section 10.
[77] Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p. 89.
[78] Scrutiny of Legislation Committee, 1999, *Alert Digest 2*, page 2.

Advice from DNRM

The committee sought the assurance of the Department of Environment and Heritage Protection (EHP) that the definition of 'small scale mining activity' is sufficiently clear so as not to jeopardise the rights of persons who may be subject to its provisions.

In particular, the committee queried the use of the term 'significantly disturbed'. The term 'significantly disturbed land' is defined in section 28 of the Environmental Protection Regulation 2008 with an extensive definition. EHP will investigate moving this definition up into the Environmental Protection Act 1994 in a future bill to remove any possible ambiguity. The impacts of changing the location on other legislation and clients who currently rely on that provision must be fully investigated before the change can be made.

The committee also queried where the definition of 'small scale mining activity' is dependent on terms defined by the Strategic Cropping Land Act 2011. 'Strategic cropping land' is defined by section 9 of the Strategic Cropping Land Act 2011 as being land which is recorded in the decision register as being strategic cropping land. 'Potential SCL' is defined in section 10 of the Strategic Cropping Land Act 2011 as being land in area shown on the trigger map as being potential SCL, unless a validation decision has been made under the Strategic Cropping Land Act 2011. Consequently, any definition of the term 'strategic cropping land' or 'potential SCL' in the Environmental Protection Act 1994 would always be required to cross-reference the Strategic Cropping Land Act 2011.

The department also notes that the former Scrutiny of Legislation Committee was less critical of cross-referencing in the 2000's than it was in the 1990's because legislation is now more readily accessible, particularly via the internet. Consequently, in this respect, the definition of 'small scale mining activity' is sufficiently clear.

The committee also sought the department's assurances that sub-paragraphs (a)(iv), (v), (vi), (vii), (b)(iii), (iv), (v) and (vi) of the definition, which are dependent on regulation, are an appropriate delegation of legislative power.

The Legislative Standards Act 1992, section 4(5)(c) states that, whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation contains only matters appropriate to subordinate legislation. The greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater will be the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

In the definition of 'small scale mining activity', the following terms are used which are defined by a regulation:

- *category A environmentally sensitive area*
- *category B environmentally sensitive area*
- *designated environmental area*
- *aggregate environmental score*

Category A and B environmentally sensitive areas are already defined in the Environmental Protection Regulation 2008 and the definitions are extensive and detailed. The actual areas covered by each category rarely change, but the terms by which they are defined have changed more frequently. Consequently, the definitions were left in the regulation. However, EHP will investigate the possibility of moving this definition into the Environmental Protection Act 1994 in order to remove any possible ambiguity in a future bill. The impacts of changing the location on other legislation and clients who currently rely on that provision must be fully investigated before the change can be made.

The term 'designated environmental area' will be similar to the category C environmentally sensitive areas which are defined in the codes of environmental compliance for mining activities (see schedule 3 of the Environmental Protection Regulation 2008 for a list of these codes). However, these areas are likely to be modified for the small scale mining activities as the current list of Category C environmentally sensitive areas is out of date and under review. Consequently, the designated areas are prescribed by regulation to prevent any confusion with overlap with the category C environmentally sensitive areas and to provide flexibility to modify the list appropriately for small scale mining activities, without conflicting with the eligibility criteria for mining activities which require an environmental authority.

The term 'aggregate environmental score' is defined in the Environmental Protection Regulation 2008 because it is used to calculate the annual fees for each type of activity. The aggregate environmental score was calculated for each type of activity using the environmental emissions profile for the activity. Consequently, defining petroleum activities or prescribed ERAs with reference to their aggregate environmental score is simply a method of identifying the activities which have a higher environmental risk. Activities which had a lower environmental risk on their environmental emissions profile were not assigned an aggregate environmental score.

Consequently, it is the department's position that sub-paragraphs (a)(iv), (v), (vi), (vii), (b)(iii), (iv), (v) and (vi) of the definition, which are dependent on regulation, are an appropriate delegation of legislative power. However, given the concerns raised by the Committee, EHP will investigate the possibility of moving this definition into the Environmental Protection Act 1994 in order to remove any possible ambiguity in a future bill.

Committee comment

The committee notes the department's advice and welcomes the investigation by the Department of Environment and Heritage Protection of the possibility of moving the definition for 'significantly disturbed' contained in section 28 of the Environmental Protection Regulation 2008 into the *Environmental Protection Act 1994* in a future Bill.

Clauses 25 & 28 - Native title rights

Native title rights originate in Aboriginal tradition and Island custom, and have been recognised as part of the common law of Australia[79] and in legislation.[80]

Clause 25 of the Bill omits section 11 from the *Fossicking Act 1994*. This would mean that the *Fossicking Act 1994* does apply to land or waters over which a native title determination has been made. It would also mean that fossicking may occur on those areas.

Currently section 11 provides that fossicking may occur on land or waters over which a native title determination has been made if there is an Indigenous Land Use Agreement in place providing that parties consent to fossicking over the land or waters.

Clause 28 of the Bill amends section 27 of the *Fossicking Act 1994* to provide that a licensee must not fossick on land the subject of an exclusive possession determination without the written permission of the native title holder for the determination. An exclusive possession determination must include a determination to the effect that native title rights and interests under the determination confer possession of the land on native title holders to the exclusion of all others.

[79] *Mabo v. Queensland (No. 2)* (1992) 175 CLR 1.
[80] *Native Title Act 1993* (Cth).

As mentioned in the explanatory notes, page 23, this provision has the effect that 'holders of exclusive possession native title are treated no differently to freehold owners'.

However, not all native title determinations confer exclusive possession to land on native title holders. The table at Appendix D provides a breakdown of Native Title Determinations made in Queensland according to the possession rights they confer. Native title holders who have a native title determination that confers less than exclusive possession, would no longer have any input into whether fossicking occurs on their native title land. This represents a significant reduction in the rights of these native title holders.

The committee's request for advice

The committee sought assurances from the department that these provisions of the Bill have sufficient regard to the rights and liberties of individuals and to Aboriginal tradition and Island custom.

Advice from DNRM

The committee has asked the department to provide assurance that these provisions of the Bill have sufficient regard to the rights and liberties of individuals and to Aboriginal tradition and island custom.

The State holds a view that 'fossicking' is not 'mining' as defined by the Native Title Act 1993 (Cwth) (NTA), and the issue of a fossickers licence is not the creation of a right to mine under the NTA.

The State's view is that pursuant to the Fossicking Act 1994, the grant of a fossickers licence over non-exclusive land where native title exists or may exist, is captured in the NTA as a future act that passes the freehold test.

This means that the issue of a fossickers licence is within the provisions of section 24MD (6A) of the NTA, which provides that, for a future act that passes the freehold test, native title holders and registered native title claimants have the same procedural rights as ordinary landowners.

Under the Fossicking Act, ordinary landowners are not provided any procedural rights (rights enjoyed prior to issue of the licence), and therefore none are provided to native title parties either.

Section 27 of the current Fossicking Act requires the holder of a fossicker's licence, prior to entering occupied land, to obtain written consent from the owner of the land. An amendment to this section is proposed which will require the holder to also seek written consent from any native title party who has been determined to hold native title rights over the land 'to the exclusion of all others'. This will place those exclusive native title holders on a par with ordinary landowners.

In Queensland, Aboriginal tradition and Island custom is recognised and protected by the Aboriginal Cultural Heritage Act 2004 (Qld) and the Torres Strait Islander Cultural Heritage Act 2004 (the Cultural Heritage Acts), a regulatory scheme which is not affected by the amendments to the Fossicking Act 1994. The Cultural Heritage Acts bind all persons and all land in Queensland, with the purpose of providing effective recognition, protection and conservation of Aboriginal cultural heritage. This regulatory scheme protects Aboriginal cultural heritage across the whole State and is binding on the holders of a fossicker's licence, no matter what type of land tenure is accessed.

The department has formed the view that the Bill provides native title rights holders recognised in the NTA and by legal precedent with the same rights as ordinary landholders. Therefore, and as there has been no diminution of protection afforded to cultural heritage,

the department believes that provisions of the Bill have sufficient regard to the rights and liberties of individuals and to Aboriginal tradition and Island custom.

Point for clarification

The committee notes the advice provided by the department and invites the Minister to provide assurances that the new access arrangements proposed in the Bill will provide adequate protections for culturally sensitive sites and artefacts on lands that are subject to unresolved native title claims.

Clause 30 - Records of land

Clause 30 amends section 33 'Records of land mentioned in general permission to be kept' of the *Fossicking Act 1994* by removing the requirement that records be available for inspection free of charge.

While not specifically mentioned in section 4 of the *Legislative Standards Act 1992*, free public access to information is an important element of a parliamentary democracy based on the rule of law. Therefore this clause creates potential issues of fundamental legislative principle. The explanatory notes do not address this aspect of the amendment or the reasons for it.

The committee's request for advice

The committee sought an explanation from the department for removing the requirement in section 33 of the *Fossicking Act 1994* that records be available for inspection free of charge.

Advice from DNRM

The committee has asked the department to explain the justification for removing the requirement in section 33 of the Fossicking Act 1994 that records be available for inspection free of charge.

Clause 33 amends a section in the Fossicking Act dealing with record keeping, to modernise this section in light of reforms in the Mineral Resources Act 1989 that transfer powers and functions of the mining registrar to the chief executive. While the amendment removes reference to general permissions records being made available free of charge, there is no replacement with a head of power to charge a fee to make the records available. Without such a head of power, a fee cannot be charged.

Amended section 33 requires the chief executive to make these records available at an appropriate place. Currently these records are freely available in district offices and on the department's website and it is not proposed to change this access. Therefore the department considers that this amendment has sufficient regard to the rights and liberties of individuals.

Committee comment

The committee is satisfied with the department's advice.

Clause 54 (Exploration permits of unlimited duration)

Clause 54 amends section 146 of the *Mineral Resources Act 1989* with the effect that the initial term for exploration permits, which are currently issued for a maximum of five years, would have a potentially unlimited duration. The initial term will be for the required period set out in the call for tenders. Therefore it is questionable whether this exercise of administrative power, in granting the exploration permit, is sufficiently defined.

The committee's request for advice

The committee sought an explanation from the department for seeking to allow that the initial term of exploration permits is potentially unlimited.

The committee also sought assurance that this exercise of administrative power, in granting the exploration permit, is sufficiently defined.

Advice from DNRM

> *The committee has requested that the department explain the reasoning for seeking to allow that the initial term of exploration permits be potentially unlimited, and to provide an assurance that this exercise of administrative power, in granting the exploration permit, is sufficiently defined.*
>
> *The purpose of Clause 54 is to specify that the period of a work program submitted as part of a call for tenders must align with the term of the exploration permit.*
>
> *While the existing section 146 states that the period of an exploration permit is usually up to five years, the term of any exploration permit being released through the tender process must be clearly stated. This will enable the direct comparison of work programs submitted through the tender process, since they will all be for the same stated period. The amendment clarifies that while any term may be decided by the Minister, for the purposes of a tender, the period must be stated to ensure the work program to be submitted by each tenderer are all for that period.*
>
> *If a call for tender does not specify a term for the exploration permit, then section 146(1) as amended will operate to limit the term to five years.*
>
> *The effect of these provisions will be that exploration permits are either limited in time by tender criteria or section 146(1) and as such are not unlimited.*
>
> *Accordingly, the department has formed the view that the exercise of administrative power is clearly defined.*

Committee comment

The committee is satisfied with the department's advice.

Clause 77 (Transitional provision for non-coal exploration permits)

Clause 77 inserts transitional provisions into the *Mineral Resources Act 1989*. Proposed new section 807 provides that an application for an exploration permit for a mineral other than coal made before this Bill commences, and not decided at the commencement of the Bill, must be decided under the amended provisions of the *Mineral Resources Act 1989* that come into force after commencement. Therefore, this clause gives the provisions of this Bill retrospective application.

This clause is the opposite of what would usually be expected for transitional clauses. Typical transitional clauses, like proposed new section 808, provide that applications made and undecided before commencement of amendments to an Act are decided under the provisions of the Act as in force when the application was made, that is, before amendments commence.

Retrospective provisions are especially objectionable when they adversely impact on the rights and liberties of individuals. Strong argument is required to justify objectionable provisions of this nature.[81] As stated by the Office of the Queensland Parliamentary Counsel:[82]

[81] Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p. 55.
[82] Office of the Queensland Parliamentary Counsel, 2008, p. 94.

> *Legislation should not have an unintended adverse impact on individuals. Legislation should be checked to ensure that there are no gaps that adversely affect individuals. For example, if legislation changes the way a department deals with something, there should be sufficient transitional clauses to protect individuals who are affected by the transition from the existing Act to the Act as changed.*

The explanatory notes do not identify the retrospective effect of this clause or offer any justification for it. Therefore it is questionable whether proposed new section 807 has sufficient regard to the rights and liberties of individuals.

The committee's request for advice

The committee requested that the department explain why the transitional provisions differ depending on whether the exploration permits are for coal or for a mineral other than coal.

The committee also sought assurance that clause 77 will not adversely affect rights and liberties, or impose obligations retrospectively.

Advice from DNRM

> *The committee has asked the department to explain why the transitional provisions differ depending on whether the exploration permits are for coal or for a mineral other than coal.*
>
> *The department recognises the retrospective effect of the transitional provision, noting that they do not impose any obligations on applicants under the existing Act as they merely clarify which framework will apply to the assessment of applications.*
>
> *As no changes have been made to the process by which exploration permits for minerals other than coal are allocated, the department has formed the view that processing applications under the amended Act has sufficient regard to the rights, liberties or obligations of applicants.*
>
> *For exploration permits for coal, existing applications will be decided under the existing Act. This is necessary as the amended Act will only provide for exploration permits for coal to be allocated through competitive tender. The existing competitive application process for the allocation of Exploration Permits (Coal), where applications received on the same day are competitively assessed as "over-the-counter" applications, will be replaced with the competitive tendering process to bring more consistency with other resources legislation. The exception is for applications made for Exploration Permits (Coal) through the conditional surrender process. This remains unchanged, and as such the department is of the view that the provision has sufficient regard to the rights and liberties or will not impose retrospective obligations.*

Committee comment

The committee is satisfied with the department's advice.

Clause 94 (Objections to application for grant of mining claim)

Clause 94 amends section 71 of the *Mineral Resources Act 1989* to provide that only an owner of relevant land (that is, land the subject of the proposed mining claim or other land necessary for access to that land), or the relevant local government, may object to an application for a mining claim. These objections are then referred to the Land Court for hearing under section 72. The committee noted that, as the law currently stands, any entity can object to an application for a mining claim, and claims may be granted for initial terms of up to 10 years.[83]

[83] *Mineral Resources Act 1989*, Section 91.

This amendment abrogates the statutory rights of entities other than landowners and local governments. This abrogation of established statute law rights and liberties must be justified.[84] The explanatory notes, at page 9,[85] identify this issue of fundamental legislative principle, and acknowledge that the amendment may affect the rights and liberties of those entities.

The explanatory notes give the following justification for the amendment:

> *By limiting objections and appeals to directly impacted entities at the earlier stage is considered justified as it balances the rights of direct and indirectly impacted entities and the financial and administrative costs associated with the regulatory burden. In the majority of cases, objections to small mining operations are lodged by the landowner only.*

This statement has limited utility as the amendment would clearly limit the rights of entities to object to all mining claims, not just small mining claims. Further, it is not clear what is meant by 'the financial and administrative costs associated with the regulatory burden', and whether possible savings in these areas would balance the costs of preventing entities who wish to object to mining claims from doing so.

The committee's request for advice

The committee requested that the department explain and quantify the financial and administrative costs associated with the regulatory burden that clause 94 seeks to address, and that clause 94 has sufficient regard to the rights and liberties of those entities that would lose the right to object to an application for a mining claim.

The committee sought further assurances that clause 94, in preventing entities from objecting to mining claims, will not hamper the proper scrutiny of those claims in the public interest.

