Parliamentary Committees



Environmental Protection and Other Legislation Amendment Bill 2020

Report No. 6, 56th Parliament
Natural Resources, Agricultural Industry Development and Environment Committee
August 2020

Natural Resources, Agricultural Industry Development and Environment Committee

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Acknowledgements

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Abbreviations

AI Act	*Acts Interpretation Act 1954*
AgForce	AgForce Queensland Farmers Limited
APPEA	Australian Petroleum Production and Exploration Association Limited
Bill	Environmental Protection and Other Legislation Amendment Bill 2020
CCAs	Conduct and Compensation Agreements
CYLC	Cape York Land Council
DES / the department	Department of Environment and Science
EA	environmental authority
EDO	Environmental Defenders Office
EIS	environmental impact statement
EP Act	*Environmental Protection Act 1994*
HRA	*Human Rights Act 2019*
LSA	*Legislative Standards Act 1992*
MERFP Act	*Mineral and Energy Resources (Financial Provisioning) Act 2018*
NRAIDEC / the committee	Natural Resources, Agricultural Industry Development and Environment Committee
PRCPs	progressive rehabilitation and closure plans
QFF	Queensland Farmers' Federation
QLS	Queensland Law Society
QRC	Queensland Resources Council
QT	Queensland Treasury
RIA	regulatory impact analysis
RIS	Regulatory Impact Statement
Scheme	Financial Provisioning Scheme

Chair's foreword

This report presents a summary of the Natural Resources, Agricultural Industry Development and Environment Committee's examination of the Environmental Protection and Other Legislation Amendment Bill 2020.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

I wish to thank members of the committee for their consideration of the Bill.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and presented evidence at the public hearing. I also thank our Parliamentary Service staff and the Department of Environment and Science.

I commend this report to the House.

Chris Whiting MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The Natural Resources, Agricultural Industry Development and Environment Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 21 May 2020 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:

- Natural Resources, Mines and Energy
- Agricultural Industry Development and Fisheries
- Environment, Great Barrier Reef, Science and the Arts.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.[2]

The Environmental Protection and Other Legislation Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly and referred to the committee on 18 June 2020. The committee was required to report to the Legislative Assembly by 3 August 2020.

1.2 Inquiry process

On 19 June 2020, the committee invited stakeholders and subscribers to make written submissions on the Bill. Fourteen submissions were received.

The committee received a public briefing about the Bill from the Department of Environment and Science (DES) on 1 July 2020. A transcript is published on the committee's webpage; see Appendix B for a list of officials.

The committee received written advice from the department in response to matters raised in submissions.

The committee held a public hearing on 13 July 2020; see Appendix C for a list of witnesses.

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.[3]

1.3 Policy objectives of the Bill

According to the explanatory notes, the principal policy objectives of the Bill are to:

- provide for the statutory appointment of a Rehabilitation Commissioner with specific functions including providing advice on rehabilitation or best practice management of land, and facilitating better public reporting on rehabilitation;
- clarify and enhance the residual risk framework to better manage risks on sites after an environmental authority for a resource activity has been surrendered.[4]

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

2 *Parliament of Queensland Act 2001*, s 93 and *Human Rights Act 2019*, ss 39, 40, 41 and 57.

3 https://www.parliament.qld.gov.au/work-of-committees/committees/NRAIDEC/inquiries/past-inquiries/EPOLA20.

4 Explanatory notes, p 1.

The Bill also includes amendments to the *Environmental Protection Act 1994* (EP Act) and *Water Act 2000* to remove unnecessary provisions, address omissions and technical errors, and clarify and improve regulatory processes and tools.[5]

1.4 Government consultation on the Bill

The explanatory notes state that recent consultation on the Bill was restricted due to difficulties arising during the novel coronavirus (COVID-19) emergency.[6] However, consultation with key stakeholders on the establishment of a Rehabilitation Commissioner occurred during September and October 2019.[7]

Consultation in relation to the 'residual risk' aspects of the Bill initially occurred between 19 November 2018 and 1 February 2019, with the Queensland Government releasing the *Managing Residual Risks in Queensland Discussion Paper* for public comment. During 2019, workshops were held with key stakeholders.

In late May 2020, a draft of the Bill was provided to the Lock the Gate Alliance, Environmental Defenders Office (EDO) and Queensland Resources Council (QRC).[8] The explanatory notes state that feedback received from these stakeholders was considered in the finalisation of the Bill.[9]

1.4.1 Stakeholder comments

Several submitters stated that the opportunity to provide comment on the draft Bill was limited.[10]

Australia Pacific LNG Pty Limited (APLNG) stated that in relation to the establishment of the role of Rehabilitation Commissioner:

> *… this investigation was done without sufficient consultation and without considering the 'business as usual' scenario. Furthermore, during consideration of the options, industry was not updated on the details of the role, its functions, the governance, resourcing or budgeting.*[11]

Queensland Farmers' Federation (QFF) advised that it was not consulted on the Bill and was only made aware of the Bill on 30 June 2020 by another industry association. As such, QFF was unable to examine the Bill with its membership.[12]

QRC stated that inadequate consultation was undertaken on the Bill and that QRC was only provided seven days to review the draft Bill. Additionally, QRC raised concerns that while it was aware of the residual risk and Rehabilitation Commissioner reforms, it was not aware of other substantive changes to the EP Act impacting on the resources sector.[13] Mr Ian Macfarlane, QRC, stated that:

> *The point here is that with consultation the industry is more than willing to resolve these outstanding issues in line with the government's expectation… We are fully on board with that, but again it highlights the fact of (a) a lack of consultation and (b) a rush to get this legislation through before all the finer details of the legislative framework are finalised.*[14]

5 Explanatory notes, p 1.

6 Explanatory notes, p 9.

7 Explanatory notes, p 9.

8 Department of Environment and Science, correspondence dated 10 July 2020, p 3.

9 Explanatory notes, p 9.

10 Submissions 5, 9, 10, 14.

11 Submission 9, p 3.

12 Submission 10.

13 Submission 5.

14 Public hearing transcript, Brisbane, 13 July 2020, p 22.

Additionally, QRC noted that the department did not undertake a regulatory impact analysis (RIA) and consequently did not produce a RIS and advocated for a greater adherence to the RIA process.[15]

1.4.2 Departmental response

In response to the perceived lack of consultation, the department noted:

> *Many of the other amendments respond to requests from industry stakeholders for improved regulatory processes or otherwise amend the legislation to clarify the intended operation of provisions. None of these amendments will add any significant regulatory burden to any stakeholders.*[16]

