



Mineral Resources (Galilee Basin) Amendment Bill 2018

**Report No. 26, 56th Parliament
State Development, Natural Resources and
Agricultural Industry Development Committee**

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State Development, Natural Resources and Agricultural Industry Development Committee

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Abbreviations

AFOLU	Agriculture, Forestry and Other Land Use
AMCS	Australian Marine Conservation Society
Bill	Mineral Resources (Galilee Basin) Amendment Bill 2018
BECCS	Bioenergy with Carbon Capture and Storage
CDR	Carbon Dioxide Removal
CFMEU	Construction, Forestry, Maritime, Mining and Energy Union
DES	Department of Environment and Science
DNRME/the department	Department of Natural Resources, Mines and Energy
EA	Environmental Authority
EDO	Environmental Defenders Office Qld
EP Act	<i>Environmental Protection Act 1994</i>
FLP	Fundamental Legislative Principles
GL	Gigaliter
IEA	International Energy Agency
IEEFA	Institute for Energy Economics and Financial Analysis
IPCC Special Report	Intergovernmental Panel on Climate Change <i>Special Report on Global Warming of 1.5°C</i>
Member for Maiwar	Mr Michael Berkman MP
ML	Coal Mining Lease
MRA	<i>Mineral Resources Act 1989</i>
Minister	Minister for Natural Resources, Mines and Energy
Mt	million tonnes
Mtpa	million tonnes per annum
NSW	New South Wales
QRC	Queensland Resources Council
UNFCCC	United Nations Framework Convention on Climate Change
UQ	University of Queensland
US	United States
WEO	International Energy Agency - World Energy Outlook 2018

Chair's foreword

This report presents the State Development, Natural Resources and Agricultural Industry Development Committee's examination of the Mineral Resources (Galilee Basin) 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.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill or who gave evidence to the committee at a public hearing. I also thank members of the committee, the Member for Maiwar, our Parliamentary Service staff and our committee secretariat.

I commend this report to the House.



Chris Whiting MP

Chair

Recommendations

Recommendation 1 **3**

The committee recommends the Mineral Resources (Galilee Basin) Amendment Bill 2018 not be passed.

Recommendation 2 **34**

The committee recommends that the Queensland State Government advocate for a consistent national framework for climate change policy and emission targets, as the current federal policy instability may hinder Queensland's adoption of future climate change actions and pathways.

1 Introduction

1.1 Role of the committee

The State Development, Natural Resources and Agricultural Industry Development Committee (SDNRAIDC/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, and
- Agricultural Industry Development and Fisheries.

Section 93(1) of the *Parliament of Queensland Act 2001* provides 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, and
- for subordinate legislation – its lawfulness.

The Mineral Resources (Galilee Basin) Amendment Bill 2018 (Bill) was introduced into the Legislative Assembly by Mr Michael Berkman MP, the Member for Maiwar and referred to the committee on 31 October 2018. The committee was required to report to the Legislative Assembly by 30 April 2019.

1.2 Inquiry process

On 13 November 2018, the committee invited stakeholders and subscribers to make written submissions on the Bill. 109 submissions were received, including the following form submissions:

- Submission 105 - Form Submission A - 33 submissions (contact details provided); 2575 submissions (contact details incomplete)
- Submission 106 - Form Submission A Variation - 36 submissions (contact details provided); 946 submissions (contact details incomplete)
- Submission 107 - Form Submission B - 98 submissions.

A list of submissions is contained in Appendix A.

On 4 March 2019, the committee received a public briefing from the Member for Maiwar. A public hearing was held in Brisbane on 4 March 2019 and in Moranbah on 5 March 2019. Appendix B contains a list of witnesses who attended the public briefing and hearings.

The committee also received a written brief from the Department of Natural Resources, Mines and Energy (DNRME/the department) in response to a request for information by the committee.

The submissions, correspondence from the department, and the transcript of the briefing and hearings and other related evidence are available on the committee's webpage.²

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

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

1.3 Policy objectives of the Bill

The explanatory notes outline that the objective of the Bill is to contribute to Australia's commitments to pursue efforts to limit global warming to 1.5 degrees above pre-industrial levels by 2100 by preventing any coal mining in the Galilee Basin.³

To achieve its policy objectives the Bill seeks to amend the *Mineral Resources Act 1989* (MRA) to stop all coal mining in the Galilee Basin. The Bill:

- prohibits the grant of a coal mining lease for land in the Galilee Basin
- terminates any existing coal mining leases for land in the Galilee Basin
- amends any existing coal mining leases which overlap with land in the Galilee Basin to exclude that land
- confirms that no compensation is payable to the mining lease holders affected by the Bill, and
- requires the mines minister to table a report in the Legislative Assembly summarising the actions taken under the provisions of the Bill.⁴

The Member for Maiwar outlined his reasons for introducing the Bill:

...the best available science leaves absolutely no room for doubt that the climate cannot afford for us to exploit new coal resources, especially on the scale proposed in the Galilee...

When I introduced this bill in October last year I referred to the increasing frequency and intensity of natural disasters that will be driven by climate change. The unprecedented bushfires and flooding we have seen since then should lay bare the truth that these impacts are already upon us... It appears governments are now willing to accept the reality that climate change is making our already harsh climate in Queensland worse and that climate change is a real contributor to the damage, cost and human misery wrought by disasters in Queensland.

The IPCC's special report on 1.5 degrees of global warming tells us of not only worsening natural hazard risks but also the increased risks to health, livelihoods, food security, water supply, human security and economic growth. It lays bare that the difference between 1.5 degrees and two degrees warming is the difference between losing most of the Great Barrier Reef and losing it all.⁵

1.4 Private Member consultation on the Bill

The explanatory notes state that the Bill was developed based on stakeholder and community feedback and on pathways for thermal coal use in the globally authoritative Intergovernmental Panel on Climate Change *Special Report on Global Warming of 1.5°C* (IPCC Special Report).⁶

During the hearings the committee asked several witnesses if they had been consulted on the development of the Bill. All but one witness indicated that they were not consulted.⁷ Stakeholders felt that no meaningful consultation on the Bill had occurred.

The committee believes that given the significant impacts of legislation, it is critical that thorough consultation occur with all stakeholders. In regard to this Bill, consultation had not been properly undertaken and proper legislative or policy practice have not been followed.

³ Explanatory notes, p 1.

⁴ Explanatory notes, pp 1-3.

⁵ Member for Maiwar, public briefing transcript, Brisbane, 4 March 2019, p 2.

⁶ Explanatory notes, p 4.

⁷ For example see: Mr Campbell, The Australia Institute, public hearing transcript, Brisbane, 4 March 2019, p 42, Ms Bragg, EDO, public hearing transcript, Brisbane, 4 March 2019, p 13.

1.5 Should the Bill be passed?

Submitters were polarised in their support for the Bill. One view on the Bill highlighted that the impact of global climate change, with its accompanying environmental, economic, political and social consequences, was unacceptable and a sufficiently pressing issue that significant and immediate action is required. Another view on the Bill highlighted the importance of regional employment, economic prosperity from a Queensland resource sector and questioned whether people in regional Queensland should directly shoulder Australia's responsibility to mitigate global climate change.

The committee found that there is a strong argument that action needs to be taken to address climate change. The committee acknowledges that climate change has and will continue to have a devastating impact upon Queensland and the Great Barrier Reef, and that action must be taken at all levels of government to mitigate these threats.

However, as no economic, environmental or social modelling on this Bill has been undertaken and no wider stakeholder engagement, the impacts are unknown. These include:

- the impacts on regional Queensland
- the impact of lost mining royalties for Queensland
- the broader economic and social impacts to Queensland and Australia
- the potential liabilities to mining lease holders
- the impact of the lack of a clear national policy on emissions and climate change.

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

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views, department advice and information provided by the Member for Maiwar, the committee recommends that this Bill not be passed.

Recommendation 1

The committee recommends the Mineral Resources (Galilee Basin) Amendment Bill 2018 not be passed.

2 Thermal coal and the Galilee Basin

2.1 Queensland's coal

Queensland has both metallurgical and thermal coal reserves. Metallurgical coal or coking coal is used in iron and steel manufacture. Thermal coal is used for electricity generation and in industrial processes.

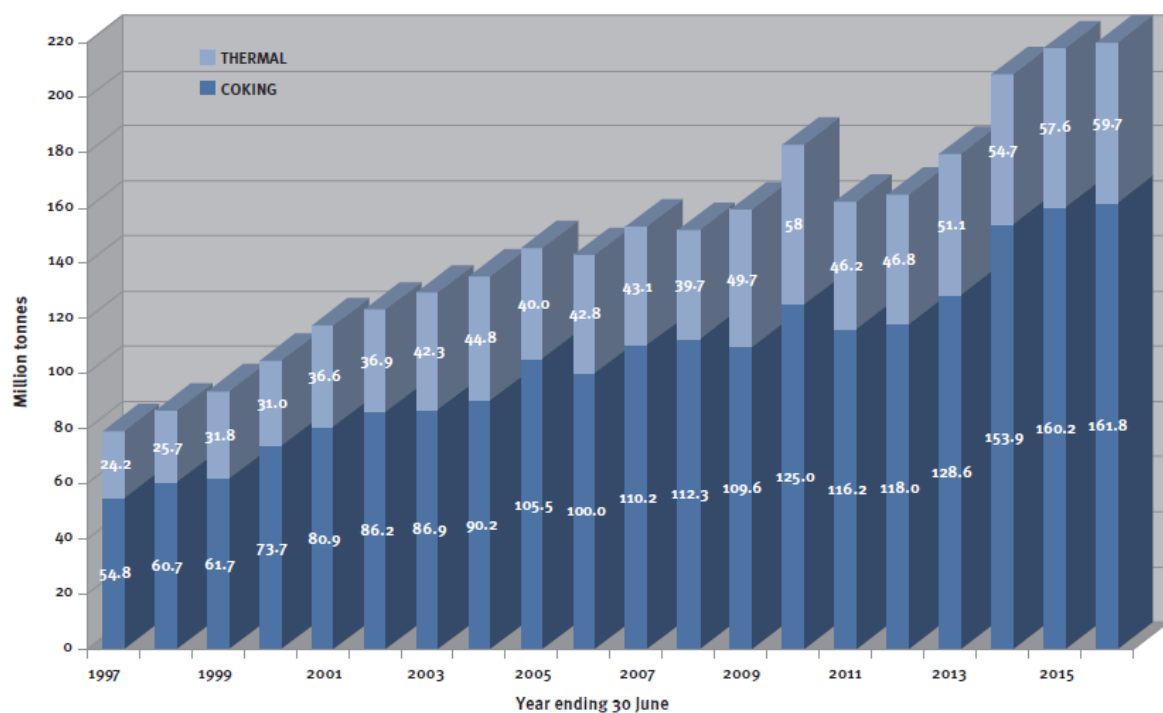
The Bowen Basin contains almost all of the State's hard coking coal, and is considered the most important coal-bearing region in Queensland. In addition to supplying all of the metallurgical coal currently mined within Queensland, mines operating within the basin also produce a wide range of thermal coal products, principally for export.⁸

High-volatile thermal coals are mined from the Clarence-Moreton and Surat basins in the south-east Queensland. Other thermal coals mined in Queensland include those within the Tarong and Callide basins which are used in mine-mouth, coal-fired power stations for electricity generation.⁹

The Galilee Basin is a 247,000 square kilometre thermal coal basin.¹⁰

DNRME found that exports of Queensland's coal continued to be dominated by metallurgical coals, accounting for 161.8 Mt, with the remaining 59.7 Mt of export sales comprised of thermal coals. Additional domestic sales of thermal coal within Queensland amounted to 23.4 Mt.¹¹

Figure 1: Queensland coal exports by type¹²



⁸ DNRME, Queensland coal – mines and advanced projects, https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf

⁹ DNRME, Queensland coal – mines and advanced projects, https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf

¹⁰ See Appendix C and Appendix D.

¹¹ DNRME, Queensland coal – mines and advanced projects, https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf

¹² DNRME, Queensland coal – mines and advanced projects, https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf

During 2015–16, Japan regained its long-held position as the State's most significant export destination, accounting for over 20 per cent of all coal exported from Queensland with 49.6 Mt sold to that country, comprised of about 31.7 Mt of metallurgical coal and 17.9 Mt of thermal coal.

Exports to China totalled 43.9 Mt during 2015–16, down from 52.9 Mt shipped during 2014–15. Other significant markets were India, Korea, Singapore and Taiwan, which imported 34.5 Mt, 30.6 Mt, 13.8 Mt and 10.2 Mt respectively from Queensland coal producers during 2015–16.¹³

According to IEEFA, Australia is the world's largest exporter of coking coal (with a 60% global share of seaborne coking coal) and the world's second largest exporter of thermal coal with a seaborne share of 20% behind only Indonesia at 37%.¹⁴

2.2 Coal mining leases and applications in the Galilee Basin

The Galilee Basin is argued to be the world's largest new thermal coal basin proposed for development, approaching 300 million tonnes per annum (Mtpa) of new thermal coal export capacity.¹⁵ In its initial Assessment Statement in 2010, Adani noted that the Galilee Basin is the last undeveloped coal reserve within Queensland.¹⁶

There are three granted coal mining leases (ML) in or overlapping the Galilee Basin as described in the Bill which are held by Adani Mining Pty Ltd for the Carmichael Mine project. These are ML70441, 70505 and 70506. ML70506 is wholly within the Basin, while the other two MLs are only partially within it.¹⁷

The Carmichael Mine project is located some 300km west of the Queensland Coast. It is a thermal coal mine and rail project. The key features of the project include:

- six open-cut pits and five underground mines
- five mine infrastructure areas
- coal handling and processing plant
- heavy industrial area
- water-supply infrastructure
- 189 km rail line
- off-site infrastructure, including workers' accommodation village and airport.¹⁸

In addition to the granted Adani Mining Pty Ltd ML, there are ten ML applications in or overlapping the Galilee Basin as described in the Bill. These are:

- Alpha project – MLA70426
- China Stone project – MLA70514, MLA70515, MLA70516, MLA70517, MLA70518
- Galilee Coal project – MLA70454

¹³ DNRME, Queensland coal – mines and advanced projects, https://www.dnrm.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf

¹⁴ IEEFA, submission 94, p 21.

¹⁵ IEEFA, submission 94, p 4.

¹⁶ Adani Mining Pty Ltd, Carmichael Coal Mine and Rail Project, Initial Advice Statement, 22 October 2010, <http://statedevelopment.qld.gov.au/resources/project/carmichael/initial-advice-statement.pdf>

¹⁷ DNRME, Information Briefing on Mineral Resources (Galilee Basin) Amendment Bill 2018, p 4.

¹⁸ DNRME, Coordinator-General, Carmichael Coal Mine and Rail Project, Project Overview, <http://statedevelopment.qld.gov.au/assessments-and-approvals/carmichael-coal-mine-and-rail-project.html>

- Kevin's Corner project – MLA70425
- North Alpha project – MLA700031
- South Galilee project – MLA70453.¹⁹

Mining proposals include but are not limited to:

- *the Adani Carmichael proposal of up to 60Mtpa for 60 years;*
- *three Hancock Prospecting proposals, that being Alpha, Alpha West (sic) and Kevin's Corner, totalling up to 84Mtpa;*
- *Clive Palmer's Waratah Coal variously slated for up to 80Mtpa;*
- *China's MacMines China Stone proposal for up to 38Mtpa; and*
- *Resolve Coal's Hyde Park proposal for 10Mtpa.*²⁰

Mr Buckley from IEEFA highlighted the scale and interrelatedness of these mining projects:

The Galilee Basin is the largest proposed coal basin in the world. It sits up there with the tar sands of Canada as the two biggest undeveloped carbon basins in the world proposed for development.