Advice from DNRM

> *The committee has asked the department to explain and quantify the financial and administrative costs associated with the regulatory burden that clause 94 seeks to address.*
>
> *While the likelihood of having an objection lodged by any entity is low, there still remains the uncertainty whether the applicant will be required to resolve an objection including the potential for Land Court proceedings. Such costs would be difficult to quantify as it would be highly dependent on the circumstances of the case. The costs associated with the regulatory burden for these provisions relate to: costs of legal representation and constructing and presenting a case for all parties to the appeal, the cost of consultants to provide evidence in support or rebuff, the cost of lodging the case with the Court, delay costs to the applicant including bank interest, equipment hire, etc. Of these costs only the Land Court costs remain constant. Noting that these operators are individuals or small business, any additional cost can have significant impact. Revitalisation and support of the small scale mining sector is an objective of this package of reforms for an industry that is economically important for regional Queensland.*
>
> *The provisions of the Bill seek to limit the burden associated with any objection by restricting the right to object to these small scale and low risk activities to those entities directly impacted, that is the landowner and local government. Accordingly, the department has formed the view that this amendment pays sufficient regard to the rights and liberties of individuals.*
>
> *Mining claims are relatively small scale operations. The department, in consultation with industry, has identified an opportunity to reduce red tape for this sector during the mining*

[84] Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p.106.
[85] The Explanatory Notes referred on page 9, in error, to 'clause 95' in relation to this provision. The Erratum to the Explanatory Notes, tabled on 8.3.13, corrected the error to read 'clause 94'.

claim application process by limiting objections on all mining claims to affected landowners and local governments. This is intended to streamline the application process that will contribute to improving certainty for mining claim applicants. Due to the small scale nature of these activities, it is appropriate that only these stakeholders have the right to object to the application: Affected landowners, for the obvious reasons of disturbance to their land and right to compensation; and local governments so that considerations can be made relating to the provision of municipal services. This has been reflected by the fact that the majority of applications for mining claims and mining leases do not attract objections. In the event objections are lodged, it is usually the landowner. Objections made under the Mineral Resources Act 1989 are not for environmental grounds. For proposed mining activities with high environmental impact, this is usually provided under an EIS process.

The proposal to limit objections to landowners and local governments reduces red tape for the small scale mining sector and improves certainty of process for potential small scale miners undertaking the application process.

The committee has asked the department to provide reassurance that clause 94 has sufficient regard to the rights and liberties of those entities that would lose the right to object to an application for a mining claim.

The department considers that this amendment provides balance for maintaining the rights and liberties of individuals that are directly impacted by proposed mining claims and improves certainty of process for mining claim applications, for the benefit of the small scale mining sector and towns that benefit from its economic contribution to their communities. Even though the reform is of marginal significance, this is one of several amendments where the cumulative benefit will greatly assist an industry that supports economic activities in small towns and remote communities.

The committee has asked the department to provide reassurance that clause 94, in preventing entities from objecting to mining claims, will not hamper the proper scrutiny of those claims in the public interest.

Applications for mining claims will be decided by the Minister under the proposed amendments in the Bill, to recognise the change in scope of the mining claim and to make the decision making head of power consistent with other tenements under the Mineral Resources Act 1989 and other resources legislation. Under section 74 as amended by the Bill, the Minister may refuse to grant the mining claim if the Minister considers the grant is not in the public interest.

Committee comment

The committee is satisfied with the department's advice.

Clause 104 (Other mining)

Clause 104 amends the *Mineral Resources Act 1989* section 110 to insert a head of power for a regulation to declare types of machinery, mechanical devices or other equipment (if any) that may or may not be used for prospecting, hand mining or other mining.

The committee is concerned that the term, 'other mining,' is too broad and general for a word creating a head of power for a regulation, and that it could permit a regulation to be made that goes beyond what is necessary and convenient for achieving the purpose of the Act.

The committee's request for advice

The committee sought assurances from the department that clause 104 has sufficient regard to the institution of Parliament, and that it is not possible to use more specific language.

Advice from DNRM

The committee has sought the department's assurance that clause 104 has sufficient regard to the institution of Parliament, and that it is not possible to use more specific language.

The reference to 'other mining' inserted into section 110 reflects that any other mining methods granted in accordance with the conditions of a mining claim for opal and gemstones are provided under this Bill. This is to distinguish these from the existing mining claim framework that limits activities to hand mining only. Section 6B of the Act defines the meaning of 'mine' that limits the regulation making power.

On the advice of the Office of Queensland Parliamentary Counsel the language of this provision in this context is appropriate and, as it cannot be used to approve mining, other than that which has already been considered by Parliament, has sufficient regard for the institution of Parliament.

Committee comment

The committee notes the department's advice.

Clause 124 (Any person may assist authorised officer)

Clause 124(4) amends the *Mineral Resources Act 1989* section 342(1)(j) to provide that an authorised officer may ask another person to assist. The person assisting then has the powers and authorities of an authorised officer. Currently, only a mining registrar, deputy mining registrar, field officer or other officer could be asked to assist. Authorised officers have broad powers under the Mineral Resources Act 1989, including the power to give a compliance direction. Failure to comply with a compliance direction without a reasonable excuse is punishable by a penalty of up to 500 penalty units.

It could be expected that an authorised officer is able to exercise his or her powers without excessively interfering with the rights and liberties of individuals. However, the same cannot be said of all members of the general public, and it could be argued that it is preferable not to permit any person to exercise these powers. It is therefore questionable whether this provision has sufficient regard to the rights and liberties of individuals.

The committee's request for advice

The committee sought assurances from the department that clause 123 has sufficient regard to the rights and liberties of individuals.

Advice from DNRM

The committee has sought the department's assurances that clause 123 has sufficient regard to the rights and liberties of individuals. Clause 124(4) provides that an authorised officer may ask a person to assist in the exercise of powers under the Act.

The amendment that related to 'authorised officers' is a simple change in terminology to replace references to mining registrars, deputy mining registrars, field officers and relevant officers. The amendment does not create any new powers. Current section 336(3) of the Mineral Resources Act 1989 provides that the chief executive may appoint other persons as a 'relevant officer' to perform the functions under divisions 1A or 1B or schedule 1. Division 1A provides for the power to give compliance directions. Section 342 already provides for the power of a relevant officer appointed under section 336 to call others to his or her aid to assist with exercising of powers and authorities. Therefore the issue raised is already provided for under the Act; the amendment in the Bill under schedule 1 item 3, simply changes the nomenclature for the officer exercising the power.

With regard to the issue raised, to state that any member of the general public could be called to issue a compliance direction is not entirely accurate. Section 342(1)(k) as amended, provides that only a person may be called to give aid, if the authorised officer considers the person is competent to assist. This rules out any random member of the general public, and provides a limitation on exercise of the power. A competent person asked to assist an authorised officer is only likely to be asked to do so, in the event of urgency or an emergency such as a threat to life, injury or property. It would be an unlikely circumstance where such a person would be asked to give a compliance direction, considering these may also be given orally.

Notwithstanding this, aside from the change in name of the officer exercising the power, the amendments in the Bill do not change the current scope of administrational and judicial functions under the Act.

Therefore the department considers that the amendments have sufficient regard to the rights and liberties of individuals.

Committee comment

The committee is satisfied with the department's advice.

Clause 133 (Small scale mining code)

Clause 133 inserts proposed new section 391C into the *Mineral Resources Act 1989*, which would create a head of power for a regulation to make a small scale mining code. The small scale mining code may impose mandatory conditions about the conduct of authorised activities on land for a mining claim or exploration permit (section 391C(1(b)).

Provisions of the small scale mining code would prevail over inconsistent conditions of mining claims or exploration permits (new section 391(2)). Under the Bill, compliance with the relevant mandatory provisions of the small scale mining code is a condition of a mining claim[86] and of an exploration permit.[87] It is possible for provisions of the small scale mining code to be mandatory provisions. Compliance directions[88] can be issued by authorised officers for mandatory provisions. Failure to comply with a compliance direction is punishable by a penalty of up to 500 penalty units.

Sufficient regard for the institution of Parliament requires that the greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater will be the likelihood that a matter should be dealt with in an Act of Parliament and not delegated below Parliament.[89] For example, the former Scrutiny of Legislation Committee stated that the principal means of creating offences should always be through Acts of Parliament rather than delegated legislation.[90]

This issue of fundamental legislative principle is identified by the explanatory notes, which state, at page 10, that this framework is consistent with the existing Land Access Code under the *Mineral Resources Act 1989*. The notes also point out that it is preferable for these matters to be dealt with by a regulation rather than a document prepared by the department. The question remains, however, whether it is preferable for the small scale mining code be in the Act rather than in subordinate legislation.

Matters in the nature of guidelines are arguably more suited to inclusion in regulations, however mandatory conditions are more suited to inclusion in an Act. A comprehensive list of other conditions

[86] Clause 96, amending *the Mineral Resources Act 1989* section 81.
[87] Clause 109, amending the *Mineral Resources Act 1989* section 141.
[88] Under the *Mineral Resources Act 1989* sections 335A and 335B.
[89] Office of the Queensland Parliamentary Counsel, 2008, *Fundamental Legislative Principles: The OQPC Notebook*, p.145.
[90] Scrutiny of Legislation Committee, 1996, *Alert Digest No. 4*, p.7.

for mining claims are set out in the Act, in section 81, while section 141 lists conditions for exploration permits.

The committee's request for advice

The committee sought assurances from the department that clause 133 is an appropriate delegation of legislative power, and that these provisions have sufficient regard for the institution of Parliament.

Advice from DNRM

> *The committee has sought the department's assurance that clause 133 is an appropriate delegation of legislative power, and that these provisions have sufficient regard for the institution of Parliament.*
>
> *Clause 133 follows an established precedent within the Mineral Resources Act 1989 in that conditions are already prescribed under the regulations. For example, see sections 8 and 14 of the Mineral Resources Regulation 2003. In addition, the mining registrar or Minister can already impose conditions as the mining registrar or Minister sees fit from time to time, see section 81(1)(o) and section 141(1)(j) for mining claims and exploration permits respectively. In both these cases conditions can be imposed on the grant of these tenements outside an Act of Parliament that also allow a compliance direction to be given. The legislative framework for the Small Scale Mining Code was modelled on the provisions of the recently introduced Land Access Code prescribed under section 24A of the Petroleum and Gas (Production and Safety) Act 2004 that applies to all resources Acts.*
>
> *Sufficient regard for the institution of Parliament is not compromised due to the particular nature of mining and the State's ownership and role in resource stewardship. Conditions imposed on mining tenements are up to the applicant to accept in agreeing to undertake mining activities on behalf of the State. The State reserves its right to set conditions as it sees fit, to ensure the best stewardship outcomes of the State's resources to the economic benefit of Queensland. Due to the nature and complexity of mining activities, there are many discretionary powers under the resources legislation to allow the Minister the flexibility to administer the resources sector in circumstances that are impracticable to prescribe under an Act. To attempt to do so would create significantly more complex mining legislation on top of the current legislation that is already voluminous and complex. While the most significant aspects of regulation should be stated in primary legislation, Parliament should not be overburdened with considering less significant changes to the day to day running of the resources sector, which due to its nature may require consideration of the circumstances of each case. This is especially the case for less significant issues that should not warrant Parliament's constrained time.*
>
> *The activities that are to be conducted under the Small Scale Mining Code are of the most limited impact of mining activities able to be undertaken. Therefore, the extent of this limited impact is reflected in the legislative framework where mandatory conditions may be made under the regulations that relate specifically to mining claims for opal and gemstones, and small scale exploration activities. The Code will not apply to all mining claims and exploration permits, only a subset of these authorities, which makes it appropriate that these are dealt with under a more flexible framework.*

Committee comment

The committee is satisfied with the department's advice.

Clause 175 (Definition of 'produced water pipeline')

Clause 175(2) amends section 802(2) of the *Petroleum and Gas (Production and Safety) Act 2004* to insert a definition of produced water pipeline. This definition is essentially a pipeline the construction

and operation of which is carried out under an Act other than one of three named Acts. The term 'produced water pipeline' is used in section 802(1), which provides that a person must not construct a pipeline other than a distribution pipeline unless one of three scenarios apply.

The committee's request for advice

The committee sought assurances from the department that section 802 is not ambiguous and that it is drafted in a sufficiently clear and precise way given the use of the phrase 'other than'.

Advice from DNRM

The committee has sought the department's assurance that section 802 is not unambiguous and is drafted in a sufficiently clear and precise way, given the use of the phrase 'other than'.

The point of conjecture is in the phrase 'other than a distribution pipeline'.

Section 802 provides a restriction on the construction or operation of a pipeline in the circumstances as detailed in this section. However, section 802 also provides that this section does not apply to a distribution pipeline.

'Distribution pipeline' is clearly defined in Schedule 2 'Dictionary' to the Petroleum and Gas (Production and Safety) Act 2004. The definition of distribution pipeline also provides that a distribution pipeline is not a transmission pipeline. 'Transmission pipeline' and 'pipeline' are also clearly defined in the Petroleum and Gas (Production and Safety) Act 2004.

Given this level of definition for these items, the department is of the view that the committee can be assured that section 802 of the Petroleum and Gas (Production and Safety) Act 2004 is drafted in a sufficiently clear and precise manner.

Committee comment

The committee is satisfied with the department's advice.

Schedule 1 (Powers and duties of authorised officers)

Schedule 1 amends the *Mineral Resources Act 1989*, section 417(2)(k) to state that powers and duties of authorised officers may be dealt with by regulation. Considering the powers of authorised officers (for example, under section 401, authorised officers are protected against liability at the suit of any person), it would be preferable for the powers and duties to be set out in the Act. This occurs in the *Environmental Protection Act 1994*, section 447, for example. The advantage of these provisions being included in the Act are increased scrutiny and accountability.

The committee's request for advice

The committee sought assurances from the department that Schedule 1 is an appropriate delegation of legislative power, and that these provisions have sufficient regard for the institution of Parliament.

Advice from DNRM

The committee has sought the department's assurance that Schedule 1 is an appropriate delegation of legislative power, and that these provisions have sufficient regard for the institution of Parliament.

The amendment to section 417(2)(k) is not creating a new regulation power for a new statutory position. The existing regulation making power is amended to reflect the change in terminology of the title of the officer already stated in the Act.

Committee comment

The committee is satisfied with the department's advice.

Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 as well as a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. The notes, however, contained a number of errors.

The errors were corrected in an Erratum to the Explanatory Note tabled on Friday 8 March 2013 by Hon Andrew Cripps MP, Minister for Natural Resources and Mines.

Appendix A – List of submitters

1 –Mr Ed Lunney

2 – Wildlife Protection Association of Australia Inc.

3 – Cape York Land Council

4 – The Wilderness Society Qld Inc.

5 – Association of Mining and Exploration Companies

6 – Queensland Conservation

7 – North Queensland Land Council

8 – Queensland Resources Council

9 – Queensland Law Society

10 – Local Government Association of Queensland

11 – Western Downs Regional Council

12 – Queensland Murray-Darling Committee Inc.

13 – Queensland Small Mining Council

Appendix B – Briefing officers and hearing witnesses

Briefing officers

Department of Environment and Heritage Protection
- Ms Elisa Nichols, Executive Director, Reform and Innovation

Department of Natural Resources and Mines
- Mr Dean Barr, Program Manager, Streamlining Approvals Project
- Mr Geoff Beare, Director, Business & Stakeholder Solutions
- Mr Jim Grundy, Executive Director, Mining and Petroleum Operations
- Mr Gerry McKie, Director, Native Title Services
- Ms Bernadette McNevin, Project Director, Competitive Cash Bidding
- Ms Kirsten Pietzner, Director, Petroleum Gas and Geothermal
- Mr John Skinner Deputy Director-General, Policy and Program Support
- Mr Warwick Squire, Director, Land and Resource Policy

Department of State Development, Infrastructure and Planning
- Mr Graeme Albion, Director, Aurukun Project
- Mr Darcy Blackman, Indigenous Relations Officer, Aurukun Project

Hearing witnesses

Queensland Resources Council
- Mr Andrew Barger, Director, Resource Policy
- Ms Katie-Anne Mulder, Resource Industry Adviser

Association of Mining and Exploration Companies
- Mr Bernie Hogan, Regional Manager QLD/ NT

Aurukun Shire Council
- Mr Dereck Walpo, Mayor

Qld Small Miners' Council
- Mr Kev Phillips, Secretary

The Wilderness Society
Dr Tim Seelig, Queensland Campaign Manager
Ms Karen Touchie, Queensland Campaigner

Queensland Law Society
- Mr Jeremy Chenoweth, Chair, Mining and Resources Law Committee
- Mr Matthew Dunn, Principal Policy Solicitor

Private submitters
- Mr Eddy Lunney

Appendix C – Summary of submissions

Sub No.	Submitter	Cl.	Section/initiative	Key Points	Departmental Response
			Consultation		
1	Eddy Lunney	n/a	Lack of appropriate community consultation	Mr Lunney questions the validity of the 'peak bodies' that have been consulted, particularly in relation to their qualifications and expertise (in relation to opal mining). *The minister will say 'We have the support of the peak bodies.' These peak bodies do not represent the vast majority of stakeholders, as assumed.* (Submission 1, p.4) *The committee must examine the validity of these so called peak bodies.* (Submission 1, p.4)	Noted. However, it is the department's view that the industry representatives consulted including the Queensland Sapphire Producers Association, Quilpie Opal Miners Miners Association, Yowah Opal Miners Community Services Association, Queensland Small Mining Council, Queensland Boulder Opal Association, North Queensland Miners Association, Association of Mining and Exploration Companies and the Queensland Resources Council is an appropriate representation of the small scale mining industry. The department also met with other individuals of the small scale mining sector in Rubyvale and Sapphire to discuss the proposed amendments. Other community representative bodies were also consulted including the Environmental Defenders Office, Queensland Conservation Council, Local Government Association of Queensland, AgForce, Queensland Farmers Federation and local government authorities including the Central Highlands Regional Council and the Winton Shire Council.
1	Eddy Lunney	n/a	Lack of appropriately timed community consultation	Mr Lunney states that the date of introduction of the Bill (28 November), and the truncated reporting date for the committee's report, has resulted in many stakeholders not being aware of, or having the opportunity to comment on, the proposed changes. *The introduction of the bill on the 28 November has resulted in many of the stake holders, not being aware of the proposed changes! - They have not had the opportunity to participate in the process. - These are the people who will be affected directly by the bill - Opal mining is a winter occupation in Queensland. - Almost all of the projects are on shut down due to the summer heat. - Christmas and new years are times that people spend with family. (Not writing submissions to government.) The longest heat wave and catastrophic bush fires have kept many*	Noted. However, extensive consultation was undertaken with a broad cross-section of representative bodies prior to the introduction of the Bill. Other community representative bodies were also consulted including the Environmental Defenders Office, Queensland Conservation Council, Local Government Association of Queensland, AgForce, Queensland Farmers Federation and local government authorities including the Central Highlands Regional Council and the Winton Shire Council.