Additionally, the department argued that many of the amendments had already been the subject of extensive consultation and further consultation was unnecessary.[17]

In correspondence to the committee, the department stated that it had followed advice from the Office of Best Practice Regulation in relation to developing an RIA and RIS. The department stated that it had:

> *…followed the Regulatory Impact Assessment requirements specified under the* Queensland Government Guide to Better Regulation*. However, under the principles in this guideline, none of the amendments in the Bill required a Regulatory Impact Statement. Where required under the guideline, the department advised that it sought advice from the Office of Best Practice Regulation by submitting exclusions and preliminary impact assessments, and that this process was outlined in the Explanatory Notes for the Bill.*[18]

1.4.3 Committee comment

The department advised that consultation on this Bill has occurred since 2018. Stakeholders are generally satisfied with the level of consultation that occurred in relation to the establishment of a Rehabilitation Commissioner and managing residual risk. The committee notes that certain amendments proposed in this Bill were not provided for stakeholder consultation, as the department regarded that these amendments responded to requests from industry stakeholders for improved regulatory processes, clarified the intended operation of provisions and did not add any significant regulatory burden to any stakeholders.[19] The committee also notes that the department sought advice from the Office of Best Practice Regulation.[20]

The committee considers that given the Queensland Government's commitment to best practice policy and legislative development, it is appropriate that stakeholder consultation be undertaken on all aspects of the Bill.

The committee could not find information in the explanatory notes as advised by the department, on its process to obtain advice from the Office of Best Practice Regulation in relation to an RIA and RIS.[21] The committee sought clarification on this matter from the department. The department acknowledged:

> *The department's response to submissions in relation to comments regarding the regulatory impact assessment for the Bill included a statement that the information in the response was*

15 Submission 5, p 1.

16 Department of Environment and Science, correspondence dated 10 July 2020, pp 3-4.

17 Department of Environment and Science, correspondence dated 10 July 2020, p 3.

18 Department of Environment and Science, correspondence dated 10 July 2020, p 4.

19 Department of Environment and Science, correspondence dated 10 July 2020, p 4.

20 Department of Environment and Science, correspondence dated 16 July 2020, p 5.

21 Department of Environment and Science, correspondence dated 10 July 2020, p 4.

'outlined in the Explanatory Notes for the Bill'. Information on regulatory impact assessment was not included in the Explanatory Notes for the Bill.[22]

The committee emphasises the need for accuracy in the information supplied to the committee, particularly when considering a Bill.

The committee considers that an RIA and RIS, while not mandated processes, are important aspects of the policy and legislative development cycle. The committee believes the absence of a RIS should be explained in the explanatory notes so that this action is transparent to stakeholders, including portfolio committees and the Parliament.

Recommendation 1

The committee recommends that the explanatory notes provided with a Bill note the existence or absence of a RIS and outline the process undertaken by the relevant department in consideration of the development of a RIS.

1.5 Should the Bill be passed?

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

After examination of the Bill, including the policy objectives it is intended to achieve, and consideration of the information provided by DES, submitters and witnesses, the committee recommends that the Bill be passed.

Recommendation 2

The committee recommends the Environmental Protection and Other Legislation Amendment Bill 2020 be passed.

[22] Department of Environment and Science, correspondence dated 16 July 2020, p 5.

2 Examination of the Bill

2.1 Background

In November 2016, a review of Queensland's financial assurance framework by the Queensland Treasury Corporation found that resource sector financial assurance arrangements could be improved. The review recommended a package of reforms to deliver positive environmental outcomes, improve rates of site rehabilitation, and reduce the amount of rehabilitation required at the end of a resource site's life cycle.[23]

The package of reforms included:

- reforming the current resource sector financial assurance framework
- improving mine rehabilitation in Queensland
- expanding the range of surety providers available for the provision of financial assurance
- improved management of sites in care and maintenance
- expansion of the abandoned mines program to improve management of legacy issues
- review of existing approval conditions on the sale of resource assets
- improved data analysis, information systems and governance framework
- residual risk policy development.[24]

In November 2018, the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (MERFP Act) replaced existing financial assurance requirements for resources activities with the Financial Provisioning Scheme (Scheme) to be administered by Queensland Treasury (QT).[25] The MERFP Act also amended the EP Act requiring mining companies to develop Progressive Rehabilitation and Closure Plans (PRCPs).

The MERFP Act:

- introduced requirements for the planning and delivery of progressive rehabilitation of disturbed land for the biggest mines in the state
- set up a new risk-based Scheme to ensure funding is available to cover rehabilitation costs when resource companies cannot meet their environmental rehabilitation obligations.[26]

Under the MERFP Act, the residual risk reforms were progressed as part of broader financial assurance and mine rehabilitation reforms. The residual risk reforms aim to ensure there will be sufficient money available for government to manage the work associated with risks left on site following surrender to ensure enduring rehabilitation of resource sites in Queensland.[27]

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23 Queensland Treasury Corporation, *Review of Queensland's Financial Assurance Framework: Final Report,* April 2017.

24 Queensland Treasury, *Improving rehabilitation and financial assurance outcomes in the resources sector*, https://www.treasury.qld.gov.au/programs-and-policies/improving-rehabilitation-financial-assurance-outcomes-resources-sector/.

25 Also see Queensland Parliament, Economics and Governance Committee, Report No. 6, 56th Parliament, Mineral and Energy Resources (Financial Provisioning) Bill 2018.

26 Queensland Government Consultation Report, *Managing Residual Risks in Queensland Discussion Paper,* 2019, p 6.

27 Queensland Government Consultation Report, *Managing Residual Risks in Queensland Discussion Paper,* 2019, p 6.

This Bill is part of this suite of reforms to achieve improved outcomes for the rehabilitation of land disturbed by resource activities.