*Adani enables the development of the entire Galilee, because no-one else can actually go ahead without Adani's railway line and Adani's port. Therefore, we are not talking about a narrow little part of Queensland. I am not. I am talking about nine of the biggest projects in thermal coal in the world proposed for development that are not yet enabled...*²¹

Doctors for the Environment Australia noted:

*Adani's Carmichael coal mining project, one of only seventeen proposed in the area, would require 20,200 hectares of land to be cleared, over half of which is mature woodland, bushland and riparian growth.*²²

Some witnesses raised concerns that ML approvals do not consider or have regard to the cumulative impact of the proposed multiple Galilee Basin projects.²³

2.3 Galilee Basin coal

The committee heard divergent opinions on the quality of thermal coal deposits in Australia and in the Galilee Basin.

A number of witnesses emphasised the high quality of Queensland's coal.²⁴ Some witnesses argued that Australia's thermal coal has a higher energy-value than that of international competitors. Mr Macfarlane from the QRC noted that:

*Australia is well renowned for high-quality thermal coal. The benchmark is Newcastle coal, which is sometimes as high as 6,500 kcal. You go from there to more average coal, depending ... on how much it is washed, which is somewhere between 5,000 and 5,500 kcal.*²⁵

¹⁹ DNRME, Information Briefing on Mineral Resources (Galilee Basin) Amendment Bill 2018, p 4.

²⁰ IEEFA, submission 94, p 4.

²¹ Mr Buckley, IEEFA, public hearing transcript, Brisbane, 4 March 2019, p 50.

²² Doctors for the Environment Australia, submission 60, p 4.

²³ Mr Buckley, IEEFA, public hearing transcript, Brisbane, 4 March 2019, p 44.

²⁴ Mayor Baker, Isaac Regional Council, public hearing transcript, 5 March 2019; Mayor McNamara, Shire of Flinders, public hearing transcript, Brisbane, 4 March 2019.

²⁵ Mr Macfarlane, QRC, public hearing transcript, Brisbane, 4 March 2019, p 25.

The committee heard from representatives of companies with mining leases in the Galilee Basin who highlighted the quality of the Basin's thermal coal. Mr Dow, from Adani Australia, discussed the kilocalories quality of thermal coal to be sourced from the Adani Carmichael project:

In terms of our project in Queensland, the Galilee Basin and our Carmichael project constitute a 10 million tonne per annum mine of thermal export grade coal in the order of 5,000 to 5,500 kilocalories, certainly a higher quality than would likely be sourced from other jurisdictions.²⁶

Similarly, Resolve Coal outlined the high quality of thermal coal from the proposed Hyde Park project:

The Hyde Park project, in common with other Galilee Basin coal deposits contains high quality thermal coal with a product specification of 5600Kcal (NAR), 11% ash, 0.27% sulphur, and trace elements that are uniformly below Australian averages, and up to ¼ of world averages. The high Initial Deformation Temperatures and low carbon in ash makes Galilee Basin coal ideal for utilisation in high efficiency, low emission coal fired power stations.²⁷

The committee were informed that Australian thermal coal contained a much lower range of pollutants than international sources of thermal coal.²⁸

In contrast, a number of submitters argued that the thermal coal in the Galilee Basin was of low quality with high ash content.²⁹

The 6,000kcal benchmark thermal coal is definitely higher energy content than Indonesian export coal which has a range around a 5,000kcal average, 15-20% below the top Australian, South African, Columbian and Russian thermal coal exports. In contrast, Carmichael coal is significantly lower quality than the benchmark Australian export coal with an energy content below 5,000kcal and a high ash content (26%).³⁰

The QRC acknowledged that some Galilee Basin coal has a lower calorific value than other established Australian thermal coals, however the QRC noted that:

...by global standards Galilee coals are still high energy coals with reported calorific values in the range of up to 5,800 kcal/kg. Well above a typical Indian thermal coal, which has a weighted average value of 4,301-4,600 kcal/kg.³¹

2.4 Global demand for thermal coal

The committee heard polarised assessments of the current and future global demand for thermal coal. The Bill's opponents argued that global demand for thermal coal continued to be high and that large developing economies were reliant on thermal coal for electricity generation and were not limited by the requirements of the Paris Agreement for several decades. In contrast, the proponents of the Bill argued that in light of measures to address climate change, the demand for thermal coal had peaked and was diminishing as the development and uptake of renewable sources of energy increased.

Submissions to this inquiry drew on key analysis and modelling undertaken in regard to climate change and potential future demand for thermal coal.

²⁶ Mr Dow, Adani Australia, public hearing transcript, Brisbane, 4 March 2019, p 17.

²⁷ Resolve Coal Pty Ltd, submission 5, p 1.

²⁸ Mr Macfarlane, QRC, public hearing transcript, Brisbane, 4 March 2019, p 26.

²⁹ Mr Buckley, IEEFA, public hearing transcript, Brisbane, 4 March 2019, p 44; Professor Peter Dart, Queensland University of Technology, submission 96; Mr Ryan, EDO, public hearing transcript, Brisbane, 4 March 2019, p 15.

³⁰ IEEFA, submission 94, p 16.

³¹ QRC & CFMEU, submission 100, p 5.

2.4.1 International Energy Agency - World Energy Outlook 2018

Several witnesses informed the committee that the International Energy Agency (IEA) scenario-based analysis is widely used to model assumptions regarding the demand for coal and the possible corresponding impacts on climate change goals. Mr Barr, from DNRME noted:

There are a number of scenarios that policymakers look at. Overall, there are challenges for coal demand out to 2040, but the report that [is] rely on most by policymakers is the International Energy Agency's world outlook report.³²

The IEA refers to three scenarios in its World Energy Outlook 2018 (WEO) report. The WEO's scenario-based analysis outlines different possible futures for the energy system across all fuels and technologies. It models how different energy pathways, based on current and planned policies, and those that can meet long-term climate goals under the Paris Agreement, reduce air pollution, and ensure universal energy access.³³ The three scenarios are:

- the New Policies Scenario
- the Sustainable Development Scenario
- the Current Policies Scenario.³⁴

According to the WEO, the *New Policies Scenario* “provides a measured assessment of where today's policy frameworks and ambitions, together with the continued evolution of known technologies, might take the energy sector in the coming decades. The policy ambitions include those that have been announced as of August 2018 and incorporates the commitments made in the Nationally Determined Contributions under the Paris Agreement, but does not speculate as to further evolution of these positions.”³⁵

The *Sustainable Development Scenario* as described by the WEO, “starts from selected key outcomes and then works back to the present to see how they might be achieved. The outcomes in question are the main energy-related components of the Sustainable Development Goals, agreed by 193 countries in 2015:

- Delivering on the Paris Agreement. The Sustainable Development Scenario is fully aligned with the Paris Agreement's goal of holding the increase in the global average temperature to “well below 2 °C”.
- Achieving universal access to modern energy by 2030.
- Reducing dramatically the premature deaths due to energy-related air pollution.

The Sustainable Development Scenario sets out the major changes that would be required to deliver these goals simultaneously.”³⁶

The third model outlines the *Current Policies Scenario* which is “based solely on existing laws and regulations as of mid-2018, and therefore excludes the ambitions and targets that have been declared by governments around the world.”³⁷

³² Mr Barr, DNRME, public hearing transcript, Brisbane, 4 March 2019, p 5.

³³ World Energy Outlook 2018, International Energy Agency, <https://www.iea.org/weo2018/>

³⁴ World Energy Outlook 2018, International Energy Agency.

³⁵ World Energy Outlook 2018, International Energy Agency, p 29.

³⁶ World Energy Outlook 2018, International Energy Agency, p 29.

³⁷ World Energy Outlook 2018, International Energy Agency, p 29.

The IEA scenario-based analysis was used by both proponents and opponents of the Bill to suggest future demand for thermal coal. Mr Swann from the Australia Institute noted:

We have heard a lot of talk about forecasts from the IEA. Anyone who talks about forecasts from the IEA is generally misusing the data. The IEA World Energy Outlook does not produce forecasts; they are very explicit about this. It states that it 'does not aim to forecast the future.' It is a scenario based on policy assumptions.

In the new policies scenario it assumes that the world does not take sufficient action to reduce climate change.

In the sustainable development scenario we get ongoing economic growth, universal access to modern energy everywhere for everyone, reduced pollution and success under the Paris Agreement.

In this scenario, which is clearly the scenario we should all be aiming at, we have a dramatic reduction in coal demand.

It is not surprising that the coal industry would rather point to the new policies scenario because in this scenario we do see an ongoing coal demand in the traded markets, but in the sustainable development scenario, coal demand decreases substantially, and this is the scenario that we should be aiming at.³⁸

2.4.2 Growing global demand for high quality thermal coal

Hancock Coal submitted that strong global demand for thermal coal will continue to be driven in line with urbanisation and industrialisation in developing economies.³⁹ The QRC highlight the continued demand in Asia for Australian thermal coal:

Thermal coal demand across the Asia Pacific is set to continue. HIS [Markit] forecasts India's thermal coal demand to grow at a yearly average growth rate of around 3.5% from 777 million tonnes in 2018 to 1,180 million tonnes in 2030. That's nearly an extra Carmichael mine of demand growth each year. Similarly, the IEA, in its central scenario, projects India to nearly double its coal-fired power capacity by 2040. This investment will mean coal remains the dominant generation source for India in 2040 at around 50% of total generation. Across the wider Asia Pacific, coal is projected to provide around 40% of total power generation by the year 2040.⁴⁰

Queensland's production of thermal coal was approximately five per cent of the total international export market:

...in 2017 Standard & Poor's came out and said that overall production of thermal coal internationally is about 1.9 billion tonnes. Queensland's production of thermal coal was about 83 million tonnes per annum in 2016-17, so this is about five per cent of the total international export market, just to give some context about how significant thermal coal is from Queensland.⁴¹

Mr Dow from Adani Australia argued that Australia was currently a minor provider of global thermal coal into Asia and in particular to India:

Maybe if we just take India, which is our target market, as a prime example. In 2017, India imported 137 million tonnes of thermal coal. Does anyone hazard a guess as to how much Australia contributed to that? It was three million tonnes. That means that there is a competitive

³⁸ Mr Swann, The Australia Institute, public hearing transcript, Brisbane, 4 March 2019, p 41.

³⁹ Hancock Coal, submission 86, p 1.

⁴⁰ QRC & CFMEU, submission 100, pp 5-6.

⁴¹ Mr Barr, DNRME, public hearing transcript, Brisbane, 4 March 2019, pp 5-6.

*market for 134 million tonnes of coal. Where does that other coal come from? Indonesia, the US, Russia, South Africa.*⁴²

The committee heard the proposition that if Australia was unable to supply thermal coal to global markets this demand would be met by other coal producing countries.⁴³ Mr Macfarlane from the QRC stated that:

*If this bill were to be passed, coal buyers would turn to other countries to meet that demand, many with lower quality and higher emitting coal.*⁴⁴

The committee also heard that if global demand for thermal coal declines, the demand for Australian coal will not necessarily be affected due to the high quality of Australia's thermal coal. Mr Barger from the QRC argued:

*It is not axiomatic that if global coal demand falls away by X per cent then Queensland coal demand falls away by the same percentage... Queensland coal is higher quality and it is produced under better standards so it attracts a premium. We have existing customers that have built long-life infrastructure based around that coal source, that fuel supply. It is not a homogenous product. You are not buying smarties on the open market.*⁴⁵

Mr Smyth from the Construction, Forestry, Maritime, Mining and Energy Union (CFMEU) argued that the responsibility for reducing thermal coal use lay not with suppliers, but with the consumers of coal:

*If we want a global framework for addressing climate change, it is up to other countries to reduce demand for our coal within their strategies for energy production and emissions reduction if they wish. This may happen over time, but it is not up to us to force other countries to stop buying our coal.*⁴⁶

2.4.3 The market substitution defence

The committee heard different views on the impact of the market substitution defence in legal actions. Several witnesses challenged the supposition that if coal was not supplied from the Galilee Basin, thermal coal would be mined and supplied to the market from other inferior sources leading to greater levels of CO² emissions and therefore climate change.⁴⁷ Dr Watt argued:

*I think it is a short-term argument if we are saying that we are going to send them coal that is of a better quality that we are going to reduce the impact of air pollution. It is still going to be air pollution. It is just to what degree. It is still going to be CO² emissions... Whether the CO² comes from so-called clean or dirty coal is really a very-short term argument, because, in the long term, it is CO²...and it is causing climate change.*⁴⁸

Dr Bell-James from UQ argued that the market substitution defence was flawed as it is inherently interwoven with an acceptance of the future demand for coal and that it is premised on trading a known risk for a speculative risk.⁴⁹ Dr Bell-James noted the recent court cases in New South Wales and the United States (US) where mining lease applications have been rejected, in part, as a result of the rejection of the market substitution defence:

⁴² Mr Dow, Adani Australia, public hearing transcript, Brisbane, 4 March 2019, p 20.

⁴³ Mr Dow, Adani Australia, public hearing transcript, Brisbane, 4 March 2019, p 20.

⁴⁴ Mr Macfarlane, QRC, public hearing transcript, Brisbane, 4 March 2019, p 23.

⁴⁵ Mr Barger, QRC, public hearing transcript, Brisbane, 4 March 2019, p 28.

⁴⁶ Mr Smyth, CFMEU, public hearing transcript, Moranbah, 5 March 2019, p 7.

⁴⁷ Dr Jeremijenko, Doctors for the Environment Australia, public hearing transcript, Brisbane, 4 March 2019, p 36.

⁴⁸ Dr Watt, Doctors for the Environment Australia, public hearing transcript, Brisbane, 4 March 2019, p 37.

⁴⁹ Dr Bell-James, University of Queensland, public hearing transcript, Brisbane, 4 March 2019, p 30.

The market substitution defence was also rejected there. The case in the US involving WildEarth Guardians ... was another case where the market substitution defence was rejected for the sorts of reasons that I mentioned earlier around it being speculative in terms of whether or not there would be something to replace the known impact that the court was dealing with.⁵⁰

However, the market substitution defence has so far been consistently accepted in judgements in Queensland, notably in a Land Court case featuring Adani.⁵¹

2.4.4 Declining global demand for thermal coal

The committee heard that the transition to renewables is largely being driven by market forces,⁵² and that Adani was also investing heavily in renewable energy in India:

If the world changes, if technology changes, decisions made eight or nine years ago are now superseded. They are redundant. The world has moved on. That is the nature of a multinational. They take a whole range of risks. As Adani also testified, they are one of the biggest developers of renewables in India. They only started that business three years ago, but they have invested \$3 billion in the last three years in that business.⁵³

The global move towards cheaper renewable sources of energy, over the past decade, was argued by some witnesses to have undermined the business case for thermal coal projects, such as Adani's Carmichael project.⁵⁴

Submitters argued that Australia was also moving toward a greater investment in renewable energy and that coal was losing social and economic capital globally:

Instead, we see credible polls repeatedly showing overwhelming support for leaving coal in the ground. Plus, in Queensland we are voting with our feet and putting rooftop solar on our homes at the highest per-capita rate in the world. Australians clearly love renewable energy and in a country with ample opportunities for large-scale wind, solar and pumped hydro, there is no excuse for our government not to support renewable energy projects more - especially as, due to the falling cost of renewables, investing in massive new coal mines risks this investment and the supporting infrastructure becoming a stranded asset as the world moves further away from coal - as we already seeing on a massive scale in countries like China and India.⁵⁵

Several witnesses noted that the growth in renewable energy will increase the risk of coal investments becoming stranded assets.⁵⁶ Dr Able argued that 'financial institutions are not investing in coal mines, knowing that mines dug now will be stranded assets before their capital cost is amortized'.⁵⁷

The committee heard that a decline in international finance would impact the development of future coal projects and therefore the demand for thermal coal. Mr Buckley noted that as a result of the Paris Climate Agreement, financial institutions globally were no longer financing new coal projects:

In September 2018 ... Standard Chartered announced it would immediately cease financing any new thermal coal project anywhere in the world. It built on the decision in 2016 that Standard Chartered said they would no longer finance thermal coalmines anywhere in the world. The CEO

⁵⁰ Dr Bell-James, University of Queensland, public hearing transcript, Brisbane, 4 March 2019, p 30.