Sub No.	Submitter	Cl.	Section/initiative	Key Points	Departmental Response
				miners and farmers out of touch with each other. The timing of this bill is obstructive.(Submission 1, pp.1-2 & 10)	
11	Western Downs Regional Council	n/a	Lack of consultation with councils	The Western Downs Regional Council has expressed disappointment at the lack of consultation with councils and the timeframe given to comment on the Bill, particularly as it has fallen over the December/January holiday period.(Submission 11, p.1)	Noted. The Department consulted with relevant local government authorities that have the majority of opal and gemstone mining activity within their respective areas and through the Local Government Association of Queensland as the representative body for local councils. As the Western Downs Regional Council has no mining of opal or gemstones within its jurisdiction and the procedures for notification to local government and right to object to applications for mining claims are unchanged by the Bill they were not specifically targeted for consultation in regard to small scale mining.
12	Queensland Murray-Darling Committee Inc	n/a	Lack of public/community consultation	*Those bodies who have been consulted and who have voiced their support for the amendments have done so without there being any wider public or community consultation or discussion. QMDC argues the selection is not representative of key community interests or expertise.* (Submission 12, p.4)	Noted. Community representative bodies were consulted including the Environmental Defenders Office, Queensland Conservation Council, Local Government Association of Queensland, AgForce, Queensland Farmers Federation and local government authorities including the Central Highlands Regional Council and the Winton Shire Council. These entities were consulted as they were considered to be those entities or representative organisations most directly impacted by the Bill's provisions. The department also met with other individuals of the small scale mining sector in Rubyvale and Sapphire to discuss the proposed amendments.
			Minister's Introductory Speech		
1	Eddy Lunney	n/a	Inconsistency between speech and Bill	Mr Lunney queries the Minister's claim in his introductory speech that this Bill will amend legislation to ensure that small mining lease operators will no longer by liable for annual rental payments, and will not be required to lodge royalty returns if the value of the operation is under a reportable threshold. Mr Lunney states he cannot find a reference to such an amendment in the MOLA Bill. *Serious contradiction exists between the introduction speech the objectives and the actual bill… The minister may have misled the parliament and the people in his speech with regard to the use of the words 'Not liable for annual rental payments. Also with regards to obligation to lodge royalty returns. With*	The Minister's introductory speech is accurate in that opal and gemstone miners moving from a mining lease to a mining claim will no longer need to pay rent. Schedule 5 of the Mineral Resources Regulation 2003 prescribes rent payable for mining claims and leases. This is currently nil for mining claims and $50.75 per hectare for a mining lease. No specific legislative amendment is required to achieve this outcome, mining leases for opal and gemstones converted to mining claims, are taken to be mining claims pursuant to clause 140 of the Bill, new section 816(9)(a). Similarly, section 34 of the Mineral Resources Regulation 2003 states that for corundum, gemstones or precious stones, no royalty is payable on the first $100,000 of the combined value of the minerals sold, disposed of or used in a year. Then under section 29 of the Mineral Resources

Sub No.	Submitter	Cl.	Section/initiative	Key Points	Departmental Response
				regards to the amount of area promised for a prescribed tenement. (Submission 1, pp.10-11)	Regulation 2003, a holder of a mining claim that is not required to pay royalty, does not need to lodge a royalty return.
			Explanatory Notes		
1	Eddy Lunney	n/a	Reasons for the policy objectives p.2	Mr Lunney raises a concern that the Bill does not comply with the *Legislative Standards Act 1992* in a number of ways: *The bill is ambiguous. The bill has been rushed in its drafting and the quality of the bill is not there. The bill is contradictory. The bill is not clear and precise.* (Submission 1, p.10)	Noted. However, the Bill has been drafted by the Office of Queensland Parliamentary Counsel and every effort has been made to ensure the Bill is not ambiguous and drafted in a sufficiently clear and precise way. The reforms contained in this Bill contribute to the governments objectives of reducing red tape. The department acknowledges the short timeframes and notes that this was necessary to ensure delivery of reforms to meet the government's initial Six Month Action Plan.
1	Eddy Lunney	n/a	Achievement of policy objectives	Mr Lunney states that the benefits of the Bill for small miners could have been achieved through '…changes to policy in the Mineral Resources Regulations 2003 (rather than amendment of the *Mineral Resources Act 1989*). (Submission 1, pp.6-8) *He could have easily and inexpensively delivered the out comes to opal miners under policy and regulation. He has chosen not to.* (Submission 1, pp.5)	Legislative amendments to achieve the policy objectives were required. In the department's view, the most efficient way to reduce administrational and financial burden on the small scale miners of opal and gemstones was to transition these miners operating under 'mining leases' to the 'mining claim' tenure framework. Other reforms identified to benefit all mining claim holders, also require legislative amendment e.g. streamlined application process, removal of mandatory issuing and updating of a physical instrument of grant document. Under the mining claim framework, miners stand to benefit from lighter administrational and financial requirements under this tenure type. For example, not having to pay rent or lodging a royalty return (if no royalty is payable), lower fees for applications, renewals and other transactions with government and reduced costs from a less onerous application process with regards to avoiding advertising costs. These issues are related to statutory requirements under the primary legislation and to achieve these types of reform, legislative amendment is required; this cannot be achieved through policy or by subordinate legislation. In addition, the proposal to provide an exemption for small scale mining activities from holding an environmental authority under the *Environmental Protection Act 1994* cannot be achieved without amendment to this Act and the *Mineral Resources Act 1989*.

Sub No.	Submitter	Cl.	Section/initiative	Key Points	Departmental Response
1	Eddy Lunney	n/a	Achievement of policy objectives	Mr Lunney questions the need to amend the *Mineral Resources Act 1989* to address rent issues for small miners and to permit the use of machinery on mining claims to benefit opal miners. *I will go further to demonstrate that the benefits that the minister is now promising opal miners could have been achieved by changes to policy in the Mineral resources regulations 2003. NO1 Rents under regulation. The rents are prescribed and the amount of rent can be changed by the government at any time. It is my understanding that miners who protested about rent in the past 3 years, protested about rent being CPI indexed. On the basis that the miners had a set rent for a set term according to their grant. We do not need to debate the issue of rent being prescribed and set by the regulations; it is clear and evident that this is the case. So there is no need to further amend the MRA1989 to achieve this end result! Is there?No2 Use of machinery on mining claims. It has never been disputed that the MRA 1989 has sufficient power to allow the use of machinery on mining claims. However, it has not been the policy in Queensland for a long time. In the past machinery was used on mining claims with consent from the registrar or the minister. It is not up to me to show the history of this activity, only to demonstrate that there are other ways available to the minister to deliver these benefits to opal miners, without altering the definitive document the MRA 1989. It is only policy that prohibits the use of machinery on mining claims.* (Submission 1, p.7)	Rent payable is set by the regulations. While the rent issue could be addressed by amending the regulations, this is just one of several benefits to small scale miners of opal and gemstones moving to the mining claim framework, as discussed above. In moving opal and gemstone miners under a mining lease to a mining claim, an amendment is needed to the provision under the *Mineral Resources Act 1989* that limits mining claims to hand mining only under section 50(1)(a)(ii). There are no such restrictions under a mining lease. Therefore an exclusion for mining claims for opals and gemstones is introduced (see clause 81) to distinguish these specific mining activities where this has been approved by the Minister. This issue should not be confused with the ability to use machinery to 'hand mine' under a mining claim pursuant to section 110 of the *Mineral Resources Act 1989*. Mining activities for opal and gemstones conducted under a mining lease, that will be possible under a mining claim, involve use of machinery that is not hand mining, e.g. bulldozers, excavators. These types of machinery are prohibited machinery for hand mining under section 10 of the Mineral Resources Regulation 2003. Amendments to the Mineral Resources Act 1989 are required to implement the mining claim framework.
1	Eddy Lunney	n/a	Estimated costs for government implementation	Mr Lunney questions whether the costs to implement the Bill to assist small miners can be justified stating: *To implement the current bill will according to the explanatory notes, cost approximately 6.4 million dollars per year.* (Submission 1, p.8)	The estimated total costs of the small scale mining reforms of $800,000 - $1,400,000 is related to lost revenue to the State from loss of rent from mining leases that convert to mining claims (where no rent is payable) and related fees for environmental authorities where eligible holders seek exemption. This figure is dependent on how many miners choose, or are eligible, to take advantage of these reforms. The remaining $5 million out of the $6.4 million referred to in the submission relate to the annual budget for administering the competitive tendering process for exploration. This reform is unrelated to the small scale mining amendments in the Bill.

Sub No.	Submitter	Cl.	Section/initiative	Key Points	Departmental Response
					There is no cost to the small scale mining industry the cost is carried by government.
12	Queensland Murray-Darling Committee Inc (QMDC)	n/a	Alternative ways of achieving policy objectives p.8	*QMDC argues further investigation and analysis is required e.g. what improved model conditions would promote better practices and put a safeguard in place which means the approval could be more streamlined.*(Submission 12, p.4)	Noted. The department, when deciding that the only pathway to achieve a stated policy objective is via legislative amendments is required to produce regulation in accordance with regulatory best practice principles. This is achieved through the application of the Regulatory Assessment Statement system. This system provides a streamlined procedure for developing regulation for Queensland. As part of this system, alternative pathways to achieving policy objectives are subject to analysis to determine a best case for action in terms of achieving a stated policy objective. Government action in this case generates the greatest net benefit overall.
			Bill – General comments		
1	Eddy Lunney	n/a	Achievement of policy objectives	*This bill should be rejected in its current form. …Option two should now be commenced…The acts should be amended one at a time … The acts should be amended individually with careful thought and consideration.* (Submission 1, p.1) *He could have easily and inexpensively delivered the out comes to opal miners under policy and regulation. He has chosen not to.* (Submission 1, p.5) *The bill should be scrapped immediately and option two of alternative ways to achieve policy adopted without reservation* (Submission 1, p.12)	It is a common and accepted practice to amend multiple pieces of legislation through an amendment Act. The submission expresses a preference that each Act be amended by separate Bills. This is not efficient and in many cases impractical, where there are necessary related and consequential amendments to another piece of legislation that must be considered by Parliament together. Legislative amendments must adhere to regulatory best practice principles. This means that ensuring government adopts the option that generates the greatest net benefit overall. The amendments contained in this Bill achieve this and therefore the stated policy objectives.
1	Eddy Lunney	various	Achievement of policy objectives	*How is stripping the registrar of their statutory power helping opal miners?* (Submission 1, p.3) *Opal miners have no legal right to complain about the cost of the activity! I and all opal miners have no legal right to complain about money charged by the department. I signed that right away when I was asked to declared as all miners are required under policy that I have the financial and technical capacity to carry out the activity. This has been the policy of the department for many years. So why now, why all of a sudden are you going to budget an estimated 6.4 million dollars per*	The department considers the transferring of the statutory powers and functions of the mining registrar to the chief executive, Minister or authorised officer, is required to modernise the resource legislation and positions Queensland's legislation for future streamlining. The position of mining registrar will still exist; the only difference is that their powers will be delegated to them from the Minister or chief executive as appropriate. In many cases, mining registrars will also be authorised officers. The Bill carries a transitional provision to this effect (see clause 140, new section 813).

Sub No.	Submitter	Cl.	Section/initiative	Key Points	Departmental Response
				year to implement a bill to help opal miners. (Submission 1, p.5)	
1	Eddy Lunney		[changes to /creation of a new form of tenure	*A prescribed tenement for corundum and other gem stone. Yes, that is correct a new tenure, somewhere between a mining lease and a claim. This is not simplifying the process it is complicating the process and not all opal miners will be able to convert to this new system. As the amendment are poorly thought out. The result is a proposal to legislate a discriminating legislation. The benefit of the changes does not apply equally to all opal miners'. It is discrimination and the bill should be scrapped.* (Submission 1, p.6)	All miners for opal and gemstones operating under a mining lease will be able to convert to a mining claim providing they meet the limitations in size and other conditions defined by clause 140, new section 816. The proposed amendments are in the department's view, the most effective means of achieving the policy objective.
1	Eddy Lunney	various	[transfer of power from mining registrars to the Minister or Chief Executive]	*The bill is creating a new judicial enforcement officer "The authorised officer." The authorised officer will no longer need to have an acquired knowledge of the legislation and experience that is needed for the role of registrar. (This role can be filled by deputising any public servant.)* (Submission 1, p.3)	The 'authorised officer' is not a new judicial enforcement officer. It merely replaces the existing terminology for positions such as mining registrar and 'relevant officer' and makes the *Mineral Resources Act 1989* consistent with the other resources legislation. Knowledge and experience will be required to be appointed as an authorised officer, just like any other public office. Under the amended section 336(3) by clause 122, the chief executive may appoint an authorised officer only if the chief executive considers the person is appropriately qualified to perform the function.
12	Queensland Murray-Darling Committee Inc	various	[transfer of power from mining registrars to the Minister or Chief Executive]	*The State is gaining more and more executive power with every Act they pass. It is important the checks and balances of the State government are visual in each law enacted by parliament. The gathering concentration of power in the hands of the State's executive is a growing trend not supported by community as it has the capacity to expand executive authority largely immune to legislative control or judicial review.*(Submission 12, pp.3-4)	The transfer of powers and functions of the mining registrar to the chief executive or the Minister makes the *Mineral Resources Act 1989* consistent with the other more modern Queensland resources legislation. This will provide the department with the organisational flexibility to improve service delivery. Regardless of the office, any decision maker exercising a power or function is subject to the provisions of the applicable legislation and any other relevant legislation including the *Judicial Review Act 1991*.
			Part 3 – Amendment of Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012 (ss 5-21)		
10	Local Government			LGAQ supports the streamlining of processes for the small scale mining of opal, corundum, gemstones and other precious	Noted. Currently, a mining claim applicant is required to provide a copy of the application to the relevant local government, which includes an 'outline'