2.2 Rehabilitation Commissioner

The Bill proposes to amend the EP Act to provide for the statutory appointment of a Rehabilitation Commissioner.[28] Mr Geoff Robson, DES, informed the committee:

> *The creation of this statutory position is a new role that does not place any new regulatory burden on operators; instead, it is about providing rigorous scientific and independent advice on rehabilitation for industry sectors or for issues that are common across the industry. It also provides a dedicated role to engage with stakeholders about rehabilitation matters and it also promotes a better understanding and awareness of rehabilitation matters.*[29]

The functions of the Rehabilitation Commissioner include:

- providing advice to the Minister on:
  - rehabilitation and management practices, outcomes and policies
  - public interest evaluation processes and performance
- developing technical and evidence-based reports on complex aspects of best practice rehabilitation and management of non-use management areas
- providing guidance on the interpretation of advice or reports prepared under the above functions (only if the chief executive requests such advice and the Rehabilitation Commissioner considers it appropriate to provide such advice)
- monitoring and providing reports to the Minister on rehabilitation performance and trends
- consulting on, and raising awareness of, rehabilitation and management matters
- chairing workshops and forums about technical, scientific or engagement matters.[30]

The appointment of a Rehabilitation Commissioner for Queensland fulfils a government commitment made during debate on the Mineral and Energy Resources (Financial Provisioning) Bill 2018 to investigate options to establish a Rehabilitation Commissioner to provide advice on best practice management of rehabilitation areas.[31]

The department noted that:

> *The Rehabilitation Commissioner will assist the Government to provide certainty for industry on what is required to deliver best practice rehabilitation. This is because a specific function of the Commissioner is to develop technical and evidence-based reports on complex aspects of best practice rehabilitation. It is expected that these reports will enable better rehabilitation planning by the resources industry.*
>
> *The creation of the Rehabilitation Commissioner role will also assist to address community expectations that rehabilitation meets best practice.*[32]

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28 Explanatory notes, p 37, cl 81.

29 Public briefing transcript, Brisbane, 1 July 2020, p 1.

30 Explanatory notes, p 39.

31 Hon Leeanne Enoch MP, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts, Record of Proceedings, 18 June 2020, p 1391.

32 Department of Environment and Science, correspondence dated 10 July 2020, p 7.

2.2.1 The need for a Rehabilitation Commissioner

Resource industry stakeholders considered a Rehabilitation Commissioner as unwarranted.[33] Origin Energy stated:

> *The creation of an additional statutory position is not supported. This is a significant financial investment, when the majority of the capacity to deliver the objectives of the Rehabilitation Commissioner already exist within Government. It is noted that there is an entire division within the department whose role is to provide support and advice to both assessment and policy teams on best practice and interpretation of the legislation.*[34]

Mr Macfarlane, QRC, stated:

> *If you want transparency, the easiest way to do that is through the protocols and the procedures already established in the department. The commissioner is just another layer on top of that, another cost, another set of forms to fill out, another set of forms to have to answer questions on. We do not see the advantage.*[35]

The Queensland Law Society (QLS) raised concerns that the role of the Rehabilitation Commissioner may ultimately duplicate the functions of the regulator and result in poor regulatory outcomes, stakeholder confusion and the erosion of public will.[36]

In response to these concerns, the department stated:

> *The intent is that the role will not provide oversight of the regulatory functions of the department. The role is advisory in nature. The Rehabilitation Commissioner will not duplicate or interfere with existing functions; rather the role is designed to add value through specific new functions.*[37]

Additionally, the department noted:

> *The functions of the Rehabilitation Commissioner will ensure that there is a body of expertise beyond that which would otherwise be available to the department to support decision-making. The reporting functions of the Rehabilitation Commissioner will support industry to inform the Queensland Parliament and the community on the progress that it is making on rehabilitation.*[38]

Aboriginal, environmental and farming stakeholders supported the establishment of the statutory position of Rehabilitation Commissioner. WWF-Australia noted:

> *WWF-Australia strongly supports the creation of the Rehabilitation Commissioner role as it will be instrumental in ensuring the Government's broader mine rehabilitation reforms are fully implemented and are effective. In addition, the role of the Commissioner will significantly improve transparency and accountability regrading* [sic] *mine rehabilitation and will also create increased opportunities for affected landholders and the broader community to participate in the process of ensuring material improvements in mine rehabilitation outcomes.*[39]

Cape York Land Council (CYLC) supported the appointment of a Rehabilitation Commissioner as:

> *This will provide better environmental outcomes for land that Aboriginal people have social and*

33 Submissions 5, 6, 9, 13, 14.

34 Submission 14, Attachment A, p 4.

35 Public hearing transcript, Brisbane, 13 July 2020, p 20.

36 Submission 13, p 2.

37 Department of Environment and Science, correspondence dated 10 July 2020, p 10.

38 Department of Environment and Science, correspondence dated 16 July 2020, p 4.

39 Submission 3, p 1; also see submission 1.

cultural interests in, and should also provide opportunities for Aboriginal people to engage in processes to determine rehabilitation standards.[40]

AgForce Queensland Farmers Limited (AgForce) gave qualified support for a Rehabilitation Commissioner given that the role could provide the opportunity for greater transparency and better alignment with public expectations.

AgForce strongly supports the establishment of a Rehabilitation Commissioner on the provision that this will lead to a marked improvement in the on-ground return of land-use from mining to agriculture. Moreover, that the Commission ensures there is a strong framework in place for public reporting on performance and trends in rehabilitation and management outcomes.[41]

EDO argued that the Rehabilitation Commissioner provided an important accountability mechanism to support best practice and the work of the government in reforming the rehabilitation framework.[42]

2.2.2 Qualifications and experience

Section 444A of the Bill allows for the appointment of a person into the statutory position of Rehabilitation Commissioner. The appointment is made by the Governor in Council, upon the recommendation of the relevant Minister, who must be satisfied that the person is appropriately qualified to perform the functions of the role.[43]

The Bill requires the commissioner to be appropriately qualified and to have the qualifications and experience to allow them to fulfil the functions prescribed under the *Acts Interpretation Act 1954* (AI Act). Schedule 1 of the AI Act sets out the definition of 'appropriately qualified':

(a) for a function or power—means having the qualifications, experience or standing appropriate to perform the function or exercise the power; or

(b) for appointment to an office—means having the qualifications, experience or standing appropriate to perform the functions of the office

Example of standing—

a person's classification level in the public service.[44]

QRC argued that requirements for the Rehabilitation Commissioner's qualifications were incomplete and vague when compared to other similar statutory roles as the AI Act framework did not provide listed qualifications and experience for the role.[45] QRC argued the need to clarify the qualifications and experience required for the commissioner:

Given the advice of the Rehabilitation Commissioner will inform DES' assessment and decision on rehabilitation matters, including PRCPs, it is critical that the person appointed is more than a project manager who collates and disseminates technical information from its support staff. The Rehabilitation Commissioner must have a comprehensive understanding of how mines of different commodities operate and rehabilitate, and the technical matters to be considered in these processes. For this reason, and the highly technical nature of the role, it is necessary for the person appointed to have relevant qualifications and experience outlined in legislation.[46]

40 Submission 12, p 1.

41 Submission 8, p 3.

42 Submission 11.

43 Explanatory notes, p 37.

44 *Acts Interpretation Act 1954*, Schedule 1.