⁵¹ *Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors* [2015] QLC 48.

⁵² Dr Dean, Climate Council of Australia, public hearing transcript, Brisbane, 4 March 2019, p 13.

⁵³ Mr Buckley, IEEFA, public hearing transcript, Brisbane, 4 March 2019, p 46.

⁵⁴ Mr Buckley, IEEFA, public hearing transcript, Brisbane, 4 March 2019, p 49.

⁵⁵ Mr Browne, submission 21, p 2.

⁵⁶ Dr Dean, Climate Council of Australia, public hearing transcript, Brisbane, 4 March 2019, p 13; IEEFA, submission 94.

⁵⁷ Dr Able, submission 88, p 1.

stated, 'Climate change is one of the single biggest challenges society has to address,' and that alternative sources for electricity are now available ... there are over 100 globally significant financial institutions which now have policies similar to Standard Chartered....⁵⁸

It was submitted that Australian banks have moved to recognise the global financial risks of climate change by reduce funding for thermal coal mining and coal-fired power plants:

Westpac ruled out financing new thermal coal basins in April 2017. Commonwealth Bank (CBA) reported in August 2018, as part of its 2017/18 financial results, substantial progress in measuring, reporting and acting on this commitment, with a substantial decarbonisation shift well underway... CBA has also shifted its lending programs towards funding low emissions technologies. Direct exposure to coal mining was down 7% year on year (yoy) to \$270m and coal infrastructure was down 30% yoy to \$1,000m, while lending to renewable energy was +32% year-on-year to \$3,700m.⁵⁹

2.4.5 Coal-fired power plants

It was argued that as coal plant capacity has risen, coal plant utilisation has declined. IEEFA submitted that there has been a decade long over-investment in new coal-fired power generation capacity in excess of demand and that:

- *Globally, coal power plant retirements are accelerating and by 2022 are forecast to exceed new plant completions. In January 2019 Germany announced it would close 12 gigawatts (GW) by 2022 as part of its accelerated 100% coal phaseout of its remaining 42GW by 2038.*
- *The global coal plant pipeline has shrunk by two-thirds; a cumulative US\$1 trillion or 744GW in a small timeframe (the 30 months to July 2018). Stranded asset losses are rapidly rising as renewable energy competition gets increasingly competitive.*
- *New coal plant proposals moving to final investment decisions are slowing. The IEA identifies 2017 as a record low level of new coal plant proposals moving to a final investment decision as investors reassess coal's future.*
- *Coal plants are becoming on average more efficient. They are generating 0.5-1.0% more electricity per tonne of coal used each year.⁶⁰*

IEEFA challenged the commercial viability of the global coal-fired power fleet as utilisation rates have fallen towards just 55%, suggesting that on average, every second day, they sit idle. This is below the optimal 75-85% assumption factored into projections made upwards of a decade ago.⁶¹

⁵⁸ Mr Buckley, IEEFA, public hearing transcript, Brisbane, 4 March 2019, pp 44-45.

⁵⁹ IEEFA, submission 94, p 10.

⁶⁰ IEEFA, submission 94, pp 6-7.

⁶¹ IEEFA, submission 94, p 7.

3 Impact of the Bill

The QRC and CFMEU highlighted the significant contribution of the resource industry to the Queensland economy and community:

- the total contribution to the Queensland economy from the resource industry was \$62.9 billion in 2017-18, supporting one in five dollars in the Queensland economy and one in eight Queensland jobs
- for 2018-19, to date Queensland resources industry has contributed \$5 billion in royalties
- the industry has created 10,000 jobs over the past year, including well paid, highly skilled and high tech jobs - many which are in regional and rural communities, and
- in the year to November 2018, Queensland resource exports was \$80 billion with an extra \$10 billion earned through the sale of Queensland coal, minerals and petroleum.⁶²

The committee heard from opponents of the Bill, that the Bill would impact the resource industry and have broader adverse economic, social and legal consequence. These include:

- loss of royalties to the Queensland Government
- loss of opportunities for regional Queensland
- compensation claims and litigation against the Queensland Government

3.1 Coal royalties to Queensland

The calculation of coal royalties to the State of Queensland is influenced by a number of factors. Mr Ellem, from the Queensland Treasury, outlined that coal royalties payable for coal sold, disposed of or used in a return period are calculated by multiplying the royalty rate by the value of the coal. The value of coal is determined by a number of considerations such as the prevailing price of the coal, the US-Australian dollar exchange rate and available deductions. In addition, coal prices are influenced by a range of factors including the quality of the coal relative to benchmarks, and global supply and demand conditions.⁶³

The Australia Institute noted the estimated Queensland royalty revenue in 2017-18:

*The Queensland state government estimated it received around \$3.5 billion in royalty revenue from the coal industry over 2017-18. When considering the \$58.2 billion budget for the same year this amounts to only 6.5% of revenue.*⁶⁴

The committee sought evidence in regard to the potential value of mining royalties from the proposed projects in the Galilee Basin. The committee asked Treasury if it had undertaken any modelling in regard to the Bill. Mr Ellem from the Queensland Treasury told the committee:

*We model projects as known going forward. With respect to this particular Bill and the Galilee Basin in particular, Treasury considers there is not sufficient information available on the value of the coal or the timing of the mining developments to prepare a reliable estimate of the royalties per annum that may be associated with each of the projects. Consistent with that position, the current budget projections as at the 2018-19 midyear review—and that is what I can talk about at the moment—do not factor in any royalty revenue from those projects in the Galilee Basin.*⁶⁵

⁶² QRC & CFMEU, submission 100.

⁶³ Mr Ellem, Queensland Treasury, public hearing transcript, Brisbane, 4 March 2019, pp 2-3.

⁶⁴ The Australia Institute, submission 103, p 8.

⁶⁵ Mr Ellem, Queensland Treasury, public hearing transcript, Brisbane, 4 March 2019, pp 2-3.

Resolve Coal, the owner of the Hyde Park Coal Project in the Galilee Basin, provided evidence on the royalty regime and provided a figure as to the possible annual royalty revenue across the whole Galilee Basin:

*The Queensland royalty regime requires coal mines to pay 7.0% of revenue from the first A\$100 earned per tonne of coal, and 12.5% for any portion thereafter to A\$150. Any amount earned above A\$150/T is subject to a 15% royalty rate. The Galilee Basin is capable of producing large tonnages of high quality coal for a significant period of time. If we assumed a 50 million tonne per annum production from the Galilee Basin, this would equate to an annual royalty revenue at today's prices of ~A\$500,000,000.00 per annum, without taking other state and federal taxes into consideration.*⁶⁶

Similarly, the QRC and CFMEU outlined the significant value of royalties and noted that expected annual royalties, utilizing one quarter of the coal capacity in the Galilee Basin would reach approximately \$220 million each year.⁶⁷ Mayor Baker from Isaac Regional Council informed the committee of the significant contribution in royalties the Isaac region makes to the state:

*The Isaac is currently home to 26 active coalmines, with further major projects under development including those planned for the Galilee Basin. We are very proud of the role our region has played and is playing in helping to energise the world. Our resource sector contributed no less than \$1.5 billion in royalties out of a Queensland total of \$3.8 billion in the 2017-18 time frame.*⁶⁸

The committee heard that the royalties from the Galilee Basin would contribute to the provision of essential services in Queensland.⁶⁹ Some witnesses argued that all Queenslanders, including those who live in cities, will forgo services without coal royalties:

*I ask ... what future revenue streams are state and federal governments going to rely on instead of the billions and billions of dollars in future royalties and taxes when that coalmining disappears? What services are people in our cities and towns willing to go without? What infrastructure and what projects are people willing to cut if the revenue stream from the Galilee Basin is ignored or not accessed?*⁷⁰

However, in contrast, Mr Buckley from IEAAF highlighted that thermal coal was a small percentage of Queensland's coal exports and currently contributes a small percentage to Queensland's royalties.⁷¹ Other witnesses were critical of the amount of royalties which would be paid to the Queensland Government in comparison to the value of the commodity. Professor Peter Dart, from the Queensland University of Technology argued:

*The Queensland Government royalties to be garnered from exploiting this resource are pitifully small as a percentage (and total dollars to the treasury) of the coal value especially with transfer pricing. In other words Australians get very little indeed from this resource exploitation...*⁷²

⁶⁶ Resolve Coal Pty Ltd, submission 5, p 2.

⁶⁷ QRC & CFMEU, submission 100, p 4.

⁶⁸ Mayor Baker, Isaac Regional Council, public hearing transcript, Moranbah, 5 March 2019, p 2.

⁶⁹ QRC & CFMEU, submission 100, p 4, Mayor Baker, Isaac Regional Council, public hearing transcript, Moranbah, 5 March 2019, p 3.

⁷⁰ Mayor Baker, Isaac Regional Council, public hearing transcript, Moranbah, 5 March 2019, p 3; Shire of Flinders, submission 73.

⁷¹ Mr Buckley, IEFA, public hearing transcript, Brisbane, 4 March 2019, p 44.

⁷² Professor Peter Dart, submission 96, p 2.

The Environment Council of Central Queensland argued that thermal coal royalties to the state need to be considered against the increasing costs associated with climate change:

*Governments relying on coal royalties are not good at considering the other side of the ledger. Cyclone Debbie clean-up last year cost \$1.7 Billion in insurance costs, though talking in dollars does not reflect the true cost to people's health and wellbeing and livelihoods. Ignoring costs on the other side of the ledger is true of drought, bushfire, floods – any disaster relief falls short of the real cost to people, places and ecosystems. Royalties are poor compensation.*⁷³

3.2 Regional economies and communities

A significant number of regional communities rely on the resource industry.⁷⁴ The Australian Mining Cities Alliance argued that the Bill, driven by interests of capital cities, would have a profound effect on many regional Queensland communities:

*Australia's mining cities have made, and continue to make, an invaluable contribution to the life and economy of the nation. Yet the Bill before the Committee seeks to profoundly hurt Australia's mining cities. The Bill is driven by capital city politics. It gives not a shred of consideration to Australia's mining cities – in this case regional Queensland mining cities. The Bill, which seeks to prohibit the mining of coal in one of the world's greatest untapped basins of clean thermal coal, the Galilee Basin, is designed to stymie the vitality and inhibit the future of a number of great Australian mining cities, including Moranbah, Townsville, Mackay and Rockhampton.*⁷⁵

Some submitters informed the committee that many of the region's communities have been built off the back of the mining industry which has provided security, prosperity and an enviable lifestyle for many of its residents for generations.⁷⁶ The Shire of Flinders highlighted the importance of the mining industry in providing regional employment and supporting regional economies:

Outback Queensland represents some 60% of the state with less than 2% of the States population. Recent Census data indicates that many communities within outback Queensland are reducing in population, including Flinders Shire due to lack of employment. Coal exploration throughout the Northern Region would create a whole range of skilled employment opportunities including apprenticeships, plant operators and labourer positions, which in turn has the potential to increase population to these communities. The knock on effect from population decline has a significant impact on:

- *Education delivery to our youth from a decrease in allocated teacher numbers*
- *Health services ceasing some specialised services*
- *Emergency Services employment numbers with a decrease in allocated officers.*⁷⁷

Mr Smyth from the CFMEU noted that in regional Queensland, coal mining provides jobs that are unmatched in terms of pay and conditions by any other industry in regional areas.⁷⁸ Hancock Coal noted that coal jobs provided \$6 billion in wages to Australian workers in regional areas.⁷⁹

⁷³ Environment Council of Central Queensland, submission 20, p 2.

⁷⁴ For example see: Charters Towers Regional Council, submission 6; Whitsunday Regional Council, submission 90; Barcaldine Regional Council, submission 91; Gladstone Regional Council, submission 92; North West Queensland Regional Organisation of Councils, submission 102.

⁷⁵ Australian Mining Cities Alliance, submission 84, p 1.

⁷⁶ Isaac Regional Council, submission 79; Barcaldine Regional Council; submission 91.

⁷⁷ Shire of Flinders, submission 73, p 1.

⁷⁸ Mr Smyth, CFMEU, public hearing transcript, Moranbah, 5 March 2019, p 7.

⁷⁹ Hancock Coal, submission 86, p 1.

The committee heard evidence from individuals who live in Moranbah and work in the coal mining industry. Many of these residents consider the Bill a direct and personal attack on them and their ability to be employed in an industry which provides for their families.

Ms Sinclair told the committee:

This proposal to stop coalmining creates fear in the hearts and minds of the people who live out here, especially after going through a downturn like we did. We are actually starting to see the community rise up and we are getting a lot more people coming through. I took my daughter to kindy the other morning and I noticed how many more families are in town. My little girls gets the opportunity to have more friends. I have the opportunity to have my own friends here in town. We have committed our lives to this town and to the industry as well... It scares me the thought that we would have to find somewhere else to go, somewhere else to live because we would lose our home, we would lose the opportunity to have our children in school here and we could possibly also lose the opportunity to keep our family together.⁸⁰

Mr Mawson told the committee:

This bill will attack my entire family. I have a daughter who has just started her job courtesy of the mining industry, and my young fellow is going through school at the moment and is hoping to be an apprentice when he comes out. We keep saying that the coal industry is at fault here... If the coal industry goes, there are a lot of Australian families and a lot of businesses that just will not be around.⁸¹

Mr Smith told the committee:

I have done 10 years underground and two years on the surface as well. It is everything to me. This is my dream job. It pays well. I will not get another job that pays like this to support my family because I am not educated. I am good with my hands... In the downturn it was bloody horrible. There was no work. I think I had 12 weeks between jobs; I could not find work at all. I just struggled and maxed out credit cards until I could find another job. I lived in Townsville at the time and I could not even get a job in Townsville. If you take the industry out of here, I do not know how many people just in Isaac will be affected, but then there are also people in Emerald, Middlemount and Tieri who all move to chase work up north as well. As work dries up down here, there will be thousands and thousands of people with no job to go to. Nothing in your Bill shows plans for where people are going to work. I do not want to work in the city. I live in a town with no traffic lights and I think it is bloody great.⁸²

3.2.1 Galilee Basin and jobs

The committee heard conflicting views on the number of jobs that would be created as a result of coal mining in the Galilee Basin.

Mr Dow, from Adani Australia informed the committee that the Carmichael project would create 1,000 - 2,000 direct jobs as there was no automation contemplated for Adani's mine sites.⁸³

The consequence of this is over 1,500 direct jobs created through the ramp-up of construction, with a further 6,750 indirect jobs created as a consequence of our development, Indigenous participation at 7½ per cent employment, traineeships at over 10 per cent of Indigenous

⁸⁰ Ms Sinclair, public hearing transcript, Moranbah, 5 March 2019, p 19.