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	Association of Queensland (LGAQ)			stones but they have an additional suggestion regarding this process. (Submission 10, p.2), They note that small scale miners will still have to provide the relevant council with their mining claim application and a council may still object via Land Court processes. *LGAQ suggests this process could be improved by providing that the relevant local council also receive a copy of the five-year program of work that is submitted when the mining claim reaches its fifth anniversary. This will ensure that council is appropriately informed of activities on land subject to the mining claim for the full 10-year period of the mining claim. The process for renewing a mining claim should also ensure the program of works is provided to the relevant local government. (Submission 10, p.3)* The LGAQ raises a concern about exploration permits for minerals (other than coal) now operating under the Small Scale Mining Code and without an environmental authority. (Submission 10, p.3) *…there is potential incentive for proponents to apply for multiple separate permits to satisfy the small scale criteria and operate without an environmental authority. This is of concern for local governments as the combined effect of multiple small scale exploration permits may still have a material impact locally, particularly on local roads used for access.* (Submission 10, p.3) They suggest an improvement to the process. *… to provide that the relevant council receive a copy of the program of work accompanying the small scale exploration permit application prior to grant, consistent with the process for a mining claim application. The process for renewing an exploration permit for minerals should also ensure the program of works is provided to the relevant local government*. (Submission 10, p.3) *Further, there should be provision for the Minister to consider any concerns of the relevant council about a tenure holder's activities under the Small Scale Mining Code. LGAQ considers*	of the proposed activities. This outline has been replaced by the 'work program', which is simply a formalisation of the previous 'outline' requirement. The work program submitted on application is to contain the proposed activities for the term applied for. The requirement to lodge an updated work program after five years is for the department to consider if the mining claim is for bona-fide purposes. The content of the updated work program may be used to determine if the department needs to take follow up action with the tenement, e.g. conduct an inspection. The original work program should give the local government sufficient information; a requirement to lodge a copy of the updated work program with the local government would be an increase in regulatory burden. There is currently no requirement for exploration permit applicants for grant or renewal to notify local governments. This would be an increase in the regulatory burden on explorers. For local government to be informed of resources activity, use can be made of the Local Area Mining Permit Report available free on the department's website, where mining permits can be identified by local government area. Also available free on the department's website is the public enquiry report, which provides details on specific tenures that can be identified in the Local Area Mining Permit Report. If a local government has concerns about the compliance of any resource tenure, they can contact the department and the Minister or delegate may take any necessary action, which may include a fine or cancellation of the permit. Mining and exploration activities that fall under the definition of small scale mining activities will continue to be monitored as required. <u>Incentive to apply for multiple permits</u> The number of claims that can be held is limited to two at a time (section 55 of MR Act) so there will not be multiple applications from single proponents. It is not expected that the impact on local government areas will be significantly differ to the current situation. <u>Right of recourse for local governments around small scale mining code</u>

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				this to be important to ensure council has right of recourse given these activities are no longer subject to an environmental authority. (Submission 10 p.3) The LGAQ also requests further information on how small scale mining activities will be monitored to ensure compliance with the new Small Scale Mining Code.	The Department of Environment and Heritage Protection will still respond to complaints about environmental issues on site. Councils will be able to use the same processes that they do currently to raise issues with the department about any environmental concerns.
11	Western Downs Regional Council (WDRC)	6	Insertion of new s 4AA	The WDRC is concerned about the changes that will mean small scale miners do not have to submit an environmental authority. Council is concerned that this will: 1. turn a pro-active approach to monitoring activities to a more re-active approach 2. contribute more easily to greater harm from a cumulative effect from the numbers of mining projects, and 3. not provide WDRC with information as to who, where, and what level of activity is occurring in their region, impacting on their ability to understand and provide the appropriate levels of management and governance.(Submission 11, p.1)	The department considers the lack of an environmental authority will not reduce environmental standards for small scale mining,. As the activity will remain an environmentally relevant activity, the department will still be able to undertake proactive compliance where appropriate. The provisions of the *Environmental Protection Act 1994* will continue to apply and the operator will need to comply with the general environmental duty. Offence provisions designed to prevent environmental harm, noise and water contamination issues will still apply and reflect the main risks presented by this industry. In addition, the small scale mining code will provide guidance for operators on managing the site to reducing the risk of an environmental issue. The Bill provides a process for notification of tenure applications to landholders and local governments. Therefore, WDRC will receive notification of any application for a mining claim in their local government area, enabling them to understand the scale and impact of business in their area. They will also be able to make submissions about the issue of tenure and have recourse to the Land Court if they are not satisfied, identical to the current situation. Notification is not related to the existence or otherwise of an environmental authority.
13	Queensland Small Mining Council	6	Insertion of new s 4AA	In relation to prescribed condition about financial assurance, who determines the costs or expenses or likely expenses, mentioned in section 298, and what recourse does the tenure holder have to appeal these costs if they think that these costs are not correct.	The provision referred to requires the Minister to be satisfied, before recommending a regulation imposing a prescribed condition requiring financial assurance to the Governor in Council, that the condition is justified having regard to the matters in section 292(2).
13	Queensland Small Mining Council	7	Amendment of s 8 (Insertion of new chs 5 and 5A)	In relation to the power to give a written direction to carry out rehabilitation, who decides that rehabilitation is inadequate and what experience will they have to substantiate their decision and what recourse does the tenure holder have to appeal the	The standard of rehabilitation will be assessed by authorised officers, appointed by the chief executive, in the same way it is currently assessed for opal and gem mining activities. A direction to carry out rehabilitation can only be given after an operator

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				decision	has applied to discharge their financial assurance and the application was refused, for example, because rehabilitation has not been carried out. The direction must be given with the notice to refuse the discharge of financial assurance which is subject to review or appeal.
13	Queensland Small Mining Council	15	Amendment of s 36 (Amendment of s 452 (Entry of place – general))	Power of entry should be limited to reported or reasonably expected breaches of prescribed conditions	The provisions relate to existing powers that are being amended to reflect the new terminology.
13	Queensland Small Mining Council	16	Amendment of s 37 (Amendment of s 458 (Order to enter land to conduct investigation or conduct work)	Can access to land by authorised officers be facilitated by an amendment to the previous section dealing with powers of entry?	The provisions relate to existing powers that are being amended to reflect the new terminology.
12	Queensland Murray-Darling Committee Inc	20	Amendment of s 62 (Amendment of sch 4 (Dictionary))	QMDC recommends clearer criteria around potential water discharges to a watercourse. (Submission 12, p.5)	Section 440ZG of the *Environmental Protection Act 1994* makes it an offence to discharge listed substances including sediment, soil and chemicals into a watercourse. This provision continues to apply and there is no need for additional criteria around this. It is also noted that a mine operating within a watercourse or a riverine area must continue to operate with an environmental authority. The restriction about location means the likelihood of water discharges to a watercourse is very low.
13	Queensland Small Mining Council	20	Amendment of s 62 (Amendment of sch 4 (Dictionary))	Legislation should allow two claims of up to twenty hectares but whereon only ten hectares maximum could be disturbed at one time in total on this combination on a single Mining Project (combination of two new mining claim tenures)	The criteria to operate a small scale mining activity without an environmental authority are based on the activity being small scale and low risk. Ten hectares of disturbance over two claims was under initial discussion with the small scale mining sector as this is consistent with the amount of disturbance currently allowed under a Level 2 environmental authority for a single mining project (i.e. multiple tenures on one environmental authority). However, during the legislative drafting of the Bill, it was recognised that the existing legislative arrangements that allow the disturbance to be spread over a single mining project would not apply to small scale mining activities. This is because the disturbance is linked to mining activities operating under an environmental authority, and under the Bill, these activities will no longer need an environmental authority. Under the Bill, a small scale mining activity is now linked to a tenure granted under the *Mineral Resources Act 1989*, e.g. a mining claim.

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					Because no environmental authority is required, a single mining project covering two claims is no longer applicable to small scale mining activities. A small scale mining activity operating on two claims will no longer be a single mining project and will be known as two separate small scale mining activities. The area of disturbance is therefore limited to 5 hectares per mining claim. Given that two claims are allowed, an operator may have up to 10 hectares of disturbance.
13	Queensland Small Mining Council	20	Amendment of s 62 (Amendment of sch 4 (Dictionary))	Error or oversight in relation to provision excluding small mining claims from a Wild River Area	Currently, in relation to the small scale mining activities covered by the Bill, activities operating on a mining claim can operate in a wild river area, and mining activities on a mining lease can operate in a wild river area, apart from a wild river high preservation area or wild river special floodplain management area. The definition of 'small scale mining activity' in the Bill excludes these activities from operating in all categories of a wild river area, which was not intended. It was only intended to exclude small scale mining activities from operating in wild river high preservation areas and wild river special floodplain management areas. The Department will seek to have the definition of small scale mining activity amended to allow small scale mining activities to operate in a wild river area, other than a wild river high preservation area or wild river special floodplain management area.
13	Queensland Small Mining Council	20	Amendment of s 62 (Amendment of sch 4 (Dictionary))	With reference to the 1000m2 area of land disturbance allowed for mineral exploration, the word disturbed should be defined to state that rehabilitated areas are not included	The definition provides that the activity does not, or will not, at any one time cause more than 1000m2 of land to be disturbed. An erratum to the explanatory notes will be provided to clarify that this area of disturbance does not include areas that have been rehabilitated.
13	Queensland Small Mining Council	20	Amendment of s 62 (Amendment of sch 4 (Dictionary))	With reference to the definition of watercourse, the word intermittently should be defined better by defining creeks and streams in this section to have significant and / or continual water flows during periods without drought conditions.	The definition of watercourse is an existing definition in the Environmental Protection Regulation 2008 that is utilised for more than one purpose. It is being elevated to the Act due to drafting conventions. The impacts of changing the definition on other provisions in legislation and clients who currently rely on that definition for other purposes must be fully investigated before any change can be made.

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8	Queensland Resources Council	23/42/44/78/ 178/189	Amendment of s3 (Definitions) Amendment of sch 2 (Dictionary)	Opposes the broadening of the definition of occupier because of burden it imposes on industry	Noted. The amendment to the definition of occupier is a clarifying amendment and does not alter the policy intent. Government maintains that the definition was originally intended to capture a broad range of legitimate occupiers of freehold and leasehold land and therefore the definition as drafted clarifies this position.
			Part 4 – Amendment of Fossicking Act 1994 (ss 22-39)		
3	Cape York Land Council Aboriginal Corporation (CYLAC)	25	Omission of s 11 (Act's application if approved determination of native title) [omission of requirements for an indigenous land use agreement to consent to fossicking over registered native title land]	CYLAC is concerned that the proposed amendments to the *Fossicking Act 1994* will impact on native title rights and interests, and potentially create a liability for holders of fossicking licences for non-compliance with the future act provisions of the *Native Title Act 1993* (Cth) (NTA): *We understand that the State has formed the view that the issue of a Fossicking Licence is consistent with s.24MD(6A) of the NTA, on the basis that as landowners do not have procedural rights regarding the grant of a fossicking licence, nor do native title holders/claimants; and that the issue of such a licence is not a right to mine, so the Right to Negotiate provisions of the NTA do not apply. (Submission 3, p.2)* *We understand that section 11 was originally introduced so that a fossicking licence could be issued as a low impact future act under the NTA. Section 24LA of the NTA which deals with low impact future acts specifically refers in sub-para (1)(b) to acts which are not low impact future acts, and refers at (1)(b)(v) to "mining (other than fossicking by using hand-held implements)". (Submission 3, p.3)* *It seems to us that fossicking clearly includes activities that fall within the NTA definition of mining. If s.11 is removed, and steps are not taken to ensure compliance with subdivision P of the NTA (including compensation liability), then it appears that the risk of non-compliance will fall on fossicking licence holders, which does not seem to be fair or reasonable.* (Submission 3, p.3) [proposes s.27(1)(d)] *does not address the rights of native title*	The State has re-assessed the original interpretation of 'fossicking' used drafting in the *Fossicking Act 1994* and has subsequently formed the view that 'fossicking' is not 'mining' as defined by the *Native Title Act 1993* (Cwth) (NTA). Consequently, the grant of a fossickers licence is not a future act conferring a right to mine as defined by the NTA, on the licensee. The State's view is that section 24MD of the NTA applies – Acts that pass the freehold test, to the grant of a fossickers licence and gives Native Title holders and claimants the same procedural rights as landowners. In the Fossicking Act, landowners receive no procedural rights in the application and grant process for a fossickers licence. The granting of the licence includes a condition which requires the holder to obtain written consent from owners of occupied land before entry for fossicking activities. The granting of a fossickers licence provides the licensee a right to fossick over the whole of the State of Queensland, subject to the prior written consent obtained from the owner of occupied land to enter upon the land. There is no guarantee that a fossicker will obtain permission to enter land, and there are no appeal provisions for a fossicker refused permission to enter land. The proposed amendments do not require a fossicker's license holder to enter any native title negotiations and the grant of a fossickers license does not create any interest in, or priority to, any land. The State's view is that the owner's consent can only be given or refused by an entity that is an owner of the land, that is, someone normally able to charge rent for that land (see *Queensland Construction Materials P/L v Redland Shire Council & Ors* [2010] QCA 182.) As this definition does not apply to native title parties who hold non-exclusive rights and interests, the

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				holders with non-exclusive rights, who will have no say about access and its potential effect on native title rights and interests… And *… there will be considerable uncertainty for fossickers who seek licences for exclusive native title land, as there is no guarantee that they will get agreement to access and they will potentially be in breach of the future act provisions of the NTA…* (Submission 3, p.3) *We note that by contrast the New South Wales Mining Act 1992 at s 12(6) extends to any native title land (exclusive or otherwise):-* *(6) A person must not carry out fossicking on any land that is, or in waters that are, the subject of an approved determination of native title under the Commonwealth Native Title Act to the effect that native title exists, except with the consent of the relevant registered native title body corporate with respect to that native title. (Submission 3, p.4)* *If section 11 is removed, and there is no requirement for agreement to access non-exclusive native title land, there is a high potential for damage to cultural heritage. Many sites and objects of significance to the Traditional Owners remain unmapped or unrecorded on registers. If there is no requirement to consult with native title holders, then it is difficult to see how appropriate precautions can or will be taken in practice. We doubt that those conducting activities described as "intermittent small scale recreational activities" will have the ability, resources or awareness of appropriate cultural heritage processes.*(Submission 3,p.4) *We are concerned that the proposed removal of s.11 from the Fossicking Act will result in fossickers re-entering the native title process, and if accepted as parties to native title claims, withholding consent to any determination of native title unless and until they are given a guarantee of access for fossicking activities post-determination. …This will add to the cost and*	requirement for fossickers to seek their authority has not been provided for. The Fossicking Act limits fossicking to the use of hand held implements like spades and sieves and prohibits the sale of fossicking materials for commercial gain, reflecting the nature of fossicking as a relatively low impact hobbyist activity. All existing measures for managing cultural heritage remain unchanged and unaffected by the proposed amendments to the Fossicking Act. Cultural heritage is protected and administered under the *Aboriginal Cultural Heritage Act 2003.* No amendments or reduction in the protection afforded to cultural heritage by that Act is proposed in this Bill.

