



Land, Explosives and Other Legislation Amendment Bill 2018

Report No. 5, 56th Parliament
State Development, Natural Resources and
Agricultural Industry Development Committee
April 2018

State Development, Natural Resources and Agricultural Industry Development Committee

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Abbreviations

ALA	<i>Aboriginal Land Act 1991</i>
BTOAC	Batavia Traditional Owners Aboriginal Corporation
CAC	Chuulangun Aboriginal Corporation
CATSI corporation	Corporations formed under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>
CYLC	Cape York Land Council
CYPHA	<i>Cape York Peninsula Heritage Act 2007</i>
DATSIP	Department of Aboriginal and Torres Strait Islander Partnerships
DNRME/the department	Department of Natural Resources, Mines and Energy
DOGIT	Deed of Grant in Trust
HPW	Department of Housing and Public Works
ILUA	Indigenous Land Use Agreement
IPNRC	Infrastructure, Planning and Natural Resources Committee
LSA	<i>Legislative Standards Act 1992</i>
MRA	<i>Mineral Resources Act 1989</i>
MLT	Mangkuma Land Trust
OAC	Olkola Aboriginal Corporation
P & G Act/ PGPSA	<i>Petroleum and Gas (Production and Safety) Act 2004</i>
PBC	Prescribed Body Corporate
QFF	Queensland Farmers Federation
QLS	Queensland Law Society
RNTBC	Registered Native Title Body Corporate
the Bill	Land, Explosives and Other Legislation Amendment Bill 2018
TSILA	<i>Torres Strait Islander Land Act 1991</i>

Chair's foreword

This report presents a summary of the State Development, Natural Resources and Agricultural Industry Development Committee's examination of the Land, Explosives and Other Legislation Amendment Bill 2018.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The committee was aided in this undertaking by the work of our predecessor committee, the Infrastructure, Planning and Natural Resources Committee (IPNRC) of the 55th Parliament, which considered an early version of the Bill.

The scope of this omnibus Bill was very broad. The committee acknowledges that such Bills are vehicles to allow minor technical amendments to multiple Bills to be considered and managed in an efficient manner. However, not all amendments proposed in this Bill were considered to be insignificant to some stakeholders. The committee required additional time to examine the proposed amendments to the *Aboriginal Land Act 1991*, the *Torres Strait Islander Land Act 1991* and the *Cape York Peninsula Heritage Act 2007*. The committee held a regional hearing in Cairns and greatly appreciated the opportunity to meet and talk with stakeholders from the Cape York Peninsula.

I would like to thank my fellow committee members for their contributions to this Inquiry.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Natural Resources, Mines and Energy and the Department of Aboriginal and Torres Strait Islander Partnerships.

I commend this report to the House.



Mr Chris Whiting MP

Chair

Recommendations

Recommendation 1 **4**

The committee recommends the Land, Explosives and Other Legislation Amendment Bill 2018 be passed.

Recommendation 2 **13**

The committee recommends that the Minister provides advice in his second reading speech on:

- the request by the Olkola Aboriginal Corporation, the Batavia Traditional Owners Aboriginal Corporation and the Chuulangun Aboriginal Corporation to have additional land parcels included in proposed new section 27A of the Bill as protected land
- a possible formal mechanism or process that allows Aboriginal corporations to nominate Aboriginal land, at the request of the traditional owners, for protection from mining interests

Recommendation 3 **45**

The committee recommends that the Minister, in his second reading speech, respond to the matters identified in the report in relation to:

- *Petroleum and Gas (Production and Safety) Act 2004* - Clauses 265, 270, 286 - Onus of proof
- *Explosives Act 1999* - Clauses 57, 58, 63, 64 and 203 - Protection against self-incrimination

1 Introduction

1.1 Role of the committee

The State Development, Natural Resources and Agricultural Industry Development Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's areas of portfolio responsibility are:

- State Development, Manufacturing, Infrastructure and Planning
- Natural Resources, Mines, and Energy
- Agricultural Industry Development and Fisheries

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness

1.2 Inquiry process

The Land, Explosives and Other Legislation Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 15 February 2018. The committee was required to report to the Legislative Assembly by 9 April 2018.

The former Infrastructure, Planning and Natural Resources Committee (IPNRC) of the 55th Parliament was referred the Land, Explosives and Other Legislation Amendment Bill 2017 (the 2017 Bill) by the Legislative Assembly on 10 October 2017. The IPNRC was unable to complete its Inquiry on the 2017 Bill due to the calling of the Queensland election on 28 October 2017 and the dissolution of Parliament. However, before Parliament was dissolved the IPNRC did call for submissions and held a public briefing by the then Department of Natural Resources and Mines. The IPNRC received three submissions on the 2017 Bill. As both Bills cover substantially the same issues, the committee accepted the submissions on the 2017 Bill as submissions in relation to its consideration of the current Bill. A table that summarised the key differences between both Bills is on the committee's web page.

On 20 February 2018, the committee wrote to the Department of Natural Resources, Mines and Energy (the department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions by 27 February 2018.

The committee received 11 submissions (see Appendix A). On 2 March 2018, the committee received written advice from the department in response to matters raised in submissions.

The committee held a public briefing with the Department of Natural Resources, Mines and Energy (the department/DNRME) and the Department of Aboriginal and Torres Strait Partnerships (DATSIP) on 5 March 2018 (see Appendix B).

Given the evidence received by the Inquiry, the committee wrote to the Committee of the Legislative Assembly (CLA) and sought an extension to the Inquiry reporting date. The CLA resolved that the committee report on the Bill on 19 April 2018.

The committee held a public hearing in Cairns on 13 April 2018 (see Appendix C).

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

Copies of the material published in relation to the committee's Inquiry, including submissions, correspondence from the department and transcripts are available on the committee's webpage.²

1.3 Policy objectives of the Bill

The explanatory notes state that the policy objectives of the Bill are to:

- streamline and ensure the effectiveness of key regulatory frameworks within the Natural Resources and Mines portfolio
- enhance worker and community safety and security in the explosives and gas sectors, and
- support the protection and cooperative management of cultural and natural values of Cape York Peninsula.³

The specific objectives of the Bill include:

- amending the *Aboriginal Land Act 1991* and *Torres Strait Islander Act 1991* to:
 - provide power to the Minister to grant land to a Registered Native Title Body Corporate (RNTBC) outside of their determined native title area, and
 - allow the trustee and the CEO of the Department of Housing and Public Works to set by agreement a sale price for social housing on Indigenous land
- protecting the cultural and natural values of the Shelburne and Bromley properties on Cape York Peninsula
- improving security, safety and transportation requirements under the *Explosives Act 1999*
- amending the definitions of who meets the criteria for notifying the state under the *Foreign Ownership of Land Register Act 1988*, so that those definitions are consistent with other state legislation such as the *Duties Act 2001*
- providing for contemporary compliance powers in the *Land Act 1994*
- further enhancing rolling term lease provisions on regulated islands by enabling marine term leases to become rolling term leases where they are tied by covenant to, and provide infrastructure which supports a rolling term, or perpetual, tourism lease
- amending the *Land Title Act 1994* to eliminate the need for remaining duplicate paper certificates of title and facilitate the take-up of online conveyancing
- enabling the state to deal with buildings and other structures on state land that pose a risk to public safety or that are otherwise inappropriate or unwanted – these amendment also enable the state to recover any removal and remediation costs if necessary
- addressing minor issues associated with the overlapping tenure framework for coal and coal seam gas (overlapping tenure framework)
- amending the *Petroleum and Gas (Production and Safety) Act 2004* to resolve operational deficiencies in the Act, streamline regulatory requirements and make the overall gas safety legislation more contemporary and to clarify and improve operational safety outcomes for workers in the gas sector and users of gas plan and appliances by:
 - revising safety reporting requirements for operating plant so they are real time and support effective gas safety regulation
 - confirming an operator of operating plant can be a corporation or an individual
 - establishing a transparent process for appointing approving authorities for gas devices
 - rationalising safety requirements for all fuel gas delivery networks
 - aligning other safety provisions with Queensland's mining safety legislation and general workplace laws

² <https://www.parliament.qld.gov.au/work-of-committees/committees/SDNRAIDC>.

³ Explanatory notes, p 1.

- introducing a framework to manage abandoned operating plant, and
- making minor amendments to correct errors and omissions in the *Aboriginal Land Act 1991*, *Land Act 1994*, *Land Title Act 1994*, *Petroleum and Gas (Production and Safety) Act 2004*, and *the Torres Strait Islander Land Act 1991*.

1.4 Consultation on the Bill

The explanatory notes state that Cape York Land Council (CYLC) and Queensland South Native Title Services were consulted and support the amendments to the *Aboriginal Land Act 1991* and *Torres Strait Islander Act 1991* providing for the grant of land to a Registered Native Title Body Corporate (RNTBC). Aboriginal Shire Councils were also consulted and offered no objections.⁴ The amendments to the *Cape York Peninsula Heritage Act 2007* were ‘activity pursued’ by the traditional owners of Shelburne and Bromley properties, the conservation sector, Cape York Land Council Aboriginal Corporation and Balkanu Cape York Development Corporation.⁵

Although the explanatory notes advised that consultation took place in relation to the amendments, some submitters expressed concern that they were not sufficiently consulted. The CAC submitted that they were not sufficiently consulted and that the consultation which did take place focused on organisations such as the Cape York Land Council (CYLC). The CAC submitted:

Again, with the current call for submissions, only 12 days were allowed, which is a completely inadequate. Further, the invitation to make submissions was not widely communicated, and we only heard of the Bill by word-of-mouth. We know of a number of other Indigenous organisations on Cape York who are in a similar situation...

This noticeable lack of consultation and transparency ignores not only the Legislative Standards Act 1992 (Qld) but for Indigenous people who are significant landowners of Cape York, it also breaches the principle of free prior and informed consent enshrined in the United National Declaration on the Rights of Indigenous People (UNDRIP), of which Australia is a signatory.⁶

In response to the concerns raised, the department advised as follows:

Consultation was undertaken with Native Title Representative Bodies and Indigenous local governments as the organisations that are most likely to be impacted by the amendments.⁷

The amendments to the *Explosives Act 1999* are supported by the Australian Explosives Industry and Safety Group and the Firearms Dealers Association of Queensland.⁸ The Queensland Law Society (QLS) and Agforce expressed in principle support for the amendments to the *Foreign Ownership of Land Register Act 1988*. However, the QLS raised several concerns in relation to proposed changes to the *Land Act 1994* particularly in relation to the entry powers granted to authorised officers and the impact that this will have on occupiers of the land. Stakeholders were generally supportive of the amendments to the *Land Title Act 1994*, the *Petroleum and Gas (Production and Safety) Act 2004*, the *Mineral and Energy Resources (Common Provisions) Act 2014* and the *Mineral Resources Act 1989*.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

⁴ Land, Explosives and Other Legislation Amendment Bill 2018, explanatory notes, p 20-21.

⁵ Explanatory notes, p 21.

⁶ Submission 11, p 2.

⁷ Department of Natural Resources, Mines and Energy and Department of Aboriginal and Torres Strait Islander Partnership, correspondence dated 8 March 2018, p 1.

⁸ Explanatory notes, p 21.

After examination of the Bill, including the policy objectives which it will achieve and consideration of the information provided by the department and submitters, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Land, Explosives and Other Legislation Amendment Bill 2018 be passed.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Amendments to the *Aboriginal Land Act 1991* and *Torres Strait Islander Act 1991*

The explanatory notes state that the Bill proposes to amend the *Aboriginal Land Act 1991* (ALA) and the *Torres Strait Islander Land Act 1991* (TSILA) to enhance the ability of Aboriginal and Torres Strait Islander people to access and utilise their land by reducing compliance and administrative burden on Indigenous communities in the granting of land.⁹ In relation to these amendments, the Minister for Natural Resources, Mines and Energy advised in his first reading speech:

*This will provide flexibility for Aboriginal and Torres Strait Islander owner groups to nominate an existing registered native title body corporate to be grantee of land which is not subject to a native title determination provided the land is adjacent to, or in the vicinity of, a relevant native title determination area and the traditional owner groups are the same or similar. This flexibility removes the need to establish and fund a new entity with the same or similar membership, and administrative and governance arrangements, if an otherwise suitable entity already exists.*¹⁰

The amendments also seek to enhance opportunities for home ownership by Indigenous persons by providing an option to set a price for social housing, by agreement between a trustee and the state. The trustee and the chief executive of the Department of Housing and Public Works (HPW) will agree either on a valuation methodology, or a specific price for a social housing dwelling. They will also recognise existing interests in property and allow for adjustments in communities where there is limited or no active housing sales market.¹¹

2.1.1 Appointment of grantee to hold land for the benefit of Aboriginal people

Clause 8 amends section 40(3) of the ALA and clause 303 amends section 36(3) of the TSILA to allow the Minister to appoint a corporation¹², such as the RNTBC, as the grantee of land that does not hold native title, and where the Minister is satisfied that it is appropriate to do so. The Minister may only make a grant to an RNTBC if, under the *Commonwealth Native Title Act 1993*:

- a determination has been made that native title exists in relation to all or a part of the land and the CATSI corporation is the registered native title body corporate for the determination, or
- a determination has not been made under the *Commonwealth Native Title Act 1993* that native title exists in relation to all or a part of the land, but the Minister is satisfied it is appropriate in all the circumstances to appoint the CATSI corporation as the grantee of the land.¹³

In circumstances where no native title determination has been made, the explanatory notes state:

.....an Indigenous Land Use Agreement (ILUA) is made with the people claiming to hold native title and goes through a more extensive notification and objection period prior to the National

⁹ Explanatory notes, p 2.

¹⁰ Hon Anthony Lynham MP, Minister for Natural Resources, Mines and Energy, Explanatory Speech, Hansard, 15 February 2018, p 120.

¹¹ Hon Anthony Lynham MP, Minister for Natural Resources, Mines and Energy, Explanatory Speech, Hansard, 15 February 2018, p 120.

¹² CATSI corporation means a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth).

¹³ Explanatory notes, p 8.

*Native Title Tribunal registering the ILUA to ensure that the right people have had an opportunity to comment on the agreement.*¹⁴

The onus is placed on the parties seeking a grant to a RNTBC to provide evidence that it is appropriate that the grant be made. Clause 8 provides a non-definitive list of examples as to when it may be appropriate for the Minister to approve land to be transferred to a CATSI corporation. These include:

1. *the appointment of the CATSI corporation is supported by consultation with Aboriginal people particularly concerned with the land*
2. *the land is within the external boundaries of an area of land the subject of a native title determination and the CATSI corporation is the RNTBC for the determination*
3. *an Indigenous Land Use Agreement (ILUA) has been entered into for the land and the CATSI corporation is nominated in the ILUA as the proposed grantee for the land under this Act, and*
4. *anthropological research supports the CATSI corporation as being the appropriate grantee.*

Clause 303 provides for the same criteria with respect to the Minister appointing a RNTBC as grantee to hold land for the benefit of Torres Strait Islanders.

The committee heard that the proposed amendments were to improve the connections between the Commonwealth's Native Title Act, which creates the RNTBCs, and the land trusts that are created under the Aboriginal Land Act under Queensland's legislation. Mr Burns from the CYLC told the committee:

The bill provides the opportunity to have the one corporation holding both sets of rights and interests, the native title rights and interests that are created through the Native Title Act and the Aboriginal freehold rights and interests that are created through the Aboriginal Land Act. It does that in particular because, as I am sure you are aware, the Aboriginal Land Act currently restricts the transfer of land to Aboriginal freehold to an RNTBC to areas within the areas that are determined for native title.

*The proposed amendment allows land outside of that determined area, which is still within the traditional country of the people on the RNTBC, for that land to be transferred to Aboriginal freehold and held and managed by the RNTBC in its capacity as a land trust. We see that that is a way of ensuring that we have the one corporation which holds both sets of rights and it just simplifies the corporate governance arrangements, but you still have the appropriate people, the traditional owners for that country, managing the title rights and interests and also managing the Aboriginal freehold rights and interests. That is why we support this proposal to allow the transfer of land outside of the determined area to a PBC.*¹⁵

The committee sought clarification as to why areas of land were excluded or left out of native title claims and therefore the determined area. The committee were informed that:

That issue has arisen sometimes because the claims have followed property boundaries, or local government boundaries; they have not followed traditional boundaries. The Kowanyama determination was the property boundary of the DOGIT—at that time it was DOGIT—which formed the local government area. It is the same thing with Wuthathi. It followed property boundaries rather than traditional boundaries. Because it followed those property boundaries

¹⁴ Explanatory notes, p 8.

¹⁵ Mr Burns, public hearing transcript 13 April 2018, p 14.

*with modern descriptions of land, they did not follow the traditional boundaries. So certain areas were excluded.*¹⁶

Additionally, Mr Carse told the committee:

*When we are resolving these native title claims, it is through the courts—the Federal Court—and we get certain time frames put on us that all parties, including the state, are bound by or try to meet. Part of meeting those time frames involves a bit of negotiation. Where there is a dispute over whether you have native title here or whether you have proved it, to meet the court time frame we might say, 'Let's just exclude that area for now and we will proceed with the rest to get a determination.' These areas are excluded for one reason or another. That is not to say that they are not within those people's land, but it is whether we can meet the requirements of the Native Title Act and the Federal Court in their time frames, so they get excluded.*¹⁷

The committee heard that native title rights do not allow mainstream economic activity on the land, in contrast, the transfer of Aboriginal freehold to an RNTBC does.¹⁸ Mr Macleod clarified that an objective of the amendment was to provide a basis for economic activity:

*I think it is really important to understand that native title is not a tenure; it is a bundle of rights and interests that is determined through the federal process. We are trying... to bring the two regimes together more closely, because the holding of tenure provides the certainty that traditional owners can base their economic future on, which is quite separate to native title. We are trying to align those two more closely so that it is more streamlined.*¹⁹

2.1.1.1 Stakeholder views and department's response

Some submitters raised concerns that the granting of land outside of the Native Title determination area would significantly disadvantage traditional owner's interests.²⁰ In their submission to the committee, the Chuulangun Aboriginal Corporation (CAC), based within the Mangkuma Land Trust (MLT), also expressed concern that granting land to an RNTBC would be at the expense of 'Traditional Custodians'.²¹

The CAC submitted that the safeguards that are provided by amended clauses 8 and 303 are inadequate:

*This clause should require that at the very least, in the clause and not only by way of example, that the Minister must be satisfied that there is free, prior and informed consent, provided through traditional governance arrangements accepted by the Traditional Custodians of the subject land for the RNTBC to be appointed and make decisions about the land. Additionally, there needs to be recognition of existing duly constituted bodies, such as the MLT [Mangkuma Land Trust], as organisations that have been established to make decisions about the land, and that they are not sidelined.*²²

In their response to the issue raised, the department advised:

There are existing mechanisms in place under the ALA to ensure appropriate consultation on granting land is undertaken. For example, before making the appointment, the Minister must consult with, and consider the views of Aboriginal people particularly concerned with the land –

¹⁶ Mr Burns, public hearing transcript, 13 April 2018, p 17.

¹⁷ Mr Carse, public hearing transcript, 13 April 2018, p 23.

¹⁸ Mr Burns, public hearing transcript, 13 April 2018, p 18.