⁸¹ Mr Mawson, public hearing transcript, Moranbah, 5 March 2019, p 18.

⁸² Mr Smith, public hearing transcript, Moranbah, 5 March 2019, p 16.

⁸³ Mr Dow, Adani Australia, public hearing transcript, Brisbane, 4 March 2019, p 18.

*participation and over \$250 million over the course of the project for Indigenous enterprise participation as well.*⁸⁴

However, the evidence on automation heard by the committee contradicts earlier reports in the amount of automation planned by Adani.⁸⁵

Analysis by the Office of the Chief Economist's indicated that if the six major coal projects in the Galilee Basin were to proceed they would create 13,900 construction jobs and 12,803 jobs during operations.⁸⁶ Mr Haseler, representing Resolve Coal, also noted that the Bulloo Creek project close to Charters Towers would provide approximately 140 local Indigenous jobs.⁸⁷

In contrast, proponents of the Bill argued that coal mining in the Galilee Basin would cost jobs in the Surat and the Bowen Basin and damage existing mining communities.⁸⁸ The Port of Newcastle commissioned analysis from Wood Mackenzie was argued to have found that existing coal supplies were enough to supply existing market for a long time and that restricting supply would keep prices higher and benefit the existing coal industry.⁸⁹ Witnesses argued that developing the Galilee Basin would see a significant decline in production from other coal regions in Australia:

*The Wood Mackenzie report looks at pretty significant declines in volume in terms of export of thermal coal that would go through the port of Newcastle, as well as impacts on thermal coal in the Bowen and Surat basins and I guess in the case of the Surat Basin the development of thermal coal projects there. There was a fairly significant decline in volumes going through there.*⁹⁰

Mr Campbell argued that the full development of the Galilee Basin would see around 10,000 fewer people working in existing coal regions of Australia.⁹¹ The Australia Institute assessed the likely changes to jobs, should the Galilee Basin be developed, finding employment reduction of 9,100 in the NSW Hunter Valley, 2,000 in the Bowen Basin and 1,400 in the Surat Basin.⁹²

3.3 Termination and amendment of coal mining leases for land in the Galilee Basin

The Bill proposes to terminate any existing coal mining leases for land in the Galilee Basin; amends any existing coal mining leases which overlap with land in the Galilee Basin to exclude that land; and confirms that no compensation is payable to the mining lease holders affected by the Bill.⁹³

3.3.1 Cancellation of mining leases

DNRME informed the committee that the Queensland Parliament had passed laws that had the effect of cancelling mining leases or different mining tenures in 2003, 2004 and 2008. The leases terminated in each of these cases were for reasons readily distinguishable from the justifications listed in the Bill under consideration. Ms Cooper from DNRME outlined:

The 2003 example was the cancellation of mining leases at Shelburne Bay. At that time it was an amendment of the Mineral Resources Act through the Land Legislation Amendment Act. That

⁸⁴ Mr Dow, Adani Australia, public hearing transcript, Brisbane, 4 March 2019, p 17.

⁸⁵ Mr Swann, The Australia Institute, public hearing transcript, Brisbane, 4 March 2019, p 41; also see; Anna Krien, Revealed: Gautam Adani's coal play in the state facing global-warming hell; <https://www.smh.com.au/lifestyle/adani-how-we-got-conned-by-coal-20170525-gwcw5h.html>

⁸⁶ Mr Macfarlane, QRC, public hearing transcript, Brisbane, 4 March 2019, p 23.

⁸⁷ Mr Haseler, General Counsel, Resolve Coal Pty Ltd, public hearing transcript, Brisbane, 4 March 2019, p 18.

⁸⁸ Member for Maiwar, public briefing transcript, Brisbane, 4 March 2019, p 6.

⁸⁹ Mr Campbell, The Australia Institute, public hearing transcript, Brisbane, 4 March 2019, p 42.

⁹⁰ Mr Campbell, The Australia Institute, public hearing transcript, Brisbane, 4 March 2019, p 43.

⁹¹ Mr Campbell, The Australia Institute, public hearing transcript, Brisbane, 4 March 2019, p 43.

⁹² The Australia Institute, submission 103, p 8.

⁹³ Explanatory notes, p 3.

Act cancelled two mining leases situated at Shelburne Bay in the Cape York Peninsula and also provided that applications for renewal of those mining leases did not require a decision. It also provided that no compensation was payable to any person as a result of the cancellation of those mining leases.

At that time the explanatory notes noted that it was in the public interest that the land subject to the mining leases was to be protected for future generations. It was also seen to be nonsensical for the government to continue to renew those mining leases when there was no intention of actually having the land mined in the future. That was the public interest consideration as expressed in the explanatory notes, so that was the reason for no compensation there.

It happened again in 2004. That time it was about the cancellation of mining leases in Aurukun. In 2004 it was the Aurukun Associates Agreement Repeal Act, which was passed for the purpose of cancelling or repealing the Aurukun Associates Agreement Act. That was cancelling a mining lease in the Aurukun area of western Cape York. The Agreement Act had authorised the making of a special agreement between the state and certain mining companies to provide for the grant of a mining lease in the Aurukun area.

The mining lease was effectively held by Aluminium Pechiney Holdings Pty Ltd. Pechiney failed to comply with its obligations under that agreement, so the state commenced legal action in that case to require the surrender of that lease. The litigation was expected to take many years and it was expected to be quite costly. As a matter of policy, the decision was made to take legislative action to cancel that lease. That also had the effect of opening up Aurukun mineral resources to development and investment. The legislation provided that there was an amount of money that was payable to Pechiney for the mining lease rental. That was basically to reimburse them for that rental and interest, and also the costs that they had incurred in the court proceedings, but there was no provision for any other type of compensation in that particular instance.

The 2008 example was in relation to the Peak Downs mine. That one occurred through the Mineral Resources (Peak Downs Mine) Amendment Bill 2008, which amended the Mineral Resources Act. The purpose of that legislation was to resolve a quite longstanding tenure dispute between two private resource companies, BMA and Cherwell Creek Coal. In that instance, BMA was proposing to do quite a large expansion of the Peak Downs mine, but it was prevented from doing so because of overlapping tenure held by Cherwell Creek. Cherwell Creek had done relatively little in the 13-year period that it had to proof up that particular coal resource in that area. It was decided as a matter of policy that the most appropriate and economic use for that land would be for infrastructure to support the mining expansion. The legislation was put through. It cancelled the exploration permit for coal held by Cherwell Creek to remove that overlapping tenure, to reject two outstanding applications for mineral development licences made by Cherwell Creek over that land and to allow BMA to apply for a mining lease over the land.

In terms of compensation on that particular piece of legislation, it was expressed that there would be no compensation paid by the state. However, there was an ability in that legislation for Cherwell Creek to seek compensation from BMA through the Land Court if it so chose. That would be for the loss of opportunity to commercialise the coal resource in the area of the permit. In 2008 Cherwell Creek actually did commence proceedings in the Land Court to recover compensation against BMA, but that litigation is still ongoing. There is no final hearing date yet on that one.⁹⁴

⁹⁴ Ms Cooper, DNRME, public hearing transcript, Brisbane, 4 March 2019, p 4.

The Bill provides no compensation is payable for any termination or amendment of an existing coal mining lease.⁹⁵ The possibility of the cancellation of existing rights without compensation were of significant concern to a number of witnesses.⁹⁶ The QLS, in its submission notes:

*These provisions will effectively deny a party who presently lawfully enjoys use of one of the affected mining interests a portion of their legitimate expectation without recourse to any form of compensation or review of the decision, in relation to rights which have been extinguished by the State.*⁹⁷

A number of submitters argued that the Bill contradicts fundamental legislative principles (FLPs) which requires that the Queensland Parliament, in making legislation, should have sufficient regard to the rights and liberties of individuals.⁹⁸ The QRC submitted:

*...the Bill contradicts the fundamental legislative principles that legislation should not interfere with property without fair compensation...*⁹⁹

Witnesses noted that FLPs were not mandatory.¹⁰⁰ Mr Ryan from EDO argued:

*The fundamental legislative principles are a guide which can be derogated from if the circumstances demand it. This is an urgent global problem that we are dealing with—climate change. The other point I want to make is that we are not talking about a case where a vulnerable landholder is having their house acquired by a large infrastructure project, which is really what the fundamental legislative principles are dealing with. This is a well-resourced multinational company.*¹⁰¹

Several witnesses noted that FLPs, regarding acquisition of property applies only to natural persons, whereas the Bill cancels the mining leases of corporations.¹⁰² The committee discusses this matter in detail at Section 6 of this report.

3.3.2 Compensation

The committee heard contested views on the issue of compensation. Several witnesses highlighted the significant investments made by ML holders over the past decade in developing the projects in the Galilee Basin. The committee was informed that the shareholders of the GVK Hancock Coal companies, comprising majority shareholder GVK from India, and Hancock Prospecting in Australia, have to date committed more than \$2 billion to the development of thermal coal assets in the Galilee Basin.¹⁰³ Adani had invested over \$1.4 billion to date on the mine and rail project.¹⁰⁴

If MLs were cancelled, the issue of compensation was raised as a matter which would need to be addressed. The QRC submitted:

*If a mining lease is an interest that can be bought and sold (and in Adani's case - bought for half a billion dollars), natural justice issues may arise if Government is to deny that interest without compensation.*¹⁰⁵

⁹⁵ Mineral Resources (Galilee Basin) Amendment Bill 2018, Clause 4, new subsections 334ZJM(4) and 334ZJN(4)

⁹⁶ Mr Plum, QLS, public hearing transcript, Brisbane, 4 March 2019, p 51; Mr Dow, Adani Australia, public hearing transcript, Brisbane, 4 March 2019, p 1; Queensland Resources Council, submission 100.

⁹⁷ Queensland Law Society, submission 95, p 1.

⁹⁸ Legislative Standards Act 1992, Section 4.

⁹⁹ Queensland Resources Council, submission 100, p 3.

¹⁰⁰ Ms Cooper, DNRME, public hearing transcript, Brisbane, 4 March 2019, p 4.

¹⁰¹ Mr Ryan, EDO, public hearing transcript, Brisbane, 4 March 2019, p 30.

Mr Dow from Adani Australia argued:

*Suffice it to say, if this legislation were to somehow find its way and be enacted, clearly there would be a legal recourse to this, not only for the costs incurred but obviously for the future profits that would be forgone as well. That would be a sizeable compensation.*¹⁰⁶

Resolve Coal submitted:

*In conclusion, should this bill be enacted into legislation, the state government will face a storm of opposition, both from the general public, and more particularly in the courts from companies damaged by this bill. Queenslanders want to protect the future prosperity of themselves, their children, and the state in which they live. Queensland companies want to enjoy the rights and protections of the current mineral tenement administration framework, and move forward with certainty that the significant investments they have made are protected by a statutory environment that enables growth and opportunity for all.*¹⁰⁷

Similarly, Hancock Coal noted:

*Our stakeholders have worked for over ten years in the development of our coal assets. Major projects have long and expensive lead times. It is confusing when governments are changing priorities, and it is concerning when such changes add time, cost and uncertainty to major capital investments.*¹⁰⁸

Some witnesses noted that while the Bill's intention in regard to compensation appears to target mining lease holders, the Bill could also affect third parties, such as service businesses, take-or-pay obligations with the ports, landholders and traditional owners.¹⁰⁹ The QLS submitted:

*...this may include landholders who have entered into access arrangements which may not contemplate the unilateral termination of a mining lease, as well as other individuals, organisations and locally operated businesses who have entered into supply or service contracts with a mining lease holder.*¹¹⁰

The committee heard that the NSW state government had paid compensation for the cancellation of three petroleum exploration licences.¹¹¹

The committee received evidence from the EDO outlining that there was no valid legal basis for a claim against the Queensland Government for compensation arising from the passage of the Bill.¹¹²

The regulation of land and mining of resources is clearly within the residual powers of the States, and in our view this Bill does not stray into the heads of power vested in the Commonwealth in the Commonwealth Constitution. The Commonwealth Constitution also provides for the acquisition of property on 'just terms'. However that is a constraint on the Commonwealth

¹⁰² EDO, correspondence dated 11 March 2019, p 1.

¹⁰³ Hancock Coal, submission 86, p 2.

¹⁰⁴ Mr Dow, Adani Australia, public hearing transcript, Brisbane, 4 March 2019, p 19.

¹⁰⁵ QRC, correspondence, 11 March 2019, p 2.

¹⁰⁶ Mr Dow, Adani Australia, public hearing transcript, Brisbane, 4 March 2019, p 19.

¹⁰⁷ Resolve Coal Pty Ltd, submission 5 p 2.

¹⁰⁸ Hancock Coal, submission 86, p 2.

¹⁰⁹ Mr Dow, Adani Australia, public hearing transcript, Brisbane, 4 March 2019, p 19.

¹¹⁰ Queensland Law Society, submission 95, p 2.

¹¹¹ Mr Macfarlane, QRC, public hearing transcript, Brisbane, 4 March 2019, p 25; QRC, correspondence, 11 March 2019, p 2.

¹¹² EDO, correspondence dated 11 March 2019.

*Parliament, not the Queensland Parliament. We note that the Constitution of Queensland Act 2001 (Qld) does not provide for compensation to be payable on the acquisition of property.*¹¹³

Dr Bell-James from UQ told the committee:

*... there is no constitutional requirement to acquire property on just terms at the state level. The bill that we are talking about would remove the legislative entitlement to compensation under the Minerals Resources Act, which is not a constitutional right... there have been several instances of mining leases being revoked by legislative acts in Queensland without compensation, including a case where this was necessitated by the public interest.*¹¹⁴

The Member for Maiwar argued that there was no legal basis on which compensation should be claimed for future profits.¹¹⁵

Mr Buckley from IEEFA proposed that compensation could be limited if no lease payment was made to a state government:

*The bill says that no compensation is due. I think earlier one on the MPs cited the examples of Shenhua's Watermark project and BHP's Caroonna project. They paid the New South Wales government \$300 million for the exploration licences. When the New South Wales government bought back those agreements, with the agreement of Shenhua and BHP, they repaid the exploration payment.*¹¹⁶

¹¹³ EDO, correspondence dated 11 March 2019.

¹¹⁴ Dr Bell-James, UQ, public hearing transcript, Brisbane, 4 March 2019, p 30.

¹¹⁵ Member for Maiwar, public briefing transcript, Brisbane, 4 March 2019, p 5.

¹¹⁶ Mr Buckley, IEEFA, public hearing transcript, Brisbane, 4 March 2019, p 49.