45 Submission 5, p 21.

46 Submission 5, p 21.

Mr Robson, DES, stated that the arrangements under the Bill supported a larger recruitment framework:

> *… the Acts Interpretation Act stipulates requirements around being suitably qualified to undertake those requirements in the legislation, so the provisions in this bill, the provisions in the Acts Interpretation Act and the recruitment process and Governor in Council appointment process are designed to ensure the right person is found.*[47]

Additionally, the department noted that prescriptive provisions in the Bill for specific qualifications would remove flexibility to respond to changes over time dependent upon varied requirements of the role.[48] The department added:

> *One of reasons why the bill does not stipulate a set of particular tertiary qualifications specifically is that the type of needs may change over time and so you have got the overall process that will ensure that you get a suitably qualified person who can deal with the issues that are expected to be dealt with in their term as Rehabilitation Commissioner.*[49]

2.2.3 Engagement with Aboriginal peoples and Torres Strait Islander peoples

CYLC stated that the Rehabilitation Commissioner's functions, as proposed in s 444I of the Bill, do not mention requirements to engage with and have regard for the views of Indigenous people. CYLC argued that the Bill be amended so that the Rehabilitation Commissioner has an explicit statutory requirement to consult with the appropriate Indigenous people. [50]

> *These requirements should include a description of the ways in which appropriate Indigenous people for an area are identified and how they are to be engaged in the Commissioner's processes. Native title holders must be explicitly recognised as key stakeholders to be engaged in processes, as well as Indigenous corporations that hold registered interests in land. Consideration should be given to the establishment of an Indigenous Working Group to provide advice to the Rehabilitation Commissioner.*[51]

The department advised that engagement with Aboriginal peoples and Torres Strait Islander peoples is required by existing provisions in the EP Act and the HRA. Therefore, the intent of this recommendation is already achieved through existing legislative provisions.[52] Additionally the department noted that:

> *Seeking input from Native Title holders and First Nations peoples will be a key part of the Rehabilitation Commissioner's role, although advice, reports or guidance produced by the Rehabilitation Commissioner will not be specific to a particular area or landowner's interest. This means any information regarding Indigenous values or landscapes will be general or state-wide in nature. The Rehabilitation Commissioner may consider the establishment of an Indigenous Working Group during implementation.*[53]

2.2.4 Ministerial direction

The Bill allows the Minister to give the Rehabilitation Commissioner a written direction about the performance of the Rehabilitation Commissioner's functions or the exercise of the Rehabilitation

47 Public briefing transcript, Brisbane, 1 July 2020, p 4.

48 Department of Environment and Science, correspondence dated 10 July 2020, p 9.

49 Mr Geoff Robson, Department of Environment and Science, public briefing transcript, Brisbane, 1 July 2020, p 4.

50 Submission 12, p 2.

51 Submission 12, p 2.

52 Department of Environment and Science, correspondence dated 10 July 2020, p 11.

53 Department of Environment and Science, correspondence dated 10 July 2020, p 11.

Commissioner's powers and that the commissioner must comply with a ministerial direction.[54] While the Minister does have powers of direction, these powers do not extend to the content of advice and reports.[55]

Some stakeholders argue that the power granted to the Minister to direct the Rehabilitation Commissioner is broadly framed and compromises the independence of the Rehabilitation Commissioner.[56] EDO argued that the current broad framing may expose the power to potential misuse.[57] Ms Revel Pointon, EDO, stated:

> *However, we have some concern that the role of the commissioner and its great independence in providing an independent oversight on how we are doing in rehabilitation might be compromised if there is not clarity around when that power can be used. If the clause is going to remain, we recommend that it is narrowed somewhat to specify the kinds of direction that could be given to the commissioner and what might not be appropriate.*[58]

In response, the department stated that ministerial direction is, to some extent, limited in scope as the Minister may not give a direction about the content of any advice or report.

> *The intent is that the Minister would use the Ministerial directions power for matters such as directing the work plan of the Rehabilitation Commissioner or providing timeframes for delivery of advice or reports.*
>
> *To provide transparency on the use of this power, the Bill includes a provision that requires the annual report to include details of directions given by the Minister under section 444M(2)* [sic].[59]

2.2.5 Confidentiality of information

Stakeholders stated that the Bill does not provide sufficient confidentiality safeguards for the mining sector in relation to the information that may be requested by, and shared with, the commissioner and supporting staff.[60] QRC stated:

> *While QRC appreciates that DES has made some attempt in the Explanatory Notes to address concerns on confidentiality, the Bill does not go far enough to safeguard confidential information collected and used in relation to the Commissioner and its staff's functions more generally.*
>
> *QRC recommends that relevant confidentiality provisions and appropriate penalties be included in the Bill with respect to any and all functions of the Rehabilitation Commissioner and any staff drawn upon from Government agencies as opposed to relying on the intent in the Explanatory Notes.*[61]

In response to QRC's concern, the department stated:

> *In terms of maintaining the confidentiality of information, the Rehabilitation Commissioner and their staff will be required to comply with the provisions of* the Information Privacy Act 2009 *and are also bound by the* Public Sector Ethics Act 1994 *(as the Rehabilitation Commission is an office established under an Act).*

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54 Environmental Protection and Other Legislation Amendment Bill 2020, cl 81, s 444N.

55 Mr Geoff Robson, Department of Environment and Science, public briefing transcript, Brisbane, 1 July 2020, p 4.

56 Submissions 1, 3, 11.

57 Submission 11.

58 Public briefing transcript, Brisbane, 1 July 2020, p 11.

59 Department of Environment and Science, correspondence dated 10 July 2020, p 13.

60 Submission 5, p 23.

61 Submission 5, p 23.

The Rehabilitation Commissioner may enter in a confidentiality agreement to protect information provided by a third party, as allowed under the provision on powers (section 444J).[62]

2.2.6 Committee comment

The committee acknowledges the varied stakeholder opinions on the creation of the statutory role of the Queensland Rehabilitation Commissioner.

The committee notes that the establishment of this role fulfils a government commitment to provide certainty for industry on what is required to deliver best practice rehabilitation, develop technical and evidence-based reports on complex aspects of best practice rehabilitation and enable better rehabilitation planning by the resources industry. The creation of the Rehabilitation Commissioner role will also assist in meeting the growing community expectations in relation to the rehabilitation of land disturbed by resource activities. As such, the committee considers that the establishment of statutory appointment of a Rehabilitation Commissioner will be an important addition to the suite of mechanisms to achieve these outcomes.