¹⁹ Mr Macleod, public hearing transcript, 13 April 2018, p 24.

²⁰ Submission 7.

²¹ Submission 11, p 2.

²² Submission 11, p 2-3.

or – where land may be granted to a RNTBC solely for the benefit of native title holders, the Minister must consider if there are non-native title holders that may be adversely affected by the proposed grant and any action the RNTBC intends to take to address their concerns.

The Bill includes the new option of granting land to a RNTBC outside of the determination area - where the Minister is satisfied that it is appropriate to do so in the circumstances. The onus is on the parties seeking the grant to provide evidence that it is appropriate to grant the land to the RNTBC in the circumstances.²³

Mr Carse from DNRME further clarified that:

There was a particular concern, I think, in one of the submissions about affecting existing land trusts. The amendment is aimed at granting land. This is unfortunate terminology in the act. We talk about transferred land. That is land granted under the act. The amendment is primarily aimed at granting new land, but we have catered for where there is existing land. Where there is an existing land trust, the state cannot transfer that land to an RNTBC.

The act provides that the trustee must apply for the land to be transferred. Where there is an existing land trust and they hold land, the only way that land could go to an RNTBC is if that land trust applied for that to occur. The state cannot come in and say, 'We want that to go there' and the RNTBC cannot ask for it. The act is quite specific that it is the trustee who applies.

Then we have those additional safeguards that the RNTBC must agree and then the minister must be satisfied that it is appropriate.²⁴

The issue of the Minister granting land to an RNTBC in circumstances where native title has not been formally established and there is leasehold over a property, was raised by the committee at its public briefing on the Bill.²⁵

The department provided the following response:

It is worth noting that the proposed changes in LEOLA do not allow the transfer of any land that would not otherwise be able to be granted. The changes are simply about reducing regulatory burden for Native Title groups by removing the requirement for them to establish new corporations to handle additional parcels of land.

The Minister can only grant State land under the Aboriginal Land Act 1991 (ALA) or the Torres Strait Islander Land Act 1991 (TSILA) where there is an existing interest in the land, such as a lease, with the signed consent of the interest holder (an available State land agreement) and the interest holder must either receive a new interest to substitute for their existing interest or their existing interest continues.

To be granted under the ALA or TSILA, land must be transferable land. Transferable land includes available State land declared by regulation to be transferable land. The Minister must firstly also agree under the available State land agreement for the leased land to become transferable land.

Available State land is land where no person other than the State has an interest, or where there is an available State land agreement in force.

These provisions apply whether the land is to be granted to a Registered Native Title Body or other suitable Indigenous corporation and whether native title has been determined or not.²⁶

²³ Department of Natural Resources, Mines and Energy, correspondence dated 8 March, p 1-2.

²⁴ Mr Carse, public hearing transcript, 13 April 2018, p 24.

²⁵ Member for Buderim, public briefing transcript, 5 March 2018, p 7.

²⁶ Department of Natural Resources, Mines and Energy, correspondence dated 9 March 2018, p 2.

The issue of administrative burden was raised by witnesses during the committee's hearing. Mr Burns explained the duplication of administrative roles under commonwealth and state legislation:

Both of these corporations are holding two sets of rights and interests. They are wearing one hat as a native title holding corporation, which is created through the Native Title Act. The other hat is as a land trust holding actual freehold. They have those two corporate responsibilities under two separate pieces of legislation.

The Commonwealth government supports RNTBCs to administer and manage their native title rights through support for PBCs and also the creation of a land council—the Cape York Land Council in this case—to provide legal and other advice to the PBCs. The state government does not do the same in supporting the corporations in their land trust capacity. The state government provides very little support to RNTBCs in their land trust capacity at all. Land councils are not really resourced to do that job either.²⁷

Ms Major highlighted the challenges faced by RNTBCs:

We do not need more bureaucratic red tape. Right now Kowanyama PBC is the main body that overlooks native title of the entire determinant Kowanyama area. We are struggling because we only get a small bucket of funding for our overhead costs ... now we are struggling around building our internal capacity.²⁸

Committee comment

The committee notes that this Bill seeks to draw closer together the Native Title Act and ALA/TSILA and streamline corporate governance and reduce administrative burden.

The committee notes that there is concern among some non-RNTBCs groups that they will be disadvantaged in further negotiations in regard to the granting of land with shared boundaries. However, the committee is satisfied with the department's response that there are existing mechanisms in place under the ALA and the TSILA to ensure appropriate consultation in granting land. Additionally, any grant of land is based on an application and the act provides that the trustee must apply for the land to be transferred.

2.1.2 Additional conditions and requirements for social housing dwelling

The amendments seek to enhance opportunities for home ownership by Indigenous persons by providing an option to set a price for social housing, by agreement between a trustee and the State. This amendment was strongly supported by submitters. The committee was told:

The second point in the Bill that we are supportive of is the setting of a sale price for social housing based on an agreed value or an agreed price. Previously, it was required that the sale price put on the house was based on the value of the property, which was sometimes determined upon the land value and the cost to build the building. Of course, those costs are quite high in remote Indigenous communities, so it can potentially end up in the setting of a sale price that is probably more than what the place is worth in a real market situation and also more expensive than what people can afford. Being able to set a sale price based on agreement means that the trustees who are owners of those houses can set a price that is realistic and that people can afford. We also support that option.²⁹

²⁷ Mr Burns, public hearing transcript, 13 April 2018, p 21.

²⁸ Ms Major, public hearing transcript, 13 April 2018, p 21.

²⁹ Mr Burns, public hearing transcript, 13 April 2018, p 14.

2.2 Amendments to the Cape York Peninsula Heritage Act 2007

Clause 19 inserts new section 27A into the *Cape York Peninsula Heritage Act 2007* (CYPHA) providing for the prohibition, and dealing with applications for the grant of mining interests over specific land parcels of protected land. The protected land is Aboriginal freehold land under the *Aboriginal Land Act 1991* with the prohibition relating to two land parcels held by the Shelburne Bay; Wuthathi Aboriginal Corporation Registered Native Title Body Corporate and one parcel held by the Bromley Aboriginal Corporation Registered Native Title Body Corporate.

2.2.1 Prohibition on mining applications

Clause 19 provides that a mining interest, which is defined as a lease, licence, permit, claim or other authority under the *Geothermal Energy Act 2010*, *Greenhouse Gas Storage Act 2009*, *Mineral Resources Act 1989*, *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004* or another Act relating to mining for minerals, petroleum or natural gas, can neither be applied for, nor granted, in relation to the protected land. If an application for the grant of a mining interest in relation to the protected land has not been decided before the commencement of the section, it is taken to have been withdrawn and cannot be further dealt with.

2.2.1.1 Stakeholder views and department's response

The Olkola Aboriginal Corporation (OAC) supported the introduction of new section 27A and submitted that the section should be extended to include Aboriginal freehold land (Lot 10 on SP261207 and Lot 6 on SP262570) returned to the Olkola People in 2014.³⁰ The inclusion of these land parcels was also supported by the Australian Conservation Foundation.³¹

Mr Ross, the Chairman of the OAC outlined the significant natural and cultural values of these lots:

We got that land handed back to the Olkola Aboriginal Corporation on behalf of the Olkola people. Since 2014 we have been doing a lot of work on our land—a lot of work, a lot of mapping, a lot of cultural mapping. We have rangers out there. It takes a lot of time to cover around about 800,000 hectares of land and really look at all that area. While we worked in that area we have many cultural sites on our area.

There are two areas that are in question now. Areas on the east side of the boundary were areas of our golden-shouldered parrot habitat. We call the golden-shouldered parrot alwal. That is one of our totems from there. They call it the golden-shouldered parrot, but we call it alwal. We have areas where the golden-shouldered parrot was created and its habitat sits in that area.³²

The committee were told of the significant damage that mining would cause to the habitat of the golden-shouldered parrot:

...we also have a problem with mining in terms of putting exploration permits on there. We want to keep that area for the golden-shouldered parrot, the alwal, because it was the place it was created and it is its only habitat. It used to be further up north in the cape, but they are not up there anymore. They disappeared. They were further right up north and they moved out. We have them around in their place, as we call it, where they were created to come back to home. Disturbances in that area will move those birds. They will disappear... Disturbance noise around there does not fit in. Exploration mining permits and noise do not fit in with the habitat on that area.³³

³⁰ Submission 10, p 1.

³¹ Submission 4, p 1.

³² Mr Ross, public hearing transcript, 13 April 2018, p 2.

³³ Mr Ross, public hearing transcript, 13 April 2018, p 2-3.

Similarly, the Batavia Traditional Owners Aboriginal Corporation (BTOAC) submitted that a land parcel under their management, the Batavia Nature Refuge - Loftus, Sinkholes and Wenlock sections (Lot 2 on SP241405), be included in new section 27A. The primary aim of the BTOAC is to protect the cultural and natural values of this area, by creating ecologically sustainable income streams. The BTOAC expressed concern that they currently have 'no legal right to control access and land use on our property in regards to mining interests', in light of exploration permits approved over the Batavia Nature Refuge.³⁴

Representative from the BTOCA highlighted that mining exploration opened up areas of their land to environmental, social and cultural threats, such as wildfire, new tracks, unwanted people on country and damage to land and of sacred sites and totems.

The permits let them make new tracks. If mining goes in there, it will disturb the land. There will be more pig hunters and more unauthorised people on our country. For this part we are talking about, we have not been there ourselves. It is a sacred site to us and we would like to leave it there. Even as traditional owners of this land, we do not go in there. We would like to preserve that bit that the old people left. We have a big savanna burning on our country at the moment. That is the biggest income we have, ever since we got our land back. If mining is going to come into our country, it is going to disturb the money that we make out of carbon...

One of the worst things in our part is the pig hunting competition. You get people who come in with firearms and you get people with dogs and lighting unwanted fires and then you have wildfires...

*We have a thing with Rio Tinto at the moment. They have to go into the country and make new roads. New roads mean tourists can go in and pig hunters can go in and just destroy the place. Our country has been destroyed by many people over the years with rubbish left around and wildfires. We have to run around and put out those fires. It is just destroying the whole value of our country and mining just makes it worse.*³⁵

Additionally, Ms Nelson highlighted the difficulty in negotiating with mining companies and the cultural gulf which exists between the parties:

*They showed us maps where they want to go, but we spoke to them and said, 'Look, this is a sacred site. This is our heart,' like in the Aboriginal way. If they are going to go and destroy the land, we could get sick, or they could get sick. Preserving the land so the next generation has something to see—there is a lot of water over there—very valuable spring water and animals that we want to take care of. We just do not want mining at all and keep the culture how it is, our land.*³⁶

The CAC submitted that the Payamu biocultural landscape including the MLT lands and the Kaanju Ngaachi Indigenous Protected Area (IPA), be included in the new section 27A.³⁷

However, the Queensland Resources Council did not support proposed amendments to CYCHA:

QRC appreciates that the area specified in the Bill is already a restricted area and has been for many years, and the environmental values of the area are beyond repute. However, as a general principle QRC believes that level of specificity in legislation (i.e. calling out one particular location or locations) is not good practice legislative drafting.

Additionally, there are already established and comprehensive existing process to identify significant environmental values and assess development applications. As such, QRC believes

³⁴ Submission 9, p 1.

³⁵ Ms Nelson, closed session hearing transcript, 13 April 2018, p 3.

³⁶ Ms Nelson, closed session hearing transcript, 13 April 2018, p 4.

³⁷ Submission 11, p 3-4.

*that the environmental assessment process in Queensland should be used, if and when an application was to arise over the areas mentioned in several of the submissions. Again, the addition of particular locations into legislation in an ad hoc manner would not be good practice legislation.*³⁸

In addressing the submissions of the BTOAC, the OAC and the CAC, the Department of Aboriginal and Torres Strait Islander Partnerships advised that the 'suggestion to include additional lots warrants further Government consideration'.³⁹ The committee notes the comments by Mr Burns from the CYLC which 'support a proposal to exclude mining from the Shelburne and Bromley areas [and] see that this sets a precedent where that can also be extended to other areas of Aboriginal land where the traditional owners of those countries also wish to exclude mining from their country'.⁴⁰

The committee were concerned by evidence which suggested that significant resources are expended by Aboriginal Corporations and RNTBCs dealing with mining permits and that this detracts from projects which communities wish to fund.

My job, and our CEO's job as well, is implementing that plan for Olkola people. Since that time, every year we have been employing up to about 30 Olkola people to do that. We have been quite successful in being able to get people back out on country, working on country and doing the projects that Olkola people want to do. Then in 2016 we had five exploration permits lodged at the same time—three of them over Olkola freehold land and two on other Olkola country which is not freehold land. What we are asking for at the moment is an amendment to the Cape York Peninsula Heritage Act to include those two lots of Aboriginal freehold land as land that is going to be protected from mining tenements under the Mineral Resources Act, similar to some other properties up in Cape York.

*... there is an impact of having to deal with that. I am employed by the Olkola Aboriginal Corporation. They pay me with money that they make from their projects to manage the country and to do projects and getting people back out on country, but a lot of my time and resources are having to be spent in dealing with these applications and not creating positive projects that people want to be doing and getting people back out on country. The strain on resources for the corporation has been a bit heavy.*⁴¹

Committee comment

The committee acknowledges the submissions of the Olkola Aboriginal Corporation, the Batavia Traditional Owners Aboriginal Corporation and the Chuulangun Aboriginal Corporation and their request to have additional land parcels included in the *Cape York Peninsula Heritage Act 2007* as protected land and the significant reasons that each give to support their claim for inclusion. The committee also notes the argument made by QRC that the addition of particular locations into legislation in an ad hoc manner would not be good legislative practice. However, the committee believes that there is a need to support the cultural, social and economic values and aspirations of traditional owners.

The committee recommends that the Minister consider the request of these organisations and a possible formal mechanism or process that allows Aboriginal corporations to nominate Aboriginal land, at the request of the traditional owners, for protection from mining interests. The committee recommends that the Minister provide advice on these matters in his second reading speech.

³⁸ QRC, submission 3a, p 2.

³⁹ Department of Aboriginal and Torres Strait Islander Partnerships, correspondence dated 2 March 2018, p 1, and correspondence dated 8 March 2018, p 2.

⁴⁰ Mr Burns, public hearing transcript, 13 April 2018, p 14.

⁴¹ Mr Duffy, public hearing transcript, 13 April 2018, p 3.

Recommendation 2

The committee recommends that the Minister provides advice in his second reading speech on:

- the request by the Olkola Aboriginal Corporation, the Batavia Traditional Owners Aboriginal Corporation and the Chuulangun Aboriginal Corporation to have additional land parcels included in proposed new section 27A of the Bill as protected land
- a possible formal mechanism or process that allows Aboriginal corporations to nominate Aboriginal land, at the request of the traditional owners, for protection from mining interests

2.3 Amendment of the Petroleum and Gas (Production and Safety) Act 2004

The Bill amends the *Petroleum and Gas (Production and Safety) Act 2004* (P & G Act) by introducing a framework to deal with abandoned gas and petroleum sites. Clause 264 inserts new part 3 that provides a framework for the remediation of abandoned gas and petroleum operating plants. New section 799C provides that an abandoned operating plant is or was an operating plant under section 670 of the P & G Act, in circumstances where a relevant tenure or authority and environmental authority, were required but are no longer in force. The section also provides that an authorised activity can be any other thing prescribed by regulation that is or was an operating plant.

The Bill also inserts new section 799D which provides that the chief executive may authorise a person to carry out remediation activities in relation to an abandoned operating plant. These activities include:

- investigating the condition of the abandoned operating plant or the primary land for the abandoned operating plant;
- capping a wellhead;
- drilling a well or water bore on the primary land to monitor or remediate the abandoned operating plant or the primary land;
- maintaining an abandoned operating plant to make it safe. For example, to monitor, inspect, carry out repairs;
- decommissioning an abandoned operating plant. For example, degassing a facility, removing part of a facility;
- removing, or making safe, structures or equipment on the primary land that are associated with the abandoned operating plant;
- repairing erosion, or preventing further erosion, of the primary land or vegetation on the primary land and
- cleaning up pollution remaining on the primary land.

2.3.1 Abandoned Gas and Petroleum Operating Plants

At the committee's public briefing the department advised that the disclaiming of gas and petroleum sites by Linc Energy created the need to introduce a similar framework to that which currently exists for abandoned mines under the *Mineral Resources Act 1989* (MRA).

The Mineral Resources Act does it much better in terms of the framework which allows a regulator to get access to a site, to control the site and to do what is required to secure a site from a safety perspective first and foremost, but equally in terms of working with the environmental regulator to minimise and mitigate any adverse impacts in relation to the condition in which that site has been left. Basically, the proposal is to align the Mineral Resources Act with those in the petroleum and gas act so it is seamless.

*Underground coal gasification is an interesting process in itself. It is basically regulated under the Mineral Resources Act as a mining tenure, if you like. Once the coal resource is turned into a gas the petroleum and gas framework kicks in. The regulator was having those two regulatory frameworks apply and there were significant differences in the two. This is to bring it all into a consistent framework. Certainly those broader issues of the liabilities and how the state minimises impact and making sure that those who are accountable are held responsible is certainly something that has been the subject of significant legislative reform over the last couple of years as well and is ongoing.*⁴²

The department was asked to further clarify whether the provisions were meant to only apply to resource industries. The department advised:

*Specifically, yes, to operating plant under the petroleum and gas act. The definition of operating plant can be very small. It can be say a single well or it could be a processing plant for underground coal gasification. As occurred in this place, it could be compressor stations—all manner of infrastructure that somebody needs to ultimately take responsibility for its remediation to secure it, make it safe and facilitate its decommissioning.*⁴³

2.3.1.1 Stakeholder views and department's response

In their submission to the committee, the Queensland Farmers Federation (QFF) submitted that it was essential that landowners were not left to carry out remediation activities.⁴⁴ In response to this concern the department confirmed that the state is responsible for carrying out remediation activities not limited to the decommissioning of an abandoned operating plant.⁴⁵

The QFF expressed a further concern in 2017 in that the provisions could be widely applied to other installations such as anaerobic digesters which the Bill addresses in its definition of an abandoned plant. However, the QFF advised the regulation proposed by the Department of Environment and Science (DES) in relation to anaerobic digesters is yet to be implemented and the final decision Regulatory Impact Statement yet to be completed and released.⁴⁶ The department has responded to this concern advising that it will work with DES to ensure there will be no unintended consequences to the abandoned operating plant framework.⁴⁷

Committee comment

The committee considers that the framework established by the amendments to the *Petroleum and Gas (Production and Safety) Act 2004* is an important response to the issues surrounding the disclaiming of gas and petroleum sites. This new framework, in conjunction with the framework which already exists for abandoned mines under the *Mineral Resources Act 1989*, provides a comprehensive response to all abandoned mining sites in Queensland.

2.3.2 Appointing persons to approve gas devices

The committee questioned the department in relation to the new process for appointing persons to approve gas devices, and whether the proposed legislation will impact on people that are already approved.⁴⁸

⁴² Department of Natural Resources, Mines and Energy, public briefing transcript, 5 March 2018, p 6.

⁴³ Member for Ipswich West, public briefing transcript, 5 March 2018, p 6.

⁴⁴ Submission 8, p 3.

⁴⁵ Department of Natural Resources, Mines and Energy, correspondence dated 2 March 2018, p 14.