4 Climate Change

Mr Arthur submitted:

*The major cause of the climate change over the last couple of centuries has been excessive use ('consumption') of fossil fuels coal, petroleum oil and mineral ('natural') gas; avoidance of the adverse consequences of this climate change requires that atmospheric CO₂ concentration be allowed to decrease to less than 350 ppm. In turn, this necessitates complete cessation of fossil fuel consumption as rapidly as alternative technologies can be deployed.*¹¹⁷

The explanatory notes outline that the Bill is based on the modelled pathways of global coal use in the Intergovernmental Panel on Climate Change *Special Report on Global Warming of 1.5°C* (the IPCC Special Report) published on 8 October 2018.¹¹⁸

The IPCC Special Report was prepared in response to an invitation from the United Nations Framework Convention on Climate Change (UNFCCC) when it adopted the Paris Agreement in 2015.¹¹⁹

The report found that human activities are estimated to have caused approximately 1.0°C of global warming above pre-industrial levels, with a likely range of 0.8°C to 1.2°C, and if this continues to increase at the current rate, global warming is highly likely to reach 1.5°C between 2030 and 2052. Additionally, the report found that warming from anthropogenic emissions, including greenhouse gases, aerosols and their precursors, will continue to cause further long-term changes in climate, natural and human systems. The future risks associated with climate change depend on the magnitude and rate of warming, geographic location, levels of development and vulnerability, and on the choices and implementation of adaptation and mitigation options.¹²⁰

The report models global emissions pathways to limit global warming to 1.5°C and also to 2°C. Emission pathways are classified by their temperature trajectory over the 21st century. All pathways use Carbon Dioxide Removal (CDR), but the amount varies across pathways, as do the relative contributions of Bioenergy with Carbon Capture and Storage (BECCS) and removals in the Agriculture, Forestry and Other Land Use (AFOLU) sector.¹²¹ Mr Ryan, from EDO told the committee:

... the IPCC modelled four different scenarios of how to keep warming below 1.5 degrees. In those scenarios they modelled the relative percentage of coal power relative to 2010 levels. They do that under scenarios where they make different assumptions... Under all of those scenarios, coal power is reduced by more than 60 per cent by 2030 relative to 2010 levels. If we are to not give

¹¹⁷ Mr Arthur, submission 72, p 1.

¹¹⁸ Explanatory notes, p 1.

¹¹⁹ IPCC, 2018: Summary for Policymakers. In: Global warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, <https://www.ipcc.ch/sr15/chapter/summary-for-policy-makers/>

¹²⁰ IPCC, 2018: Headline Statement from the Summary for Policymakers. In: Global warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, https://www.ipcc.ch/site/assets/uploads/sites/2/2018/07/sr15_headline_statements.pdf

¹²¹ IPCC, 2018: Summary for Policymakers. In: Global warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, <https://www.ipcc.ch/sr15/chapter/summary-for-policy-makers/>

optimistic projections to carbon capture and storage, we would be reducing coal power by 78 per cent on 2010 levels by 2030.¹²²

The Bill's explanatory notes state:

IPCC Special Report summarises existing peer-reviewed scientific studies to provide a consensus statement on:

- additional harm from 2 degrees of warming compared to 1.5 degrees,*
- scientific limits on pollution to provide at least a 50% chance of avoiding 1.5 degrees of warming, and*
- technologically and physically feasible pathways to cut climate pollution in line with those scientific limits.*

Importantly, the IPCC Special Report finds that global impacts, including impacts on Queensland specifically, are far more severe at 1.5 degrees of warming compared to 2 degrees. These impacts include:

- The total destruction (more than 99%) of the Great Barrier Reef and almost all coral reefs at 2 degrees, compared to a very serious but not fatal decline of 70-90% at 1.5 degrees.*
- Risks from droughts, loss of rainfall, floods, extreme weather and cyclones is higher at 2 degrees compared to 1.5 degrees.*
- Hundreds of millions more people would be exposed to climate-related threats such as water stress, loss of food security, disease and risk of conflict at 2 degrees compared to 1.5 degrees.*
- Global mean sea level rise by 2100 would be reduced by 0.1m at 1.5 degrees compared to 2 degrees, meaning 10 million fewer people would be directly affected.*
- Approximately 13% of all terrestrial ecosystems face a "transformation" from one type to another at 2 degrees, but the area at risk is reduced by 50% at 1.5 degrees.*

To avoid these impacts, global climate pollution must fall rapidly, including a global cut of 45% (compared to 2010 levels) by 2030 and reaching "net zero" by around 2050. The pollution cuts are global, meaning that rich, developed nations like Australia must cut pollution even faster.

The IPCC Special Report finds that limiting global warming to 1.5°C would require "rapid and far-reaching" transitions in land use, energy, industry, buildings, transport, and cities.¹²³

4.1 Impacts of climate change

The majority of submitters to this inquiry expressed strong concerns in relations to the impacts of global warming. The Climate Council outlined their support for the Bill for the following reasons:

First and foremost, the stabilisation of the climate system depends on the rapid decarbonisation of global energy systems, the rapid phase-out of fossil fuels and, crucially, no new coal deposits being exploited. Climate change poses real and serious risks for human health, our economy and the environment both in Australia and globally. The risks of climate change rise rapidly in line with the increase in the global average surface temperature. If emissions continue to rise at current rates we are on track to see a global average temperature rise of three to four degrees by 2100. A four-degree temperature rise would likely lead to a world that would be hardly recognisable today.¹²⁴

¹²² Mr Ryan, EDO, public hearing transcript, Brisbane, 4 March 2019, p 11.

¹²³ Explanatory notes, pp 1-2.

¹²⁴ Dr Dean, Climate Council of Australia, public hearing transcript, Brisbane, 4 March 2019, pp 11-12.

The Environment Council of Central Queensland submitted:

*Queensland is entering the 8th year of crippling drought, and has just suffered unprecedented bushfires. In Eungella National Park, a tropical rainforest of enormous scientific significance, and unused to fire, lost 10,000 hectares of the forest as fires travelling at 50kph ravaged the area.... This year too we have witnessed raging fires in Sweden and the Arctic Circle, and in the Amazon rainforest that was previously considered fireproof. Our global climate is changing, we know why, and we know how to limit the devastation. We can see climate change now, in the changes to the Reef, in our landscapes, in our loss of species. We should not be complacent about these things happening on our watch.*¹²⁵

A large number of submitters identified several climate change risks and risks associated with coal mining in the Galilee Basin:

- increasing severe weather events¹²⁶
- destruction of the Great Barrier Reef¹²⁷
- rising sea level¹²⁸
- legal risks¹²⁹
- water risks¹³⁰

Many submitters noted that Queensland was particularly vulnerable to climate change risks. For example, Mr Smith argued:

*Queensland is at the front line of the negative consequences of climate change with intensifying storms and deeper droughts, bleaching of the Great Barrier Reef and coastal erosion and inundation due to rising sea levels.*¹³¹

4.2 Weather events and the economic cost of natural disasters

Numerous submitters noted the increase in the frequency and severity of extreme weather events, especially heatwaves, intense rainfall and extreme bushfires.¹³² Dr Dean from the Climate Council of Australia told the committee:

*Queensland has just experienced a summer of extremes, from drought to heatwaves to bushfires and flooding. The series of events that occurred is illustrative of how, as extreme weather events increase in frequency and/or severity, they are occurring more often in coincidence or in close succession, with significant implications for coping capacity.*¹³³

Numerous submitters noted that failing to limit fossil fuel emissions will increase the number of extreme heat days in Queensland cities and increase temperatures tenfold.¹³⁴

The committee was told of the increasing economic cost of severe weather in Queensland and that Queensland was particularly exposed to extreme weather, having borne 60 per cent of the cost to

¹²⁵ Environment Council of Central Queensland, submission 20, p 2.

¹²⁶ For example see Submissions: 1; 8; 10; 45; 78; 85; 99.

¹²⁷ For example see Submissions: 11; 18; 22; 35; 46; 49; 50; 77; 81; 83.

¹²⁸ For example see Submissions: 4; 35; 83; 88.

¹²⁹ Dr Bell-James, UQ, submission 93, Environmental Defenders Office QLD, submission 97.

¹³⁰ For example see Submissions: 7; 43; 54; 59; 72.

¹³¹ Mr Smith, submission 12, p 1.

¹³² For example see Submissions: 18; 21; 45; 78; 85; 99.

¹³³ Dr Dean, Climate Council of Australia, public hearing transcript, Brisbane, 4 March 2019, p 11.

¹³⁴ The Australia Institute, submission 103, p 9.

Australia in recent decades.¹³⁵ Dr Dean from the Climate Council of Australia highlighted the cost to the Queensland state government of the recent severe weather events in 2018-19:

*Queensland's 2018-19 summer of disasters has cost the state government an estimated \$1.5 billion. The latest figures from AgForce suggest that half a million cattle were killed in North-West Queensland during the floods, costing farmers about \$500 million. The floods resulted in at least \$887 million in insured losses as at the latest estimate, so this figure may rise.*¹³⁶

Similarly, Ms Tubman told the committee:

*You said that the bill could cost Queensland \$660 million in compensation if it passes. In contrast to that, the recent floods in Townsville are estimated to have cost \$1.5 billion. The recent storms in Brisbane cost \$1.1 billion. The more climate change, the more coal, the more carbon dioxide, the more catastrophic weather events we will experience and the more compensation will be paid. We have to look at all those economic costs.*¹³⁷

Doctors for the Environment Australia highlight that along with the tangible costs of natural disaster there were significant, and higher intangible costs:

*While tangible costs tend to be one-off costs, the intangible ones tend to be long-term, often life-long. They found for 2015 that the social costs of natural disasters were at least equal to the physical costs, if not greater. In their case study of the Queensland Floods of 2010-11 the intangible costs were estimated to be \$7.4 billion, compared with the tangible costs that amounted to \$6.7 billion (in 2015 dollars).*¹³⁸

The cost of natural disasters can also be extrapolated over a lifetime, Doctors for the Environment Australia informed the committee:

*Further estimates of health effects resulting from the Queensland floods detailed the lifetime cost (net value in 2015 Australian dollars) of death and injuries at around \$320 million, exacerbation of diabetes and chronic obstructive pulmonary disease, and the development of stroke, resulting from the floods totalling around \$430 million, lifetime cost of mental health issues at around \$5.9 billion, lifetime cost of flood-related increase in risky alcohol consumption \$20 million, and flood-related increases in family violence around \$720 million. These are extrapolated estimates of major indirect health cost components.*¹³⁹

Deloitte Access Economics found that the total economic cost of natural disasters in Australia for 2015 exceeded \$9 billion and that this is estimated to rise to an average of \$33 billion per annum by 2050.¹⁴⁰

4.3 The Great Barrier Reef

The Great Barrier Reef, in addition to its significant ecological value, supports coastal communities by providing employment, protection from coastal erosion, food, leisure opportunities and is part of vital ecosystems.¹⁴¹ Many submitters argued that climate change is the biggest threat to the World Heritage listed Great Barrier Reef.¹⁴² It was argued that:

... oceans are growing warmer because they are absorbing excess heat from the atmosphere, caused by our continued burning of fossil fuels. The use of coal, oil and gas is the biggest threat

¹³⁵ Dr Dean, Climate Council of Australia, public hearing transcript, Brisbane, 4 March 2019, p 16.

¹³⁶ Dr Dean, Climate Council of Australia, public hearing transcript, Brisbane, 4 March 2019, p 11.

¹³⁷ Ms Tubman, public hearing transcript, Moranbah, 5 March 2019, p 14.

¹³⁸ Doctors for the Environment Australia, correspondence, 11 March 2019, p 2.

¹³⁹ Doctors for the Environment Australia, correspondence, 11 March 2019, p 2.

¹⁴⁰ Doctors for the Environment Australia, correspondence, 11 March 2019, p 2.

¹⁴¹ Doctors for the Environment Australia, submission 60, p 6.

¹⁴² For example see Submissions 11; 18; 22; 46; 49; 50; 66; 77; 81; 83.

*to the continued existence of our iconic Great Barrier Reef and Queensland's unique and important flora and fauna.*¹⁴³

Dr Ward from UQ also noted that the increase levels of carbon dioxide in the atmosphere has led to an increase in ocean acidification:

*We do not talk about this much. This is a very big problem for oceans globally. So far we have had a 30 per cent increase in the amount of carbon dioxide in the sea since pre-industrial times.*¹⁴⁴

The Australian Marine Conservation Society outlined the recent loss of coral on the Great Barrier Reef as a result of marine heatwaves:

*During the summers of 2016 and 2017, half of the Great Barrier Reef's shallow water corals died due to two consecutive marine heatwaves. Major bleaching and mortality also affected almost a quarter of deep water corals (40 metres). Hard coral cover has shown a steep decline throughout the northern, central and southern Great Barrier Reef. The loss of coral in all three regions (northern, central, southern) is unprecedented in the historical record. Many reefs now have very low coral cover. The geographic scale of recent bleaching means that breeding populations of corals have been decimated over large areas. Last year coral recruitment declined by an alarming 35-93%, depending on the species.*¹⁴⁵

Dr Ward highlighted that while the issue of coral bleaching attracts a lot of public attention there are a range of significant and damaging marine issues related to marine temperature increases:

*Coral disease is exacerbated by higher temperature. Reproductive modes are disrupted by higher temperature. Basically, fish biology is very badly affected by increases in temperature. It is not just bleaching, but this is one that attracts most of our attention.*¹⁴⁶

Numerous submitters argued the need to act quickly in relation to climate change as a 1.5 degrees increase in global temperature will result in a loss of 70 per cent to 90 per cent of coral reefs around the world. Further, it was argued that if global temperatures increase by two degrees Celsius, 99 per cent of coral reefs, including the Great Barrier Reef, will be lost.¹⁴⁷ Submitters emphasised the link between coal production and coral reef decline:

*In order to save the reef, we need to be reducing coal production. It is clearly inconsistent with keeping it under 1.5 degrees—saving the reef—to increase coal production by 60 million tonnes, in the case of Adani, or over 100 million tonnes a year, in the case of opening up the whole Galilee Basin. It is certainly necessary to not open up the Galilee Basin in order to avoid 1.5 degrees and save the last of the reef, but it is not nearly enough.*¹⁴⁸

Proponents of the Bill highlighted that the loss of the Great Barrier Reef would result in related environmental and economic losses,¹⁴⁹ and that consideration should be given to the economic value of the Great Barrier Reef. Dr Schindler from the Australian Marine Conservation Society argued:

... the Great Barrier Reef is a global icon. People around the world love it, and we are very lucky as Queenslanders to have it in our state. If its intrinsic value does not motivate, let the economic

¹⁴³ Australian Marine Conservation Society, submission 63, p 2.

¹⁴⁴ Dr Ward, UQ, public hearing transcript, Brisbane, 4 March 2019, p 29.

¹⁴⁵ Australian Marine Conservation Society, submission 63, p 1.

¹⁴⁶ Dr Ward, UQ, public hearing transcript, Brisbane, 4 March 2019, p 29.

¹⁴⁷ Dr Schindler, Australian Marine Conservation Society, public hearing transcript, Brisbane, 4 March 2019, p 10.

¹⁴⁸ Mr Ryan, EDO, public hearing transcript, Brisbane, 4 March 2019, p 11.

¹⁴⁹ Mr Playford, submission 22, p 1.