2.3 Residual risks

The Queensland Government Consultation Report, *Managing Residual Risks in Queensland Discussion Paper,* noted that:

Residual risks are those risks remaining at a rehabilitated and surrendered resource site, when the resource company is generally no longer responsible for the monitoring, maintenance or rectification of the site. Residual risks covers the risk of rehabilitation failing, ongoing management, and the risk of contaminants being released from the area and potentially causing environmental harm after the environmental authority (EA) has been surrendered.[63]

The Bill amends Schedule 4 of the EP Act to define residual risks to mean either, or both, of the following to the extent that it relates to resource activities carried out on the land:

(a) the risk that, although the land has been rehabilitated and appropriately managed, remedial action will need to be carried out in relation to the land in the foreseeable future;

(b) the risk that ongoing management activities will need to be carried out in relation to the land, including—

(i) monitoring the condition of the land or site features of the land; and

(ii) taking action to prevent or minimise environmental harm caused by the land or site features of the land.

Examples of ongoing management activities—

- *maintaining fences to ensure the safety of steep slopes or to prevent access to contaminated areas*
- *providing a pump-back system to manage the discharge of contaminants*
- *continuing a monitoring and verification plan under the* Greenhouse Gas Storage Act 2009 *… to ensure greenhouse gas … stream storage under that Act is taking place as predicted.*[64]

62 Department of Environment and Science, correspondence dated 10 July 2020, p 15.

63 Queensland Government Consultation Report, *Managing Residual Risks in Queensland Discussion Paper,* 2019, p 6.

64 Environmental Protection and Other Legislation Amendment Bill 2020, cl 100.

The explanatory notes state that the Bill will:

- *improve consistency in the provision of residual risk information required with a surrender application;*
- *introduce a post-surrender management report, that includes a risk assessment of the land, which must accompany a surrender application if a resource activity was carried out on the site;*
- *remove provisions that allow for residual risk payments to be collected as part of progressive certification;*
- *clarify that residual risk payments may be collected for non-use management areas (in addition to rehabilitated areas);*
- *require residual risks to be noted against the relevant land title;*
- *establish a pooled 'scheme fund' to consistently manage residual risk payments; and*
- *expand the remit of the scheme manager of the Financial Provisioning Scheme to include managing the residual risks fund.*[65]

Mr Robson, DES, informed the committee that:

> *The proposed residual risk reforms will provide a clear, transparent and streamlined approach to identifying and managing any residual risks in order to minimise the chance of future environmental harm and to minimise the use of taxpayers' funds to remedy such harm.*[66]

WWF-Australia strongly supported the provisions in the Bill regarding residual risk as:

> *… it reduces environmental and economic risk to Queensland taxpayers and … that costs of rectifying any environmental impacts that occur post-relinquishment of a mine site are borne by the industry and not by taxpayers.*[67]

2.3.1 Post-surrender management report

The Bill amends the EP Act to require that, where a resource activity has been carried out, a surrender application must be accompanied by a post-surrender management report that complies with new s 264A of the Bill. The post-surrender management report will include information required to enable the consideration of the residual risks of the activity. This information was previously required to be provided in the final rehabilitation report or the post-mining management report.[68]

The Bill does not introduce new requirements for a post-surrender management report; however, it draws from existing requirements of the final rehabilitation report and post-mining management report.[69] Mr Robson, DES, stated:

> *The post-surrender management report provides information about what is required for the management of residual risk on site. It is not a report that is binding on the landholder. When residual risks are identified through the surrender of the environmental authority, the whole residual risk framework is ultimately about the government having the liability for those risks transferred to the government. That is why we look at taking our residual risk payment so that taxpayers do not face the burden of those risks.*[70]

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65 Explanatory notes, p 3.

66 Public briefing transcript, Brisbane, 1 July 2020, p 2.

67 Submission 3, p 2.

68 Explanatory notes, p 26.

69 Mr Geoff Robson, Department of Environment and Science, Public briefing transcript, Brisbane, 1 July 2020, p 2.

70 Public briefing transcript, Brisbane, 1 July 2020, p 5.

QRC argued that post-surrender management reports should remain only applicable to mining leases and that it was unclear why petroleum and gas activities and exploration and mineral development activities, should be required to submit a 'post-surrender management report' if there is nothing that requires ongoing post-surrender management.[71]

In contrast, Mr Richard Humphries, Lock the Gate Alliance, argued:

> *We believe what is good for the mining industry is good for the gas industry and, again, those documents enhance the public's confidence in the regulation and give certainty and transparency about the issues and how they will be managed. I think there is no reason they should not be applied to gas.*[72]

2.3.2 Recording of residual risks on title

The Bill amends the EP Act to require that the administering authority record residual risks on the relevant land title.[73] Specifically, s 275B requires that the existence of the post-surrender management report be recorded on the relevant land title if s 264A requires a risk management plan.[74]

Residual risks are only noted on the land title if there is a risk management plan included in the post-surrender management report. Land that does not require ongoing management activities or remedial action will not need to have a risk management plan developed and will therefore not be noted on the land title.[75]

The explanatory notes state that there was strong stakeholder feedback for a post-surrender management report and the associated risk management plan to be recorded on the land title.

The explanatory notes outline that as residual risks may exist on land into perpetuity, and ongoing management and remedial actions may be required, it is important that information on these aspects are available to the public.[76]

> *Recording the existence of a post-surrender management report with an associated risk management plan on title will ensure that current and prospective landholders are aware, through a title search, that ongoing management and remedial activities may be carried out by the State on the land. It will also advise current and prospective landholders of where further information regarding residual risks associated with the land can be obtained (i.e. from the administering authority). This will enable prospective owners to be aware of any residual risk requirements attached to the land.*[77]

A number of stakeholders did not support this amendment.[78] Mr Matthew Paull, Australian Petroleum Production and Exploration Association Limited (APPEA), stated:

> *… the first thing I would note is that the explanatory notes to the bill say that the proposal to record residual risk on land title received very strong stakeholder support. However, it is not supported by the resources industry. We have just heard from AgForce that it is not supported. The QFF submission makes it clear that they do not support it either.*[79]

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71 Submission 5, p 6.