⁴⁶ Submission 8, p 3.

⁴⁷ Department of Natural Resources, Mines and Energy, correspondence dated 2 March 2018, p 14.

⁴⁸ Member for Bundaberg, public briefing transcript, 5 March 2018, p. 8.

The department confirmed that people who are already approved will be accommodated under transitional arrangements:

I think it is a case of when their approval comes due again. Those provisions will become relevant when the person has to reapply for their relevant authority approval.⁴⁹

2.4 Amendment of the *Land Act 1994*

The Bill amends the *Land Act 1994* to provide compliance powers to stop inappropriate behaviour on state land where the department has direct land management responsibilities. The powers seek to stop the inappropriate behaviour from motorbikes and vehicles causing destruction not only on state land but also causing nuisance to properties which border state land.

2.4.1 Entry powers for authorised officers

In providing greater compliance powers, clause 203 inserts new section 390N which provides for the circumstances in which an authorised officer may enter a place pursuant to the *Land Act 1994* and the *Vegetation Management Act 1999*. The instances where these entry powers can be used, include the following:

- where an occupier of the place consents to the entry under division 2 (relating to entry by consent) and the authorised officer has complied with section 390Q which relates to matters the authorised officer must tell the occupier
- the place is unallocated state land or relevant trust land
- the place is non-freehold land subject to a trust, lease, licence or permit, or freehold land containing a reservation for a public purpose, and the authorised officer reasonably believes the terms or conditions of the reservation, trust, lease, licence or permit are not being complied with, or the Act is not being complied with
- the place is non-freehold land and the authorised officer reasonably suspects a building or structure or equipment on the land is dangerous and poses a serious risk to the safety of the public
- the place is non-freehold land (other than unallocated state land or relevant trust land), or freehold land containing a reservation for a public purpose, and the entry is made at least 14 days after giving the occupier of the place a notice stating: the authorised officer's intention to enter; the proposed purpose of entering; and the day and time, or the 48 hour period during which, the authorised officer proposes to enter the place
- if it is a public place, the entry is made when the place is open to the public
- the place is the place of business of the lessee, licensee or permittee and is open for carrying on the business, or otherwise open for entry, and
- the entry is authorised under a warrant, and if there is an occupier of the place, the entry procedure is complied with under section 390X.

2.4.1.1 Stakeholder views and department's response

In their submission, the QLS submitted that there was no mechanism for a landholder to object or negotiate the timing as to when an authorised officer may enter the landholder's land. This is particularly relevant when a landholder has harvesting or mustering activities planned which could give rise to safety and operational requirements for an authorised officer.⁵⁰

The QLS also submitted that unrestricted power of entry on the basis that a place was 'open for business' was inappropriate and too broad a power. The QLS explained:

⁴⁹ Department of Natural Resources, Mines and Energy, public briefing transcript, 5 March 2018, p 8.

⁵⁰ Submission 2, p 6.

*There is the potential for this power to be misused. Further, this general power of entry may be broader than the powers of entry under the Police Powers and Responsibilities Act and raises privacy concerns and contravenes a right to privately enjoy premises. This is concerning as many businesses will be in possession of commercially sensitive, private and confidential information.*⁵¹

The QLS raised a number of further issues of fundamental legislative principle which are discussed in Section 3 of this report.

In response to the QLS concern in relation to entry powers, the department advised the following:

An authorised officer must have the necessary expertise and experience to be appointed to that role. They must also satisfactorily complete approved training and assessment. The Compliance Technical Capability Program (CTCP) includes modules dealing with ethics in the regulatory environment, the scope of powers available to authorised officers, negotiating a beneficial outcome and communication techniques.

The CTCP sets the minimum standard required of staff seeking appointment, to conduct certain activities under the legislation administered by the department. Additionally, the department also has a specific training course for the use of PINs around evidence collection and decision making.

Appointed authorised officers are also supported by the compliance framework, policy, response guidelines, other relevant guidelines, templates and standard operating procedures to support consistent application of an authorised officer's power and tools under the legislation. Further support is provided by on ground mentoring and support/advice from investigators.

The Land Act currently provides very broad powers of entry to land for the purposes of the Land Act or the Vegetation Management Act 1999. In line with modern drafting practices the new compliance framework will insert new processes for entry to land with a warrant and provides more transparency around entry by consent.

There are also a number of safeguards built into the framework, including new section 390ZZE which imposes a duty on an authorised officer when exercising a power to take all reasonable steps to cause as little inconvenience and do as little damage as possible. Where damage does occur in relation to the exercise of a power, compensation may be available.

*The department notes the comments of QLS and is of the view that the proposed new sections provide an appropriate balance between the necessity for entering places for compliance and enforcement of the Act and the potential impacts on individual's rights.*⁵²

Committee comment

The committee notes the concerns of the QLS in regard to entry powers for authorised officers, however appropriate safeguards are in place to impose a duty on authorised officers to carry out their duties with due regard to the rights of landholders.

2.5 Amendment of the Explosives Act 1999

The Bill proposes to amend the *Explosives Act 1999* to regulate the manufacture, sale, handling, storage, transportation and use of explosives in Queensland and provides for the safety of person and property from misuse of explosives.

⁵¹ Submission 2, p 6-7.

⁵² Department of Natural Resources, Mines and Energy, correspondence dated 2 March 2018, p 9.

At the public briefing, the committee asked the department to clarify what is defined as an explosive, and whether the quantity of explosive would trigger this legislation.⁵³ The department provided the following advice:

Assuming you have a weapons licence, obviously you are entitled to have all of those ingredients that you are talking about. There is no impost on that particular use of propellant powders if you load your own ammunition associated with security. There is adequate security in place to handle those, as they stand.

And...

We have a definition in the act around products that are security-sensitive explosives. For instance, in the case of propellant powders we regard that as a security-sensitive explosive because it could be adapted for misuse or a criminal or terrorist activity. Therefore, there are stricter controls around those particular types of items. There are exemptions in various parts of the act, in the schedules, that allow people who have a legitimate need, such as a weapons licence or a shotfirer licence, to go about their business without excessive burden.⁵⁴

The committee also asked about the need for nationally consistent explosives regulations and laws and how the Bill will harmonise with national laws.⁵⁵ The department provide the committee with the following advice:

We have been working for the past two years with a study group at the national level to try to achieve that. We had determined that there would be four policy areas that we would address. Queensland has always adopted the stance of, if we can achieve national harmonisation and it is an improvement to safety and security, then we would move forward; if it does not improve security and safety, we would not be going along the national route. Consequently, the amendments we have put into this particular act have picked up on some things that other jurisdictions do quite well and that we feel should be introduced, such as the explosive security card that has not been in place in Queensland, but has been in place in other states for the period.

The other matters are around licence types that would support people being able to move across states and that is one of the policy agreement areas that we are working towards. There is probably a long way to go on that and it is very difficult in that national forum to get every state to agree. However, we are moving forward. We believe there will be improvements as a result of this act, which we hope will show other states how they might adopt new legislation in that area.⁵⁶

The committee asked the department to clarify the processes in place in regard to the application of a domestic violence order (DVO) and whether an explosives licence would be suspended or cancelled.⁵⁷ The department submitted:

The application of a DVO will result in the automatic suspension of an explosives individual licence. Currently, it is for the duration of the DVO and it would come off. We differ a little bit to some other acts and also other jurisdictions in that regard. The application of a DVO is determined by a magistrate based on the full information that he has available. The lifting of that DVO is also done by a magistrate based on the full knowledge of the situation. As a chief

⁵³ Member for Condamine, public briefing transcript, 5 March 2018, p 8.

⁵⁴ Department of Natural Resources, Mines and Energy, public briefing transcript, 5 March 2018, p 8.

⁵⁵ Member for Ipswich West, public briefing transcript, 5 March 2018, p 7.

⁵⁶ Department of Natural Resources, Mines and Energy, public briefing transcript, 5 March 2018, p 7.

⁵⁷ Member for Bundaberg, public briefing transcript, 5 March 2018, p 6.

*inspector, we do not have access to that information, so we will be relying on the courts to make an appropriate decision.*⁵⁸

At the public briefing, the committee asked if signage on vehicles carrying explosives is uniform throughout Australia.⁵⁹ The department confirmed that it is and currently each jurisdiction referred to the Australian explosives code version 3, which provides the requirements for particular signage on the vehicles. The department advised there were a couple of minor exceptions with some states that may have some additional requirements to that particular code.⁶⁰

⁵⁸ Department of Natural Resources, Mines and Energy, public briefing transcript, 5 March 2018, p 6.

⁵⁹ Member for Ipswich West, public briefing transcript, 5 March 2018, p. 8.

⁶⁰ Department of Natural Resources, Mines and Energy, public briefing transcript, 5 March 2018, p 8.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) state 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.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

It is considered that clauses 8, 9, 12, 14, 38, 54, 57, 58, 63, 64, 67, 89, 174, 178, 180, 181, 182, 183, 184, 186, 188, 203, 205, 264, 265, 270, 271, 272, 286, 303, 304, 307 and 309 raise issues of fundamental legislative principle.

The Bill also includes offence provisions which are set out at **Table 1**.

RIGHTS AND LIBERTIES OF INDIVIDUALS

Clause	38
FLP issue	Rights and liberties of individuals - Section 4(2)(a) <i>Legislative Standards Act 1992</i> Does the Bill have sufficient regard to the rights and liberties of individuals?
Comment	<p><u>Summary of provisions</u></p> <p>Clause 38 inserts a new subdivision ‘Immediate suspensions and cancellations’ in the <i>Explosives Act 1999</i> to provide for immediate suspension and cancellation of an authority or security clearance in particular circumstances.</p> <p>Proposed section 25A ‘Immediate suspension in particular circumstances’ applies where the holder of an authority or security clearance is named as a respondent in a temporary protection order or a police protection notice, or certain release conditions are imposed on that holder under the <i>Domestic and Family Violence Protection Act 2012</i>. (subsection(1)).</p> <p>Subsection (2) provides that the authority or security clearance is suspended:</p> <ul style="list-style-type: none"> • if the authority or security clearance holder is named as a respondent in a temporary protection order, and they are present in the court when the order is made - from the time of the order until the order is no longer in force • if release conditions are imposed - while the release conditions are in force, and • If the holder is served with the temporary protection order or police protection notice - until the order or notice is no longer in force. <p>A ‘temporary protection order’ is defined in subsection (3) to mean a temporary protection order under the <i>Domestic and Family Violence Protection Act 2012</i>. It includes an interstate domestic violence order corresponding to a temporary protection order issued in Queensland.</p> <p>Proposed section 25B ‘Immediate cancellation if protection order made’ provides that where the holder of an authority or security clearance is named as the respondent in a protection order, the authority or security clearance is cancelled from the time the order</p>

	<p>is made if the holder is present in court at that time. Otherwise the authority or security clearance is cancelled from when the holder is served with the protection order.</p> <p>A ‘protection order’ is defined in subsection (3) as a protection order under the <i>Domestic and Family Violence Protection Act 2012</i>, and includes an interstate domestic violence order corresponding to a protection order issued in Queensland.</p> <p><u>Potential FLP issues</u></p> <p>Reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.</p> <p>The explanatory notes advise that the clause might represent a potential departure from the principle under section 4(2) of the <i>Legislative Standards Act 1992</i> because it might adversely affect some respondents whose employment involves possessing and using explosives:</p> <p><i>The cancellation of a respondent’s explosives licence is necessary to ensure that police have the ability to provide appropriate protection to victims in circumstances where the respondent has access to explosives, and will improve protection for victims by requiring respondents to surrender any explosives they possess until the court makes a final determination.</i>⁶¹</p> <p><u>Comment</u></p> <p>The committee notes that proposed sections 25A and 25B might detrimentally impact a person’s employment, affecting their livelihood.</p> <p>Section 25A applies to an authority or security clearance holder who might merely be a respondent. However, given the nature of the circumstances which might attract the making of a temporary protection order or police protection notice, and given that the section provides for suspension (not cancellation), the committee considers that, on balance, the clause has sufficient regard to the rights and liberties of individuals.</p> <p>Section 25B again applies to a respondent, but provides for cancellation. This section applies to an authority or security clearance holder who is named as a respondent in a protection order (not a temporary protection order). Given the nature of the circumstances which might attract the making of a protection order, the committee considers that, on balance, the clause has sufficient regard to the rights and liberties of individuals.</p>
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Clause	174, 178, 180, 181, 182, 183, 186, 188 and 205
FLP issue	<p>Rights and liberties of individuals - Section 4(2)(a) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill have sufficient regard to the rights and liberties of individuals?</p>
Comment	<p><u>Summary of provisions</u></p> <p>The committee notes that the Bill proposes a range of amendments to the <i>Land Act 1994</i> providing for the repair, removal and remediation of buildings and structures.</p>

⁶¹ Explanatory notes, p 10.

	<p>For example, clause 174 proposes to insert new Chapter 4, Part 3, Division 2, Subdivision 1AA 'Improvements reports and notices and related matters', consisting of sections 156-156C.</p> <p>Section 156 'Lessee must give improvements report and other information' applies if, at a stated day before the end of a term lease, a lessee has not made a renewal application or, if such an application has been made, it has been refused (subsection (1)). The lessee must, within a specified timeframe, give the minister an 'improvements report' stating the nature, condition and location of each building or structure on the lease land, and whether the lessee proposes to remove the building or structure prior to expiry of the lease. Subsection (3) provides that the improvements report may include the lessee's representations as to why the minister should not give an 'improvements notice' to the lessee.</p> <p>The minister may also give notice requiring the lessee, within a stated reasonable period, to give information about a building or other structure on the lease land or give a report, prepared by a person with a stated qualification or expertise and at the lessee's expense, about the condition of the buildings and other structures on the lease land (subsection (4)). If the lessee fails to comply, the minister may obtain the report and recover the cost from the lessee as a debt due to the State (subsection (5)).</p> <p>Section 156A 'Minister may give improvements notice' provides that the minister may give the lessee an improvements notice requiring the lessee, within a stated reasonable period (being in any event not less than 3 months) after the lease expires, to:</p> <ul style="list-style-type: none"> (a) carry out repairs to bring a stated building or another structure on the lease land into a good and substantial state of repair (b) remove a stated building or another structure from the lease land, or (c) remediate the lease land to the reasonable standard stated in the notice. <p>Subsections (3) to (5) specify further details about the minister's powers to require repair, removal and remediation. These provisions limit the ministers' powers to certain circumstances.</p> <p>Section 156B 'Person must comply with improvements notice' requires the recipient to comply with the notice and requires the recipient or contractor to comply with subsection (2) before entering the land to comply with the notice.</p> <p>Section 156C 'Noncompliance with improvements notice' applies if the recipient fails to comply. In such a case, the State may take the action required under the improvements notice and recover reasonable costs as a debt due to the State.</p> <p>The Bill includes other similar amendments to the <i>Land Act 1994</i>, where there is the surrender of a permit, the cancellation of a permit or the forfeiture of a lease, including:</p> <ul style="list-style-type: none"> • clause 178 - insertion of new sections 180B 'Chief executive may require report and other information' and 180C 'Chief executive may require improvements report and other information' • clause 180 - insertion of new sections 180I 'Chief executive may give improvements notice', 180J 'Person must comply with improvements notice' and 180K 'Noncompliance with improvements notice' • clause 186 - insertion of new section 242A 'may require improvements report and other information', and • clause 188 - insertion of new sections 244 'Minister may give improvements notice', 244A 'Person must comply with improvements notice' and 244B 'Noncompliance with improvements notice'.
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	<p>Clause 181 proposes to insert new section 199B ‘Conditions relating to buildings and other structures’ into the <i>Land Act 1994</i> to provide that all leases and permits are subject to the conditions that the lessee or permittee:</p> <ul style="list-style-type: none"> (a) must keep all buildings and other structures on the lease land or permit land in a good and substantial state of repair, and (b) must not erect on the lease land or permit land a building or other structure that is not consistent with the purpose.⁶² <p>Clause 182 proposes to amend section 214 ‘Minister’s power to give remedial action notice’ to insert new subsection (2A) to provide that, if the minister has given a lessee a ‘remedial action notice’ to take stated remedial action under existing section 214, and on the ground the minister is satisfied the lessee has breached a condition of the lease applying under new section 199B, the remedial action may require the lessee to carry out repairs to bring a stated building or another structure into a good and substantial state of repair or remove or demolish a stated building or another structure.</p> <p>Clause 183 proposes to insert section 214G ‘Noncompliance with particular remedial action notice’ which applies where the lessee fails to comply with the remedial action notice inserted by clause 182 (subsection (1)).</p> <p>Subsection (2) provides that the State may take the remedial action or, if that action required repair of a building or other structure, remove or demolish that building or structure, if it is not in the public interest to undertake the repairs. The State may also recover reasonable costs from the lessee as a debt (subsection (3)).</p> <p>Subsection (5) provides that the minister may decide whether it is appropriate in the circumstances to forfeit the lease. Subsection (6) provides when the minister may decide it appropriate.⁶³</p> <p>Clause 205 proposes to insert new Chapter 7, Part 1A ‘Safety Notices’, including section 403G ‘Chief executive may give safety notice’, which applies if the chief executive reasonably believes a building or other structure or equipment on non-freehold land is dangerous and poses a serious risk to the safety of the public (subsection (1)).</p> <p>Subsection (2) provides that the chief executive may give the occupier of the land a ‘safety notice’ requiring the person, within a stated reasonable period, to take any of the following ‘safety actions’:</p> <ul style="list-style-type: none"> (a) to repair or rectify the building, structure or equipment to make it safe (b) to fence off the building, structure or equipment to protect the public (c) to demolish or remove the building, structure or equipment (the show cause notice provisions in proposed sections 403D-F apply to this safety action). <p>The safety notice must be accompanied by or include an information notice about the decision to give the safety notice (subsection (4)) and the recipient must comply with a safety notice, unless there is a reasonable excuse (maximum penalty is 400 penalty units) (section 403H).</p> <p>Sections 403I and 403H provide for non-compliance with safety notices, which provide for the State to take certain actions including, in certain circumstances, forfeiture of property.</p>
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⁶² Specifically, for a lease—the purpose for which the lease was originally issued or, if the purpose is changed under section 154, the purpose of the lease as changed; or for a permit—the purpose for which the permit was issued.

⁶³ Clause 185 ensures that the lease can only be forfeited if the lessee fails to comply with a remedial action notice.