*benefits of the reef motivate you. It is a \$6 billion asset to the state. It brings in \$6 billion every year. It supports 64,000 tourism jobs.*¹⁵⁰

In 2015-16, Deloitte Access Economic found that the Great Barrier Reef provides, \$6.4 billion and 64,000 jobs to Australia; \$3.9 billion and 33,000 jobs to Queensland and \$2.9 billion and 24,000 jobs within the Great Barrier Reef regions.¹⁵¹

Ms Hawke outlined the value of the Great Barrier Reef for employment for her family:

*I want to see EVERYTHING possible done to preserve our wonderful Great Barrier Reef. Two of my adult children began their working lives in the tourist industry, working in the Whitsunday Islands, catering for international and national love and awe of this, our greatest natural icon; our drawcard for tourists from the 4 quarters of the world.*¹⁵²

Dr Abel argued that employment opportunities for north Queensland were more appropriately generated in industries other than mining:

*Coal mining does create jobs, it's true, and new jobs are needed in north Queensland. Let's remember though, that new mines will be largely robotic, and those people who are employed are likely to be skilled and sourced from existing mining regions like the Hunter. More new jobs are likely to be generated by investment in tourism, agriculture and renewable energy industries than by an equivalent investment in coal mining. The Great Barrier Reef already supports almost 69,000 jobs, but even these existing jobs will be threatened as climate change degrades the Reef. Meanwhile the new coal mines would also be damaging ground water and harming prospects for new jobs in agriculture.*¹⁵³

4.4 Rising sea levels

Several submitters raised the impact of climate change on rising sea levels. Dr Dean from the Climate Council of Australia argued:

*There is also a very clear trajectory with sea level rises. Sea levels have risen by roughly 20 centimetres. That is the global average, but it is rising much more quickly in some areas of Queensland and that is projected to increase. I think the Queensland government is anticipating an increase of 0.8 metres by the end of the century.*¹⁵⁴

Mr McRae submitted that rising sea levels would have a devastating impact in regard to displacing populations:

*It is noteworthy that climate change induced sea level rise will also have serious national security implications relating to the displacement of millions of persons currently residing in low lying coastal areas, loss of arable land etc, both abroad and within Australia.*¹⁵⁵

Dr Bell-James from UQ noted the significant economic impact of sea level rise:

Sea-level rise is another anticipated impact of climate change. If global emissions continue on a business as usual trajectory, sea-level rise of up to 0.98m is projected. A now-dated 2009 report indicated that over 711,000 residential addresses are located within 3km of the coast, and less

¹⁵⁰ Dr Schindler, Australian Marine Conservation Society, public hearing transcript, Brisbane, 4 March 2019, p 10.

¹⁵¹ Deloitte Access Economic, At what price? The economic, social and icon value of the Great Barrier Reef, 2017, <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-great-barrier-reef-230617.pdf>

¹⁵² Ms Hawke, submission 48, p 1; also see: Ms Rodier, submission 45.

¹⁵³ Dr Abel, submission 88, p 1.

¹⁵⁴ Dr Dean, Climate Council of Australia, public hearing transcript, Brisbane, 4 March 2019, p 16

¹⁵⁵ Mr McRae, Submission 4, p 1.

*than 6 metres above sea level. Another study conducted in Queensland suggested that there are currently 35,200 residences exposed to storm tide inundation, with a likely damage bill of \$1.1 billion if an event occurs. With the same planning regulation as today [2010], this could rise to 61,500 structures and a \$3.9 billion damage bill by 2070. Although these figures are now ~10 years old, population expansion and continued growth means that they are likely higher today, especially in light of the chequered history of coastal planning in Queensland over the past decade.*¹⁵⁶

4.5 Legal risks

There were different opinions amongst submitters on whether there are legal risks for governments that do or do not address climate change impacts. A number of witnesses highlighted the potential legal risk facing governments who fail to address climate change impacts in decision-making.¹⁵⁷ Proponents of the Bill would argue that court decisions are determining liability for emissions and Australian courts are setting policy and directions through case law due to an absence of government decisions at a Federal level. The EDO identified the risk of climate litigation in which global citizens, governments and corporations are seeking redress for the effects of climate change:

*The Columbia Law School - Sabin Centre for Climate Change Law records at least 252 cases against governments regarding climate change. In the United States alone there are 21 climate change cases seeking monetary damages. There are also cases currently pending before Courts in Canada, Europe, and Switzerland. Although it remains a novel application of the law, those claims indicate the possibility of Australian governments being ordered to pay damages suffered as a result of failure to take action on climate change.*¹⁵⁸

The EDO provided examples of case law in which consideration was given to climate change risks:

There is, however, ample case law affirming the legitimacy of climate change supporting government actions that have the effect of limiting the use or enjoyment of property even though that limitation was not the explicit subject of the case. For example:

- In assessing coal mines, Queensland courts have held climate change to be a relevant consideration in respect of the public interest with climate change being “real and of concern” and could not be dismissed as negligible.
- In *Charles & Howard Pty Ltd. v. Redland Shire Council*, (2007) 159 LGERA 349, 358-59, the Queensland Planning and Environment Court upheld the legitimacy of the Redland Shire Strategic Plan of 1998 requirement for urban developments “to take into consideration sea level changes which may result from changes in climatic conditions.”
- In *Northcape Properties Pty Ltd v. District Council of Yorke Peninsula* (2008) SASC 57. The Supreme Court of South Australia upheld a local council decision to refuse a proposed coastal development due to risk of sea level rise.
- In *Gloucester Resources Limited v. Minister for Planning, New South Wales, Australia* (2019). The New South Wales Planning and Environment Court included climate change as a ground of refusal of a coal mine.
- In *WildEarth Guardians v. United States Bureau of Land Management*, 10th Cir., U.S.A. (2017). The U.S. Court of Appeals held that the government should have taken the contribution of four coal leases to national greenhouse gas emissions into account in assessing the environmental

¹⁵⁶ Dr Bell-James, UQ, submission 93, pp 4-5.

¹⁵⁷ EDO Correspondence, 11 March 2019, p 10.

¹⁵⁸ EDO Correspondence, 11 March 2019, p 8.

impact of approving the leases, and required the agency to complete a new assessment taking climate into account.¹⁵⁹

Some submitters argued that the current legislative framework in Queensland does not explicitly require climate change to be taken into account in making decisions about mining leases, and associated environmental approvals.¹⁶⁰

Opponents of the Bill point to the precedents in the Queensland Lands Court decision on the Adani proposal in 2015¹⁶¹ which stated that only emissions resulting from the mines operations should be taken into account in assessing the impact of the mine. Mr Macfarlane from QRC argued:

*Australia is not expected to account for scope 3 emissions¹⁶²; they are the emissions from the coal being burnt somewhere else in another country and we only have to account for the emissions that we produce in producing that coal, whether it be fugitive emissions from the coal seam itself or from the machinery related in mining it—it goes way beyond any international commitment we have, bearing in mind that Australia is one of the few countries that are on target to meet the Kyoto agreement in terms of its global emissions and is on target in terms of its commitment to reach the Paris Agreement.*¹⁶³

However, proponents of the Bill point out that emissions from the coal produced by the mine can be relevant considerations under the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994*. Dr Bell-James stated courts are edging closer to the upholding objections to mining activities on the basis of climate change arguments. Dr Bell-James also noted that courts have acknowledged cause and effect between a project's scope 3 emissions and climate change that single projects are significant in a global context, and emissions can be assessed on a cumulative basis.¹⁶⁴

*To convince a court that a project should not go ahead on the basis of climate change, you need to look at the legislative framework that they are operating within. The New South Wales legislative framework is similar enough to Queensland's in that there are a multitude of different factors that have to be considered, including the environment and public interest, as well as your obvious economic arguments. Justice Preston weighed up the evidence and found that the potential climate change impacts that would result from the project were sufficient to say no to it on that ground, amongst other grounds.*¹⁶⁵

Similarly, Mr Plumb from QLS noted:

*Scope 3 emissions are something which have been considered by the Queensland Land Court in review of mining lease applications. The Queensland Land Court has an administrative function when objections are made to mining leases and scope 3 emissions are certainly something which has been considered.*¹⁶⁶

¹⁵⁹ EDO Correspondence, 11 March 2019, pp 6-7.

¹⁶⁰ Dr Bell-James, UQ, submission 93, p 6.

¹⁶¹ *Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors [2015] QLC 48*

¹⁶² The Greenhouse Gas (GHG) Protocol Corporate Standard classifies a company's GHG emissions into three 'scopes'. Scope 1 emissions are direct emissions from owned or controlled sources. Scope 2 emissions are indirect emissions from the generation of purchased energy. Scope 3 emissions are all indirect emissions (not included in scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions.

¹⁶³ Mr Macfarlane, QRC, public hearing transcript, Brisbane, 4 March 2019, p 26.

¹⁶⁴ Dr Bell-James, UQ, submission 93.

¹⁶⁵ Dr Bell-James, UQ, public hearing transcript, Brisbane, 4 March 2019, p 33.

¹⁶⁶ Mr Plumb, QLS, public hearing transcript, Brisbane, 4 March 2019, p 52.

The growing importance of case law in establishing climate change and emissions responsibility throughout different Australian jurisdictions emphasises the need for a consistent and leadership-based climate change policy framework at a national level.

4.6 Water risks

A number of submitters highlighted the significant water risks associated with the proposed mining projects in the Galilee Basin.¹⁶⁷ Dr Currell noted the multiple effects on the region's aquifers, groundwater users and groundwater dependent ecosystems:

*The approved and proposed mines, individually and in combination, will extract significant quantities of groundwater over a very large area in the Galilee Basin in Central Queensland... effects include significant changes to water balances in the region, the creation of a pretty serious area of legacy mining impact that is permanently changing the water balance in the region and water quality. There will be effects on some bores within the region. There will be impacts on surface water systems and springs in the region.*¹⁶⁸

The committee was informed that Adani's Carmichael Mine and Rail Infrastructure Project has applied for and been granted a licence to use 12.5 GL of water per year from local river systems through the North Galilee Water Scheme. It has also been provisionally granted unlimited groundwater, to be drawn from the Great Artesian Basin.¹⁶⁹

Several submitters raised concerns in regard to the cumulative impact of developing up to 300Mtpa of new thermal coal mines in the Galilee Basin on the hydrology of the region.¹⁷⁰

*The combination of both open-cut pits and long-wall underground mines over an area with a length well in excess of 100 kilometres is going to create, firstly, permanent land surface changes. The shape and the nature of the land surface will be changed permanently. You will have areas of subsidence and cracking in the surface. You will have the mine voids themselves that are going to be open. All of this creates a permanent change to the hydrological function of the region.*¹⁷¹

While the coal mines in the Galilee Basin are not proposing to take water from the Great Artesian Basin, the committee heard that indirect effect of these mines, will result in leakage of water and some drawdown occurring within the Great Artesian Basin aquifers.¹⁷² The committee heard of the complexity and connectivity of the hydrological cycle in the region:

*Groundwater is connected to the surface hydrological cycle. Any water that is extracted from depth, even if it is a significant depth below the surface, has some level of connectivity with the broader hydrological cycle. When we take water out from deep under the ground, it is not the same as mining a rock—where you are taking an isolated body of rock and moving it somewhere else. There is a connectivity effect. This is where the potential to impact things like springs is coming from. That is the basis of those potential impacts.*¹⁷³

A recent report on the impact of Galilee Basin coal mines on the Central Queensland water flows and water reserves by CSIRO, Bureau of Meteorology, Geoscience Australia, and the Federal Department of Environment found that there is a very high likelihood (95% chance) that the mines will:

¹⁶⁷ Dr Peter Turner, National Parks Association of NSW, submission 104; Ms Tubman, Tabled document Moranbah, 5 March 2019.

¹⁶⁸ Dr Currell, RMIT, public briefing transcript, Brisbane, 4 March 2019, p 59.

¹⁶⁹ Doctors for the Environment Australia, submission 60, pp 4-5.

¹⁷⁰ IEEFA, submission 94, p 20.

¹⁷¹ Dr Currell, RMIT, public briefing transcript, Brisbane, 4 March 2019, p 62.

¹⁷² Dr Currell, RMIT, public briefing transcript, Brisbane, 4 March 2019, p 59.

¹⁷³ Dr Currell, RMIT, public briefing transcript, Brisbane, 4 March 2019, p 59.

- change water flows in the Belyando River basin
- more than 1000km of streams will very likely have additional zero flow days
- the habitat of 12 threatened species and two ecological communities are also likely to be affected.
- five economic assets would be affected by the draw down from the mines with 3 associated with the Clematis Group of aquifers and one with the Jericho town water supply.¹⁷⁴

The committee also heard that the Doongmabulla Springs, a nationally important wetland, could be negatively impacted by groundwater drawdown.¹⁷⁵ Ms Roberts submitted:

*The Doongmabulla Springs, sacred to the Wangan and Jagalingou people, would be seriously affected and very likely lost to all Australians if the Adani coal mine were to go ahead. These indigenous people have had to take their fight to preserve their spiritual and cultural heritage to the United Nations, a move that should be quite unnecessary in terms of their land rights protections. This site may be far from the centres of financial and political power in Australia but is equally deserving of protection as any historical or heritage site in any capital city.*¹⁷⁶

Opponents of the Bill noted that the environmental assessment process in relation to ML approvals was comprehensive and scientifically rigorous.¹⁷⁷ The QRC and CFMEU noted:

*All Queensland resource projects undergo a rigorous assessment process, the purpose of which is to ensure an appropriate balance between economic, environmental and social impacts.' This process can take years to complete and is undertaken by credible and unbiased experts in the public service. This assessment process agrees on the scope of the issues to be evaluated. A considerable weight of scientific evidence is assembled and presented as a key input into this assessment process.*¹⁷⁸

Regional councils support the current comprehensive environmental approvals required in obtaining a mining lease.¹⁷⁹ The North West Queensland Regional Organisation of Councils argued that the Bill sets different standard of environmental assessment:

*Notwithstanding this economic benefit, the councils support rigorous environmental controls and conditions on any mining approval including coal no matter where it is mined in Queensland. Subject to world leading regulatory standards being imposed coal mining should be permitted in any Basin. Indeed, it is duplicitous to seek the banning of coal mining in one Basin and not others if the same environmental standards and controls are imposed across all of them.*¹⁸⁰

Some submitters highlighted that mining companies currently undertake programs with significant environmental benefits, such as, contributing to the Capping and Piping Program to assist with conservation of Great Artesian Basin water.¹⁸¹

The department outlined the complex and lengthy process undertaken prior to the granting of a ML.¹⁸² The process requires that an applicant obtain an environmental authority (EA) for the mining activities

¹⁷⁴ Professor Peter Dart, Queensland University of Technology, submission 96, p 2.

¹⁷⁵ Doctors for the Environment Australia, submission 60, pp 4-5.

¹⁷⁶ Ms Roberts, submission 66, p 2.

¹⁷⁷ Mayor McNamara, Shire of Flinders, public hearing transcript, Brisbane, 4 March 2019, p 58.

¹⁷⁸ QRC & CFMEU, submission 100, p 3.

¹⁷⁹ Shire of Flinders, submission 75; Isaac Regional Council, submission 79.

¹⁸⁰ North West Queensland Regional Organisation of Councils, submission 102, p 1.

¹⁸¹ Shire of Flinders, submission 75.

¹⁸² DNRME, correspondence, 1 February 2019, pp 2-3.

proposed to be carried out under the *Environmental Protection Act 1994* (EP Act). Under the MRA, a mining lease cannot be granted unless an EA has been issued. If any objections to the draft EA are lodged, these are referred to the Land Court for consideration.¹⁸³

DNRME noted that the Land Court conducts a hearing into the mining lease application and objections, and if objections on the draft EA have been made, the draft EA and objections as well. The hearing culminates in the Land Court recommending grant or refusal of the ML (taking into account the matters set out in section 269(4) of the MRA) and EA, with or without conditions.¹⁸⁴

¹⁸³ DNRME, correspondence, 1 February 2019, pp 2-3.

¹⁸⁴ DNRME, correspondence, 1 February 2019, pp 2-3.