72 Public hearing transcript, Brisbane, 13 July 2020, p 8.

73 Environmental Protection and Other Legislation Amendment Bill 2020, cl 61.

74 Explanatory notes, p 30.

75 Department of Environment and Science, correspondence dated 10 July 2020, p 46.

76 Explanatory notes, p 47.

77 Explanatory notes, p 30.

78 Submissions 4, 5, 8, 9, 13.

79 Public hearing transcript, Brisbane 13 July 2020, p 12.

The department stated that support was received during consultation on the *Managing Residual Risks in Queensland Discussion Paper* process.[80]

APPEA argued that the amendment was problematic for the petroleum and gas industries as:

- Oil and gas activities in Queensland are typically spread over a very large area, and a larger project can comprise of activities across hundreds (potentially thousands) of land parcels.
- The Bill's trigger for recording residual risk on land title is the existence of a risk management plan against the environmental authority that covered the land title.
- The methodology proposed by government to calculate residual risk is cumulative; therefore fill risks (no matter how small) are cumulatively added across all tenures covered by the environmental authority.
- Because of the cumulative methodology, a risk management plan is likely to be required for most gas projects.
- The residual risk on any given property within the project area will be much smaller than the cumulative total, but the Bill would see all properties impacted simply because they were part of a larger project.
- Therefore, properties in a project area that have only seen minimal activities, or no activities at all, would nevertheless have it noted on title that a 'risk' exists, and all properties within a project area would be captured if there was just one significant residual risk area within the environmental authority.[81]

APPEA noted the department already maintains two registers to record environmental risk on land; the Contaminated Land Register (CLR) and the Environmental Management Register (EMR). These registers record significant risks but neither involves the addition of risk to land title. APPEA proposed that these existing registers be used.[82]

In response, the department clarified:

> *… where there is a post-surrender management report but no risk management plan, the framework is similar to the existing framework for the EMR. Where there is a post-surrender management report and a risk management plan, the framework will operate similarly to the existing framework for the CLR. Both frameworks have been designed on a risk basis, so that land with higher levels of environmental risk have additional requirements relating to notation on title.*[83]

Additionally, APPEA recommended that:

- Where residual risk is recorded, it only be recorded on the specific lot/plan at the location of the specific risk in question.
- Residual risk only be recorded where there are credible risks.
- Should the government nevertheless proceed with its proposal, an appropriate threshold be developed below which residual risk would not be recorded against title.[84]

In response to requests that residual risk be recorded on the specific lot/plan at the location of the specific risk, the department stated:

> *The department would like to clarify that it is intended that notation of residual risks on the land title will occur at a Lot on Plan scale, not on a resource tenure or environmental authority scale.*

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80 Department of Environment and Science, correspondence dated 16 July 2020, p 3.

81 Submission 4, p 1.

82 Submission 4, p 2.

83 Department of Environment and Science, correspondence dated 16 July 2020, p 3.

84 Submission 4, p 2.

This would mean that landholders located within the resource tenure that do not have residual risk management requirements on their land would not have a residual risk noted on their land title. The department is seeking further advice to ensure that the drafting in the Bill achieves this intent.[85]

Recommendation 3

The committee recommends that in the second reading speech the Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts clarify that the notation of residual risks on the land title will occur at a Lot on Plan scale, not on a resource tenure or environmental authority scale.

Origin Energy argued that requirements to record residual risk management plans on land titles has the potential to impact the industry and agricultural landholders resulting in significant financial losses. In particular, Origin Energy stated:

These proposed requirements will impact gas companies' ability to access land and negotiate Conduct and Compensation Agreements (CCAs). CCAs would have to include provisions for additional potential impacts to property values and decreased future sale prices, creating division between companies and landholders, prolonging negotiation timeframes and ability to access land…

There will also be long-term financial and social impacts associated with these proposed requirements, with an increase in landholders expecting to be bought out of their property instead of compensation which contradicts the State's desire for co-existence. It is also not desirable for [joint venture] partners to own large landholdings.[86]

In response to the concerns raised by Origin Energy, the department stated:

Under the land access framework, relevant resource authority holders are already required to compensate for any diminution of the land value (section 81(4)(a)(ii), Mineral and Energy Resources (Common Provisions) Act 2014). *The amendments for residual risk do not in any way alter or change the way compensation is considered for impacts from resource activities. Any compensable effects relating to the residual risks of former resource activities are already required to be addressed in CCAs. The Bill does not alter what can be left on land during a surrender of an environmental authority for a resource activity.*[87]

AgForce did not support the proposed requirement for residual risks to be noted against the relevant land title and highlighted the following:

- The likelihood of inequitable recording of residual risk on title will be high when there are disproportionate risks to adjoining or neighbouring titles.
- On many titles the mining impact may be of a shorter temporal nature, therefore possibly requiring wording to be added and then retracted at a later date upon surrender.
- The preference to keep the property title simple and include attributes such as residual risk within a register that can be associated with land parcels.
- Situations where the title search completed by conveyancing solicitors has not identified uses such as mining leases.[88]

85 Department of Environment and Science, correspondence dated 16 July 2020, p 4.

86 Submission 14, p 2.

87 Department of Environment and Science, correspondence dated 10 July 2020, p 45.

88 Submission 8, pp 4-5.

Dr Greg Leach, AgForce, stated:

> *Things are recorded on title that are not representative of what the longer term future of that title is. We are trying to maintain the titling system as a discrete, pure aspect of describing the land title without diluting it with a whole lot of temporal and quite subjective assessments of what is going on here in terms of rehabilitation, risks that are happening on the title and other aspects that are very difficult to assess as to what the objective reality is on that title at any particular point in time.*[89]

In response to these matters, the department provided the following response on each point raised by AgForce:

- The noting on title will direct the potential purchaser to the information the State holds, such as the post-surrender management report. This report will contain information on the residual risks on each part of the land, which they can use to inform their purchasing decisions.
- The notation on title for residual risks does not occur until surrender.
- Residual risk notation will remain on title in perpetuity, or until the department can be satisfied that the risk no longer remains. The notation on title will be simple, consistent with general title notation through the titles registrar.
- A key aim of requiring residual risks to be noted on title is to ensure that purchasers of properties are aware of any management requirements that may exist due to residual risks from the former resource activity. The requirement to note residual risks on title will make sure that … where residual risks require management, the future purchaser can become aware prior to purchasing the property.
- The post-surrender management report will also be recorded in a departmental register, available for public viewing.[90]

The department clarified:

> *The risk management plan is not attached to the title, rather it is a note that directs a person to a plan held on a public register. The notation on title is to identify that there is a post surrender management report for the land that includes a risk management plan, and to state where the plan may be inspected.*[91]

2.3.3 Residual risks fund

The Bill amends the MERFP Act to establish a residual risks fund. The EP Act allows for the collection of residual risk payments; however, currently there is no formal process to manage the funds received. The Bill will transfer all residual risk payments into a pooled scheme fund to be managed by the same entity that manages the Scheme[92] within the QT portfolio.