	<p><u>Potential FLP issues</u></p> <p>Reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals. The above provisions require lessees, permittees or occupiers to undertake a range of acts that might be detrimental to them, including requiring:</p> <ul style="list-style-type: none"> • the provision of information • the provision of expert reports, without reimbursement of cost • the repair or removal of a building or structure • the remediation of land • compliance with an improvements notice, failing which, the recipient of the notice might be liable to pay a debt in order to reimburse the State for reasonable costs • compliance with a remedial action notice, failing which, the lessee might be liable to pay a debt in order to reimburse the State for reasonable costs and the minister might decide to forfeit the lease • compliance with a safety notice, failing which, the occupier of non-freehold land might be liable to pay a debt in order to reimburse the State for reasonable costs and the relevant building, structure or equipment is forfeited to the State. <p>The explanatory notes state:</p> <p><i>The new power seeks to address the lack of adequate provisions in the Land Act to deal with buildings and structures on State land subject to a lease or permit to occupy that become a liability for the State to maintain and/or remove.⁶⁴</i></p> <p>The explanatory notes provide a list of situations where buildings and structures become a liability to the State, concluding that:</p> <p><i>There are no provisions in the Land Act for the State to require a lessee or permittee to ensure that buildings and structures are well maintained, to remove a building or structure or for the State to recover costs if the work is undertaken by the State.</i></p> <p><i>Modern conditions attached to a lease or permit can and have addressed some of the issues, however, legacy conditions are often found to be deficient in explicitly addressing poorly maintained and unwanted buildings and structures. In addition, compliance powers associated with breaches of a condition have been found extremely cumbersome and time consuming and as a result have not been used to date.</i></p> <p><i>The power is considered justified as an additional compliance tool to deal with structures and equipment on State land that are causing community concern or that will result in a liability to the State. Such infrastructure is not only a financial liability to the State, but poses a real risk to community health and safety where accessible to the public.</i></p> <p><i>Importantly, there are a number of limitations and safeguards around the exercise of the power. This includes the ability to appeal the decision. The exercise of the power will also be constrained by departmental policy and procedures.</i></p> <p><i>These amendments will have positive implications for public health and safety; the health, safety and cost burden of future lessees and permittees; the future uses of</i></p>
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⁶⁴ Explanatory notes, p 17.

	<p><i>State land; and cost burden to the State to remove or demolish buildings, structures and equipment.</i>⁶⁵</p> <p>In relation to the proposed safety notice provisions, the explanatory notes state:</p> <p><i>The power is justified as an additional compliance tool to improve public safety on non-freehold land. There are a number of important limitations and safeguards around the exercise of the power ...</i></p> <p><i>The safety notice must be accompanied by an information notice providing the details why the safety notice was given. A person given a safety notice has the ability to appeal to the Land court.</i>⁶⁶</p> <p><u>Comment</u></p> <p>Given community concern about the safety of certain buildings and structures on State land upon the expiry of leases and permits and the resulting potential implications for community health and safety and for liability and cost to the State, the committee considers that, on balance, the clauses have sufficient regard to the rights and liberties of individuals.</p> <p>Similarly, in cases where a building, structure or equipment on non-freehold land is dangerous and poses a serious risk to the safety of the public, the committee considers that, on balance, clause 205 has sufficient regard to the rights and liberties of individuals.</p>
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Clause	184
FLP issue	<p>Rights and liberties of individuals - Section 4(2)(a) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill have sufficient regard to the rights and liberties of individuals?</p>
Comment	<p><u>Summary of provisions</u></p> <p>Clause 184 proposes to insert new Chapter 5, Part 2, Division 6 ‘Compliance notices’, including section 214H ‘Authorised officer may give compliance notice to permittee’, which applies if an authorised officer reasonably believes a permittee is breaching, or has breached, a condition of their permit (subsection (1)).</p> <p>The authorised officer may give the permittee a ‘compliance notice’ requiring the permittee to remedy the breach, including by refraining from doing an act (subsection (2)). The compliance notice must be accompanied by or include an information notice about the decision to give the compliance notice (unless it is not practicable to do so, in which case the authorised officer must give the permittee the information notice as soon as practicable).⁶⁷</p> <p>Section 214I ‘Requirements for compliance notice’ sets out the details that must be included in a compliance notice.</p>

⁶⁵ Explanatory notes, pp 17-18.

⁶⁶ Explanatory notes, p 16.

⁶⁷ Subsection (3) and (4).

	<p>Section 214J ‘Failure to comply with compliance notice’ requires that a person to whom a compliance notice is given must comply with the notice unless the person has a reasonable excuse (maximum penalty of 400 penalty units).⁶⁸</p> <p>Subsection (2) provides that, if a person is convicted of such an offence, the court may, as well as imposing a penalty for the offence, make a ‘compliance order’ that the person comply with all or part of the compliance notice within a stated period, and any other orders the court considers appropriate.</p> <p>Subsection (3) provides that if the compliance notice requires the person to remove a thing from the relevant land, the court may order that the thing be forfeited to the State if the person fails to remove it within the period stated in the compliance order.</p> <p>Section 214L ‘How forfeited property may be dealt with’ applies where a thing is forfeited to the State because a person has not complied with a compliance order:</p> <p><i>The chief executive may deal with the forfeited thing in an appropriate manner, such as by destroying it, giving it away or otherwise disposing of it. However, the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the making of the compliance order.</i></p> <p><i>Where the State incurs costs in disposing of a thing – for example transport costs, dump costs, storage costs, or costs of sale – then the State may recover these reasonable costs from the person as a debt due to the State. Where the chief executive sells the thing (or part of it), the amount received for the sale must be taken off the amount the State may otherwise recover from the person for disposal costs, or for doing a thing required under the compliance order.</i></p> <p><i>In the circumstance where the amount made from a sale is greater than the costs associated with disposal, and taking compliance order actions, then these additional proceeds of sale must be returned to the person.</i>⁶⁹</p> <p><u>Potential FLP issues</u></p> <p>Reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals. The proposed clause provides for an offence provision and for the potential forfeiture of the permittee’s property.</p> <p>If a person fails to comply with a compliance notice, without a reasonable excuse, they can be convicted of an offence. As well as imposing a penalty for the offence, a court may make a compliance order. If the compliance notice requires the person to remove a thing from the land to which the person’s permit relates, the court may order that the thing be forfeited to the State if the person fails to remove the thing within the period stated in the compliance order.</p> <p>The forfeiture of the permittee’s property might potentially breach a person’s right to be treated reasonably and fairly.</p> <p><u>Comment</u></p> <p>Given the nature of the circumstances which might lead to the forfeiture of a person’s property, the requirement that a court make an order of forfeiture and that the State is not to profit from such a forfeiture (with any additional proceeds to be returned to the</p>
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⁶⁸ Subsection (1).

⁶⁹ Explanatory notes, p 76.

	<p>person), the committee considers that, on balance, the clause has sufficient regard to the rights and liberties of individuals.</p> <p>The committee notes that a person has a right to appeal a decision to give the compliance notice, by way of application for an internal review.</p>
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Clause	89
FLP issue	<p>Onus of proof – Section 4(3)(d) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?</p>
Comment	<p><u>Summary of provisions</u></p> <p>Clause 89 proposes to insert sections 133A and 133B into the <i>Explosives Act 1999</i>.</p> <p>Section 133A ‘Expert reports’ applies to a proceeding under the <i>Explosives Act 1999</i>, other than a proceeding under part 7, providing that an ‘expert report’ (defined in subsection (6)) is admissible in evidence. Under subsection (3) the report is only admissible with the court’s leave, where the expert does not attend to give oral evidence in the proceeding. Subsection (4) states that the court must consider certain things when deciding whether to grant leave. Subsection (5) provides:</p> <p style="padding-left: 40px;"><i>An expert report admitted in evidence is evidence of any fact or opinion stated in the report of which the expert could have given oral evidence.</i></p> <p>Section 133B ‘Analysts’ reports’ provides for the inclusion of a signed analyst’s report as evidence in a proceeding. This section applies to a proceeding under the <i>Explosives Act 1999</i>, other than a proceeding under part 7. Subsection (2) states:</p> <p style="padding-left: 40px;"><i>The production by a party to the proceeding of a signed analyst’s report stating any of the following matters is evidence of the matters -</i></p> <p style="padding-left: 40px;"><i>(a) the analyst’s qualifications</i></p> <p style="padding-left: 40px;"><i>(b) the analyst took, or received from a stated person, the sample mentioned in the report</i></p> <p style="padding-left: 40px;"><i>(c) the analyst analysed the sample on a stated day, or during a stated period, at a stated place</i></p> <p style="padding-left: 40px;"><i>(d) the results of the analysis.</i></p> <p><u>Potential FLP issues</u></p> <p>A provision in legislation should not provide that something is conclusive evidence of a fact, without the highest justification. However, frequently a provision might facilitate the process of proving a fact by providing for a certificate or something else to be evidence (not conclusive) of a fact, giving a party affected an opportunity to challenge the fact.</p> <p><u>Comment</u></p> <p>The proposed sections provide that the expert report and signed analyst’s report are evidence of certain matters. The provisions do not state that the reports are conclusive of fact. It is therefore likely that, the accuracy or veracity of the information contained in any report is able to be challenged by contrary evidence put forward by a party if required.</p> <p>Such evidentiary provisions are fairly common, administratively convenient and avoid the need to unnecessarily protract court hearings in that a party is not required to waste the</p>

	<p>court's time adducing evidence to prove matters that are not likely to be in contention anyway.</p> <p>Therefore the committee is satisfied with clause 89.</p>
Clauses	265, 270, 286
FLP issue	<p>Onus of proof – Section 4(3)(d) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?</p>
Comment	<p><u>Summary of provisions</u></p> <p>A number of clauses in the Bill contain executive liability provisions. Derivative liability provisions deem a person guilty of an offence committed by another person to whom the first person is linked. 'Executive liability' provisions are a common type of derivative liability provision. They provide that executive officers of a corporation are taken to be guilty of offences committed by the corporation.</p> <p>Provisions of this type create a presumption of guilt or responsibility, and effectively relieve the prosecution of the obligation to prove the elements of the offence, for example 'intent' on the part of the person taken to have committed it. Such provisions usually include a defence that requires the accused to prove either that he or she took reasonable steps to ensure compliance or to prevent the offending act or omission, or that they were not in a position to influence the conduct of the other person.</p> <p>Within the Bill, the 'notes' contained in various offence clauses specifically state that those particular provisions are executive liability provisions.</p> <p>By clause 265, offences are provided for in subsections (1)-(3) of s 813 of the <i>Petroleum and Gas (Production and Safety) Act 2004</i>, for the acts of:</p> <ul style="list-style-type: none"> • making an entry in a document required to be made, adopted, held or kept under the Act, knowing the entry is false or misleading in a material particular • stating anything to an authorised officer that the person knows is false or misleading in a material particular • in the administration of the Act, giving to an authorised officer, a document that the person knows is false or misleading in a material particular. <p>The notes to s 813(1)-(3) advise that these provisions are executive liability provisions for s 814. If a corporation commits the offence, an executive officer of the corporation may be taken, under s 814A, to have also committed the offence.</p> <p>Other executive liability provisions are contained in clause 286 which inserts new chapter 9, part 6A into the PGPSA, including new sections 731AA and 731AG. Proposed new s 731AA contains two offence provisions, each with a maximum penalty of 200 penalty units, relevant to the supply, installation or use of unapproved or non-compliant gas devices. Proposed new s 731AG makes it an offence for the holder of a gas device approval authority to fail to comply with the conditions of that authority - with a maximum penalty of 250 penalty units.</p> <p>Clause 270 amends s 840 of the PGPSA to confirm that a person who has a representative, is responsible for an act done or not done by the representative, within the scope of the</p>

	<p>representative's actual or apparent authority, unless the person can prove that, by the exercise of reasonable precautions and proper diligence, doing the act or omission could not have been prevented.</p> <p><u>Potential FLP issues</u></p> <p>Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence. The OQPC Handbook states:</p> <p><i>For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.</i></p> <p><u>Comment</u></p> <p>The committee notes that the above provisions potentially contravene the FLP regarding the reversal of the onus of proof. The committee makes a recommendation in regard to this matter.</p>
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Clause	67
FLP issue	<p>Power to enter premises – Section 4(3)(e) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?</p>
Comment	<p><u>Summary of provisions</u></p> <p>Section 90 of the <i>Explosives Act 1999</i> provides an inspector with a power to seize evidence. In specific circumstances, seizure can occur without a warrant. The Bill does not seek to amend this existing section.</p> <p>However, clause 67 proposes to insert new sections 90A – 90C, which will supplement the existing power.</p> <p>Section 90A 'Power to secure seized thing' describes what an inspector may do with a seized thing, such as take reasonable action to restrict access to it or move it.</p> <p>Section 90B 'Powers to support seizure' provides that in order to enable a thing to be seized an inspector may require a person the inspector reasonably believes is in control of the thing or a place of seizure for the thing to, under subsection (1)(a), both take it to a reasonable place at a reasonable time and, if necessary, remain in control of it at the stated place for a reasonable time.</p> <p>Under subsection (1)(b), the chief inspector may require a person to do an act mentioned in section 90A(2)(a) or (b) or anything else an inspector could do under section 90A(1)(a).</p> <p>Section 90B(2) states that the requirement must be made by written notice or if it is not practical to give notice, it must be made orally and confirmed by notice as soon as practicable.</p> <p>Subsection (3) states that a person must comply with a requirement made under subsection (1), unless they have a reasonable excuse. (A maximum penalty of 100 penalty units applies.)</p>

	<p>Section 90C 'Offence to interfere' creates an offence to interfere with a seized thing or enter a restricted place under new section 90A without a reasonable excuse or an inspector's approval (the maximum penalty is 100 penalty units.)</p> <p><u>Potential FLP issues</u></p> <p>Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.⁷⁰ This principle supports a long established rule of common law that protects the property of citizens. Power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate. Strict adherence to the principle might not be required if the premises are business premises operating under a licence or premises of a public authority.</p> <p>In this context one concern is the range of additional powers that become exercisable after entry without a warrant or consent.⁷¹ The OQPC Notebook states:</p> <p style="padding-left: 40px;"><i>FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals.</i>⁷²</p> <p>Residential premises should not be entered except with consent or under a warrant or in the most exceptional circumstances.⁷³</p> <p><u>Comment</u></p> <p>The committee considers that, on balance, the proposed sections appropriately supplement the existing power to seize evidence.</p>
Clause	203
FLP issue	<p>Power to enter premises – Section 4(3)(e) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?</p>
Comment	<p><u>Summary of provisions</u></p> <p>Clause 203 proposes to insert new Chapter 6A 'Investigation and enforcement' into the <i>Land Act 1994</i>, including Part 3 'Entry of places by authorised officers' and Part 4 'Other powers of authorised officers and related matters'.</p> <p>The explanatory notes state:</p> <p style="padding-left: 40px;"><i>The Land Act, by section 400, currently provides power for authorised officers to enter land and undertake certain activities for the purposes of the Land Act or the Vegetation Management Act 1999.</i></p>

⁷⁰ *Legislative Standards Act 1992*, s 4(3)(e).

⁷¹ Alert Digest 2004/5, p 31, paras 30-36; Alert Digest 2004/1, pp 7-8, paras 49-54; Alert Digest 2003/11, pp 20-21, paras 14-19; Alert Digest 2003/9, p 4, para 23 and p 31, paras 21-24; Alert Digest 2003/7, pp 34-35, paras 24-27; cited in Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

⁷² Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

⁷³ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 46.

	<p><i>The Bill more clearly defines the power of entry for authorised officers and the manner in which that entry may occur. The power of entry under the Land Act is recast by the Bill with model provisions to include entry by warrant and to provide further transparency around entry by consent.</i>⁷⁴</p> <p>Section 390N ‘General power to enter places’ lists circumstances when an authorised officer may enter a place, for a purpose of the <i>Land Act 1994</i> or the <i>Vegetation Management Act</i> (subsection (1)(a)-(h)). Subsection (1)(a) and (1)(h) provide for instances where entry is granted by consent of the occupier and under the authority of a warrant, respectively. However, the instances in (1)(b)-(g) do not require consent or a warrant (although, they do not authorise entry to residential premises).⁷⁵</p> <p>Part 3, Division 3, Subdivision 1 ‘Obtaining warrant’ includes section 390S ‘Application for warrant’, which provides that an authorised officer may apply to a magistrate for a warrant for a place, and section 390T ‘Issue of warrant’. Subdivision 2 ‘Entry procedure’ includes section 390X, which applies if an authorised officer is intending to enter a place under a warrant issued under the division (Subsection (1)).</p> <p>Subsection (2) sets out things the authorised officer must do or make a reasonable attempt to do before entering the place. However, the authorised officer need not do these things if it is reasonably believed that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.</p> <p>Part 4, Division 2 includes section 390ZD ‘General powers’, which provides that the authorised officer may do any of the following:</p> <ul style="list-style-type: none"> (a) search any part of the place (b) inspect, examine or film any part of the place, anything at the place or the uses made of the place (c) take for examination a thing, or a sample of or from a thing, at the place (d) place an identifying mark in or on anything at the place (e) take an extract from, or copy, a document at the place, or take the document to another place to copy (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing (g) take to, into or onto the place and use any person, equipment and materials the authorised officer reasonably requires for exercising the authorised officer’s powers under this chapter (h) remain at the place for the time necessary to achieve the purpose of the entry.⁷⁶ <p>Subsection (2) provides for further general powers which apply if the place is lease land, licence land or permit land for agricultural, grazing or pastoral purposes, including a power to establish ‘monitoring sites’ on the land.</p>
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⁷⁴ Explanatory notes, p 13.

⁷⁵ Subsection (2).

⁷⁶ Subsection (1). Section 390ZC provides that the general powers to not apply in public places at times when entry is open to the public and, for sections 390N(1)(a) or (h), are subject to any conditions of the consent or terms of the warrant.

	<p>Section 390ZE ‘Power to require reasonable help’ provides that the authorised officer may make a ‘help requirement’ of an occupier of the place or a person at the place to give the authorised officer reasonable help to exercise a general power including, for example, to produce a document or to give information (subsection (1)).</p> <p>Subsection (2) requires that the occupier be given an ‘offence warning’ which, for a direction or requirement by an authorised officer, means a warning that, without a reasonable excuse it is an offence for the person to whom the direction is given, or of whom the requirement is made, not to comply with the requirement.⁷⁷</p> <p>Part 4, Division 3, Subdivision 1 ‘Power to seize’ includes section 390ZG which provides that an authorised officer who enters a place (being a place the authorised officer may enter under this chapter), without the consent of an occupier and without a warrant, may seize a thing at the place if the authorised officer reasonably believes the thing is evidence of the commission of an offence against the <i>Land Act 1994</i> or a breach of a condition of a person’s lease, licence or permit. Subsection (2) provides a limitation to that power.</p> <p>Section 390ZH ‘Seizing evidence at a place that may be entered with consent or warrant’ applies in circumstances where the authorised officer enters a place with consent or under a warrant.</p> <ul style="list-style-type: none"> • Subsection (4) provides that the authorised officer may also seize anything else at the place if the authorised officer reasonably believes- <ul style="list-style-type: none"> (a) the thing is evidence of the commission of an offence against the <i>Land Act 1994</i> or a breach of a condition of a person’s lease, licence or permit, and (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed. • Subsection (5) provides that the authorised officer may also seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence against the <i>Land Act 1994</i> or breaching a condition of a person’s lease, licence or permit. <p>Section 390ZJ provides power for an authorised officer to secure a seized thing. Part 4, Division 3, Subdivision 3, provides for ‘Safeguards for seized things’.</p> <p>Subdivision 4 provides for forfeiture and includes section 390ZP ‘Forfeiture by chief executive decision’. This provides that the chief executive may decide a seized thing is forfeited to the State if an authorised officer, after making reasonable inquiries, cannot find an owner; or after making reasonable efforts, cannot return the thing to an owner; or - or a thing seized for an offence - reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.</p> <p>Under section 390ZQ ‘Information notice about forfeiture decision’ the former owner must be given an information notice about the decision, which must state that the former owner may apply for a stay of the decision if the former owner appeals against the decision. Subsection (4) limits the effect of the section.</p> <p>Subdivision 5 ‘Dealing with property forfeited or transferred to the State’ includes sections providing for when a thing becomes the property of the state and how that property is to be dealt with, which includes destroying it.</p> <p>Section 390ZZG includes compensation provisions.</p>
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⁷⁷ The definition is located in proposed section 390C of the *Land Act 1994*.