5 Coherent policy on energy and climate change

A number of submitters noted that there is a fundamental contradiction between Australian federal and state government policies on climate change.¹⁸⁵ This divergence is more pronounced at the federal level where Australia has committed to the Paris Agreement, which requires a reduction in global demand for coal, while promoting growth in coal production and exports.¹⁸⁶

Submitters argued that the current uncertainty at the national level in relation to climate change strategy was detrimental to other levels of government, industry, businesses and the community.¹⁸⁷ Mr Stevenson from Isaac Regional Council highlighted that local government takes legislative and policy directions from state and federal governments and that uncertainty in regard to climate change strategy and policies does not support regional economic, social and environmental outcomes.¹⁸⁸

Mr Blackly from IEEFA argued the need for governments to set the legislative and policy framework in which industry can operate:

*We need the governments to lead and we need the government to create the framework for a market to operate. That is what corporates do; they operate within the market. You the legislator create that framework. The market does not create the framework. The market will look after itself within the framework our governments provide.*¹⁸⁹

Similarly, Mr Ryan from EDO argued:

*Markets make great servants but poor masters. It is clear that in order to preserve the reef we need to restrict coal from the Galilee Basin. That is a decision we should make—or, more accurately, you should make as elected representatives of Queensland and not abrogate that duty to the markets. It is not for them to decide; it is for us to decide.*¹⁹⁰

Dr Schindler from the Australian Marine Conservation Society highlighted the role to be played by subnational governments if national leadership is missing:

*We have seen in the US what happens when leadership fails at the national level: the states have taken over and are achieving great climate outcomes. The fact of the matter is that Queensland has a lot to lose, and it is not just the Great Barrier Reef... it is these extreme weather events—it is everything. The government needs to be doing everything it can, and it can be a subnational leader on this issue.*¹⁹¹

It was argued that the lack of policy stability at a federal level may hinder the ability of the Queensland Government to implement future climate change actions and poses problems in adopting a substantive post 2020 pathway. Mr Roberts from DNRME informed the committee:

*Due to the uncertainty and instability at the national level, the Queensland climate change strategy takes a two-stage approach to develop a long-term solution and pathways to address climate change.*¹⁹²

¹⁸⁵ See: Doctors for the Environment Australia, submission 60.

¹⁸⁶ Mr Swann, The Australia Institute, public hearing transcript, Brisbane, 4 March 2019, p 41.

¹⁸⁷ Mr Roberts, DNRME, public hearing transcript, Brisbane, 4 March 2019, p 2.

¹⁸⁸ Mr Stevenson, Isaac Regional Council, public hearing transcript, Moranbah, 5 March 2019, p 5.

¹⁸⁹ Mr Buckley, IEEFA, public hearing transcript, Brisbane, 4 March 2019, p 45.

¹⁹⁰ Mr Ryan, EDO, public hearing transcript, Brisbane, 4 March 2019, p 13.

¹⁹¹ Dr Schindler, Australian Marine Conservation Society, public hearing transcript, Brisbane, 4 March 2019, p 12.

¹⁹² Mr Roberts, DNRME, public hearing transcript, Brisbane, 4 March 2019, p 2.

Mr Roberts from DNRME highlighted the Queensland Government's actions on climate change, despite the lack of national leadership in this area:

The Queensland government accepts the science of climate change and supports the Paris outcomes which lead to a reduction of global emissions below two degrees and preferably 1.5 degrees. The Queensland government has set two targets: the target of zero net emissions by 2050, to coincide with the Paris outcome, and an interim target of a reduction of 30 per cent on 2005 levels by 2030. Achieving these targets requires a whole-of-economy approach from all sectors including the resources sector...

The first stage, which is currently underway ... is a range of low-risk and no-regrets actions that the Queensland government is currently facilitating and leading; and the second stage consists of a suite of substantive policy measures for the post-2020 environment and actions. Meeting the emissions reduction target of a 30 per cent reduction on 2005 levels by 2030 requires a reduction of something like 27 million megatons annually from current levels, and additional emissions in Queensland will need to be offset by additional reductions in emissions across the different sectors.¹⁹³

The majority of submitters to this inquiry who supported the Bill, argued the need for strong political leadership.¹⁹⁴ Mr McRae argued:

Governments need to be courageous and show true leadership by doing what is best for future generations even if it jeopardises the immediate future of the party or individual, in political terms. We have only one world sharing an atmosphere and ocean. Let history show that QLD did its part to protect the globe and the future of humanity.¹⁹⁵

Recommendation 2

The committee recommends that the Queensland State Government advocate for a consistent national framework for climate change policy and emission targets, as the current federal policy instability may hinder Queensland's adoption of future climate change actions and pathways.

¹⁹³ Mr Roberts, DNRME, public hearing transcript, Brisbane, 4 March 2019, p 2.

¹⁹⁴ For example see Submission 10; 16; 25; 33; 34; 35; 36; 40; 55; 56; 64; 66; 80; 99; 101.

¹⁹⁵ Mr McRae, submission 4, p 1.

6 Compliance with the *Legislative Standards Act 1992*

6.1 Fundamental legislative principles

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

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

6.1.1 Rights and liberties of individuals - Section 4(3)(g)

Clause 3 inserts new provisions into section 234 of the *Mineral Resources Act 1989*. The new subsection (5) prevents the minister from granting a coal mining lease for land in the Galilee Basin where the application for the lease was made before the commencement.

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

Clause 3 has an adverse retrospective effect in its treatment of a person’s already existing application or mining lease is an action that is imposed retrospectively.

Section 4(2)(a) of the *Legislative Standards Act 1992* states that the fundamental legislative principles include requiring that legislation has sufficient regard to the rights and liberties of individuals. On its face, this does not extend to corporations. Taking a literal and perhaps technical approach, any breach of fundamental legislative principle would not apply to a corporate entity.

While it is understood that all operators of coal mines currently operational in Queensland are corporations,¹⁹⁶ it is clearly possible that a coal mine operator or the holder of a coal mining lease can be an individual.

As such, the clauses are capable of extending to individuals and, particularly if a broader approach is taken to the extent of rights and liberties under the *Legislative Standards Act 1992*, the issue under section 4(3)(g) regarding retrospectivity is enlivened.

The Queensland Law Society noted that while the Bill’s objectives appear to be intended to affect mining lease holders, it will likely affect a significant number of stakeholders and individuals:

*In addition to individual shareholders, this may include landholders who have entered into access arrangements which may not contemplate the unilateral termination of a mining lease, as well as other individuals, organisations and locally operated businesses who have entered into supply or service contracts with a mining lease holder.*¹⁹⁷

Issues of retrospectivity are not mentioned in the explanatory notes. The Queensland Law Society stated:

The proposed retrospective application of the Bill in relation to applications made prior to its commencement is clear. Retrospective laws imposing obligations make the law less reliable and

¹⁹⁶ See Department of Natural Resources and Mines, *Queensland coal – mines and advanced projects*, Table 3

¹⁹⁷ Queensland Law Society, submission 95, p 2.

*less certain. The proposition as outlined above does not align with section 4(3)(g) of the Legislative Standards Act.*¹⁹⁸

The Queensland Resources Council also raised the issue of retrospectivity:

*Termination of granted tenure by legislative decree would be a clear breach of fundamental legislative principles. It would retrospectively affect the rights and liberties of individuals.*¹⁹⁹

Committee comment

The committee does not consider that the Bill's adverse retrospective impacts are sufficiently justified.

6.1.2 Compulsory acquisition of property - Section 4(3)(i)

Clause 4 introduces new sections 334ZJM and 334ZJN in the *Mineral Resources Act 1989*. Existing coal mining leases over land only in the Galilee Basin are terminated under section 334ZJM. Under section 334ZJN, any lease including land partly in the Galilee Basin is amended to exclude the land in the Galilee Basin.

Both of these provisions expressly state that no compensation is payable for the termination or amendment of the coal mining lease.²⁰⁰

Section 4(3)(i) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation provides for the compulsory acquisition of property only with fair compensation.

An abrogation of established statute law rights and liberties must be justified.²⁰¹ Entities that have been granted coal mining leases under the *Mineral Resources Act 1989* have rights and liberties associated with those leases. The termination or amendment of their leases is removing or diminishing those rights and liberties.

The OQPC states, 'A legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason'.²⁰²

Former committees noted that it is generally acknowledged that compulsory acquisition of property must only be made with compensation.²⁰³

Committee comment

It might be a matter of debate whether there is technically any acquisition of property under the Bill, and so whether there is any breach of fundamental legislative principle in providing for no compensation. The explanatory notes recognise, but do not accept, the proposition:

*It could be argued that the Bill contradicts the [fundamental legislative principle] that legislation should not interfere with property without fair compensation unless there is a good reason. It is difficult to how the cancellation of a mining lease [or] a permanent ban on all coal mining on that same land would qualify as an 'acquisition'.*²⁰⁴

¹⁹⁸ Queensland Law Society, submission 95, p 2.

¹⁹⁹ Queensland Resources Council, submission 100, p 10.

²⁰⁰ See proposed subsections 334ZJM(4) and 334ZJN(4) *Mineral Resources Act 1989*.

²⁰¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 106.

²⁰² Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 73.

²⁰³ Alert Digest 1996/7, pp 27-28, para 7.13.

²⁰⁴ Explanatory notes, p 4.

The Queensland Law Society stated:

*... These provisions will effectively deny a party who presently lawfully enjoys use of one of the affected mining interests a portion of their legitimate expectation without recourse to any form of compensation or review of the decision, in relation to rights which have been extinguished by the State.*²⁰⁵

Similarly, the Queensland Resources Council saw the exclusion of compensation as a breach of fundamental legislative principle:

*... the Bill contradicts the fundamental legislative principles that legislation should not interfere with property without fair compensation ...*²⁰⁶

Regardless of whether there is any ‘acquisition’ of propriety (and so regardless of whether section 4(3)(i) of the *Legislative Standards Act 1992* is itself specifically enlivened), it is clear that terminating a coal mining lease necessarily involves the removal of rights. As such, there is a clear impact on rights and liberties, and therefore a breach of the fundamental legislative principles, which can be seen as being exacerbated by the exclusion of any compensation.

The explanatory notes acknowledge justify any potential breach of fundamental legislative principle this way:

*Even if the cancellation of a mining lease does qualify as an acquisition of property under current jurisprudence, the existential threat posed by dangerous global warming justifies the measures in this Bill.*²⁰⁷

Committee comment

While it might be arguable whether the cancellation of a mining lease amounts to a compulsory acquisition, the committee believes that in any event, to remove a mining lease, without compensation, is an interference with the rights of a lease holder. The position outlined in the explanatory notes that compensation is not required is questionable and precarious.

Despite the stated policy intent of the Bill, the committee believes that the breach of fundamental legislative principle is not sufficiently justified.

6.1.3 Clear and precise – Section 4(3)(k)

The committee considered whether the Bill was unambiguous and drafted in a sufficiently clear and precise way.

Clause 4 inserts new section 334ZJL and the definition of ‘Galilee Basin’. It states:

***Galilee Basin** means the region in western central Queensland identified in figure 3 of the document called ‘Queensland coal – mines and advanced projects’ dated July 2017.*

The document is available at the Department of Natural Resources, Mines and Energy:

https://www.dnrme.qld.gov.au/_data/assets/pdf_file/0011/238079/coal-mines-advanced-projects.pdf

A copy of the map is reproduced at **Appendix C**.

²⁰⁵ Queensland Law Society, submission 95, p 1.

²⁰⁶ Queensland Resources Council, submission 100, p 3.

²⁰⁷ Explanatory notes, p 4.

Section 4(3)(k) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is unambiguous and drafted in a sufficiently clear and precise way.²⁰⁸

Unclear definition of Galilee Basin

The reference to the external document, 'Queensland coal – mines and advanced projects' to define the Galilee Basin, can be seen to be unclear. The map uses different colours to define different areas, such as the Galilee Basin and Bowen Basin, but these areas appear to blend together and the colouring used to define the Galilee Basin gradually blends with the colour used to define the Bowen Basin. The delineation between those two basins is therefore unclear.

Further, the map also represents a large area on a large scale, and the precise boundaries of the area covered by it are not clear. The boundaries are not, on the map, referenced by fixed points, such as local authority boundaries or land parcel boundaries. As such, it is arguable whether the map and by extension, the definition of the term 'Galilee Basin', is sufficiently clear and precise.

In addition, it is possible that the referenced map, being one created and maintained by an external source (and not included in the Bill itself) might change in the future. It could, cease to be used, or be varied or deleted from the website. This could provide further uncertainty.²⁰⁹

Committee comment

The committee does not consider the definition of 'Galilee Basin' is sufficiently clear and precise.

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. Paragraph 23(1)(f) *Legislative Standards Act 1992* requires the explanatory notes to provide a brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency. The explanatory notes are silent on the issue of retrospectivity. The explanatory notes otherwise comply with the requirements set out in Part 4.

²⁰⁸ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 88.

²⁰⁹ While not strictly a matter of unclear or imprecise drafting, the following material regarding different uses of the term 'Galilee Basin' is provided by way of background. The Galilee Basin (Coal Prohibition) Bill 2018 is a Commonwealth Bill which aims to prohibit the mining of thermal coal from the Galilee Basin in Queensland. It provides for a penalty for the carrying out of mining operations for thermal coal in the Galilee Basin of two years imprisonment, 1000 penalty units or both.

The Bill uses a different definition for the Galilee Basin, in clause 5:

Galilee Basin means the Galilee subregion in western central Queensland identified by the Australian Government's Bioregional Assessment Program map for the Galilee subregion, dated June 2018.

This map is significantly different to the map referenced in the present bill.

The Department of Natural Resources, Mines and Energy provided the committee with an information briefing, from which it is clear that the 'whole Galilee Basin area' extends beyond that described as the Galilee Basin in the Bill. The department also provided a map which showed the area impacted by the proposed Bill in yellow overlaid on top of the broader geological Galilee Basin (shown in light blue-green). [The map is at Appendix D.] This is not to be critical of the definition in the Bill but does serve to highlight the difficulties and uncertainty in defining the area that represents the Galilee Basin and that 'ordinary industry usage' is not necessarily clear.