The Bill allows the administering authority to require a residual risk payment to be made to another entity that performs functions under the EP Act, such as the Scheme manager under the MERFP Act.[93] The explanatory notes state:

> *Given that the scheme manager will be responsible for managing the residual risk payments in a scheme fund, it is also practical that the scheme manager be able to receive the payments directly to avoid double handling of the payments.*[94]

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89 Public hearing transcript, Brisbane, 13 July 2020, p 5.

90 Department of Environment and Science, correspondence dated 10 July 2020, p 44.

91 Department of Environment and Science, correspondence dated 16 July 2020, p 3.

92 Hon Leeanne Enoch MP, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts, Record of Proceedings, 18 June 2020, p 1391; also see cls 101–117 of the Bill.

93 Environmental Protection and Other Legislation Amendment Bill 2020, cl 58.

94 Explanatory notes, p 29.

Amendments made by the Bill will provide that the scheme manager has the same functions in relation to the Scheme fund and the residual risks fund.[95]

The Bill allows that the fund can be accessed by the chief executive (resources), by asking the scheme manager for a payment from the residual risks fund to cover costs and expenses associated with managing residual risks.[96] Some submitters argued that in some cases, the landowner may be the most appropriate person to undertake residual risk activities on a former site of resource activity and therefore, should be able to access the fund. The Property Council of Australia argued:

> *The Bill should allow the discretion of the scheme manager or chief executive to permit payments to be made from the fund to landowners, to allow them to undertake residual risk activities.*[97]

In response the department noted:

> *The department agrees that in some cases the landowner may be the most appropriate person to undertake the activities. The legislation does not limit who can participate in the management of post-surrender activities. The department agrees that whoever undertakes the activities should be paid for doing so.*[98]

Residual risk payments will no longer be collected at progressive certification. Clause 58 also clarifies that residual risk payments are not only for rehabilitated areas but are also intended to capture non-use management areas.[99]

The Bill makes amendments to clarify the amount and form of residual risk payment.[100] The explanatory notes state that the Bill will:

> *… replace the term 'likely rehabilitation costs' with 'likely management costs' to better reflect the original intent of the provisions. The intent was that the residual risk payment was to reflect the total likely costs and expenses associated with ongoing environmental management and remedial action (which includes rehabilitation and restoration). Section 272 describes actions taken to protect the environment as including the maintenance of environmental management processes. The term 'likely management costs' better reflects the various components of the payment.*
>
> *Ongoing management and remedial actions apply to both rehabilitated areas and non-use management areas. Ongoing management can include:*
>
> - *monitoring and maintaining the condition of the land (for example, monitoring stability of the land and fitness of the land for its intended use);*
> - *monitoring and maintaining structures on, or features of, the land (for example, taking remedial or replacement action to ensure equipment performs its intended purpose); and*
> - *monitoring the quality of emissions such as water releases.*[101]

95 Explanatory notes, p 52.

96 Cl 114, s 76B.

97 Submission 7, p 2.

98 Department of Environment and Science, correspondence dated 10 July 2020, p 48.

99 Explanatory notes, p 29.

100 Environmental Protection and Other Legislation Amendment Bill, cl 59.

101 Explanatory notes, pp 29-30.

Submitters were supportive of amendments to establish a residual risks fund.[102] Dr Leach, AgForce, noted:

> *The longer term challenges of having financial assurance and some sort of mechanisms in place to deal with residual risk much later down the track are critically important.*[103]

QRC raised technical aspects for consideration, some of which are discussed below.[104]

2.3.4 Credible risk events

Mr Macfarlane, QRC, noted that the Bill does not explicitly distinguish between any and all residual risks and the term 'credible residual risks'.[105] QRC noted that:

> *Under Subsection (4), the Bill defines 'likely management costs' as "in relation to land the subject of a surrender application, means **all** likely costs and expenses that may be incurred in carrying out remedial action or ongoing management activities in relation to the land because of **residual risks** of the land".*
>
> *This does not align with the Explanatory Notes, which states "The estimated costs and expenses will be the sum of costs and expenses associated with undertaking ongoing management activities and remediation activities required due to **credible risk events**".*[106] [emphasis in original submission]

QRC recommended that 'credible residual risks' be specified in the legislation with respect to the 'likely management cost' to appropriately contextualise the materiality of the risks considered with respect to payment.[107] Mr Macfarlane stated:

> *QRC strongly recommends that the bill be amended to define the term 'credible residual risks' as do the explanatory notes and for this term to be specifically referenced with respect to the assessment of residual risk calculation of associated payment and whether or not a risk management plan is required.*[108]

In response to this concern, Mr Robson, DES, noted:

> *Some submissions have requested that certain technical terms be included in the legislation. With regards to the term 'credible risk events' this term is solely related to the mechanics of the residual risk assessment. Description of technical terms and specific processes such as this are not considered appropriate for the legislation as the matters are highly complex, lengthy and detailed in nature and therefore more suited to inclusion in a guideline. This is consistent with good drafting principles. The risk assessment undertaken by the environmental authority holder will assess whether the site, the subject of surrender, has features that may cause credible risk events.*[109]

Recommendation 4

The committee recommends that in the second reading speech the Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts clarify that the term 'credible residual risks' will be included and described in the residual risk assessment guideline.