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				timeframes for all parties (Submission 3, p.4) CYLC submit that AREC should conclude that the Fossicking Act provisions should not proceed.	
7	North Queensland Land Council (NQLC)	25	Omission of s 11 (Act's application if approved determination of native title) [omission of requirement for an Indigenous land use agreement to consent to fossicking over native title lands]	*If the re-evaluation of "fossicking" as being "a future act passing the freehold test in the NTA" is solely based on the fact that fossicking is a hobby and a recreational non-commercial activity, that re-evaluation should be revisited. Aboriginal cultural sites such as middens and graves may be disturbed in the activity of fossicking on land that may still contain native title and it should also be taken into account that in some cases visiting the area may not be permissible from a cultural perspective. Accordingly, the impact of the act on land that may still contain native title is a matter that needs to be taken into account in any re-evaluation of "fossicking".* (Submission 7, p.2) *The proposed changes to the Fossicking Act do not accommodate native title holders of non-exclusive native title rights and interests, prescribed bodies corporate that hold native title on behalf of native title groups or registered native title claimants.* (Submission 7, pp.2-3) *The NQLC suggests that a native title holder of non -exclusive native title rights and interests, relevant prescribed bodies corporate and registered native title claimants should be provided with the opportunity to either consent or object to access on the subject land by a holder of a fossicking licence for the purpose of fossicking.* *Amendments to the definition of "owner" in the Mineral Resources Act 1989 or express amendments to the Fossicking Act 1994 would be required to effect the above suggestion. If these amendments are not included in the Bill, the North Queensland Land Council would not support the removal of the ILUA provisions.* (Submission 7, p.3)	The State has re-assessed the original interpretation of 'fossicking' used in the *Fossicking Act 1994* and has formed the view that 'fossicking' is not 'mining' as defined by the *Native Title Act 1993* (Cwth) (NTA). Consequently, the grant of a fossickers licence is not a future act conferring a right to mine as defined by the NTA, on the licensee. The State's view is that section 24MD of the NTA applies – Acts that pass the freehold test, to the grant of a fossickers licence and gives Native Title holders and claimants the same procedural rights as landowners. In the Fossicking Act, landowners receive no procedural rights in the application and grant process for a fossickers licence. The granting of the licence includes a condition which requires the holder to obtain written consent from owners of occupied land before entry for fossicking activities. The granting of a fossickers licence provides the licensee a right to fossick over the whole of the State of Queensland, subject to the prior written consent obtained from the owner of occupied land to enter upon the land. There is no guarantee that a fossicker will obtain permission to enter land, and there are no appeal provisions for a fossicker refused permission to enter land. The proposed amendments do not require a fossicker's license holder to enter any native title negotiations and the grant of a fossickers license does not create any interest in, or priority to, any land. The State's view is that the owner's consent can only be given or refused by an entity that is an owner of the land, that is, someone normally able to charge rent for that land (see *Queensland Construction Materials P/L v Redland Shire Council & Ors* [2010] QCA 182.) As this definition does not apply to native title parties who hold non-exclusive rights and interests, the requirement for fossickers to seek their authority has not been provided for. The Fossicking Act limits fossicking to the use of hand held implements like spades and sieves and prohibits the sale of fossicking materials for commercial gain, reflecting the nature of fossicking as a relatively low

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					impact hobbyist activity. All existing measures for managing cultural heritage remain unchanged and unaffected by the proposed amendments to the Fossicking Act. Cultural heritage is protected and administered under the *Aboriginal Cultural Heritage Act 2003.* No amendments or reduction in the protection afforded to cultural heritage by that Act is proposed in this Bill.
12	Queensland Murray-Darling Committee Inc	25	Omission of s 11 (Act's application if approved determination of native title) [omission of requirements for an indigenous land use agreement to consent to fossicking over registered native title land]	*The removal of the requirement to obtain Indigenous Land Use Agreements is of concern to QMDC. The constitutional rights and standing of Traditional Owners and Aboriginal people must be respected and honoured.* (Submission 12, p.3)	The proposed amendments to the *Fossicking Act 1994* will place entities who have been determined to hold native title rights and interests over certain land, "to the exclusion of all others" in the same position as ordinary landowners, with the ability to grant or refuse access to 'exclusive' native title land. The rights of traditional owners who hold exclusive possession are provided for in the Bill in that it recognises them as the owners of the land. The cultural heritage of traditional owners and Aboriginal people continues to be protected under the *Aboriginal Cultural Heritage Act 2003* which is unchanged by this Bill.
			Part 7 – Amendment of *Mineral Resources Act 1989 Division 2 – Amendments commencing on assent (ss 46-78)*		
9	Queensland Law Society (QLS)	42	Amendment of Schedule 2, definition of *occupier*.	The Queensland Law Society (QLS) raises a concern regarding the definition of "Occupier". They argue that - *…the current drafting may not extend to freehold owners who give another a right to occupy a place by a means other than a registered lease.* (Submission 9, p.1). They point out that one of the key objectives of the Bill (as outlined in the Explanatory Notes) is to change the definition of "Occupier", but that the drafting of the Bill as it is may not achieve this objective. They recommend a change to the drafting of this definition. *In any event, to ensure that the intent of the amendment is clearly achieved, we recommend that the words 'owner; or' are added to paragraph (b) of the definition. This would make the*	The Queensland Government has sought advice in relation to the drafting of the definition of 'occupier' contained in the Bill and maintains that the definition as drafted adequately reflects the policy intent that an owner (including a holder of freehold title holder and leasehold land holder) are considered to be occupiers for the purpose of the conduct and compensation provision of the resources legislation.

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				resultant definition: *occupier, of a place, means a person-* *(a)who, under an Act or a lease registered under the Land Title Act 1994, has a right to occupy the place, other than under a mining interest, petroleum tenure, licence under the Petroleum and Gas (Production and Safety) Act, GHG authority or geothermal tenure; or* *(b)to whom an:* *(i) owner; or* *(ii) occupier under paragraph (a),* *has given the right to occupy the place.* *We believe that this amendment will ensure the objective promoted in the Explanatory Notes is achieved.* (Submission 9, p.3).	
13	Queensland Small Mining Council	49	Amendment of s 131 (Who may apply)	What endeavours are being undertaken by the State to ensure that areas are available to small scale miners to invest and conduct exploration	The Department acknowledges that smaller explorers are good at making discoveries and managing the risks of exploration. That is why a cash bidding component of any competitive tender process will only be implemented for areas that are considered potentially highly prospective. There are no defined barriers to smaller explorers submitting tenders for these potentially highly prospective areas either individually or as part of a larger group. Junior explorers will continue to have the opportunity to explore green-field areas through a series of non-cash competitive tenders planned for both petroleum and gas and coal areas. Since 2005, over 140,000 sub-blocks have been released through the competitive tender process without a cash bidding component. The first round of cash bidding, for potentially highly prospective Coal Seam Gas, by comparison is releasing 50 sub-blocks. The new competitive land release framework will generate greater certainty for industry by providing access to geological data and regulatory obligations over released land upfront as part of the tender process. In

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					addition, the competitive tendering process will address market distortions as a result of land banking by trying to establish which tenderer is the most committed to the exploration and the timely and appropriate development of land; and therefore who will be allocated the relevant exploration permit. In addition, the ability to competitively tender areas provides opportunities to release areas targeted to a specific mineral type. This will allow the Government to create opportunities for small scale miners and foster the development in determined areas of a specific resource, for example, gemstones.
5	Association of Mining and Exploration Companies (AMEC)	50	Insertion of new ss 136 and 136A, pt 5, div 3 and pt 5, div 4, hdg [competitive tendering for exploration permits]	AMEC recommends the removal of the cash-bidding component for the most prospective exploration tenures, and for exploration permits for minerals.(Submission 5, p.2) *By imposing cash-bidding components to tenure application, the Government has made cash reserves the overwhelmingly major factor in determining tender winners as opposed to proponent capacity and capability. AMEC draws this conclusion assuming all exploration activities will be indistinguishable between proponents, given the known reserves. In effect the Queensland Government is placing the most prospective ground with companies that have little or no incentive to develop the project.*(Submission 5, p.3) *Cash bidding for coal exploration permits in Queensland simply allows the largest companies to add to their stockpile of permits and removing the ability of mid-tier miners to context these permits.* (Submission 5, p.3) *Cash bidding for permits is simply an increase in costs that will not be sustained by minerals projects. Explorers will not derive any further benefit from this increased cost, and Queensland would become less attractive as an investment opportunity for tight margin projects.* (Submission 5, p.3)	Unless provided for in section 8 of the *Mineral Resources Act 1989*, mineral resources are the property of the State. Through the implementation of a competitive tendering process, the Government will ensure that the greatest possible return, reflective of the resources in-ground value, is achieved for all Queenslanders. By adopting a controlled tender process for exploration rights, the Government will ensure those most capable of developing the State's resources are given an opportunity to do so. While there is an option to include a cash component in each tender, it is not mandatory and will only be included for a small number of potentially highly prospective areas. The current Call for Tenders (PLR2012-1) illustrates this process. Included within the evaluation criteria are the proposed work program and an assessment of the capability and commitment of each tenderer. The permits to be issued through this Call will be granted for four years, requiring work program compliance in this timeframe. The amendments include an option under this clause to tender exploration permits for minerals, with or without a cash bid component. The primary means of obtaining an exploration permits for minerals will continue to be via an over the counter basis. This amendment formalises the current Restricted Area release / competitive application process for exploration permits for minerals. In the case of areas known to be potentially highly prospective a cash bid component may be included. Bringing this competitive process in line with the process to be used for coal and petroleum provides industry with the

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					benefit of a simplified and consistent regulatory framework along with the provision of extensive analysis of pre-competitive data.
5	Association of Mining and Exploration Companies (AMEC)	50	Insertion of new ss 136 and 136A, pt 5, div 3 and pt 5, div 4, hdg [competitive tendering for exploration permits]	*AMEC recommends that to reduce the risk of cash-bid auction winners tying up Queensland's most prospective land indefinitely, exploration permits won through this system should be non-renewable unless 'special circumstances' apply.* (Submission 5, p.4)	Noted. The Government agrees there is a need to progress the development of these potentially highly prospective areas and the competitive tendering process has been designed with this in mind. In addition to the cash component, a tenderer's application must also include a program of work that clearly demonstrates their technical capability and experience in managing the entire exploration and production process. The permits being released through the current tender process will be granted for four years, prompting the holders to move towards development during this time. The Department believes the current reporting and relinquishment requirements provide the appropriate level of flexibility required to manage the State's resources.
5	Association of Mining and Exploration Companies (AMEC)	50	Insertion of new ss 136 and 136A, pt 5, div 3 and pt 5, div 4, hdg [competitive tendering for exploration permits]	AMEC strongly oppose the clauses in the Bill that introduce a system of cash-bidding in the awarding of tenure for coal exploration and development. *AMEC …views the introduction of cash auctions as discriminatory and counterproductive to the development of the exploration industry in Queensland.*(Submission 5, p.2) *Exploration, particularly "greenfield" exploration, which breaks new ground to discover mineral wealth, is overwhelmingly carried out by mid-tier or junior exploration companies.*(Submission 5, p.2) *…the proposed cash-bidding tenure process enshrines a system where those companies with the largest cash reserves win the most prospective tenure, not the company most-likely to develop any discovery.* (Submission 5, p.2) AMEC supports significant opposition to parts relating to cash bidding.	Noted. However, clause 50 allows the Government to ensure that the parties most capable of developing the State's resources are given an opportunity to do so. A cash component will only be included for areas considered to be potentially highly prospective. The Government recognises the valuable role of junior explorers in developing our greenfield areas and has plans to release a series of non-cash areas targeted specifically at junior explorers. Regardless of whether a cash component is required, each tenderer's application must also include a program of work that clearly demonstrates their technical capability and experience in managing the entire exploration process.
10	Local	50	Insertion of new ss 136 and 136A, pt	LGAQ sees merit in the new tendering system; however they	Noted. However, due to the confidentiality requirements of the

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	Government Association of Queensland		5, div 3 and pt 5, div 4, hdg [competitive tendering for exploration permits]	have concerns, particularly in relation to consultation with councils regarding approved programs of work and the impact on council infrastructure etc. *LGAQ considers there is merit in the new tendering framework as it will provide for the controlled release of land whereby the State Government can identify and assess suitable areas prior to release. (*Submission 10, p.4) *While exploration activities are lower impact relative to production tenure, local governments continue to experience adverse impacts on the local road network from certain types of exploration activities…the intensification of resource activities and the associated impacts remain a priority concern for councils.* (Submission 10, p.4) *LGAQ considers that as part of finalising the tender process there should be quality and timely information to councils about authorised activities*. (Submission 10, p.4)	commercial tender process, consultation with councils cannot be conducted on each tenderer's program of work. A mandatory component of each tenderer's application is that of a 'proposed consultation approach'. Tenderers must provide a detailed statement of whom they intend to consult and keep informed including establishing arrangements for related infrastructure. LGAQ, individual local governments or other interested persons may find out about mining tenures applied for and granted in their area by requesting a local area mining permit report available from the Department of Natural Resources and Mines web site. A report can be requested for a parcel of land (lot on plan) or for an entire local government area. As well as listing mining tenures in a specified area, the local area mining permit report explains the purpose and types of activities permitted for each tenure type and the general constraints that may affect resource activities.
12	Queensland Murray-Darling Committee Inc	50	Insertion of new ss 136 and 136A, pt 5, div 3 and pt 5, div 4, hdg [competitive tendering for exploration permits]	*Public consultation is required to safeguard public interests. Not just about economic gain but environmental protection and sustainable development are equally important. Potential tenders should be assessed according to their track record of previous compliance and final site management and rehabilitation of previous mining operations and projects. These factors are crucial to any tendering process and assessment of returns for the communities impacted upon. The assumption made is development will go ahead regardless of track record or impact on natural resources and their threshold limits. Additionally the socio-economic impacts on communities and landholders get no mention or assessment.*(Submission 12, p.4)	The new section 136A allows the Minister to allocate an exploration permit for a mineral other than coal through a competitive tender process if it is considered in the State's best interests. The department agrees that public consultation is an essential component when determining land for exploration; and importantly existing statutory and legislative requirements apply to any preferred tenderer when an exploration permit is granted. The publicly available "*Call for Tenders for authorities to Prospect PLR2012-1*" document provides an example of the importance of consultation and environmental protection for tender processes. This document provides clear advice and instructions for tenderers wishing to participate in the current competitive tendering process for petroleum exploration permits. Tenderers must supply a proposed consultation approach. It should be noted that development does not go ahead regardless of track record or impact on natural resources. Tenderers must provide a proposed work program detailing their technical capability and experience to

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					successfully manage all aspects of petroleum exploration and production including for example: native title, land access, and the relevant environmental approvals. Any preferred tenderer must gain all necessary environmental approvals as part of a tenure being granted. As part of the tender evaluation process demonstration of the tenderers capability and experience in appropriately managing impacts on natural resources is an important criteria.
8	Queensland Resources Council	50	Insertion of new ss 136 and 136 A, pt 5, div 3 and pt 5, div 4, hdg	Concern about how highly prospective areas will be selected	QRC's submission questions the controlled release of land through competitive cash tendering generally; and requests information on how potentially highly prospective areas will be identified and how the cash tender process for these areas will be operated. To be clear, all resources on the surface of the land and in natural underground reservoirs or deposits remain the property of the State. By implementing a competitive tender process for the controlled release of land for exploration the Government is ensuring better stewardship and the greatest possible return on resources that belong to all Queenslanders. The competitive tendering process is built on sound policy principles that promote a strong and balanced resource sector in Queensland. While only a select few targeted areas of land will be released for tender with a cash component, the whole of industry will benefit from the clearly articulated competitive tendering framework. The framework will ensure that applications submitted are given proper scrutiny, particularly around tender work programs. Non–cash competitive tender processes will continue for green-field sites ensuring continuing opportunities for small explorers. For each release, potential tenderers will receive the benefit of detailed geological assessment provided by the Geological Survey of Queensland along with details on any other land uses that a permit holder would need to manage. Tenderers will continue to be assessed on their capability and commitment to deliver a work program based on the geological assessment provided while being sensitive to other land use constraints.
8	Queensland Resources	50	Insertion of new ss 136 and 136 A, pt	Concern about estimates of revenues to be obtained from cash	Revenue forecast for the current land release involving a cash bid component was generated by Government following high level analysis

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	Council		5, div 3 and pt 5, div 4, hdg	bidding	and consideration of objective geological advice on the resource potential provided by the Geological Survey of Queensland and market prices at that point in time.
8	Queensland Resources Council	50	Insertion of new ss 136 and 136 A, pt 5, div 3 and pt 5, div 4, hdg	Concern about inclusion of option to call tenders for non-coal-tenures and include cash bid component	Exploration permits for minerals will continue to be made available on an over-the-counter basis. The amendments include an option to tender exploration permits for minerals, with or without a cash bid component. This will bring the current competitive application process for mineral exploration in line with other tender processes. Previously, to manage the release of land for minerals exploration, Restricted Areas were created by the Department on untenured land across the State that was considered highly prospective for minerals. These Restricted Areas were then combined with information packages containing pre-competitive geological information about the area and released through a competitive application process. By including the option for mineral exploration to be competitively tendered, this similar process of releasing land is formalised. This will result in a standard mechanism being introduced for the release of land for exploration across all resources with the process operating in a clear and predictable manner. It is possible that if the State exercises the option to apply competitive tendering it may result in a cost for exploration permits for potentially highly prospective areas, however the benefit to industry through a simplified and consistent regulatory structure and the extent of pre-competitive data analysed and provided to tenderers greatly outweighs this.
8	Queensland Resources Council	50	Insertion of new ss 136 and 136 A, pt 5, div 3 and pt 5, div 4, hdg	Lack of consultation in regard to cash bidding	Due to the strict requirement of confidentiality in implementing a successful competitive tendering process, opportunities for consultation were limited. The Government notes the issues raised by the Queensland Resources Council, the Association of Mining and Exploration Companies, Local Government Association of Queensland and the Queensland Murray-Darling Committee surrounding the justification for a competitive cash tendering process and in particular the issues of transparency and the impartiality of the Government.