	<p><u>Potential FLP issues</u></p> <p>Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.⁷⁸ This principle supports a long established rule of common law that protects the property of citizens. Power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate. Strict adherence to the principle might not be required if the premises are business premises operating under a licence or premises of a public authority.</p> <p>As identified above, the Bill provides for the entering of property without consent and without a warrant.</p> <p>In relation to the power of entry, the explanatory notes state:</p> <p><i>The power to enter is restrained through requirements for consent, notice or warrant and in limited circumstances, where an authorised officer reasonably believes the terms or conditions of a reservation, trust, lease, licence or permit are not being complied with.</i></p> <p><i>An additional power of entry is included to allow investigation where an authorised officer has a reasonable suspicion that a dangerous structure or building poses a serious risk to public safety. This power is exercisable upon a lower standard being achieved (reasonable suspicion rather than reasonable belief) due to the risk to public safety and the need to safeguard the public in a timely manner.</i>⁷⁹</p> <p>A concern in this context, is the range of additional powers that become exercisable after entry without a warrant or consent.⁸⁰ The OQPC Notebook states:</p> <p><i>FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals.</i>⁸¹</p> <p>As identified above, a range of powers flow from the entry provided for by the Bill, including search and seizure powers and provisions for forfeiture of property and the transfer of ownership to the State.</p> <p>The explanatory notes state:</p> <p><i>The Bill provides safeguards and limitations around the provisions by authorising entry, search and seizure of evidence by the scope of consent given, warrant issued, or the public nature of the place, and as such reflect sufficient regard to the rights and liberties of individuals.</i></p> <p><i>Seizure decisions are subject to internal review and appeal to the Magistrates Court. The provisions dealing with return of seized items allow the person entitled to the seized item to have access to it and the provisions detail the circumstances</i></p>
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⁷⁸ Legislative Standards Act 1992, s 4(3)(e).

⁷⁹ Explanatory notes, p 14.

⁸⁰ Alert Digest 2004/5, p 31, paras 30-36; Alert Digest 2004/1, pp 7-8, paras 49-54; Alert Digest 2003/11, pp 20-21, paras 14-19; Alert Digest 2003/9, p 4, para 23 and p 31, paras 21-24; Alert Digest 2003/7, pp 34-35, paras 24-27; cited in Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

⁸¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

	<p><i>for the return of the seized item. Additionally, the chief executive's decision to forfeit a seized item to the State may also be appealed to the court.</i></p> <p><i>Whilst the Bill does allow seizure of evidence where entry to a place has not been by consent or warrant, this power is not unlimited and it may only occur where the authorised officer reasonably believes the thing seized is evidence of the commission of an offence against the Act or a breach of a condition of a person's lease, licence or permit; and the seizure is necessary to prevent the thing being hidden, lost or destroyed.</i></p> <p><i>For example, an authorised officer may receive information about a structure being built on unallocated state land, and upon entering the land, a camera is found which includes photographs on the construction activity and the people undertaking that activity.⁸²</i></p> <p>The explanatory notes observe that new section 390ZP provides the chief executive with power to decide that a seized thing is forfeited to the State in limited circumstances, and that:</p> <p><i>A further safeguard is provided in that the chief executive's decision is subject to both internal review and appeal to the Magistrates Court.</i></p> <p><i>The Bill also continues a statutory obligation under the Land Act on authorised officers to avoid damaging property and to cause as little inconvenience as possible, with provision for notice and compensation if damage occurs.⁸³</i></p> <p><u>Comment</u></p> <p>The Bill provides for entry, search and seizure powers which are not subject to consent or the issuing of a warrant. The committee notes that the potential result of the exercise of such powers includes forfeiture of property. These powers might be considered to unduly infringe on the rights and liberties of individuals and not have due regard to fundamental legislative principles.</p> <p>The committee notes the government's view that the Bill provides sufficient safeguards and limitations, such as by authorising entry, search and seizure of evidence, in accordance with the scope of the consent given, the scope of the warrant issued or the public nature of the place. Where the Bill does allow seizure of evidence where entry to a place has not been by consent or warrant, the committee notes the government's observation that this power is not unlimited and may only occur in stated circumstances.</p>
Clause	264
FLP issue	<p>Power to enter premises – Section 4(3)(e) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?</p>
Comment	<p><u>Summary of provisions</u></p> <p>Clause 264 inserts new s 799E into the <i>Petroleum and Gas (Production and Safety) Act 2004</i>. This new section allows the entering of primary land for an abandoned operating plant, and also land adjacent to that primary land where an authorised person has no other</p>

⁸² Explanatory notes, p 14.

⁸³ Explanatory notes, p 14.

	<p>reasonably practicable way of entering the primary land without entering the adjacent land.</p> <p>Both the primary land and adjacent land for the abandoned operating plant may be entered by an authorised person to carry out remediation activities. If the carrying out of those remediation activities is necessary to preserve life or property, entry may be made at any time. If however those urgent circumstances are not present, entry can only be made after notice is given to the owner and any occupier.</p> <p>Under proposed s 799E, an authorised person is not permitted to enter a structure, or part of a structure, used for residential purposes, without the consent of the occupier. In addition, subsection (4) makes it clear that the authorised person may enter adjacent land only for the purpose of entering the primary land for an abandoned operating plant.</p> <p>There are obligations imposed by s 799G on an authorised person entering land to:</p> <ul style="list-style-type: none"> • not cause, or contribute to, unnecessary damage to any structure or works on the land, and • take all reasonable steps to ensure their entry causes as little inconvenience, and does as little other damage, as is practicable in the circumstances. <p>Proposed new s 799F sets out the requirements for the notice of entry, including that the authorised person must (under normal circumstances) give the owner and any occupier of the land prior notice of the entry before entering the land, advising the day on which entry is to be made, the purpose of the entry, including any remediation activities to be carried out if it is primary land, and advising that the authorised person is permitted under the Act to enter the land without consent or a warrant.</p> <p>Where entry was made, without prior notice, to carry out remediation activities necessary to preserve life or property, notice of the entry must be given to the owner and any occupier of the land, within 10 business days after the entry was made.</p> <p><u>Potential FLP issues</u></p> <p>Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer. The OQPC handbook provides that this principle supports a long established rule of common law that protects the property of citizens. Power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate. Strict adherence to the principle may not be required if the premises are business premises operating under a licence or premises of a public authority.</p> <p>The OQPC Notebook states:</p> <p style="padding-left: 40px;"><i>FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals.</i></p> <p>Residential premises should not be entered except with consent or under a warrant or in the most exceptional circumstances.</p> <p><u>Comment</u></p> <p>The amendments proposed by clause 264 will permit an authorised person to enter primary land for an abandoned operating plant, as well as adjacent land where such entry is necessary to enable access to the primary land and abandoned operating plant.</p> <p>Entry must be made for the purposes of carrying out remediation activities and only after prior notice is given to the owner and any occupier of the land to be entered, except where</p>
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	<p>remediation activities are necessary to preserve life or property, in which circumstances entry may be made at any time.</p> <p>Given that the entry (without requiring consent) is to land, rather than residential premises, and is only for the purposes of carrying out remediation activities to an abandoned operating plant under the <i>Petroleum and Gas (Production and Safety) Act 2004</i> it might be expected that the entry might often not necessarily have a direct practical impact on an owner or occupier.</p> <p>At the same time, there is potential for inconvenience or damage - if for example the land being entered or crossed was being used for another purpose (such as growing crops) or where the movement of vehicles to the abandoned operating plant for the rehabilitation activities impeded the free passage of other vehicles to or from the primary or adjacent lands.</p> <p>As noted above, all reasonable steps must be taken to ensure that any entry causes as little inconvenience and damage as practicable in the circumstances.</p> <p><u>Comment</u></p> <p>The committee is satisfied that any potential breach of the FLP is warranted and adequately addressed by safeguards in the Bill, noting the limited circumstances for entry, the notice requirements for entry in non-emergency situations, the obligation to minimise inconvenience and damage, and the fact that entry is to land rather than residential premises.</p>
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Clause	57, 58, 63, 64 and 203
FLP issue	<p>Protection against self-incrimination – Section 4(3)(f) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill provide appropriate protection against self-incrimination?</p>
Comment	<p><u>Summary of provisions</u></p> <p>Clause 57 proposes to amend section 59 of the <i>Explosives Act 1999</i>. Section 59 applies if an inspector asks a person a question about an explosives incident, requiring the person to answer the question, unless there is a reasonable excuse. Clause 57 proposes to omit section 59(3), which provides that it is a reasonable excuse for an individual to not answer the question, if answering the question might tend to incriminate the individual or make the individual liable to a penalty.</p> <p>Clause 58 proposes to insert new sections 59A and 59B into the <i>Explosives Act 1999</i>.</p> <p>Section 59A provides for the abrogation of the privilege against self-incrimination in relation to an explosives incident, if a person is required to answer a question under section 59. Under section 59A(2), a person is not excused from answering a question on the grounds that it might incriminate them or expose them to penalty. Section 59A(3) provides that the answer to a question (and other directly or indirectly derived evidence) is not admissible as evidence against the person in civil or criminal proceedings, other than proceedings arising out of the false or misleading nature of the answer.</p> <p>Section 59B states that it is not an offence for a person to refuse to answer a question on the ground the question might incriminate them, unless a warning was first given under section 59B(1)(b). Section 59B(3) states that nothing prevents an inspector from obtaining and using evidence provided voluntarily to the inspector.</p>

	<p>Clauses 63 and 64 propose to amend section 72 and insert new sections 74A and 74B, respectively. These proposed changes to the <i>Explosives Act 1999</i> are similar to those discussed immediately above.</p> <p>Section 72 of the <i>Explosives Act 1999</i> applies to witnesses who are required to attend an Inquiry into a serious explosive incident, in order to give evidence or produce particular documents or things to a board of Inquiry. The witness must not fail, without reasonable excuse, to answer a question the person is required to answer by a member of the board, or to produce a document or thing the person is required to produce.</p> <p>Clause 63 proposes to omit section 72(3), which provides that it is a reasonable excuse for to not answer the question or produce the document or thing, if it might incriminate the individual or make the individual liable to a penalty.</p> <p>Proposed sections 74A and 74B are drafted similarly to proposed sections 59A and 59B, except that they also apply to the production of a document or thing (not just to answering a question).</p> <p>Clause 203 proposes to amend the <i>Land Act 1994</i> to insert new Chapter 6A 'Investigation and enforcement', including:</p> <ul style="list-style-type: none"> • Part 4, Division 2 'General powers of authorised officers after entering places', including proposed section 390ZE, which provides for a 'help requirement' • Part 4, Division 5 'Other information-obtaining powers of authorised officers', including proposed section 390ZW, which provides for a 'document production requirement' and a 'document certification requirement'. <p>Section 390ZF(1) requires a person of whom a help requirement has been made, to comply with the requirement, unless there is a reasonable excuse. Under subsection (2), it is a reasonable excuse for a person to fail to comply, if that complying might incriminate the person or expose the person to penalty. However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the individual under the <i>Land Act 1994</i> (subsection (3)).</p> <p>Section 390ZX(1) requires a person of whom a document production requirement has been made, to comply with the requirement, unless there is a reasonable excuse. Under subsection (2), it is not a reasonable excuse for a person to fail to comply, on the basis that complying might incriminate the person or expose the person to penalty.</p> <p>Subsection (3) requires the authorised officer to inform the person in a reasonable way:</p> <ul style="list-style-type: none"> • that the person must comply, even though complying might incriminate the person or expose the person to a penalty, and • if the person is an individual, of the limited immunity under section 390ZZJ. <p>If the person fails to comply in circumstances where the authorised officer has failed to comply with subsection (3), the person may not be convicted of the offence against subsection (1). If a court convicts a person of the offence, it may, as well as imposing a penalty, order the person to comply with the document production requirement (subsection (5)).</p> <p>Proposed section 390ZY of the <i>Land Act 1994</i> contains similar provisions as section 390ZX, except the former applies to a person of whom a document certification requirement has been made and it does not contain a provision similar to section 390ZX(5).</p> <p>Clause 203 proposes to insert new section 390ZZJ 'Evidential immunity for individuals complying with particular requirements' in the <i>Land Act 1994</i>. In relation to an individual who gives or produces information or a document to an authorised officer under section</p>
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	<p>390ZE⁸⁴ or 390ZW⁸⁵, evidence of that information or document (and other directly or indirectly derived evidence) is not admissible against the individual in any proceeding, to the extent it incriminates the individual or exposes the individual to a penalty in the proceeding.</p> <p>Section 390ZZJ(3) provides that this evidential immunity does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.</p> <p><u>Potential FLP issues</u></p> <p>Legislation should provide appropriate protection against self-incrimination.⁸⁶</p> <p>The OQPC Notebook states that:</p> <p><i>... this principle has as its source the long established and strong principle of common law that an individual accused of a criminal offence should not be obliged to incriminate himself or herself.⁸⁷</i></p> <p>In relation to the proposed amendments to the <i>Explosives Act 1999</i>, the explanatory notes state:</p> <p><i>Excusing persons from answering questions can mean that necessary information showing why an explosives incident occurred might not be revealed. This information might be necessary to help stop a similar incident in the future and is particularly important given the potential for death or injury or damage to property from the misuse of explosives. Similar provisions removing the excuse to not answer questions also exist in other mining Acts as well as the Work Health and Safety Act 2011. However, as provided for in these other Acts, any information or document or other evidence received under this section will not be admissible as evidence against the person, other than proceedings arising out of the false or misleading nature of the answer, information or document.⁸⁸</i></p> <p>In relation to the proposed amendments to the <i>Land Act 1994</i>, the explanatory notes state:</p> <p><i>The Bill provides for an authorised officer to require a person to provide documents. It is not a reasonable excuse for a person to fail to comply with a document production requirement where compliance might tend to incriminate a person. The exercise of this power is limited to documents which are issued to a person under the Land Act or required to be kept under the Land Act and as such it is not unreasonable that the privilege against self-incrimination is abrogated in these circumstances.</i></p> <p><i>Further, evidential immunity is conferred by new section 390ZZJ which provides that evidence of the information or document, and other evidence directly or indirectly derived from the information or documents, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual or expose the individual to a penalty. This derivative use immunity legally protects a</i></p>
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⁸⁴ As discussed above, proposed section 390ZE provides for a 'help requirement'.

⁸⁵ As discussed above, proposed section 390ZW provides for a 'document production requirement' and a 'document certification requirement'.

⁸⁶ *Legislative Standards Act 1992*, s 4(3)(f).

⁸⁷ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 52.

⁸⁸ Explanatory notes, p 10.

	<p><i>person from the use against the person notwithstanding the limited loss of the privilege against self-incrimination.</i></p> <p><i>New section 390ZE provides a power for an authorised officer to require an occupier at a place to give an authorised officer reasonable help to exercise a general power. It is also an offence for a person to contravene such a requirement. Generally, self-incrimination is a reasonable excuse for non-compliance with the help requirement however this protection is justifiably abrogated where a document or information the subject of the help requirement is required to be held or kept by the person under the Land Act. Again, the derivative use immunity provided by 390ZZJ would apply.⁸⁹</i></p> <p>In its submission on the Bill, the Queensland Law Society reiterated its views on the proposed amendments to the <i>Land Act 1994</i> (as it had expressed in its earlier submission on the 2017 Bill):</p> <p><i>QLS finds these clauses very concerning as they abrogate the right for a person to claim privilege against self-incrimination. The limited protection against derivative use evidence provided in these sections is not strong enough to alleviate our concerns.</i></p> <p><i>Any breach of a fundamental right, such as the right to claim privilege against self-incrimination, should be a last resort. Fundamental rights of this nature underpin the rule the law and the justice system as a whole... Over the past 20 years, and in several recent Queensland bills, there has been a trend to introduce legislation across the country which abrogates fundamental rights, more often than not, relating to the abrogation of self-incrimination privilege. If legislation of this nature continues to be implemented at its current rate the right, the ability to claim privilege against self-incrimination will cease to exist within our justice system.</i></p> <p><i>The Explanatory Notes suggest that the effect of section 390ZZJ is that information obtained cannot then be used in any proceeding to the extent that it tends to incriminate the individual or expose the individual to a penalty...</i></p> <p><i>QLS considers that this is insufficient justification for abrogating this right. QLS also considers there is no other justification provided in the Explanatory Notes which justifies the abrogation of this critical and fundamental right of our legal system. ...this is a concerning trend, particularly in the context of legislation which purports to regulate land use rather than serious criminal activity. QLS notes that it has made similar comments on this issue in recent submissions on... bills...</i></p> <p><i>Given the context in which a person is required to provide the information, it is also unlikely that he or she will seek legal advice in relation to the consequences of providing this information. This is also concerning as it could easily lead to an individual inadvertently losing or waiving rights and privileges to which they are entitled.⁹⁰</i></p> <p>The Queensland Law Society suggested that:</p> <p><i>The policy objective could be achieved in an alternative way:</i></p>
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⁸⁹ Explanatory notes, p 15.

⁹⁰ Submission 2, p 1, referencing prior submission to the Land, Explosives and Other Legislation Amendment Bill 2017, Submission 3, pp 4-5.

	<ul style="list-style-type: none"> • <i>the investigating officer should be required to obtain a warrant to search the premises to seize the information required - this will ensure that there is independent magisterial oversight of the process; or</i> • <i>the person can be requested to provide the information with a warning that if they fail to provide the information voluntarily, the court may subsequently draw an adverse inference against the person with respect to the lack of evidence provided.</i> <p><i>Any provision that requires a person to provide information should include that it is a reasonable excuse for the person to refuse to provide the information if the information could incriminate the person.⁹¹</i></p> <p><u>Comment</u></p> <p>The committee notes the significant fundamental legislative principle issues and the concerns raised by the Queensland Law Society. The committee makes a recommendation in regard to this matter.</p> <p><u>Explosives Act 1999</u></p> <p>The proposed amendments to the <i>Explosives Act 1999</i> abrogate the privilege against self-incrimination:</p> <ul style="list-style-type: none"> • where an inspector asks a person a question about an explosives incident, and • for witnesses who are required to attend an Inquiry into a serious explosive incident, in order to give evidence or produce particular documents or things to a board of Inquiry. <p>The committee notes that abrogation of the right might assist in preventing death, injury or destruction of property and that similar provisions exist in existing legislation. The information and evidence obtained is also limited in how it might be used in proceedings against the person. The committee makes a recommendation in regard to this matter.</p> <p><u>Land Act 1994</u></p> <p>The committee notes that proposed section 390ZZJ of the <i>Land Act 1994</i> provides a limited, derivative use immunity to persons of whom a help requirement, document production requirement or a document certification requirement has been made. The committee makes a recommendation in regard to this matter.</p>
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Clause	271 and 272
FLP issue	<p>Immunity from proceedings – Section 4(3)(h) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill confer immunity from proceeding or prosecution without adequate justification?</p>
Comment	<p><u>Summary of provisions</u></p> <p>Clauses 271 and 272 amend sections 851A and 856 respectively of the <i>Petroleum and Gas (Production and Safety) Act 2004</i> (PGPSA). They add further circumstances in which no liability is incurred under those provisions.</p>

⁹¹ Submission 2, p 1, referencing prior submission to Land, Explosives and Other Legislation Amendment Bill 2017, submission 3, p 5.