Appendix A – Submitters

Sub #	Submitter
001	Kemble Walker
002	Robbie Collins
003	Dr Iris Bergmann
004	Antony McRae
005	Resolve Coal Pty Ltd
006	Charters Towers Regional Council
007	Wide Bay Burnett Environment Council Inc
008	Jonathon Peter
009	John Newton
010	Rebecca Stevens
011	Peter Vanderduys
012	Leon Smith
013	Alex Clarke
014	Dick Clarke
015	Evan Blair
016	Kerry Kilner
017	Dr Robert Taylor
018	Tess Malcolm
019	Dr Nanette Esparon
020	Environment Council of Central Queensland Inc
021	Phil Browne
022	Luke Playford
023	TJM Select Investments Pty Ltd
024	John Garnett
025	Trish Kelly
026	Shane McMullan
027	Kahlia Weir
028	Bill Tait

- 029 Paul Tuttlebee
- 030 McCabe - Feichtinger Family
- 031 Maureen Webb
- 032 Gail Hamilton
- 033 Steven Luks
- 034 Megan Benson
- 035 Caron Menashe
- 036 Katherine Langridge
- 037 Kellie Purcill
- 038 Maleah Gridley
- 039 Tracey Grima
- 040 Sophie McGinley
- 041 Dr Geralyn McCarron
- 042 Jill and John Lord
- 043 Joy Duncan
- 044 Wanda Grabowski
- 045 Rochelle Rodier
- 046 Danya Luo
- 047 Peter Burke
- 048 Brenda Hawke
- 049 Sandra Wood
- 050 Penelope Langmead
- 051 Arwen Birch
- 052 Patricia Morrow
- 053 Heather Bester
- 054 Elle Bock
- 055 Tess Dingle
- 056 Julina Lim
- 057 Mark Jordan
- 058 Marina Diamantis

059	David King
060	Doctors for the Environment Australia Australia
061	Patrick Lopez
062	Sharon Pie
063	Australian Marine Conservation Society
064	Elisabeth Downes
065	Emily Larkin
066	Margaret Roberts
067	Elizabeth Watson
068	Capricorn Conservation Council
069	Louise Watson
070	Dr Katherine Busch
071	Patricia Saunders
072	David Arthur
073	Wildlife Queensland - Townsville Branch Inc
074	Margaret Bluett
075	Flinders Shire Council
076	Dr Matthew Currell
077	Graeme Kelleher AO AM
078	Gecko Environment Council Assn Inc
079	Isaac Regional Council
080	Adam Rix
081	Erin Kenny
082	North Queensland Conservation Council
083	Nicholas Wixted
084	Australian Mining Cities Alliance Ltd
085	Jo Sullivan
086	GVK Hancock Coal Pty Ltd
087	Environmental Defenders Office of Northern Queensland
088	Dr Nicholas Abel

- 089 Animal Justice Party Qld
- 090 Whitsunday Regional Council
- 091 Barcaldine Regional Council
- 092 Gladstone Regional Council
- 093 Dr Justine Bell-James
- 094 Institute for Energy Economics and Financial Analysis
- 095 Queensland Law Society
- 096 Professor Peter Dart
- 097 Environmental Defenders Office (Qld) Inc
- 098 Australian Conservation Foundation
- 099 Stop Adani Byron Shire
- 100 Queensland Resources Council and Construction, Forestry, Mining and Energy Union (Mining & Energy Division)
- 101 Danielle Joyner
- 102 North West Queensland Regional Organisation of Councils
- 103 The Australia Institute
- 104 National Parks Association of NSW
- 105 Form A Template – 33 submissions (contact details provided); 2575 submissions (contact details incomplete)
- 106 Form A Variation – 36 submissions (contact details provided); 946 submissions (contact details incomplete)
- 107 Form B Template – 98 submissions
- 108 Central Highlands Regional Council
- 109 Climate Council of Australia

Appendix B – Officials at public briefing and public hearings

Public briefing, Brisbane 4 March 2019

- Mr Michael Berkman MP, Member for Maiwar

Public hearing, Brisbane, 4 March 2019

Department of Natural Resources, Mines and Energy

- Mr Benn Barr, Deputy Director-General Policy
- Ms Claire Cooper, Acting Executive Director, Mines and Energy Resources Policy
- Mr Cale Dendle, Executive Director, Minerals and Energy Resources

Queensland Treasury

- Mr Drew Ellem, Acting Deputy Under Treasurer, Agency Performance & Investment

Department of Environment and Science

- Mr Tony Roberts, Deputy Director-General, Environment Policy and Programs
- Mr Chris Loveday, Director – Operational Support, Regulatory Support, Environmental Services and Regulation

Environmental Defenders Office

- Ms Jo-Ann Bragg, CEO, Solicitor
- Mr Sean Ryan, Principal Solicitor

Australian Marine Conservation Society

- Dr Lissa Schindler, Great Barrier Reef Campaign Manager

Climate Council of Australia *via teleconference*

- Dr Annika Dean, Senior Researcher

Adani Australia

- Mr Lucas Dow, Chief Executive Officer
- Mr Hamish Manzi, Head of Environment & Sustainability

Resolve Coal Pty Ltd

- Mr William Haseler, General Counsel

Queensland Resources Council

- The Hon Ian Macfarlane, Chief Executive
- Mr Andrew Barger, Director – Economic and Infrastructure Policy

University of Queensland

- Dr Justine Bell-James, Senior Lecturer, TC Beirne School of Law
- Dr Selina Ward, Senior Lecturer, School of Biological Sciences

Doctors for the Environment Australia

- Dr Lucy Watt, Career Medical Officer in Emergency Medicine, NSW Health

- Dr Andrew Jeremijenko, Occupational and Environmental Medicine Physician, Mater Private Emergency
- Dr Karin Kochmann, GP

The Australian Institute *via teleconference*

- Mr Rod Campbell, Research Director
- Mr Travis Hughes, Researcher
- Mr Tom Swann, Researcher

Institute for Energy Economics and Financial Analysis

- Mr Tim Buckley, Director, Energy Finance Studies

Queensland Law Society

- Mr Matt Dunn, General Manager Policy, Public Affairs and Governance
- Mr James Plumb, Chair QLS Mining & Resources Law Committee
- Ms Vanessa Krulin, Senior Policy Solicitor

Shire of Flinders *via teleconference*

- Cr Jane McNamara, Mayor

Dr Matthew Currell, Associate Professor, School of Engineering, RMIT University *via teleconference*

Public hearing, Moranbah, 5 March 2019

Isaac Regional Council

- Cr Anne Baker, Mayor
- Mr Gary Stevenson, Chief Executive Officer
- Cr Kelly Vea Vea, Deputy Mayor
- Cr Gina Lacey, Councillor
- Mrs Mary-Anne Uren, Senior Advisor

CFMEU – Mining Division

- Mr Stephen Smyth, District President, Mining & Energy Division Qld District

Mr Mike Brunker

Mr Aaron Griffiths

Ms Wendy Tubman

Mr Chris Chant

Mr Bevan Smith

Mr Peter McCallum

Mr Dave Mawson

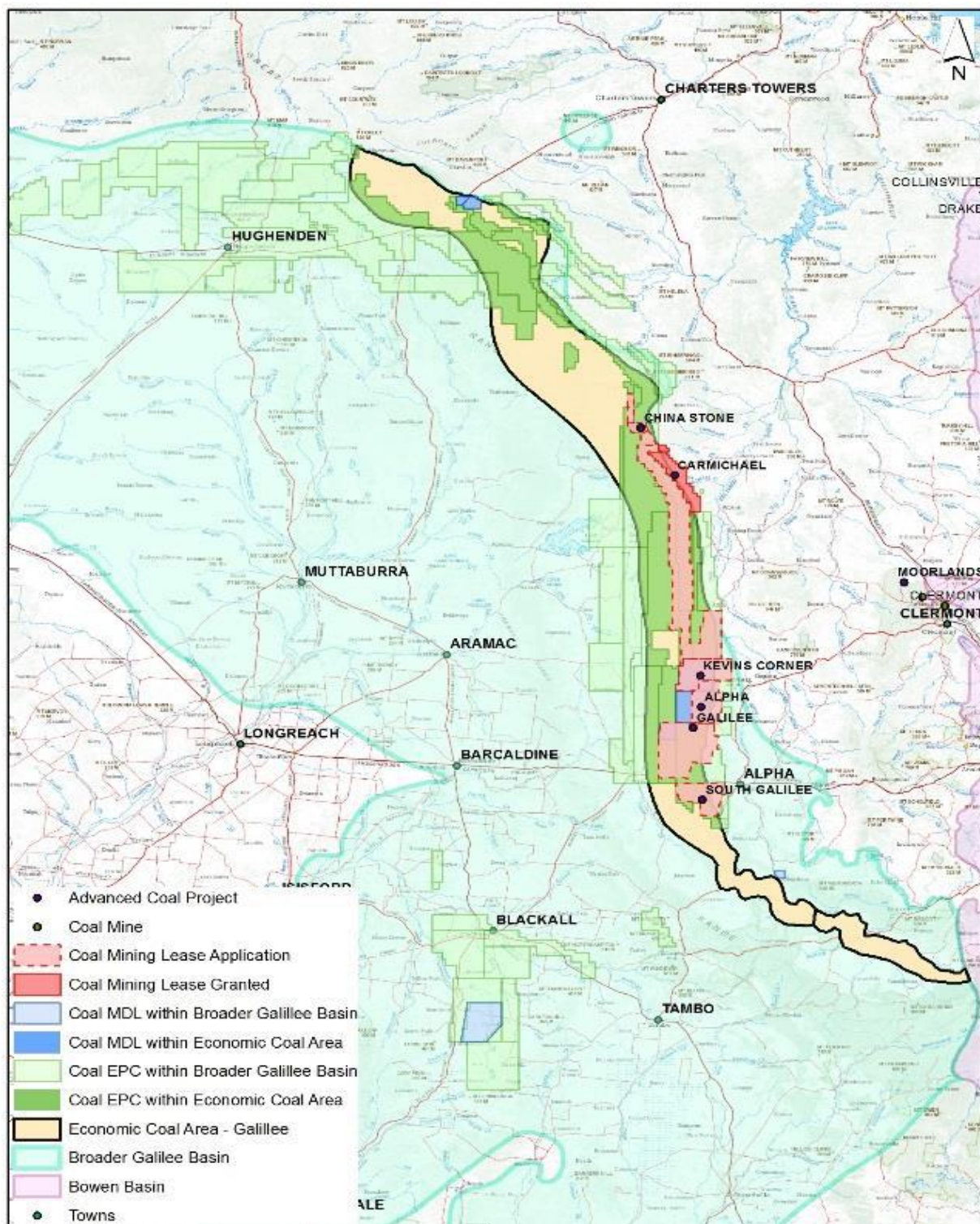
Ms Kim Sinclair

Appendix C – Map of a subset of the broader Galilee Basin²¹⁰



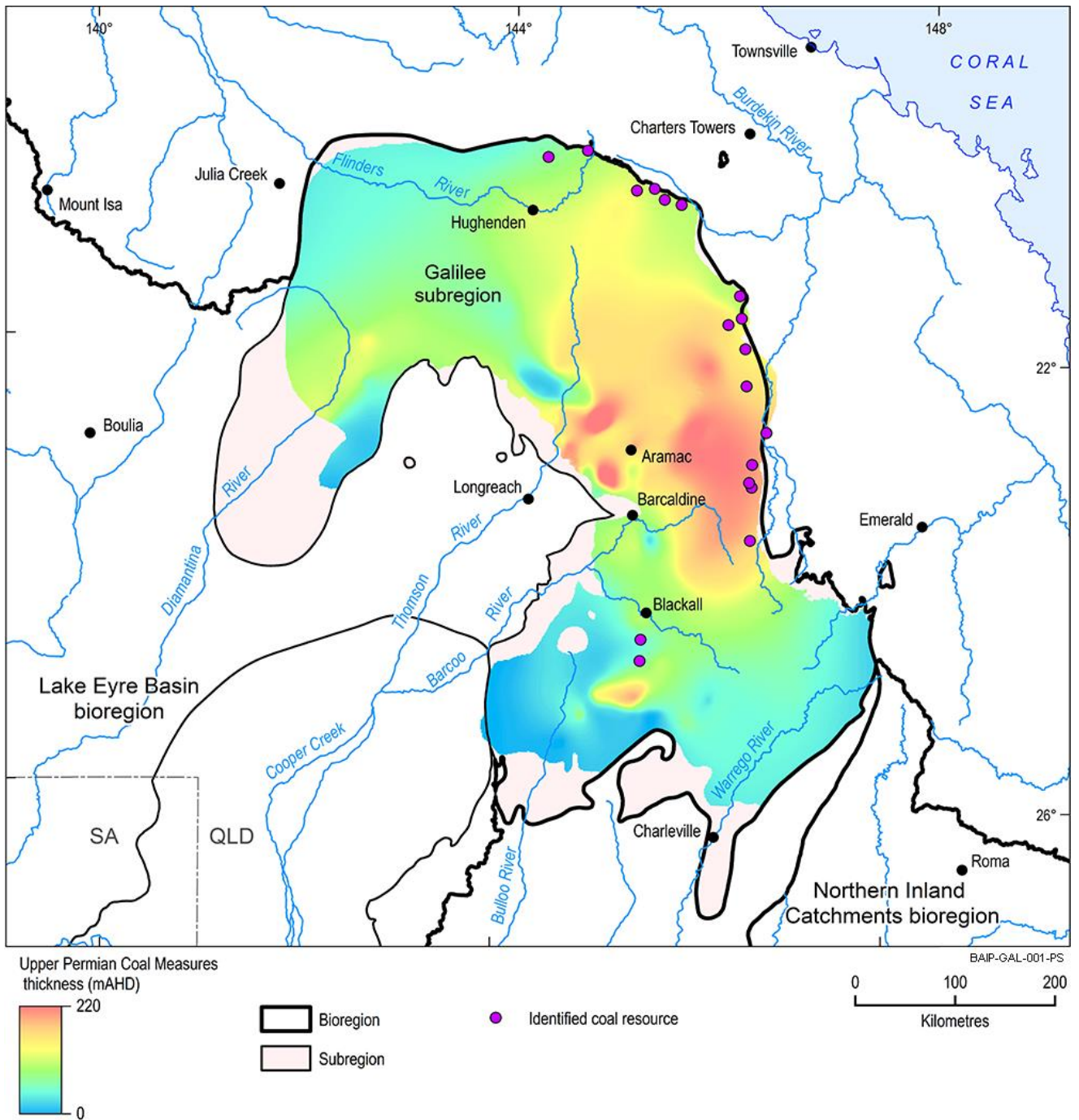
²¹⁰ DNRME, Information Briefing on Mineral Resources (Galilee Basin) Amendment Bill 2018, pp 4-7.

Appendix D - Map of the broader Galilee Basin²¹¹



²¹¹ DNRME, Information Briefing on Mineral Resources (Galilee Basin) Amendment Bill 2018, pp 4-7.

Appendix E – Map of the Galilee Basin as identified in the Galilee Basin (Coal Prohibition) Bill 2018 (Cth)



Statement of Reservation

Whilst the Liberal National Party members of the committee support recommendation 1 not to pass the Bill, we believe the inclusion of Recommendation 2 is nothing more than petty political posturing.

The Committee Process is an important component of the Queensland Parliament. The various Parliamentary Committees ensure that legislation passed by the Queensland parliament is subjected to proper scrutiny. The committee process should not be utilised to engage in political posturing during a federal election campaign and the addition of recommendation 2 cannot be seen in any other light.

Recommendation 2 does nothing to benefit the people of Queensland, let alone the future of Queenslanders whose jobs would be destroyed by the passage of this Bill.

We agree that a consistent national framework for climate change policy and emissions targets is important and necessary, but this Committee was tasked with examination of a Bill brought before the Queensland parliament; not the Federal parliament. Recommendation 2 is not only redundant in its actual effect; it is an insult to the Queensland parliamentary process and, therefore, every Queenslanders.

This Committee should be focussed on the portfolio to which it relates; not on political point scoring. The portfolio responsibilities of this Committee include State Development, Natural Resources and Agriculture and do not include a Federal election.

This Committee should be focussed on ensuring Queensland is home to a Natural Resources industry that provides employment and supports the provision of services in Queensland in compliance with relevant and appropriate environmental regulations.

This Committee should have, as its highest priority, the need to find a balance between a future for the tens of thousands of Queenslanders who rely on the Natural Resources industry and the absolute need to ensure we value and protect the environmental treasures that Queensland is home to.

For the report to add a recommendation focussed on a federal election is an affront to all Queenslanders.

The Bill proposed by the Member for Maiwar is an attempt to shut down a key industry in regional Queensland and as a consequence the recommendation for this Bill to **not** be passed is supported.

A recommendation that moves outside the parameters of the Parliamentary Committee's inquiry in favour of a political campaign, is not supported by the Liberal National Party members. A recommendation that seeks to shift blame, rather than acknowledge the Queensland government's failings, is a recommendation that highlights the failings of the current government.

The LNP members of this committee cannot support recommendation 2.



Pat Weir MP
Member for Condamine
Deputy Chair of State
Development, Natural Resources
and Agricultural Industry
Development Committee



Brent Mickelberg MP
Member for Buderim
Shadow Assistant Minister for
Tourism Industry Development



David Batt MP
Member for Bundaberg
Shadow Assistant Minister for
State Development

17 April 2019