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					To ensure the highest level of integrity is maintained throughout the process, independent probity advisors were engaged for the duration of the development and implementation of the competitive tendering project. The probity advisors have assisted the project team and steering committee to reflect the probity principles of transparency; accountability and responsibility; confidentiality and conflict of interest; and value for money throughout the project.
8	Queensland Resources Council	50/163/164/166/169/170/172	Insertion of new ss 136 and 136 A, pt 5, div 3 and pt 5, div 4, hdg Amendment of s 35 (Call for tenders) Amendment of s 37 (Requirements for making tender) Amendment of s 39 (Process for deciding tenders) Amendment of s 127 (Call for tenders) Amendment of s 128 (Right to tender) Amendment of s 130 (Process for deciding tenders)	Does not support cash bidding as this creates a moral hazard	Contrary to what QRC suggests, the competitive tender process will not change the State's stewardship of natural resources. The new framework merely includes an addition of an optional cash bid component to competitive tendering processes used to determine the awarding of tenure over potentially highly prospective resource areas. It is expected that the majority of competitive tender processes for exploration will not contain a cash bidding component and continue to provide opportunities for junior and mid-tier explorers. It assumed that the QRC has not employed the definition of "moral hazard" in its traditional sense but rather, is concerned by the level of transparency and fairness of the tender process. As witnessed in the first release of petroleum exploration permits under competitive cash tender, the process is fair and transparent. After publicly announcing the release of this land for exploration, the call for tender was made publicly available on the Queensland Government's e-tenders website. The Queensland Government's e-tenders website is not new and numerous tenders were successfully completed in 2012 that ranged from medical services to regional development projects. To maintain the highest level of integrity, the current competitive tender documentation includes all legislative and administrative requirements of the process including the criteria for evaluating tenders and selecting the preferred tenderer. The QRC's submission suggests that by accepting payments for exploration tenure, the Government's ability to impartially regulate will be compromised. The Department has significant experience in impartially evaluating exploration permit tenders and it is required to impartially regulate these tenures regardless of whether a competitive tender process

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					has been used. Key to the integrity of the evaluation process is the separation of roles between the impartial evaluation panel and the decision-making role of the Minister. As an added precaution in ensuring this integrity and impartiality is maintained in the competitive cash tendering process, the Department has engaged the services of independent probity advisors to oversee every stage of implementation, including evaluation of the tenders. The probity advisors have been responsible for preparing a probity plan, advising on confidentiality and communication protocols and ensuring every aspect of the process meets appropriate probity standards. All staff and advisors involved with the process are required to declare and continue to declare any conflicts of interest and external consultants have been engaged throughout the process to ensure best practice.
10	Local Government Association of Queensland	51	Replacement of s 137 (Grant of exploration permit)	LGAQ suggests including in s137: *…that in deciding whether to grant an exploration permit, the Minister have regard to the extent of consultation proposed with the relevant local government and that a copy of the approved program of work be provided to the council. These provisions should also be included in s43... In addition, the process for renewal of exploration tenures should ensure the program of works is provided to the relevant council.* (Submission 10, p.4) *…there appears to be a disconnection in proponent communications with relevant councils and inadequate information about the full extent of authorised activities for the term of the exploration tenure. Accordingly, proponent liability with respect to council owned infrastructure, including the local road network, is not being accurately determined.* (Submission 10, p.4)	Clause 51 replaces the existing section 137 under which exploration permits for both coal and non-coal permits were previously granted. The new section 137 states the prescribed criteria for the grant of an exploration permit. The prescribed criteria applies regardless of whether an exploration permit is allocated via an application process, competitive tender process or invitation by the Minister for a specific party to submit an application. The criteria are that: • the requirements of the Act have been complied with; • the applicant is an eligible person and has paid the rental for the first year of the term of the exploration permit; • the Minister has approved the program of work; and • the Minister is satisfied that the person is not disqualified from being granted the permit . The Minister having regard to the extent of consultation proposed with the relevant local government is a matter already addressed in tender processes via the program of work. A mandatory component of tender applications is that of a 'proposed consultation approach' as part of the proposed work program. Tenderers must provide a detailed statement of whom they intend to consult and keep informed including establishing

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					arrangements for infrastructure such as roads. With regard to an approved program of work being made available to councils, on grant of tenure and approval of the work program; the work program is made publicly available via the Department's "Mines Online' public register.
12	Queensland Murray-Darling Committee Inc	51	Replacement of s 137(Grant of exploration permit)	*QMDC recommends clearer criteria to disallow potential impacts on Strategic Cropping Land and if open cut exploration is not permitted in a prescribed watercourse and within prescribed distances for environmentally sensitive areas and urban areas.*(Submission 12, p.5)	Noted. In actioning a strategic controlled release of potentially highly prospective land, the Government takes into consideration numerous factors including, but not limited to: geological information, existing land use constraints such as strategic cropping land, land access, and other environmental values—before land is tendered. As part of a tenderers application they must submit a program of work that clearly documents their technical capability and experience to successfully manage all aspects of petroleum exploration and production including for example: native title, land access, and the relevant environmental approvals.
10	Local Government Association of Queensland	53	Amendment of s 141C (Application to vary conditions of existing permit)	LGAQ suggests including in s141: *…that the grant of an exploration permit be subject to a condition that the permit holder must consult with the relevant council about the initial approved program of work as well as approved amendments to the program of work. A similar provision should apply for the holder of an authority to prospect. This will ensure council is adequately informed of all authorised activities throughout the term of the exploration tenure.* (Submission 10, p.4)	Clause 53 amends the section so that subsection 141C(2) and subsection 142(3) apply to an exploration permit for coal despite section 130A. This means that applications to vary conditions of existing Exploration Permit (coal) will be assessed as if they were an application for an Exploration Permit (non-coal) under section 133. With regards to consultation with the relevant council about an approved program of work and any subsequent amendments to the program of work; this is a matter addressed by the new section 137 where the Minister must approve the program of work. A mandatory component of tender applications is that of a 'proposed consultation approach' as part of the proposed work program. Tenderers must provide a detailed statement of who they intend to consult and keep informed during exploration and production—this includes local government for the establishment of arrangements such as the use of roads and other infrastructure.

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12	Queensland Murray-Darling Committee Inc	71	Amendment of s 386L (Notice to progress relevant applications)	*Limiting objections and appeals to 'directly impacted entities" completely undermines the role and responsibilities of community groups and NGOs to represent public interest and community on policy, planning and legislative issues.* *The Bill permits more opportunity for mining on larger areas of land (20 hectares) and consequentially there is more opportunity for environmental harm and risk. This potentially means more impacts on public interests and concerns, socially, economically and environmentally. Mining and ecological sustainable development is a public interest in Queensland particularly where there are multiple adjoining 20 hectares.* (Submission 12, p.4)	Noted. However, it appears this submission relates to clause 94 which amends section 71 of the *Mineral Resources Act 1989* that deals with objections to mining claim applications. The vast majority of mining claim and mining lease applications for opals and gemstones do not receive objections. When objections are received, these are predominantly from underlying landowners. There is currently no public advertising of applications for mining claims under the *Mineral Resources Act 1989* however the legislation currently allows any entity to object. No definition of 'entity' is provided by the Act. Section 71 has been amended to reflect the entities that can object to align with the entities that are notified of the application. This also contributes to streamlining the application process for mining claims by balancing the rights of directly impacted stakeholders with the burden of applicants to deal with objections for other parties. Objection on environmental grounds as raised by this submission are dealt with under the *Environmental Protection Act 1994*. The types of mining activity that are eligible for the new small mining framework rarely receive objections and, if an objection is received, it is from the landholder not NGOs and community groups. The submission incorrectly understands the Bill as allowing mining on larger areas of land. In fact, the Bill reduces the area of land that can be applied for if an existing mining lease, which is currently unlimited by size, wishes to take advantage of the new framework. Only two mining claims can be held by an operator at a time. Additionally, the area of disturbance at any one time is limited to 5 hectares, rather than the 10 hectares available to current Level 2 code compliant mining leases. There is no increased risk of environmental harm resulting from the proposed new framework.
			Part 7 – Amendment of Mineral Resources Act 1989 – Division 3 – Amendments commencing by proclamation (ss 79-143)		
7	North Queensland Land Council	83	Amendment of s 53 (Area and shape of mining claim land)	NQLC notes that this clause will change the prescribed area of 1 ha for mining claims to 20 ha ("decided area") for corundum, gemstones or other precious stones, and requests that it be	An existing mining claim granted for 1 hectare for opal and gemstones will remain one hectare under the changes proposed in the Bill. To be granted 20 hectares, an applicant must apply to the Minister and normal native title

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				provided with details as to why the considerable increase in area is proposed in view of the lack of consultation in this area of the proposed amendments. *The proposed increase in area has the potential to impact on increased areas of land that may still contain native title particularly as up to 20 ha is also proposed to be the area that may be decided by the Minister in relation to new mining claims.* (Submission 7, p.2)	processes apply. A mining lease converted to a mining claim is an administrational process with any native title agreements already in place continuing to apply.
13	Queensland Small Mining Council	88/96/101/140 (new s811 & s816)	Amendment of s 61 (Application for grant of mining claim) Amendment of s 81 (Conditions of mining claim) Amendment of s 93 (Renewal of mining claim) Insertion of new ch 15, pt 6, div 2	Requirements for and making up a work program should be reduced further in the legislation.	The requirement to lodge a work program on application is an existing requirement of the Mineral Resources Act (currently referred to as an outline). The work program assists the government to fulfil its resource stewardship responsibilities, such as determining security for the operation and determining the proposed operation is appropriate and justifies giving an exclusive right to mine on that land. The work program is also provided to the landowner and local government authority on application for those parties to determine the impact of the proposed activity on their interests or responsibilities. The amendments proposed in the Bill will require a mining claim holder to submit an updated work program every five years and on renewal. This is to ensure the mining claim continues to be used for bona-fide purposes and has been introduced to balance the amendment to return the term of a mining claim to 10 years. The *Mines Legislation (Streamlining) Amendment Act 2012* reduced the term to 5 years to provide a more appropriate review period for mining claims. The work program requirement applies to all mining claims, not just opal and gemstones; therefore it is impractical to cater for individual circumstances related to particular exploration and mining techniques. The criteria in the work program are relatively straightforward and in any case can only be addressed to the best ability of the applicant. The government then makes an assessment of the application based on its merits and the requirements of the Act.
13	Queensland Small Mining Council	91	Replacement of s 64B (Applicant's obligations for certificate of public notice)	Recommendation for changes section 64B applicants obligations for mining claim application certificate	The Mineral Resources Act currently requires the applicant for a mining claim to post a copy of the Certificate of Public Notice on the datum post of the land subject of the proposed mining claim. Applicants are also required to give a copy of the application to the relevant landowners. These obligations are not changed by the Bill except that the Certificate of Public

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					Notice and Certificate of Application have been combined under a Mining Claim Application Certificate. The Certificate of Public Notice and durably engraving the number of the proposed mining claim on the datum post notifies any landowner not able or willing to receive the copy of the mining claim application or other explorers and miners doing exploration or intending to apply for tenure in the area of the status of the marked out land. The department will continue to work with the Queensland Small Mining Council during the review of regulation to reduce red tape for the small scale alluvial mining sector, as part of the government's January to June 2013 Six Month Action Plan, to identify further opportunities to streamline these and other aspects of the small mining industry.
1	Eddy Lunney	95	Amendment of s 74 (Grant of mining claim to which no objection is lodged)	Mr Lunney states that clause 95 of the Bill amends the *Mineral Resources Act 1989* to limit who may object to a mining claim and who may have the matter heard in the Land Court. *How is stripping the registrar of their statutory power helping opal miners? Registrars have an acquired juridical role under natural law. That allows them to adjudicate and intervene to find the best ways of moving forward. The role of the registrar calling a conference between disagreeing parties is also striped from the legislation by this policy and the only source of appeal will be the land court. This is an expensive and time consuming option.* (Submission 1, p.3) *The bill does not openly declare changes to statutory powers of authorised officers. The bill removes the right to object at conference. The bill makes the only course for objection available to a landholder to go to the land court. This may be seen by some as an act of obstruction. The process is expensive and creates an obstacle to stake holders rights. The bill strips the registrar of statutory powers without consultation or proper grounds. The bill will impact on natural justice* (Submission 1, p.11)	These issues raised in the submission relate to changes to statutory officer and regulatory roles under the *Mineral Resources Act 1989* and appear to be unrelated to clause 95. There are no changes to the conference provisions under the *Mineral Resources Act 1989* apart from that an authorised officer may undertake this administrative process.
1	Eddy Lunney	124	Amendment of s 342 (Powers of mining registrars and others)	Mr Lunney raises a concern that the wording of the Bill, as explained in the Explanatory Notes, unfairly targets the role of the mining registrar. Mr Lunney is concerned that, by removing	The powers and functions of the mining registrar are being transferred to the chief executive, Minister or authorised officer. The position of mining registrar will remain however the authority of the position will be exercised

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				the registrar's statutory powers and transferring them to the Minister or Chief Executive, there will be a loss to the role of the registrar. He again raises concerns that the wording of the Bill and accompanying Explanatory Notes is ambiguous and misleading. (Submission 1, pp.2-3 & 11)	by way of delegation. This brings the *Mineral Resources Act 1989* in line with the other resources Acts.
2	Pat O'Brien, Wildlife Protection Association of Australia Inc.	133	Insertion of new s 391C [new section 391C provides that a regulation may make a code for managing the impacts of small scale mining activities carried out under a mining claim or exploration permit]	Mr O'Brien raises concerns about the potential environmental impact of mining activities and states that the WPAA is concerned that any small mining activities in or adjacent to waterways should be closely monitored. Mr O'Brien also raises concerns about inappropriate land clearing in wildlife sensitive areas. (Submission 2, p.1)	The Small Scale Mining Code is not intended to replace environmental licensing. It will provide some guidelines for activity impact management and the ability to prescribe mandatory conditions where necessary. The purpose of the work program for mining claims is to indicate to the department whether the tenement is being used for the purposes it was granted. It is not a tool for environmental protection. The criteria for the new small scale mining claim precludes operation in a watercourse or riverine area. Operators who wish to operate in those kinds of environment will still require an environmental authority. In relation to land clearing in wildlife sensitive areas, the legislation specifically identifies particular environmentally sensitive areas. Many of these are wildlife sensitive areas but it is acknowledged that wildlife impacts is not a specific consideration in determining the appropriate level of assessment for a mining activity. This is a broader policy issue outside the scope of this Bill.
12	Queensland Murray-Darling Committee Inc	133	Insertion of new s 391C [new section 391C provides that a regulation may make a code for managing the impacts of small scale mining activities carried out under a mining claim or exploration permit]	*Even though the mining is small scale what happens if there is a number of small scale mining operations going on side by side or throughout a specific region? Should the cumulative impact of this type of scenario require a different assessment process?* *Risk assessment allows dangerous activities to continue under the guise of "acceptable risk." It allows the continuation of activities that lead to greater pollution and degradation of health under the premise that it is either safe or acceptable to those who are exposed. It prevents action.* *Risk assessment is fundamentally undemocratic. The risk assessment process is most often confined to agency and industry scientists, and consultants. It traditionally does not include public or community perceptions, priorities, or needs,*	The framework for the Small Scale Mining Code will enable mandatory conditions to be imposed if necessary. This will act like any other condition of the tenure, in that the Minister will be able to take compliance action against the holder which may include a fine or cancellation of tenement.

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				and does not use widespread public participation. This tradition prevails in this case see page 10 of the Explanatory Notes and the list of those organisations consulted.(Submission 12, p.2) *It is acknowledged some environmental protection measures will remain but QMDC and the wider public are not privy to the new Small Scale Mining Code and its intended provisions nor are we confident that the work programs submitted every 5 years will be successfully implemented or complied with. Lots of things can go wrong or change in 5 years, water quality, best practices, market forces, technology, policy priorities, weather patterns, soil condition etc. (*Submission 12, p.3)	
12	Queensland Murray-Darling Committee Inc	133	Insertion of new s 391C [establishing a small scale mining code by regulation]	*Applying a code for managing impacts of small scale mining. QMDC supports mandatory conditions being stated as a regulation if they reflect the potential extent and severity of risk. These conditions must be stringent and regularly monitored for breaches.* (Submission 12, p.4)	Noted
13	Queensland Small Mining Council	140	Insertion of new ch 15, pt 6, div 2	Leases changed to the "new type mining claims" have to be exactly the same size.	The conversion process has been drafted so that the whole area of the mining lease must be converted. In other words, an applicant could not seek to convert a portion of the mining lease to a mining claim unless they surrendered part of the mining lease first, thus leaving only the portion to be converted. Converting just a part of an existing mining lease would create significant administrational difficulties such as, dividing security, compensation agreements and environmental authorities. Nor has the conversion process allowed for new land (not already subject to a mining lease) to be added to the mining claim on conversion. This is not possible without providing a conversion process that would mirror the application for grant process. It would need to address the capability of the applicant, compensation, environmental approvals, native title considerations, notification and objection period and potential land court hearing. All these processes are already provided for under the Mineral Resources Act. Mining lease holders wishing to convert to a mining claim will have 2 years from commencement to undertake any administrational action needed prior to applying to convert to a mining claim. For example, surrendering part of the area of the mining lease or adding new areas to the mining lease using existing processes under the Act.