	<p>Section 851A provides that the minister, chief executive, commissioner or chief inspector may make or issue a public statement identifying and giving information about:</p> <ul style="list-style-type: none"> • the commission of offences against the PGPSA and the persons who commit the offences • investigations conducted under the PGPSA, and • actions taken by inspectors or authorised officers to enforce the PGPSA. <p>The statement may identify particular offences and persons (s 851A(2)), but a public statement must not be issued under the section unless it is in the public interest to do so (s 851A(3)).</p> <p>The amendments to s 851A provide:</p> <ul style="list-style-type: none"> • no liability is incurred by the State for anything done in good faith for the purpose of issuing a public statement under the section, and • no liability is incurred by a person for publishing, in good faith, information that has been included in a public statement under the section. <p>The amendments specify that 'liability' includes liability in defamation.</p> <p>Section 856(1) provides that a designated person (listed in the section) does not incur civil liability for an act done, or omission made, honestly and without negligence under the Act. Subsection (3) provides that where subsection (1) prevents a civil liability attaching to a designated person, the liability attaches instead to the State.</p> <p>The amendment to s 856 adds to the list of persons protected from liability <i>an authorised person carrying out remediation activities under chapter 10, part 3</i>.</p> <p><u>Potential FLP issues</u></p> <p>Legislation should not confer immunity from proceeding or prosecution without adequate justification. The OQPC Notebook states:</p> <p><i>...a person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence. If liability is removed it is usually shifted to the State.</i></p> <p>The SLC stated that one of the fundamental principles of law is that everyone is equal before the law, and each person should therefore be fully liable for their acts or omissions. The SLC also recognised that conferral of immunity is appropriate in certain situations.</p> <p><u>Comment</u></p> <p>The committee notes that the amendments made by clause 271 to s 851A cover actions done in good faith for the purpose of issuing a public statement; or the publishing, in good faith, of information that has been included in a public statement.</p> <p>The explanatory notes advise that the amendments mean that the minister, chief executive, commissioner and chief inspector will not be liable for any loss or damage caused by the release of information in good faith.</p> <p>Thus, providing they have acted in good faith, a designated person may, with immunity, make or issue a public statement about the commission of offences against the PGPSA and the persons who commit the offences, and any investigations conducted, or enforcement</p>
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	<p>actions taken, under the PGPSA. Such a statement may only be issued if the designated person considers it is in the public interest to do so.</p> <p>This might mean that a person or company is named in a public statement as being a 'person of interest' in the conduct of an investigation or that a person or company may be named as having committed an offence against the PGPSA. There could potentially be a person named in a public statement as having breached the Act or committed an offence, before that person has been the subject of a formal judicial process. Such an action could potentially, depending on the level of due process provided and whether the person had been given ample opportunity to answer to any allegations, amount to a denial of natural justice.</p> <p>Section 856 shifts liability from designated officials (which includes the Minister, chief executive, commissioner or chief inspector) and employees/contractors etc (provided they acted honestly and without negligence) to the State, thereby giving aggrieved persons an appropriate defendant to any civil action they wish to bring.</p> <p>It is generally appropriate that public officers not be personally liable for actions done by them honestly and without negligence in the course of performing their duties. It is also appropriate that, in such circumstances, liability be shifted to the State, as the officer's employer, to provide an appropriate avenue for redress for persons aggrieved by the actions or omissions of the public servant or statutory officer.</p>
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Clause	8, 9, 12, 14, 303, 304, 307 and 309
FLP issue	<p>Aboriginal tradition and Island custom – Section 4(3)(j) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill have sufficient regard to Aboriginal tradition and Island custom?</p>
Comment	<p><u>Summary of provisions</u></p> <p>Section 40 'Appointment of grantee to hold land for benefit of Aboriginal people' of the <i>Aboriginal Land Act 1991</i> applies if the minister does not appoint, under section 39, a Registered Native Title Body Corporate (RNTBC) as the grantee of land (subsection (1)).</p> <p>Subsection (2) provides that the minister may appoint as grantee of the land a CATSI corporation⁹² that is qualified to hold the land or a land trust.</p> <p>Clause 8 proposes to amend section 40(3) to provide that the minister may appoint a CATSI corporation that is a RNTBC as the grantee of the land under subsection (2) only if:</p> <ul style="list-style-type: none"> (a) under the Commonwealth Native Title Act, a determination has been made that native title exists in relation to all or a part of the land and the CATSI corporation is the RNTBC for the determination, or (b) a determination has not been made under the Commonwealth Native Title Act that native title exists in relation to all or a part of the land, but the minister is satisfied it is appropriate in all the circumstances to appoint the CATSI corporation as the grantee of the land. <p>Clause 8 provides the following examples of when it is appropriate to appoint the CATSI corporation as the grantee of the land:</p>

⁹² The *Aboriginal Land Act 1991* defines 'CATSI corporation' to mean a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth).

	<ul style="list-style-type: none"> • The appointment of the CATSI corporation is supported by consultation with Aboriginal people particularly concerned with the land. • The land is within the external boundaries of an area of land the subject of a native title determination and the CATSI corporation is the registered native title body corporate for the determination. • An ILUA⁹³ has been entered into for the land and the CATSI corporation is nominated in the ILUA as the proposed grantee for the land under this Act. • Anthropological research supports the CATSI corporation as being the appropriate grantee. <p>Clause 9 proposes to amend section 93 'Transfer to entity to hold for benefit of Aboriginal people' to allow for the transfer of Aboriginal land (which is vested in the State) to a RNTBC where there has been no determination that native title exists in relation to all or a part of the land.</p> <p>Clauses 12 and 14 propose to amend sections 106 and 111 'Minister's approval to transfer', respectively, to enable the minister to approve an application by a trustee (under sections 105 and 109, respectively) to transfer land to a RNTBC where there has been no determination that native title exists in relation to all or a part of the land.</p> <p>The amendments in clauses 9, 12 and 14 reflect the amendments in clause 8.</p> <p>Clauses 303, 304, 307 and 309 propose to amend the <i>Torres Strait Islander Land Act 1991</i> in substantially the same way as clauses 8, 9, 12 and 14 propose to amend the <i>Aboriginal Land Act 1991</i>. Clauses 303, 304, 307 and 309 refer to Torres Strait Islanders, rather than Aboriginal people.</p> <p><u>Potential FLP issues</u></p> <p>Legislation should have sufficient regard to Aboriginal tradition and Island custom.⁹⁴ This FLP has been considered to encompass the following considerations:</p> <ul style="list-style-type: none"> (i) legislation should be drafted to recognise Aboriginal and Islander customary law and to avoid unintended legislative impacts on traditional practices, and (ii) 'limited concession' to Aboriginal traditional Island custom was based on 'a recognition of the unique status of Aborigines and Torres Strait Islanders as Australia's indigenous peoples.'⁹⁵ <p>The proposed clauses raise the question of whether there has been sufficient regard to Aboriginal tradition and Island custom, including whether native title holders' rights and interests in the land may be negatively impacted.</p> <p>The explanatory notes state:</p> <p><i>... enabling a RNTBC to hold land outside of their determination area does not mean that they are the organisation which can make native title decisions for that land.</i></p> <p><i>Where no determination of native title has been made, then an Indigenous Land Use Agreement (ILUA) is made with the people claiming to hold native title and</i></p>
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⁹³ An Aboriginal Land Use Agreement (ILUA) is a voluntary agreement between a native title group and others about the use of land and waters.

⁹⁴ *Legislative Standards Act 1992*, s 4(3)(j).

⁹⁵ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 79.

	<p><i>goes through a more extensive notification and objection period prior to the National Native Title Tribunal registering the ILUA to ensure that the right people have had an opportunity to comment on the agreement.⁹⁶</i></p> <p>In relation to clause 8, the explanatory notes advise:</p> <p><i>It is up to the parties seeking the grant to the registered native title body corporate to provide evidence that it is appropriate to grant in the circumstances. However, the amendment provides examples of how the Minister could be satisfied that it is appropriate to appoint a registered native title body corporate as grantee to hold land where there has been no determination that native title exists. The examples are not a definitive list but simply indicative.⁹⁷</i></p> <p>In its submission, the Chuulangun Aboriginal Corporation commented on inconsistencies it detected with FLPs:</p> <p><i>Inconsistencies with FLPs is seen within the context of how these operate among the State, the Land Council and RNTBCs, which give insufficient regard to the rights and liberties of individuals, clan families, clan groups and tribal groups, and especially their traditional laws and customs and how these govern their rights and liberties. This can be clearly seen in how RNTBCs are developed and are fundamentally flawed as they do not address rights and liberties as defined by individual clans and clan families, and their individual traditional laws and customs, as they are required to do so under the NTA2. If retreat from FLPs is not designed and implemented properly, then that part of primary substantive rights that covers 'personal and group safety' will continue to be a detestable issue for many Traditional Custodians on Cape York. There are many cases where Aboriginal individuals and communities have suffered repression for their opposition to matters that impact them, and also to particular agendas to which they do not agree.⁹⁸</i></p> <p>The Chuulangun Aboriginal Corporation made the following response to the comment on page 8 of the explanatory notes, which have been reproduced above:</p> <p><i>...this is inadequate to address the potential breach of FLPs, as outlined in our previously expressed concerns. A requirement for free, prior and informed consent in the Bill, using traditional governance arrangements accepted by the Traditional Custodians of the subject land, may help to address this.⁹⁹</i></p> <p>The explanatory notes included the following content about consultation:</p> <p><i>Cape York Land Council and Queensland South Native Title Services support the amendment providing for the grant of land to Registered Native Title Bodies Corporate. Aboriginal Shire Councils were consulted and offered no objections.</i></p> <p><i>Targeted consultation was also undertaken with the Department of Aboriginal and Torres Strait Islander Partnerships and the Department of Housing and Public Works.¹⁰⁰</i></p>
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⁹⁶ Explanatory notes, p 8.

⁹⁷ Explanatory notes, p 26.

⁹⁸ Submission 11, p 5.

⁹⁹ Submission 11, p 5.

¹⁰⁰ Explanatory notes, pp 20-21.

	<p><u>Comment</u></p> <p>The committee considered the concerns of the Chuulangun Aboriginal Corporation in Section 2 of the report.</p>
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INSTITUTION OF PARLIAMENT

Clause	54
FLP issue	<p>Delegation of legislative power – Section 4(4)(a) <i>Legislative Standards Act 1992</i></p> <p>Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?</p>
Comment	<p><u>Summary of provisions</u></p> <p>Clause 54 of the Bill proposes to insert section 51A ‘Regulation may be made about particular matters’ into the <i>Explosives Act 1999</i>, which provides that a regulation may:</p> <ul style="list-style-type: none"> • make provision about the recognition of laws of other jurisdictions about transporting explosives (subsection (1)(a)), and • provide that the chief inspector may make a determination (decision) under the regulation about the safe and secure transport of an explosive (subsection (1)(b)). <p>Subsection (2) provides that the regulation may prescribe the process for making a determination (including the process for making and deciding an application for an administrative determination) or the effect the determination has on a provision of the regulation about transporting explosives. The regulation may also prescribe the process for amending, suspending or cancelling an administrative determination, or the information about a determination that must be kept publicly available.</p> <p>Subsection (3) defines the term ‘administrative determination’.</p> <p><u>Potential FLP issues</u></p> <p>Section 4(4)(a) of the <i>Legislative Standards Act 1992</i> provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons, which includes that matters of key importance should be dealt within the Bill itself.</p> <p>This matter is concerned with the level at which delegated legislative power is used. Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.</p> <p><u>Comment</u></p> <p>The committee notes that proposed section 51A provides for a regulation to be made about a potentially broad range of matters and important matters dealing with the transportation of explosives. It provides for delegated legislation to prescribe the process applicable to making a determination, including an administrative determination that applies to the applicant and others identified in the application.</p> <p>The committee notes that the section does not comment on review or appeal rights, which might result in the making of a regulation which potentially breaches the fundamental legislative principle that legislation not make rights and liberties, or obligations, dependent</p>

	<p>upon administrative power unless the power is sufficiently defined and subject to appropriate review.</p> <p>Any resulting regulation will be subject to Parliamentary scrutiny, being subject to the disallowance process, but it is a matter for the committee as to whether, on balance, it considers that clause 54 has sufficient regard to the institution of Parliament.</p> <p>Division 7, Subdivision 1, provides for the making and effect of determinations. Subdivision 2 provides a process for administrative determinations, including for applications for administrative determinations or amendments, the applicable decision and review process and provisions relevant to the amending, suspending or cancelling of administrative determinations.</p> <p>These proposed amendments to the Explosives Regulation 2017 generally do not appear to offend the fundamental legislative principles. However, the committee notes that the above comments in relation to proposed section 51A of the <i>Explosives Act 1999</i> remain relevant, as the proposed regulation-making powers appear broader than those reflected in the proposed amendments to the Explosives Regulation 2017.</p>
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The committee notes the significant number of proposed amendments in the Land, Explosive and Other Legislation Amendment Bill 2018 that potentially depart from fundamental legislative principles (FLPs). The committee acknowledges that the department, in the explanatory notes, has provided an explanation for these. However, the committee has received evidence to this Inquiry which has identified concerns in regard to the Petroleum and Gas (Production and Safety) Act 2004 - Clauses 265, 270, 286 and the Explosives Act 1999 - Clauses 57, 58, 63, 64 and 203. As such, the committee recommends that the Minister, in his second reading speech, respond to these concerns.

Recommendation 3

The committee recommends that the Minister, in his second reading speech, respond to the matters identified in the report in relation to:

- *Petroleum and Gas (Production and Safety) Act 2004* - Clauses 265, 270, 286 - Onus of proof
- *Explosives Act 1999* - Clauses 57, 58, 63, 64 and 203 - Protection against self-incrimination

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* 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 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. However, it would be helpful if the explanatory notes identified the specific clauses being discussed, when identifying the fundamental legislative principles.

3.3 Table 1 – proposed new or amended offence provisions

Clause	Offence	Proposed maximum penalty
41	<p>Insertion of new s 26A</p> <p>Part 3, division 2, subdivision 3— insert—</p> <p>26A Surrender of explosives</p> <p>(1) This section applies to a person whose authority is suspended or cancelled under this division.</p> <p>(2) The person must immediately arrange with an inspector to give to an inspector any explosives the person has, as soon as practicable, but no later than 1 day, after the suspension or cancellation takes effect, unless the person has a reasonable excuse.</p> <p>Maximum penalty—40 penalty units.</p> <p>(3) The person must comply with the arrangement under subsection (2), unless the person has a reasonable excuse.</p> <p>Maximum penalty—100 penalty units.</p>	<p>40 penalty units</p> <p>100 penalty units</p>
45	<p>Insertion of new s 30A</p> <p>After section 30— insert—</p> <p>30A Reporting loss, destruction or theft of authorities and security clearances</p> <p>(1) This section applies if an authority or security clearance is lost, destroyed or stolen.</p> <p>(2) The holder of the authority or security clearance must immediately notify the chief inspector or an authorised officer, as required by subsection (3), about the loss, destruction or theft.</p> <p>Maximum penalty—50 penalty units.</p> <p>(3) The notification may be given—</p> <p>(a) by notice in the approved form; or</p> <p>(b) orally.</p> <p>(4) If the notification is given orally, the holder of the authority or security clearance must also give the chief inspector or an authorised officer notice in the approved form within 7 days after the loss, destruction or theft.</p>	<p>50 penalty units</p>

	Maximum penalty—50 penalty units.	50 penalty units
48	<p>Replacement of s 33 (Employer's obligation about employees)</p> <p>Section 33— omit, insert—</p> <p>33 Employers' obligations about employees</p> <p>(1) An employer must not allow an employee to have access to an explosive unless—</p> <ul style="list-style-type: none"> (a) the employee is the age prescribed by regulation; and (b) for an employer who holds a security sensitive authority— <ul style="list-style-type: none"> (i) the employee holds a security clearance; or (ii) the access is within the course of the employee's employment and in the presence, and under the direct supervision, of a person who holds a security clearance. <p>Maximum penalty—50 penalty units.</p> <p>(2) Before an employer asks or allows an employee to carry out an activity involving the handling of explosives, the employer must be reasonably satisfied the employee has the qualifications, experience and expertise prescribed by regulation for the carrying out of the activity.</p> <p><i>Note—</i></p> <p>See also section 23(1)(h).</p>	50 penalty units
55	<p>Replacement of ss 55 and 56</p> <p>Sections 55 and 56— <i>omit, insert—</i></p> <p>55 Meaning of <i>relevant person</i></p> <p>A <i>relevant person</i>, for explosives involved in an explosives incident, means—</p> <ul style="list-style-type: none"> (a) if a person other than the holder of the authority for the explosives was in custody or control of the explosives at the time of the incident—that person; or (b) otherwise—the holder of the authority for the explosives. <p>56 Notification of explosives incidents</p> <p>(1) The relevant person for explosives involved in an explosives incident must immediately after the incident notify the chief inspector of the incident—</p> <ul style="list-style-type: none"> (a) by giving the chief inspector notice in the approved form; or 	

	<p>(b) orally.</p> <p>Maximum penalty—170 penalty units.</p> <p>(2) If the notification is given orally, the relevant person must also give the chief inspector notice in the approved form within 48 hours after the incident.</p> <p>Maximum penalty—50 penalty units.</p>	<p>170 penalty units</p> <p>50 penalty units</p>
55	<p>56A Isolation of site of explosives incidents</p> <p>(1) This section applies if an inspector reasonably believes it is necessary to preserve evidence after an explosives incident happens.</p> <p>(2) The inspector may isolate the site of the explosives incident to prevent interference with the site.</p> <p>(3) Also, the inspector may, by written notice given to the relevant person for the explosives or orally, require the relevant person to do the following—</p> <p>(a) mark the boundaries of the site by signs or other means in a way that—</p> <p>(i) identifies the site as the site of an explosives incident; and</p> <p>(ii) prohibits entry to the site;</p> <p>(b) remain at the site for a reasonable stated time.</p> <p>(4) If the requirement is given orally under subsection (3), the chief inspector must also, as soon as practicable, give the relevant person a written notice confirming the requirement.</p> <p>(5) The relevant person must comply with the requirement.</p> <p>Maximum penalty for subsection (5)—200 penalty units.</p>	<p>200 penalty units</p>
65	<p>Amendment of s 75 (Contempt of board)</p> <p>(1) Section 75—</p> <p><i>insert—</i></p> <p>(ba) impede or obstruct the board in the exercise of its powers; or</p> <p>(2) Section 75, penalty—</p> <p><i>omit, insert—</i></p> <p>Maximum penalty—200 penalty units.</p> <p>(3) Section 75(ba) to (d)—</p> <p>renumber as section 75(c) to (e).</p>	<p>200 penalty points</p>
67	<p>Insertion of new ss 90A–90C</p> <p>After section 90—</p>	

	<p><i>insert—</i></p> <p>90B Powers to support seizure</p> <p>(1) To enable a thing to be seized, an inspector may require a person the inspector reasonably believes is in control of the thing or a place of seizure for the thing—</p> <p>(a) to both—</p> <p>(i) take it to a stated reasonable place by a stated reasonable time; and</p> <p>(ii) if necessary, remain in control of it at the stated place for a reasonable time; or</p> <p>(b) to do an act mentioned in section 90A(2)(a) or (b) or anything else an inspector could do under section 90A(1)(a).</p> <p>(2) The requirement—</p> <p>(a) must be made by written notice; or</p> <p>(b) if for any reason it is not practicable to give written notice, may be made orally and confirmed by written notice as soon as practicable.</p> <p>(3) A person must comply with a requirement made of the person under subsection (1) unless the person has a reasonable excuse.</p> <p>Maximum penalty for subsection (3)—100 penalty units.</p>	100 penalty units
67	<p>90C Offence to interfere</p> <p>(1) If access to a seized thing is restricted under section 90A, a person must not tamper with the thing or with anything used to restrict access to the thing without—</p> <p>(a) an inspector's approval; or</p> <p>(b) a reasonable excuse.</p> <p>Maximum penalty—100 penalty units.</p> <p>(2) If access to a place is restricted under section 90A, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—</p> <p>(a) an inspector's approval; or</p> <p>(b) a reasonable excuse.</p> <p>Maximum penalty—100 penalty units.</p>	<p>100 penalty units</p> <p>100 penalty units</p>
71	<p>Replacement of s 99 (False or misleading statements to inspector)</p> <p>Section 99—</p> <p><i>omit, insert—</i></p>	

	<p>99 False or misleading information</p> <p>(1) A person must not, in relation to the administration of this Act, give an inspector or authorised officer information the person knows is false or misleading in a material particular.</p> <p>Maximum penalty—20 penalty units.</p> <p>(2) Subsection (1) does not apply to a person if the person, when giving information in a document—</p> <p>(a) tells the inspector or authorised officer, to the best of the person’s ability, how the document is false or misleading; and</p> <p>(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.</p>	20 penalty units
71	<p>99A Person not to encourage or influence refusal to answer questions</p> <p>(1) A person must not encourage or influence, or attempt to encourage or influence, another person to refuse to answer questions asked of the person by an inspector or authorised officer.</p> <p>Maximum penalty—40 penalty units.</p> <p>(2) To remove any doubt, it is declared that subsection (1) does not apply to the provision of legal advice to a person by a lawyer.</p>	40 penalty units
74	<p>Insertion of new s 105AA</p> <p>Part 6, division 2, subdivision 6—</p> <p><i>insert—</i></p> <p>105AA Impersonating inspectors or authorised officers</p> <p>A person must not impersonate an inspector or an authorised officer.</p> <p>Maximum penalty—100 penalty units.</p>	100 penalty units
76	<p>Insertion of new pt 6, div 2A</p> <p>Part 6—</p> <p><i>insert—</i></p> <p>Division 2A Authorised officers</p> <p>105G Authorised officer’s identity card</p> <p>(1) The chief inspector must give each authorised officer an identity card.</p> <p>(2) The identity card must—</p> <p>(a) contain a recent photo of the authorised officer; and</p> <p>(b) be signed by the authorised officer; and</p>	

	<p>(c) identify the person as an authorised officer under this Act; and</p> <p>(d) state an expiry date for the card.</p> <p>(3) A person who stops being an authorised officer must return the person's identity card to the chief inspector as soon as possible (but within 21 days) after the person stops being an authorised officer, unless the person has a reasonable excuse.</p> <p>Maximum penalty—20 penalty units.</p> <p>(4) This section does not prevent the giving of a single identity card to a person for this Act and other Acts or for other purposes.</p>	20 penalty units
91	<p>Insertion of new pt 10, div 6</p> <p>Part 10—</p> <p><i>insert—</i></p> <p>Division 6 Transitional provisions for Land, Explosives and Other Legislation Amendment Act 2018</p> <p>150 Particular authority holders taken to hold security clearances</p> <p>(1) This section applies in relation to a security sensitive authority that—</p> <p>(a) was in effect immediately before the commencement; or</p> <p>(b) is given after the commencement for an existing application.</p> <p>(2) If the holder of the security sensitive authority is an individual, the holder is, on the relevant day, taken to be the holder of a security clearance.</p> <p>(3) If the holder of the security sensitive authority is a corporation other than a listed corporation, each executive officer of the corporation is taken, on the relevant day, to be the holder of a security clearance.</p> <p>(4) If the holder of the security sensitive authority is a partnership, each partner is taken, on the relevant day, to be the holder of a security clearance.</p> <p>(5) Subsections (6) and (7) apply if the holder of the security sensitive authority is a listed corporation.</p> <p>(6) Within 2 months after the relevant day, the listed corporation must, by written notice given to the chief inspector, nominate an executive officer or employee of the corporation as the responsible person for the corporation for matters relating to explosives.</p> <p>Maximum penalty—50 penalty units.</p> <p>(7) On the day the nomination is received by the chief inspector, the responsible person for the listed corporation is taken to be the holder of a security clearance.</p>	50 penalty units

	<p>(8) Despite section 12E, a security clearance mentioned in subsection (2), (3), (4) or (7) expires on the earlier of the following—</p> <ul style="list-style-type: none"> (a) the day the security sensitive authority expires or is cancelled or surrendered or, if the authority is renewed, the day the renewed authority expires or is cancelled or surrendered; (b) the day that is 5 years after the security clearance takes effect. <p>(9) In this section—</p> <p style="padding-left: 40px;">relevant day means—</p> <ul style="list-style-type: none"> (a) in relation to an authority that was in effect immediately before the commencement— the day this section commences; or (b) in relation to an authority given after the commencement for an existing application—the day the authority takes effect. 	
96	<p>Insertion of new pt 2B</p> <p>After section 18—</p> <p><i>insert—</i></p> <p>Part 2B Security clearances</p> <p>18B Notification requirements for security clearance holders</p> <p>(1) This section applies if any of the following events (each a notifiable event) happens during the term of a security clearance—</p> <ul style="list-style-type: none"> (a) the holder of the security clearance is, in Queensland or elsewhere, convicted of or charged with a relevant offence; (b) the holder of the security clearance is named as the respondent in a domestic violence order or police protection notice; (c) release conditions are imposed on the holder of the security clearance under the <i>Domestic and Family Violence Protection Act 2012</i>, section 125; (d) the holder of the security clearance becomes aware of another change in circumstances that affects the holder's suitability to continue to hold the security clearance; <p><i>Example for paragraph (d)—</i></p> <p>a change in the holder's mental health</p> <ul style="list-style-type: none"> (e) the name or address of the holder of the security clearance changes. <p>(2) The holder of the security clearance must, as soon as practicable after the holder becomes aware the notifiable</p>	

	<p>event has happened, give the chief inspector a notice about the event, unless the holder has a reasonable excuse.</p> <p>Maximum penalty—</p> <p>(a) for a notifiable event mentioned in subsection (1)(d)—50 penalty units; or</p> <p>(b) for a notifiable event mentioned in subsection (1)(e)—20 penalty units; or</p> <p>(c) otherwise—200 penalty units.</p>	<p>50 penalty units</p> <p>20 penalty units</p> <p>200 penalty units</p>
105	<p>Amendment of s 43 (Notification requirements for all authority holders)</p> <p>(1) Section 43(1)(a), example, 'or mental'— <i>omit.</i></p> <p>(2) Section 43(1)(b) and (c)— <i>omit.</i></p> <p>(3) Section 43(1)(e)— <i>omit, insert—</i></p> <p>(e) if the holder of the authority is a corporation—</p> <p>(i) there is a change to the corporation's executive officers; or</p> <p>(ii) the corporation becomes an externally administered corporation;</p> <p>(f) if the holder of the authority is a corporation other than a listed corporation—there is a change to the corporation's shareholders;</p> <p>(g) if the authority is not a security sensitive authority or the holder of the authority is a corporation—the holder is, in Queensland or elsewhere, convicted of or charged with an offence involving a prescribed activity.</p> <p>(4) Section 43(1)(d) to (g)— renumber as section 43(1)(b) to (e).</p> <p>(5) Section 43(2), from 'becoming' to 'unless'— <i>omit, insert—</i></p> <p>the holder becomes aware the prescribed event has happened, give the chief inspector a notice about the event, unless</p> <p>(6) Section 43(2), penalty, paragraph (a)— <i>omit, insert—</i></p> <p>(a) for a prescribed event mentioned in subsection (1)(b)(i) or (ii)—20 penalty units; or</p> <p>(7) Section 43(3), definition <i>listed corporation</i>— <i>omit.</i></p>	<p>20 penalty units</p>

<p>106</p>	<p>Insertion of new s 43A</p> <p>After section 43—</p> <p><i>insert—</i></p> <p>43A Notification requirements for holders of security sensitive authorities</p> <p>(1) This section applies if any of the following events (each a prescribed event) happens during the term of a security sensitive authority—</p> <p>(a) if the holder of the authority is a listed corporation—</p> <p>(i) the responsible person for the corporation stops being employed or engaged by the corporation; or</p> <p>(ii) the responsible person for the corporation is, in Queensland or elsewhere, convicted of or charged with a relevant offence; or</p> <p>(iii) the responsible person for the corporation is named as the respondent in a domestic violence order or police protection notice; or</p> <p>(iv) release conditions are imposed on the responsible person for the corporation under the <i>Domestic and Family Violence Protection Act 2012</i>, section 125;</p> <p>(b) if the holder of the authority is a corporation other than a listed corporation—</p> <p>(i) an executive officer of the corporation is, in Queensland or elsewhere, convicted of or charged with a relevant offence; or</p> <p>(ii) an executive officer of the corporation is named as the respondent in a domestic violence order or police protection notice; or</p> <p>(iii) release conditions are imposed on an executive officer of the corporation under the <i>Domestic and Family Violence Protection Act 2012</i>, section 125.</p> <p>(2) The holder of the security sensitive authority must, as soon as practicable after the holder becomes aware the prescribed event has happened, give the chief inspector a notice about the event, unless the holder has a reasonable excuse.</p> <p>Maximum penalty—200 penalty units.</p>	<p>200 penalty units</p>
<p>108</p>	<p>Insertion of new pt 3, div 5A</p> <p>Part 3—</p> <p><i>insert—</i></p> <p>Division 5A Safety and security Requirements</p> <p>46A Requirement for safety and security management system</p>	

	<p>(1) This section applies to the holder of a prescribed authority if 1 or more employees of the holder carry out activities under the authority.</p> <p>(2) The holder of the authority must have and give effect to a safety and security management system that complies with subsections (3) and (4).</p> <p style="padding-left: 40px;">Maximum penalty—100 penalty units.</p> <p>(3) For subsection (2), the safety and security management system is to relate to—</p> <p style="padding-left: 40px;">(a) if a place is stated in the prescribed authority as a place at which an activity may be carried out under the authority—the place; or</p> <p style="padding-left: 40px;"><i>Examples of a place for paragraph (a)—</i></p> <ul style="list-style-type: none"> • an explosives factory • premises where explosives are stored <p style="padding-left: 40px;">(b) if an activity is carried out under the prescribed authority other than at a place mentioned in paragraph (a)—the activity.</p> <p style="padding-left: 40px;"><i>Examples of an activity for paragraph (b)—</i></p> <ul style="list-style-type: none"> • blasting activities carried out under a prescribed authority at various locations • transporting explosives <p>(4) The safety and security management system must include the following—</p> <p style="padding-left: 40px;">(a) a description of the holder’s safety and security policy;</p> <p style="padding-left: 40px;">(b) details of the organisational structure of the holder’s operations, including details of the personnel responsible for performing all the functions provided for under the system;</p> <p style="padding-left: 40px;">(c) a system procedure for each matter stated in schedule 3, part 1;</p> <p style="padding-left: 40px;">(d) an operational procedure for each matter stated in schedule 3, part 2 that applies to the place or activity to which the system applies;</p> <p style="padding-left: 40px;">(e) a security plan that complies with section 46C;</p> <p style="padding-left: 40px;">(f) an emergency response plan to manage risk to the safety and health of persons and the security of explosives in an emergency event;</p> <p style="padding-left: 40px;">(g) a process for ongoing consultation with employees and contractors of the holder who are engaged in carrying out activities under the prescribed authority, at least once in each month, about safety and security in relation to the activities.</p>	<p>100 penalty units</p>
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<p>108</p>	<p>46D Requirement to review security plan</p> <p>The holder of the prescribed authority must review the security plan—</p> <ul style="list-style-type: none"> (a) annually; and (b) if any of the following happens— <ul style="list-style-type: none"> (i) a change in the national counter terrorism alert level or level of risk; (ii) there is a loss of explosives; (iii) there is unauthorised entry, or attempted unauthorised entry, to the place where the explosives are stored; (iv) an explosives stock discrepancy cannot be reconciled with records kept by the holder; (v) an explosive has been stolen; (vi) an explosive has been fraudulently obtained; (vii) an explosive or an explosive facility has been intentionally damaged; (viii) information kept by the holder in relation to explosives has been lost or stolen; (ix) an explosive has been accessed by a person who should not have access to the explosive; (x) an explosive has been sold and has not been delivered by the expected delivery day. <p>Maximum penalty—100 penalty units.</p>	<p>100 penalty units</p>
<p>115</p>	<p>Amendment of s 76 (Persons to whom explosives may be supplied)</p> <p>Section 76, penalty—</p> <p><i>omit, insert—</i></p> <p>Maximum penalty—100 penalty units.</p>	<p>100 penalty units</p>
<p>127</p>	<p>Replacement of s 116 (Entry to government magazine)</p> <p>Section 116—</p> <p><i>omit, insert—</i></p> <p>116A Entry to areas within government magazines</p> <p>(1) The manager of a government magazine or an inspector may direct a person not to enter an area within a government magazine if the manager or inspector considers the direction is reasonably necessary to ensure—</p>	

	<p>(a) the safety of the person or another person; or</p> <p>(b) the security of an explosive at the magazine from access by a person who should not have access to the explosive.</p> <p>(2) A person given a direction under subsection (1) must comply with the direction.</p> <p>Maximum penalty—50 penalty units.</p> <p>(3) The manager of a government magazine or an inspector may take reasonable steps to remove a person from an area within a government magazine if the person entered the area in contravention of a direction given to the person under subsection (1).</p>	50 penalty units
138	<p>Insertion of new s 138A</p> <p>Part 9, division 3—</p> <p><i>insert—</i></p> <p>138ALicence must be available for inspection</p> <p>The holder of an explosives driver licence must, unless the holder has a reasonable excuse—</p> <p>(a) have the licence available for inspection when driving a vehicle to transport explosives; and</p> <p>(b) if asked by an inspector, produce the licence for inspection by the inspector.</p> <p>Maximum penalty—20 penalty units.</p>	20 penalty units
142	<p>Insertion of new pt 9, divs 6 and 7</p> <p>Part 9—</p> <p><i>insert—</i></p> <p>Division 7 Determinations</p> <p>Subdivision 1 Making and effect of determinations</p> <p>145C Offences relating to determinations</p> <p>(1) If a determination permits the doing of something subject to a condition, a person to whom the determination applies must, if the person does the thing, comply with the condition.</p> <p>Maximum penalty—40 penalty units.</p> <p>(2) If a determination prohibits the doing of something, a person to whom the determination applies must not do the thing.</p> <p>Maximum penalty—100 penalty units.</p> <p>(3) If a determination requires the doing of something, a person to whom the determination applies must do the thing.</p> <p>Maximum penalty—100 penalty units.</p> <p>(4) It is a defence to a prosecution for an offence against this section that the person did not know, and could not reasonably</p>	<p>40 penalty units</p> <p>100 penalty units</p> <p>100 penalty units</p>

	have been expected to know, of the determination, or that the determination applied to the person.	
163	<p>Replacement of ss 18–21</p> <p>Sections 18 to 21— <i>omit, insert—</i></p> <p>19 Notification of ceasing to be a foreign person</p> <p>(1) Subsection (2) applies if—</p> <p>(a) the legal estate of an interest in land is registered in the register, or recorded in the records of a relevant registering authority, in the name of a foreign person; and</p> <p>(b) the person ceases to be a foreign person.</p> <p>(2) The person must complete, and lodge with the registrar, a notification, in the prescribed form, in relation to the cessation not later than 90 days after the day on which the person ceases to be a foreign person.</p> <p>Maximum penalty—20 penalty units.</p>	20 penalty units
184	<p>Insertion of new ch 5, pt 2, div 6</p> <p>Chapter 5, part 2— <i>insert—</i></p> <p>Division 6 Compliance notices</p> <p>214J Failure to comply with compliance notice</p> <p>(1) A person to whom a compliance notice is given under this division must comply with the notice unless the person has a reasonable excuse.</p> <p>Maximum penalty—400 penalty units.</p> <p>(2) If a person is convicted of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, make—</p> <p>(a) an order (a compliance order) that the person comply with all or part of the compliance notice within a stated period; and</p> <p>(b) any other orders the court considers appropriate.</p> <p>(3) Without limiting subsection (2)(b), if the compliance notice requires the person to remove a thing from the land to which the person's permit relates, the court may order that the thing be forfeited to the State if the person fails to remove the thing within the period stated in the compliance order.</p>	400 penalty units
203	<p>Insertion of new ch 6A</p> <p>After chapter 6—</p>	

	<p><i>insert—</i></p> <p>Chapter 6A Investigation and Enforcement</p> <p>Part 2 General provisions about authorised officers</p> <p>Division 2 Identity cards</p> <p>390K Return of identity card</p> <p>If the office of a person as an authorised officer ends, the person must return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse.</p> <p>Maximum penalty—10 penalty units.</p>	10 penalty units
203	<p>Part 4 Other powers of authorised officers and related matters</p> <p>Division 1 Stopping or moving Vehicles</p> <p>390ZB Failure to comply with direction</p> <p>(1) The person in control of the vehicle must comply with a direction under section 390Z unless the person has a reasonable excuse.</p> <p>Maximum penalty—100 penalty units.</p> <p>(2) It is a reasonable excuse for the person not to comply with a direction if—</p> <p>(a) the vehicle was moving and the authorised officer did not comply with section 390ZA; or</p> <p>(b) to comply immediately would have endangered someone else or caused loss or damage to property, and the person complies as soon as it is practicable to do so.</p> <p>(3) Subsection (2) does not limit what may be a reasonable excuse for subsection (1).</p> <p>(4) A person does not commit an offence against subsection (1) if—</p> <p>(a) the direction the person fails to comply with is given under section 390Z(2); and</p> <p>(b) the person is not given an offence warning for the direction.</p>	100 penalty units
203	<p>Division 2 General powers of authorised officers after entering places</p> <p>390ZF Offence to contravene help requirement</p> <p>(1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse. Maximum penalty—100 penalty units.</p>	100 penalty units