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13	Queensland Small Mining Council	148/149	Amendment of s 163 (Amendment of s 91 (Initial term of mining claim)) Amendment of s 164 (Amendment of s 93 (Renewal of mining claim))	The term of the new tenure should be for the term sought by the applicant unless there are native title issues that may affect this outcome.	The transition from a mining lease to a mining claim has been drafted as an administrative conversion process. It is not a reconsideration of the grant of the authority. Therefore the conversion process cannot accommodate extending the term of the original grant. This would require a process that provides for reconsideration of the authority such as the priority of land use, capability of the applicant, compensation, native title, notification and objection period and potential land court hearing.
8	Queensland Resources Council	169	Amendment of s 127 (Call for tenders) S 35(2)(e)(iv)	Concern about removal of weightings of a decision to grant an authority to prospect	QRC states that the removal of the published weightings for the assessment of cash tendering is “unacceptable public policy”. In responding to each specific evaluation criteria explicitly stated in every call for tenders for Authorities To Prospect, tenderers have always been expected to address each criteria by submitting their best possible applications including providing programs of works of a sufficiently high quality and expenditure commitment to distinguish them from their competitors. Consistent with this approach, the State continues to strongly encourage tenderers to develop innovative techniques and inclusions in their proposed work programs so as to try to ensure the best possible party be allocated the tenure. The change to remove a requirement to issue publicly stated weightings for each criterion provides the State the ability to employ reasoned judgement as to the relative merit and appropriateness of the weightings for each separate tender evaluation criteria within each tender round, which is common commercial practice. Nevertheless, the State will continue to set and publish clearly defined evaluation criteria by which all tenderers can be judged on their merits for all future calls of tenders. This change—the removal of weightings—encourages tenderers to submit a program of work in line with their capabilities and site suitability rather than submitting a program that is designed to achieve a high assessment score under a published weightings and scoring system. In past instances, the Department has experienced cases that clearly indicated the tenderer had included an overly aggressive work program simply to win the highest score, rather than being the most appropriate for the site.

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8	Queensland Resources Council	169	Amendment of s 127 (Call for tenders)	Concern that cash bidding will impact on small explorers	QRC is concerned that the competitive cash tender changes will adversely affect smaller explorers who do not have the financial capabilities to bid for tenure. In their submission the QRC said: *"History has shown that the small explorers are best at making discoveries, the best at juggling the risks. They have the best track record of delivering discoveries of new deposits. This policy is disenfranchising that smaller explorer because this is all about the big cheque book and the early return to Treasury."* The Queensland Government agrees that smaller explorers are good at making discoveries and managing the risks of exploration. That is exactly why a competitive cash tender process will only be implemented for areas that are considered potentially highly prospective. There are no defined barriers to smaller explorers submitting tenders for these potentially highly prospective areas either individually or as part of a larger group. Junior explorers will continue to have the opportunity to explore green-field areas through a series of non-cash competitive tenders planned for both petroleum and gas and coal areas. Since 2005, over 140,000 sub-blocks have been released through the competitive tender process without a cash bidding component. The first round of cash bidding, for potentially highly prospective Coal Seam Gas, by comparison is releasing 50 sub-blocks. The new competitive land release framework will generate greater certainty for industry by providing access to geological data and regulatory obligations over released land upfront as part of the tender process. In addition, the competitive tendering process will address market distortions as a result of land banking by trying to establish which tenderer is the most committed to the exploration and appropriate development of land and may be allocated the relevant exploration permit—and will be required to expedite the project in a timely manner.
			Part 10 – Amendment of *Petroleum and Gas (Production and Safety) Act 2004* – Division 3 – Amendments commencing by proclamation (ss 179-189)		

Sub No.	Submitter	Cl.	Section/initiative	Key Points	Departmental Response
11	Western Downs Regional Council	179-189	179 Amendment of s 403 (Incidental activities) to 189 Amendment of sch 2 (Dictionary) [colocation of infrastructure and activities on pipeline licences]	*The WDRC is supportive of co-location of infrastructure and activities on pipeline licenses. However, with co-location comes greater risk. WDRC therefore believes approvals must include a condition for increased monitoring on these licences.* (Submission 11, p.1)	The Bill includes an amendment to section 669 of the P&G Act which will enable a regulation to be implemented that addresses safety issues that may arise in relation to the conduct of incidental activities under the authority of a pipeline licence. This regulation will be in place when proposed amendments to the P&G Act come into force. The regulation will provide that the conduct of pipeline incidental activities is not to compromise the safety of the pipeline itself.
12	Queensland Murray-Darling Committee Inc	179-189	179 Amendment of s 403 (Incidental activities) to 189 Amendment of sch 2 (Dictionary)	*The principle of co-location of infrastructure if it reduces the overall footprint is supported by QMDC. The route of co-location should still avoid strategic cropping land and other areas of significant environmental or socio-economic value. However the proposed new legislation fails to articulate how allowing co-location of infrastructure on pipeline licences will reduce the impact from petroleum and gas projects in terms of potential risks e.g. increased fire hazard or pipeline rupture. Without a full risk analysis and assessment, the proposed amendment to the Petroleum and Gas (Production and Safety) Act 2004 may in reality create the opportunity for greater impact because it permits more and more development with less scrutiny or regard for environmental risk and protection.* (Submission 12, p.1) *The statement that co-location will reduce impact needs to be based on a solid analysis of the potential impacts and their associated risks to the environment, to human health and wellbeing, to stock, to neighbouring businesses etc. QMDC argues that the Bill is making an assumption that any inherent risks associated with co-location are acceptable.* *Not addressed or even acknowledged is the level of risk community and landholders are prepared to live with or accept from the industry. QMDC believes the assumptions made by the State government within this Bill do not align to current public concern and the value communities place on preventing harm minor and serious to the environment, to themselves, their families and communities, to the future generations.* Submission 12, p.2)	The Bill provides for consideration of the potential impacts of proposed incidental activities on landholders, the environment and safety. In the first instance, the Bill provides criteria the Minister will use to decide an application to conduct incidental activities on a pipeline licence for another petroleum authority. These criteria include consideration of whether the proposed incidental activity will have the overall effect of reducing impacts on land, landowners and the community. In addition, before a licence is granted, under existing provisions the applicant for the pipeline licence will need to obtain an Environmental Authority (EA) that covers the conduct of the proposed incidental activities. The EA will consider the environmental risks associated with the proposed activities and provide for appropriate measures to mitigate and manage these risks. The Petroleum and Gas Inspectorate of the Department of Natural Resources and Mines has also been closely consulted regarding the proposed amendments. The Bill includes an amendment to section 669 of the P&G Act which will enable a regulation to be implemented that addresses safety issues that may arise in relation to the conduct of incidental activities under the authority of a pipeline licence. This regulation will be in place when proposed amendments to the P&G Act come into force. The regulation will provide that the conduct of pipeline incidental activities is not to compromise the safety of the pipeline itself.

Sub No.	Submitter	Cl.	Section/initiative	Key Points	Departmental Response
10	Local Government Association of Queensland	185	Amendment of s 428 (Costs of pipeline works caused by public road construction)	*LGAQ notes that the existing provision under s428 in the Petroleum and Gas (Production and Safety) Act 2004 will extend to all infrastructure constructed for the carrying out of a stated pipeline licence incidental activity. As such, the proponent will have to bear the costs of any infrastructure effects from council road works.* (Submission 10, p.5)	Noted.
			Part 11 – Amendment of *Wild Rivers Act 2005* (ss 190-192)		
4	The Wilderness Society	190, 191 & 192	190 Act Amended 191 Amendment of s 45 (Exemption of projects from application of this Act) 192 Amendment of s 46 (Meaning of *Aurukun project*) [extending the existing exemption of the Aurukun project from the *Wild Rivers Act 2005* to more than one Aurukun project]	The Aurukun project is currently exempt from the application of the *Wild Rivers Act 2005*. Clauses 190-192 (191 in particular) effectively extend the exemption to multiple Aurukun projects. The Wilderness Society strongly opposes this. *The Wilderness Society wholeheartedly rejects the proposition that exemptions to valid environmental protection laws should be made simply to make development proposals more attractive to investors….the project(s) now on the table for Aurukun are of a fundamentally different order of magnitude than the 2005 Chalcoa project, which was the catalyst for the original statutory exemption* (Submission 4, p.2) *…there is nothing in either the Explanatory Notes to the Bill or in the documentation for the current Aurukun EOI process…that would justify a continued exemption to valid environmental protection laws.* (Submission 4, p.3) *The current Aurukun EOI process explicitly excludes the development of new downstream processing capacity, drastically reducing…the potential direct employment opportunities from the project.* (Submission 4, p.3) *In summary there is nothing in either the Explanatory Notes or in the documentation for the current Aurukun EOI process – in terms of either the overall economic benefits of the project or the specific benefits for local indigenous communities and native title holders – that would justify a continued exemption to valid environmental protection laws.*(Submission 4, p.3) The Wilderness Society requests that the committee consider	Noted. However, the amendments to the *Wild Rivers Act 2005* are consequential amendments resulting from amendments to the *Mineral Resources Act 1989* to clarify that the State may enter into an arrangement with more than one proponent for the development of the Aurukun resource area. The amendments do not result in an extension of the existing exemption for projects beyond the Aurukun resource area (RA315) as limited by the definition of Aurukun project. It is also important to note that while the amendments to the *Mineral Resources Act 1989* and the consequential amendments to the *Wild Rivers Act 2005* are being progressed in support of the Government's current competitive tender process for the development of the Aurukun bauxite resource area, the application of Part 6A and 7AAA is not limited to the current competitive tender process and as such any such limitations have been avoided in the drafting of the extrinsic material to the Bill. The Government through the Department of State Development, Infrastructure and Planning (DSDIP) has been negotiating closely with the Wik and Wik Way people who hold native title over the Aurukun bauxite resource and the Aurukun Shire Council (ASC). Negotiations with the Wik and Wik Way people have been conducted through the five elected directors of the Ngan Aak-Kunch Aboriginal Corporation (NAK) which is the Registered Native Title Body Corporate under the *Native Title Act 1993* (Cth) for the determinations of native title and which acts as the representative or agent of the Wik and Wik Way people for native title matters. Negotiation with the Aurukun Shire Council has been with the Mayor, Deputy Mayor and Councillors. Prior to the announcement of the retender, the Deputy Premier travelled to Aurukun to meet with the Mayor, his Council, the NAK directors and the Aurukun community to hear their views on the retender and future development. The Wik and Wik Way

Sub No.	Submitter	Cl.	Section/initiative	Key Points	Departmental Response
				the correspondence received by the then Government from Aurukun community members criticising the introduction of the exemption contained in the Wild Rivers Act (see http://www.parliament.qld.gov.au/documents/committees/arec/2012/miningolab12/004-aurukun.pdf).	people, through their NAK directors and the ASC have expressed their full support for the timely development of the Aurukun bauxite resource. The ASC and NAK directors have been meeting regularly with DSDIP officials since the announcement in Aurukun and Cairns to discuss all aspects of the retender, including the proposed amendments for the Aurukun project set out in the Bill.
6	Queensland Conservation	190, 191 and 192	190 Act Amended 191 Amendment of s 45 (Exemption of projects from application of this Act) 192 Amendment of s 46 (Meaning of *Aurukun project*) [extending the existing exemption of the Aurukun project from the *Wild Rivers Act 2005* to more than one Aurukun project]	Queensland Conservation opposes the extension of current exemptions under the *Wild Rivers Act 2005* to multiple projects in the Aurukun resource area. Queensland Conservation recommend – 1. Deleting clauses 190, 191 and 192 of Part 11 of the proposed Bill, and 2. Inserting new clause 190 into Part 11, which should read as: *This part amends the Wild Rivers Act 2005 by deleting sections 45 and 46 of the Act* (Submission 6, p.2). *…the current exemptions (under the Wild Rivers Act) are entirely based on flawed out of date approaches, insubstantial economic assessment, was driven by the previous government's political agenda and ignore valid concerns of Traditional Owners.*(Submission 6, p.2)	Noted. However, the amendments to the *Wild Rivers Act 2005* are consequential amendments resulting from amendments to the *Mineral Resources Act 1989* to clarify that the State may enter into an arrangement with more than one proponent for the development of the Aurukun resource area. The amendments do not result in an extension of the existing exemption for projects beyond the Aurukun resource area (RA315) as limited by the definition of Aurukun project. It is also important to note that while the amendments to the *Mineral Resources Act 1989* and the consequential amendments to the *Wild Rivers Act 2005* are being progressed in support of the Government's current competitive tender process for the development of the Aurukun bauxite resource area, the application of Part 6A and 7AAA is not limited to the current competitive tender process and as such any such limitations have been avoided in the drafting of the extrinsic material to the Bill. The Government through the Department of State Development, Infrastructure and Planning (DSDIP) has been negotiating closely with the Wik and Wik Way people who hold native title over the Aurukun bauxite resource and the Aurukun Shire Council (ASC). Negotiations with the Wik and Wik Way people have been conducted through the five elected directors of the Ngan Aak-Kunch Aboriginal Corporation (NAK) which is the Registered Native Title Body Corporate under the *Native Title Act 1993* (Cth) for the determinations of native title and which acts as the representative or agent of the Wik and Wik Way people for native title matters. Negotiation with the Aurukun Shire Council has been with the Mayor, Deputy Mayor and Councillors. Prior to the announcement of the retender, the Deputy Premier travelled to Aurukun to meet with the Mayor, his Council, the NAK directors and the Aurukun community to hear their views on the retender and future development. The Wik and Wik Way people, through their NAK directors and the ASC have expressed their full support for the timely development of the Aurukun bauxite resource. The

Sub No.	Submitter	Cl.	Section/initiative	Key Points	Departmental Response
					ASC and NAK directors have been meeting regularly with DSDIP officials since the announcement in Aurukun and Cairns to discuss all aspects of the retender, including the proposed amendments for the Aurukun project set out in the Bill. The amendments to the *Wild Rivers Act 2005* are consequential amendments resulting from amendments to the *Mineral Resources Act 1989* to clarify that the State may enter into an arrangement with more than one proponent for the development of the Aurukun resource area. The amendments do not result in an extension of the existing exemption for projects beyond the Aurukun resource area (RA315) as limited by the definition of Aurukun project.

Appendix D – Native Title Determinations

Index – Full and Part Exclusive Native Title Only (Current as at 4 February 2013)

Date of Determination Hearing	Case Name	Legal Process	Subject to Registration of ILUA (Date Registered)	Exclusive/ Non-Exclusive Determination	Outcome
3 June 1992	Mabo v Qld (No 2) [1992] 175 CLR 1	Litigated determination	No	Exclusive	Native title exists in parts of the determination area.
8 December 1997	Hopevale (Deeral v Charlie (unreported, FCA, 8 December 1997, Beaumont J)	Consent Determination	No	Exclusive	Native Title exists in parts of the determination area.
12 February 1999	Saibai Island Community – QG6017/98 (Saibai People v Qld [1999] FCA 158)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
12 February 1999	Moa Island – QG6035/98 (Mualgal People v Qld [1999] FCA 157)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
6 July 2000	Dauan People -QG6248/98 (Dauan People v Qld [2000] FCA 1064)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
6 July 2000	Mabuiag People - QG6062/98 (Mabuiag People v Qld [2000] FCA 1065)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
7 July 2000	Masig People and Damuth People - QG6068/98 (Masig People v Qld [2000] FCA 1067)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
7 July 2000	Porumalgal Poruma People - QG6087/98 (Poruma People v Qld [2000] FCA 1066)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
7 July 2000	Warraber People - QG6073/98 (Poruma People v Qld [2000] FCA 1066	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
3 October 2000	Wik and Wik-Way Peoples - QG6001/98 (Wik Peoples v Qld [2000] FCA 1443)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
23 May 2001	Kaurareg People (Murulag #1) - QG6024/98 (Kaurareg People v Qld (2001) 6 AILR 41; [2001] FCA 657)	Consent Determination	Yes 16/03/2001	Exclusive	Native Title exists in parts of the determination area.
23 May 2001	Kaurareg People (Mipa, Tarilag, Yeta, Damaralag) - QG6027/98 (Kaurareg People v Qld (2001) 6 AILR 41; [2001] FCA 657)	Consent Determination	Yes 16/03/2001	Exclusive	Native Title exists in parts of the determination area.
23 May 2001	Kaurareg People (Murulag #2) - QG6026/98 (Kaurareg People v Qld (2001) 6 AILR 41; [2001] FCA 657)	Consent Determination	Yes 16/03/2001	Exclusive	Native Title exists in parts of the determination area.
23 May 2001	Kaurareg People (Ngurupai) - QG6023/98 (Kaurareg People v Qld (2001) 6 AILR 41; [2001] FCA 657)	Consent Determination	Yes 16/03/2001	Exclusive	Native Title exists in the entire determination area.
23 May 2001	Kaurareg People (Zuna) - QG6025/98 (Kaurareg People v Qld (2001) 6 AILR 41; [2001] FCA 657)	Consent Determination	Yes 16/03/2001	Exclusive	Native Title exists in parts of the determination area.
14 June 2001	Meriam People - QG6204/98 (Passi v Qld [2001] FCA 697)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
13 October 2004	Wik and Wik Way Peoples – QG6001/98 (Wik Peoples v State of Qld [2004] FCA 1306)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.