	<p>(2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.</p> <p>(3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the individual under this Act.</p> <p><i>Note—</i></p> <p>See, however, section 390ZZJ.</p>	
203	<p>Division 3 Seizure by authorised officers and forfeiture</p> <p>Subdivision 2 Powers to support seizure</p> <p>390ZK Offence to contravene seizure requirement</p> <p>A person must comply with a requirement made of the person under section 390ZJ(2)(c) unless the person has a reasonable excuse.</p> <p>Maximum penalty—50 penalty units.</p> <p>390ZL Offence to interfere</p> <p>(1) If access to a seized thing is restricted under section 390ZJ, a person must not tamper with the thing or with anything used to restrict access to the thing without—</p> <p>(a) an authorised officer's approval; or</p> <p>(b) a reasonable excuse.</p> <p>Maximum penalty—100 penalty units.</p> <p>(2) If access to a place is restricted under section 390ZJ, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—</p> <p>(a) an authorised officer's approval; or</p> <p>(b) a reasonable excuse.</p> <p>Maximum penalty—100 penalty units.</p>	<p>50 penalty units</p> <p>100 penalty units</p> <p>100 penalty units</p>
203	<p>Division 5 Other information-obtaining powers of authorised officers</p> <p>390ZV Offence to contravene personal details requirement</p> <p>(1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.</p> <p>Maximum penalty—50 penalty units.</p> <p>(2) A person may not be convicted of an offence against subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.</p>	50 penalty units

	<p>390ZX Offence to contravene document production requirement</p> <p>(1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.</p> <p>Maximum penalty—100 penalty units.</p> <p>(2) It is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.</p> <p><i>Note—</i></p> <p>See, however, section 390ZZJ.</p> <p>(3) The authorised officer must inform the person, in a way that is reasonable in the circumstances, that—</p> <p>(a) the person must comply with the document production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and</p> <p>(b) if the person is an individual—there is a limited immunity under section 390ZZJ against the future use of the information or document given in compliance with the requirement.</p> <p>(4) If the person fails to comply with the document production requirement when the authorised officer has failed to comply with subsection (3), the person may not be convicted of the offence against subsection (1).</p> <p>(5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.</p> <p>390ZY Offence to contravene document certification requirement</p> <p>(1) A person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse.</p> <p>Maximum penalty—100 penalty units.</p> <p>(2) It is not a reasonable excuse for a person to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.</p> <p><i>Note—</i></p> <p>See, however, section 390ZZJ.</p> <p>(3) The authorised officer must inform the person, in a way that is reasonable in the circumstances, that—</p>	<p>100 penalty units</p> <p>100 penalty units</p>
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	<p>(a) the person must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and</p> <p>(b) if the person is an individual—there is a limited immunity under section 390ZZJ against the future use of the information or document given in compliance with the requirement.</p> <p>(4) If the person fails to comply with the document certification requirement when the authorised officer has failed to comply with subsection (3), the person may not be convicted of the offence against subsection (1).</p>	
203	<p>390ZZA Offence to contravene information requirement</p> <p>(1) A person of whom a requirement is made under section 390ZZ(2) must comply with the requirement unless the person has a reasonable excuse.</p> <p>Maximum penalty—100 penalty units.</p> <p>(2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.</p>	100 penalty units
203	<p>Part 5 Obtaining criminal history reports</p> <p>390ZZD Criminal history is confidential document</p> <p>(1) A person must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 390ZZC.</p> <p>Maximum penalty—100 penalty units.</p> <p>(2) However, the person does not contravene subsection (1) if—</p> <p>(a) the disclosure of the report or information is for the purpose of the other person performing a function in relation to this Act; or</p> <p>(b) the disclosure of the report or information is otherwise required or permitted by law.</p> <p>(3) The chief executive or an authorised officer to whom the report or written information in the report is provided must destroy the report or written information as soon as practicable after the authorised officer considers the risk mentioned in section 390ZZB.</p>	100 penalty units
203	<p>Part 6 Miscellaneous provisions relating to authorised officers</p> <p>Division 3 Other offences relating to authorised officers</p> <p><i>Note—</i></p>	

	<p>See also section 440 in relation to the obstruction of authorised officers and other persons.</p> <p>390ZZH Giving authorised officer false or misleading information</p> <p>(1) A person must not, in relation to the administration of this Act, give an authorised officer information the person knows is false or misleading in a material particular.</p> <p>Maximum penalty—100 penalty units.</p> <p>(2) Subsection (1) applies to information given in relation to the administration of this Act whether or not the information was given in response to a specific power under this Act.</p> <p>(3) Subsection (1) does not apply to a person if the person, when giving information in a document—</p> <p>(a) tells the authorised officer, to the best of the person's ability, how the document is false or misleading; and</p> <p>(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.</p> <p>390ZZI Impersonating authorised officer</p> <p>A person must not impersonate an authorised officer.</p> <p>Maximum penalty—100 penalty units.</p>	<p>100 penalty units</p> <p>100 penalty units</p>
205	<p>Insertion of new ch 7, pts 1A–1C</p> <p>Chapter 7—</p> <p><i>insert—</i></p> <p>Part 1A Safety notices</p> <p>Division 2 Giving of safety notices and related matters</p> <p>403H Person must comply with safety notice</p> <p>A person to whom a safety notice is given must comply with the notice unless the person has a reasonable excuse.</p> <p>Maximum penalty—400 penalty units.</p>	400 penalty units
205	<p>Part 1B Regulatory and other notices on unallocated State land and particular trust land</p> <p>403K Regulatory notices</p> <p>(1) The chief executive may, for the purpose of regulating or prohibiting a stated activity in an area of unallocated State land or relevant trust land, erect or display a notice (a regulatory notice) at or near the access points to the area of land to which the notice applies (the restricted use area).</p> <p><i>Example of an access point to an area of unallocated State land—</i></p> <p>a track or trail giving access to the area</p>	

[illegible]

205	<p>Part 1C Directions to leave unallocated State land and particular trust land</p> <p>403N Authorised officer may give direction</p> <p>(1) This section applies in relation to a person on unallocated State land or relevant trust land.</p> <p>(2) An authorised officer may direct the person to leave the land, or a stated part of the land, if the authorised officer reasonably believes—</p> <p>(a) it is unsafe for the person to remain on the land; or</p> <p><i>Example of when it may be unsafe for a person to remain on the land—</i></p> <p>A controlled burn is being carried out on the land.</p> <p>(b) the person is contravening a requirement of a regulatory notice that applies to the land and leaving the land is the only way the person can comply with the requirement.</p> <p><i>Example—</i></p> <p>A person is driving a vehicle in a part of unallocated State land where the driving of vehicles is prohibited under a regulatory notice. An authorised officer may direct the person to leave the part of the unallocated State land to which the regulatory notice applies.</p> <p>(3) The direction may be given orally or in writing.</p> <p>(4) If the direction is given orally, the authorised officer must, when giving the direction, tell the person—</p> <p>(a) for a direction under subsection (2)(a)—</p> <p>(i) why it is unsafe for the person to remain on the land; and</p> <p>(ii) that it is an offence for the person not to comply with the direction unless the person has a reasonable excuse; or</p> <p>(b) for a direction under subsection (2)(b)—</p> <p>(i) the requirement of the regulatory notice the authorised officer believes is being contravened; and</p> <p>(ii) the way in which it is believed the requirement is being contravened; and</p> <p>(iii) that it is an offence for the person not to comply with the direction unless the person has a reasonable excuse.</p> <p>(5) If the direction is given in writing, the direction must state the matters mentioned in subsection (4)(a) or (b).</p> <p>(6) The person must comply with the direction unless the person has a reasonable excuse.</p>	
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	<p>Maximum penalty—400 penalty units.</p> <p>(7) In this section—</p> <p>relevant trust land means—</p> <p>(a) trust land of which the State is the trustee; or</p> <p>(b) trust land for which there is no trustee.</p>	400 penalty units
215	<p>Replacement of s 440 (Obstruction of officers etc.)</p> <p>Section 440—</p> <p><i>omit, insert—</i></p> <p>440 Obstructing particular officers</p> <p>(1) A person must not obstruct a relevant officer exercising a power under this Act, or a person helping a relevant officer exercising a power under this Act, unless the person has a reasonable excuse.</p> <p>Maximum penalty—400 penalty units.</p> <p>(2) If a person has obstructed a relevant officer, or someone helping a relevant officer, and the relevant officer decides to proceed with the exercise of the power, the relevant officer must warn the person that—</p> <p>(a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and</p> <p>(b) the relevant officer considers the person’s conduct an obstruction.</p> <p>(3) In this section—</p> <p>obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.</p> <p>relevant officer means—</p> <p>(a) an authorised officer; or</p> <p>(b) a public service employee employed in the department.</p>	400 penalty units
261	<p>Replacement of s 699 (General obligation to keep risk to acceptable level)</p> <p>Section 699—</p> <p><i>omit, insert—</i></p> <p>699 General obligation to keep risk to acceptable level</p> <p>(1) This section applies to a person on whom—</p> <p>(a) an obligation is imposed under this Act for an operating plant; or</p> <p>(b) an obligation is imposed under the safety management system for an operating plant.</p>	

	<p>(2) To the extent of the person's obligation mentioned in subsection (1), the person must take all reasonable steps to ensure no person or property is exposed to a level of risk in relation to the operating plant that is more than an acceptable level.</p> <p>Maximum penalty—100 penalty units.</p>	100 penalty units
265	<p>Replacement of s 813 (False or misleading information)</p> <p>Section 813— <i>omit, insert—</i></p> <p>813 False or misleading documents or statements</p> <p>(1) A person must not make an entry in a document required to be made, adopted, held or kept under this Act knowing the entry is false or misleading in a material particular.</p> <p>Maximum penalty—100 penalty units.</p> <p><i>Notes—</i></p> <p>1 This provision is an executive liability provision— see section 814.</p> <p>2 If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 814A, to have also committed the offence.</p> <p>(2) A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.</p> <p>Maximum penalty—100 penalty units.</p> <p><i>Notes—</i></p> <p>1 This provision is an executive liability provision— see section 814.</p> <p>2 If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 814A, to have also committed the offence.</p> <p>(3) A person must not, in relation to the administration of this Act, give to an authorised officer a document that the person knows to be false or misleading in a material particular.</p> <p>Maximum penalty—100 penalty units.</p> <p><i>Notes—</i></p> <p>1 This provision is an executive liability provision— see section 814.</p> <p>2 If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 814A, to have also committed the offence.</p>	<p>100 penalty units</p> <p>100 penalty units</p> <p>100 penalty units</p>

	<p>(4) Subsection (3) applies to a document given in relation to the administration of this Act whether or not the document was given in response to a specific power under this Act.</p> <p>(5) Subsection (3) does not apply to a person if the person, when giving the document—</p> <ul style="list-style-type: none"> (a) tells the authorised officer, to the best of the person's ability, how the document is false or misleading; and (b) if the person has, or can reasonably obtain, the correct information—gives the correct information. <p>(6) This section does not apply to a person for an act or omission of the person if section 606 or 607 applies to the person for the act or omission.</p>	
282	<p>Insertion of new ch 9, pt 3, div 3</p> <p>Chapter 9, part 3—</p> <p><i>insert—</i></p> <p>Division 3 Information notices</p> <p>694A Executive safety manager and operator to give information notices</p> <p>(1) The executive safety manager of an operating plant must give the chief inspector a notice stating who is—</p> <ul style="list-style-type: none"> (a) the operator; and (b) the executive safety manager; and (c) if the operator is a corporation, the representative of the operator. <p>Maximum penalty—500 penalty units.</p> <p>(2) The operator of an operating plant must give the chief inspector a notice stating the information prescribed by regulation about the operating plant.</p> <p>Maximum penalty—500 penalty units.</p> <p>(3) For subsection (2), a regulation may prescribe information that is necessary for ensuring and promoting the safety of the operating plant.</p> <p><i>Examples of information for ensuring and promoting the safety of an operating plant—</i></p> <ul style="list-style-type: none"> 1 a description of the operating plant including the operating plant's location and nature and extent of activities 2 details of the commissioning or decommissioning of the operating plant <p>(4) A notice under this section must be given—</p> <ul style="list-style-type: none"> (a) in the approved form; and (b) in the way prescribed by regulation; and 	<p>500 penalty units</p> <p>500 penalty units</p>

	<p>(c) no later than—</p> <p>(i) for a notice under subsection (1)—10 business days after the commencement and, after that period, any time the operator, executive safety manager or representative (if any) of the operator changes; and</p> <p>(ii) for a notice under subsection (2)—a day prescribed by regulation.</p> <p>(5) In this section—</p> <p>representative, of an operator, means a individual nominated under section 688(1)(a).</p>	
286	<p>Insertion of new ch 9, pt 6A</p> <p>Chapter 9—</p> <p><i>insert—</i></p> <p>Part 6A Approval of gas devices</p> <p>Division 1 Approval requirement</p> <p>731AA Approval of gas devices for supply, installation and use</p> <p>(1) A person must not supply a gas device (type A), or install or use any type of gas device, unless—</p> <p>(a) the supply, installation or use has been approved by—</p> <p>(i) the chief inspector; or</p> <p>(ii) a person who holds a gas device approval authority for the gas device; and</p> <p>(b) the gas device complies with any labelling requirements prescribed by regulation for the device.</p> <p>Maximum penalty—200 penalty units.</p> <p><i>Note—</i></p> <p>This provision is an executive liability provision—see section 814.</p> <p>(2) Also, a person must not supply a gas device unless the person gives the person to whom the device is supplied a written notice in the approved form stating that the installation and use of the device must be approved under subsection (1)(a).</p> <p>Maximum penalty—200 penalty units.</p> <p><i>Note—</i></p> <p>If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 814A, to have also committed the offence.</p>	<p>200 penalty units</p> <p>200 penalty units</p>

286	<p>Division 2 Gas device approval authorities</p> <p>731AG Offence not to comply with conditions</p> <p>The holder of a gas device approval authority must comply with the conditions of the authority.</p> <p>Maximum penalty—250 penalty units.</p> <p><i>Note—</i></p> <p>If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 814A, to have also committed the offence.</p>	250 penalty units				
289	<p>Insertion of new s 734AA</p> <p>Chapter 9, part 7—</p> <p><i>insert—</i></p> <p>734AA Safe use of gas devices</p> <p>(1) A person who uses a gas device must take reasonable steps to ensure the gas device is used safely.</p> <p>Maximum penalty—100 penalty units.</p> <p>(2) A person does not contravene subsection (1) if the person uses a gas device in accordance with—</p> <p>(a) if the gas device is a gas device (type A)— the manufacturer’s instructions for the safe use of the gas device; or</p> <p>(b) if the gas device is a gas device (type B)—</p> <p>(i) an approval for use of the gas device under section 731AA(1)(a); and</p> <p>(ii) the manufacturer’s instructions for the safe use of the gas device.</p>	100 penalty units				
298	<p>Amendment of sch 1 (Infringement notice offences and fines for nominated laws)</p> <p>Schedule 1, entry for Land Act 1994—</p> <p><i>omit, insert—</i></p> <p>Land Act 1994</p> <table><tr><td>Column 1</td><td>Column 2</td></tr><tr><td>Infringement notice offence</td><td>Infringement notice fine (penalty units)</td></tr></table>	Column 1	Column 2	Infringement notice offence	Infringement notice fine (penalty units)	
Column 1	Column 2					
Infringement notice offence	Infringement notice fine (penalty units)					

		Individual	Corporation	
	S 214J(1)	20	10	See table to the left < for penalty units
	S 390ZB(1)	3	15	
	S 390ZF(1)	10	-	
	S 390ZK	5	-	
	S 290ZL(1)	10	50	
	S 390ZL(2)	10	50	
	S 403K(2)	2	10	
	S 403M	4	20	
	S 403N(6)	10	50	
	For a direction given under s 403N(2)(a)			
	For a direction given under s 403N(2)(b)	3	15	
	S 404(1)	10	50	
	for a trespass related act mentioned in s 404(1)(a)			
	for a trespass related act mentioned in s 404(1)(b)	5	25	
	for a trespass related act mentioned in s 404(1)(c)	3	15	
	for a trespass related act mentioned in s 404(1)(d)	10	50	
	for a trespass related act mentioned in s 404(1)(e)	10	50	
	S 407	10	50	

Appendix A – Submitters

2017 Bill

Sub #	Submitter
001	Australian Explosives Industry and Safety Group
002	Alliance to Save Hinchinbrook
003	Queensland Law Society

2018 Bill

Sub #	Submitter
001	Australian Explosives Industry and Safety Group
002	Queensland Law Society
003	Cape York Land Council Aboriginal Corporation
004	Australian Conservation Foundation
005	Queensland Resources Council
006	AgForce Queensland
007	CONFIDENTIAL SUBMISSION
008	Queensland Farmer's Federation
009	Bativia Traditional Owners Aboriginal Corporation
010	Olkola Aboriginal Corporation
011	Chuulangun Aboriginal Corporation

Appendix B – Witnesses at public briefings

Public departmental briefing – 5 March 2018

Department of Natural Resources, Mines and Energy

- Ms Mirranie Barker, Manager, Land Policy
- Ms Liz Dann, Executive Director, Titles Registry
- Mr Rober Djukic, Acting Chief Operating Officer, Resources Safety and Health
- Mr Noe Erichsen, Chief Inspector of Explosives
- Mr Lyall Hinrichsen, Executive Director, Land Policy
- Ms Nicolette Rusling, Principal Policy Officer
- Ms Mari Vidas, Manager, Title Practices and Standards

Department of Aboriginal and Torres Strait Islander Partnerships

- Mr Ross Macleod, Director, Cape York Peninsula Tenure Resolution Program

Private departmental briefing – 19 March 2018

Department of Natural Resources, Mines and Energy

- Ms Mirranie Barker, Manager, Land Policy
- Mr Ken Carse, Manager, Land Policy
- Mr Robert Dougherty, Principal Land Officer, Aboriginal and Torres Strait Islander Land Services
- Mr Lyall Hinrichsen, Executive Director, Land Policy
- Mr Graham Nicholas, Executive Director, Aboriginal and Torres Strait Islander Land Services,

Department of Aboriginal and Torres Strait Islander Partnerships

- Mr Ross Macleod, Director, Cape York Peninsula Tenure Resolution Program

Appendix C – Witnesses at public hearing

Public hearing – 13 April 2018

Batavia Traditional Owners Aboriginal Corporation

- Mr Richard King, Member
- Ms Joanne Nelson, Northern Kaanju Director; Member
- Mr Robert Nelson, Northern Kaanju Elder; Member

Olkola Aboriginal Corporation

- Mr Phillip Duffey, Executive Officer
- Mr Michael Ross, Chairperson

Chuulangun Aboriginal Corporation

- Mr Robert Frazer

Pormpuraaw Aboriginal Shire Council

- Mr Bert Edwards, Deputy Mayor
- Mr Edward Natera, PSM., Chief Executive Officer

Cape York land Council

- Mr Shannon Burns, Policy Officer

Wuthathi Aboriginal Corporation RNTBC and Bromley Aboriginal Corporation RNTBC

- Mr Johnson Chippendale, Chair

Abm Elgoring Ambung Aboriginal Corporation RNTBC

- Mr Tania Major, Deputy Chair

Department of Natural Resources, Mines and Energy

- Mr Ken Carse, Manager, Land Policy

Department of Aboriginal and Torres Strait Islander Partnerships

- Mr Ross Macleod Director, Cape York Peninsula Tenure Resolution Program