Date of Determination Hearing	Case Name	Legal Process	Subject to Registration of ILUA (Date Registered)	Exclusive/ Non-Exclusive Determination	Outcome
7 December 2004	**Kulkalgal People** – QG6006/01 (Warria on behalf of the Kulkalgal v State of Qld [2004] FCA 1572)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
8 December 2004	**Erubam Le** – QG6036/98 (Mye on behalf of the Erubam Le v State of Qld [2004] FCA 1573)	Consent Determination	Yes 22/11/2001	Exclusive	Native Title exists in the entire determination area.
9 December 2004	**Ugar People** – QG6076/98 (Stephen on behalf of the Ugar People v State of Qld [2004] FCA 1574)	Consent Determination	Yes 24/05/2005	Exclusive	Native Title exists in the entire determination area.
10 December 2004	**Boigu People** – QG6199/98 (Gibuma on behalf of the Boigu People v State of Qld [2004] FCA 1575)	Consent Determination	Yes 24/05/2005	Exclusive	Native Title exists in the entire determination area.
13 December 2004	**Gebaralgal** – QG6066/98 (Newie on behalf of the Gebaralgal v State of Qld [2004] FCA 1577)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
13 December 2004	**Iama People and Tudulaig** – QG6052/98 (David on behalf of the Iama People and Tudulaig v State of Qld [2004] FCA 1576)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
14 December 2004	**Badulgal** – QG6078/98 (Nona on behalf of the Badulgal v State of Qld [2004] FCA 1578)	Consent Determination	Yes 23/11/2004	Exclusive	Native Title exists in the entire determination area.
15 August 2005	**Warraberalgal, Porumalgal & Iama Peoples** – QUD6015/03 (Patrick Thaiday, Jack Billy and Jenson Pearson on behalf of the Warraber Poruma and Iama Peoples and the State of Qld and Ors [2005] FCA 1116)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
15 August 2005	**Buru & Warul Kawa Peoples** – QUD6021/01 (Victor Nona, John Whop, Pili Waigana, Nelson Gibuma and Phillip Bigie on behalf of the Saibai, Dauan, Mabuiag, Badu and Boigu Peoples v State of Qld and Ors[2005] FCA 1118)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
15 August 2005	**Garboi People** (QUD6042/01) (Lota Warria on behalf of the Poruma and Masig Peoples and the State of Qld and Ors [2005] FCA 1117)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
15 August 2005	**Yarpur & Uttu People** (QUD6043/01) (Jack Billy on behalf of the Poruma People and the State of Qld [2005] FCA 1115)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
13 April 2006	**Badu & Moa People** #2 (QUD6002/02) (Nona and Manas v State of Queensland [2006] FCA 412)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
13 April 2006	**Mualgal People** #2 (QUD6003/02) (Manas v State of Queensland [2006] FCA 413)	Consent Determination	No	Exclusive	Native Title exists in the entire determination area.
24 April 2006	**Mandingalbay Yidinji** (QUD6015/98) (Mundraby v State of Queensland [2006] FCA 436)	Consent Determination	Yes 22/03/2006	Exclusive and Non-Exclusive	Native Title exists in the entire determination area.
26 July 2007	**Strathgordon Mob** – (QUD6005/03) (Timothy James Malachi on behalf of the Strathgordon Mob v State of Queensland [2007] FCA 1084	Consent Determination	Yes	Exclusive	Native Title exists in the entire determination area.
9 December 2007	**Eastern Kuku Yalanji People** (QUD6008/98) (Walker on behalf of the Eastern Kuku Yalanji People v State of Queensland [2007] FCA 1907)	Consent Determination	Yes	Exclusive and Non-Exclusive	Native Title exists in the entire determination area.
12 December 2007	**Ngadjon-Jii People #2** (QUD6027 of 1999)	Consent Determination	Yes (28/05/2008)	Exclusive and Non-Exclusive	Native Title exists in the entire determination area.

Date of Determination Hearing	Case Name	Legal Process	Subject to Registration of ILUA (Date Registered)	Exclusive/ Non-Exclusive Determination	Outcome
9 December 2008	Lardil, Yangkaal, Gangalidda & Kaiadilt People – (QUD7/06) (Lardil, Yangkaal, Gangalidda & Kaiadilt Peoples v State of Queensland [2008] FCA 1855	Consent Determination	No	Exclusive and Non-Exclusive	Native Title exists in the entire determination area.
25 June 2009	Kuuku Ya'u People v State of Queensland [2009] FCA 679 (QUD6016/98)	Consent Determination	Yes (16/11/2009)	Exclusive and Non-Exclusive	Native title exists in the entire determination area
22 October 2009	Kowanyama People v State of Queensland (QUD6119 of 1998)	Consent Determination	No	Exclusive and Non-Exclusive (Part A)	Native Title exists in the entire Part A determination area
17 December 2009	Combined Dulabed Malanbarra Yidinji (QUD6012 of 2001) – QC01/14	Consent Determination	Yes (23/08/2010)	Exclusive and Non-Exclusive	Native Title exists in the entire determination area
23 June 2010	Gangalidda and Garawa People (QUD84/04)	Consent Determination	No	Exclusive and Non-Exclusive	Native title exists in the entire Part determination area
8 October 2010	Jirrbal People #1 (QUD6001 of 2003)	Consent Determination	No	Exclusive and Non-Exclusive	Native title exists in the entire determination area
9 December 2010	Waanyi People (QUD6115 of 1998)	Court Determination	Yes (14/07/11)	Exclusive and Non-Exclusive	Native title exists in the entire determination area
4 July 2011	Quandamooka People #1 (QUD6010/98)	Consent Determination	Yes 08/12/2011	Exclusive and Non-Exclusive	Native title exists in the entire determination area
4 July 2011	Quandamooka People #2 (QUD6010/98)	Consent Determination	Yes 08/12/2011	Exclusive and Non-Exclusive	Native title exists in the entire determination area
26 July 2011	Juru People (Cape Upstart) (QUD6249/1998)	Consent Determination	Yes 12/12/2011	Exclusive and Non-Exclusive	Native title exists in the entire determination area
1 September 2011	Djiru People #2 (QUD6003/03)	Consent Determination	No	Exclusive and Non-Exclusive	Native title exists in the entire determination area
1 September 2011	Djiru People #3 (QUD6006/03)	Consent Determination	No	Exclusive	Native title exists in the entire determination area
12 December 2011	Kalkadoon #4 (QUD579/05)	Consent Determination	Yes 17/05/2002	Exclusive and Non-Exclusive	Native title exists in the entire determination area
14 December 2011	Muluridji #1 (QUD6208/98)	Consent Determination	Yes 20/01/2012	Exclusive and Non-Exclusive	Native title exists in the entire determination area
19 December 2011	Combined Gunggandji (QUD6013/01)	Consent Determination	Yes (22/12/2011)	Exclusive and Non-Exclusive	Native title exists in the entire determination area
1 August 2012	Gugu Badhun (QUD85/05)	Consent Determination	No	Exclusive and Non-Exclusive	Native title exists in the entire determination area
2 August 2012	Djungan #1 (QUD208/97)	Consent Determination	No	Exclusive and Non-Exclusive	Native title exists in the entire determination area
2 August 2012	Djungan #2 (QUD6022/98)	Consent Determination	No	Exclusive and Non-Exclusive	Native title exists in the entire determination area
2 August 2012	Djungan #3 (QUD6116/98)	Consent Determination	No	Exclusive	Native title exists in the entire determination area
21 September 2012	Combined Mandingalbay Yidinji Gunggandi (QUD6016/2001)	Consent Determination	No	Exclusive	Native title exists in the entire determination area

Date of Determination Hearing	Case Name	Legal Process	Subject to Registration of ILUA (Date Registered)	Exclusive/ Non-Exclusive Determination	Outcome
9 October 2012	Jangga (QUD6230/1998)	Consent Determination	No	Exclusive Non-Exclusive	Native title exists in the entire determination area
20 November 2012	Jinibara People (QUD6128/1998) FCA1285	Consent Determination	No	Exclusive and Non-Exclusive	Native title exists in the entire determination area
5 December 2012	Kowanyama People (QUD6119/98) FCA1377	Consent Determination	Yes	Exclusive and Non-Exclusive	Native title exists in part of the determination area. Native Title does not exist in part of the determination area.
10 December 2012	Tagalaka (QUD6109/1998)	Consent Determination	No	Exclusive Non-exclusive	Native title exists in the part of the determination area. Native title does not exist in part of the determination area.
10 December 2012	Tagalaka #2 (Part A) (QUD6020/2001)	Consent Determination	No	Exclusive Non-exclusive	Native title exists in the part of the determination area. Native title does not exist in part of the determination area.

Source: Department of Natural Resources and Mines, Correspondence, 5 February 2013.

Statement of reservations – Jackie Trad MP, Member for South Brisbane

The *Mining and Other Legislation Amendment Bill 2012* amends the following pieces of legislation;

- *Mineral Resources Act 1989*
- *Fossicking Act 1994*
- *Petroleum and Gas (Production and Safety) Act 2004*
- *Petroleum Act 1923*
- *Geothermal Energy Act 2010*
- *Greenhouse Gas Storage Act 2009*
- *Mines Legislation (Streamlining) Amendment Act 2012.*
- *Environmental Protection Act 1994*
- *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*
- *Wild Rivers Act 2005*

A number of the proposed amendments are both relatively minor and eminently sensible. The Opposition will outline its support for these changes during parliamentary debate. The Member for South Brisbane and the Opposition are however concerned in regards to two particular aspects of the bill.

Fossicking and Native Title

It appears that the Government has not engaged in sufficient consultation with native title holders in relation to the proposed changes to the *Fossicking Act 1994.* This change would remove the requirement for fossickers operating on native title land to enter an Indigenous Land Use Agreement.

The submissions from both Cape York Land Council and the North Queensland Land Council raise concerns with these amendments. It is clear from these submissions that further consultation with native title holders is required to ensure that they are not disadvantaged by these changes.

Competitive Tendering Processes

Potentially the most contentious element of the bill is the introduction of a competitive tender process for mining exploration tenures. The Opposition notes that both the Queensland Resources Council and the Association of Mining and Exploration Companies oppose these amendments.

The Association of Mining and Exploration Companies main objection to the introduction of a competitive tendering process is that it has the potential to advantage large mining companies as they have a greater ability to purchase claims. Further the AMEC contends that this will result in delays in developing mining tenures. These concerns can be ameliorated through the regulatory framework and the Opposition will be seeking clarification from the Minister on these issues during parliamentary debate.

The Queensland Resources Council highlights its concerns with the proposals with particular reference to the New South Wales model. The QRC contends that competitive tendering has been prone to abuse and corruption since its introduction in New South Wales. The Opposition will again be seeking detail from the Minister on how this proposal differs from the

New South Wales experience and what probity measures will be in place to safeguard against even the appearance of impropriety.

Conclusion

Many of the changes contained within the *Mining and Other Legislation Amendment Bill 2012* meet with bipartisan support however some changes require further work by the Minister and his department. The Opposition will seek clarification on these issues and raise further concerns during parliamentary debate.

Jackie Trad MP
Member for South Brisbane
Shadow Minister for Transport, Environment,
Small Business, Consumer Protection and the Arts
Deputy Chair, AREC

Statement of Reservations – Shane Knuth MP, Member for Dalrymple

The Mining and other legislation bill has been largely welcomed by industry however there are a number of clauses which have been strongly opposed as it will severely impact the development of prospective.

Concerns are that the cash bidding changes will adversely affect smaller explorers who do not have the up-front capital to bid for tenure. QRC understands the current intention is that only areas known to be highly prospective will be selected for cash bidding.

The explanatory notes state that land releases will still happen for areas which are "under explored", which suggests a two-tier system of tenure in Queensland where the small innovative entrepreneurial exploration companies are effectively precluded from the most prospective country.

To date, no information has been made available to industry as to how highly prospective areas will be selected nor how the cash bidding process might operate. QRC members would be keen to understand if there are criteria for declaring a prospective area for cash bidding or if the decision is to be left to the Minister's sole discretion.

QRC continues to be very concerned about the development of this policy, which emerged as part of the mid-year fiscal and economic review under the previous Government in January 2012.

When the policy was announced, QRC publicly described the proposal as: "Predicated on a flawed assumption that minerals and energy companies are bottomless cash pits. Most small to medium explorers and developers operate on shoestring budgets because of the high-risk nature of their activities."

When the new Government announced in October 2012 that they would implement the previous Government's policy of cash tendering, QRC emphasised that smaller exploration companies are crucial to the future of the industry and that these exploration companies will be outbid by larger mining companies.

QRC said: "History has shown that the small explorers are the best at making discoveries, the best at juggling the risks. They have the best track record of delivering discoveries of new deposits. This policy is disenfranchising that smaller explorer because this is all about the big cheque book and the early return to the Treasury."

The headline revenues from the new cash bidding process have been emphasised in forward estimates ($95 million a year pa from 2013-14), but unfortunately the methodology for estimating these revenues remains opaque.

Industry is concerned that the policy's genesis in meeting a fiscal need has led to substantial shortcomings in the usual policy development process including neglecting any assessment of the impact on exploration activity, the impact on the exploration industry, the impact on Queensland's ability to attract and retain explorers and other key considerations of the impact, including community confidence in the process of the grant of resource tenure.

The Queensland Exploration Council produces an annual scorecard in November (see http://www.queenslandexploration.com.au/wp-content/uploads/2012/11/QEC-Exploration-Scorecard-2012-Final.pdf) which reports on the industry's perceptions of a series of lead and lag indicators of exploration activity. The 2011-12 survey saw sentiment around regulatory and policy matters in Queensland remain negative and deteriorated from the previous year.

The change in cash bidding policy was one of the four key policy changes in Queensland which specifically called out as generating industry concern in the scorecard.

Another public survey, the Grant Thornton JUMEX Survey reported: 'We left Australia as a considered decision due to the impact of Government intervention on the industry in the last 12 months.'

'Africa is mineral rich, under-developed, less costly, attractive to other investors and for us there is minimal sovereign risk'. (Grant Thornton JUMEX Survey Oct 2012 pages 5 and 15)

With regard to competitive tendering, QRC has particular concern with the inclusion of an option for the Minister to call for tenders for non-coal tenures and include a cash bid component.

When the Minister announced competitive tendering on 9 October 2012, its application to mineral tenures was silent. The cash bid process was announced for coal, petroleum and gas exploration permits only.

QRC only became aware of the broader application to mineral tenures once the Bill was introduced into Parliament as there was no consultation or even notification to industry of this significant change. This inclusion by default is highly detrimental to Queensland's reputation as an exploration destination. Queensland does not need further policy surprises.

The policy proposed by the Queensland Government enshrines the premise that larger companies, potentially with more available funds, will be most likely to develop projects.

If the underlying driving force for this system is to derive long-term benefit for Queensland, AMEC considers the system misguided and will not necessarily result in the desired outcomes.

Mid-tier miners and explorers have a greater economic imperative to develop projects quickly (for reasons such as cash-flow, shareholder returns, share price growth) and in doing so provide a more immediate royalty income to the state of Queensland.

The need for mid-tier companies to develop their projects within funding constraints and operate efficiently aligns with the Queensland Government's goal to provide long-term benefits to the state.

By imposing cash-bidding components to tenure application, the Government has made cash reserves the overwhelmingly major factor in determining tender winners as opposed to proponent capacity and capability. AMEC draws this conclusion assuming all exploration activities will be indistinguishable between proponents, given the known reserves.

In effect the Queensland Government is placing the most prospective ground with companies that have little or no incentive to develop the project.

As part of a world-wide suite of exploration permits, multi-national miners have a commercial interest to progress those tenements that offer the best commercial return for shareholders.

Cash-bidding for coal exploration permits in Queensland simply allows the largest companies to add to their stockpile of permits and removing the ability of mid-tier miners to contest these permits.

AMEC strongly recommends that this policy be removed and the current system of assessment be continued, allowing equality for all participants of the industry.

Sincerely,

Shane Knuth MP
Member for Dalrymple