102 Submissions 1, 3, 8, 11, 12.

103 Public hearing transcript, Brisbane, 13 July 2020, p 3.

104 Submission 5.

105 Public hearing transcript, Brisbane, 13 July 2020, p 18.

106 Submission 5, p 17.

107 Submission 5, p 17.

108 Public hearing transcript, Brisbane, 13 July 2020, p 18.

109 Public hearing transcript, Brisbane, 13 July 2020, p 23.

2.3.5 Calculating residual risk payment

Submitters expressed concern that the scope of the residual risks to be considered relies on the residual risk assessment guideline, which is yet to be developed.[110] It was argued that without definition, industry cannot cost the residual risk payment.[111] Ms Frances Hayter, QRC, noted:

> *There is a substantial calculator under development relative to the residual risk payment which is slightly separate, but it is about cost to industry… It is significantly advanced, but companies have not been given the full opportunity to test that yet. Without that threshold … it is still not clear how much of that calculated amount would be paid. Again, this has been left to the guidelines. It should be an instrument that we have seen and has been tested prior to a piece of legislation being passed. That is the point of a residual risk payment: you know what you are paying.*[112]

In response to concerns about the timeliness of the development of the guidelines and calculator, Mr Robson from DES highlighted the anticipated complexity of determining residual risks and residual risk payment and the need to adopt an individually considered approach:

> *In terms of the operation of the calculator, we are developing up a guideline that will govern the use of that calculator by both the proponent and the department. Also for large and complex sites there is the ability to establish an expert panel to assess those sites. It is a stepwise process starting with the provisions that are in the bill to ensure that there is a requirement to assess what residual risks are left on-site. There is no judgement made at that stage, you have got to go and assess any potential risk, the proponent, and then you use that calculator or an expert panel process to put more definition around what is actually required.*[113]

2.3.6 Progressive certification

The Bill removes the power for the administering authority to collect a residual risk payment at progressive certification. The explanatory notes state that:

> *Residual risk will no longer be considered at progressive certification as the responsibility for the site remains with the environmental authority holder. Therefore, the State does not need to collect a payment at progressive certification for residual risk as it does not have responsibility for managing the resource site until the area is surrendered…*
>
> *The residual risk framework will still apply to areas that have been progressively certified, however, the calculation and payment of residual risks will only occur at surrender of the environmental authority.*[114]

APPEA stated that the Bill's proposal to remove the power for the administering authority to collect a residual risk payment at progressive certification will see the gas proponent connected to the rehabilitated land until eventual surrender of the environmental authority which in many cases will not occur for decades.[115] Ms Leanne Bowie, QRC, outlined this concern for industry:

> *That is primarily about the distinction between mining and petroleum in terms of how they go about progressive rehabilitation and surrender. You can have surrender of any part of a mining lease. With petroleum, the system is set up on a grid system with blocks and sub blocks, so there are obstacles to surrender just, say, a corner that has already been rehabilitated that happens to be somebody's title. They have been dealing with that in the past through progressive*

110 Ms Leanne Bowie, Queensland Resources Council, public hearing transcript, Brisbane, 13 July 2020, p 19.

111 Mr Ian Macfarlane, Queensland Resources Council, public hearing transcript, Brisbane, 13 July 2020, p 19.

112 Public hearing transcript, Brisbane, 13 July 2020, p 19.

113 Public briefing transcript, Brisbane, 1 July 2020, p 5.

114 Explanatory notes, p 36.

115 Submission 4, p 3.

rehabilitation. They wanted to keep the certification process similar, but they wanted to no longer have responsibility for ongoing maintenance following progressive rehabilitation certification.[116]

Both APPEA and the Association of Mining and Exploration Companies argued the need to retain the residual risk payment at progressive rehabilitation certification so that liability for the ongoing rehabilitated land is transferred back to government once all the regulatory checks are met, rather than wait decades. Mr Paull, APPEA, told the committee:

By any reasonable measure if you have got a well pad that is now being farmed it has been rehabilitated. Government does not officially recognise that. I am yet to find a good policy reason why. If you consider an open-cut mine it maybe makes a bit more sense because you have got a mine that is closely matched by the environmental authority. Most of the environmental authority is taken up by the mine. That is not the case for petroleum. We might be done on one farm, we might be completely finished on one farm, everything is rehabilitated but we cannot sever the link to that farm until the entire environmental authority is surrendered and so we are left with the situation where we are linked to the farm for many decades after we have actually finished the activities.[117]

In response to concerns that the landholder's preferred use of land may be different to that required by an environmental authority and achieved at progressive certification, the department noted that it is currently working with stakeholders on options within the current legislative framework for landholders to use land and resource industry assets prior to surrender of the environmental authority.[118]

The department stated that:

The Queensland Government is removing the ability to take a residual risk payment at progressive certification because after this process, the environmental authority holder retains the environmental authority and tenure and all the rights and obligations associated with this. The holder is required to abide by these until the EA is surrendered.

EA holders have been able to apply for progressive certification of their rehabilitation since it was introduced into the EP Act in 2005.

The progressive certification provisions require that rehabilitation meets the final criteria in the environmental authority, and the land is in a condition that could be surrendered. Where rehabilitation has been undertaken but resource activities continue to occur (for example where active pipelines remain in use under a field), the area would not meet the requirements for progressive certification.[119]

The department confirmed that this approach will ensure that the existing residual risk framework applies to all resource industries:

… because residual risks are present at the surrender of all resource operations, including petroleum and gas operations. Some submissions commented that the legislation does not acknowledge that petroleum and gas operations differ from mining operations. However, the residual risk provisions do not apply to operations but apply at surrender after operations have ceased. The legislation therefore provides consistent treatment of landholders regardless of whether their land has been impacted by mining or petroleum and gas activities.[120]

116 Public hearing transcript, Brisbane, 13 July 2020, p 5.

117 Public hearing transcript, Brisbane, 13 July 2020, p 14.

118 Department of Environment and Science, correspondence dated 16 July 2020, p 1.

119 Department of Environment and Science, correspondence dated 10 July 2020, p 39.

120 Mr Geoff Robson, Department of Environment and Science, public hearing transcript, Brisbane, 13 July 2020, p 24.

2.3.7 Committee comment

The committee notes that resource industry stakeholders seek clarification on some technical matters relating to the residual risk framework that will result from amendments in this Bill. However, the committee is satisfied with the department responses to these matters and that the department will continue to work with industry to resolve any issues. The committee notes that some matters raised were outside the scope of this Bill, but the department has confirmed that:

> *Whilst in the process of doing as much as possible to facilitate these arrangements under the existing legislative framework, we are of course engaging with industry to understand those details about whether there might be other barriers. We will continue that discussion with industry. As I say, it is outside the scope of this bill, but the government will respond to those matters in due course.*[121]

The committee acknowledges that some stakeholders sought to differentiate the process based upon the type of resource industry; however, the intent of the Bill is to develop a consistent approach and to ensure adequate support for rehabilitation, regardless of the type of resource activity on the land.

The committee strongly supports measures aimed at better management of risks on sites after an environmental authority for a resource activity has been surrendered and efforts to ensure that Queensland taxpayers are not required to cover any future costs associated with the ongoing management or remediation of the site following surrender. The committee notes the comments by Mr Humphries from Lock the Gate Alliance that:

> *The reforms are quite complex and broad sweeping. I think it is fair to say that it has propelled Queensland into a leadership position in terms of Australian jurisdictions in terms of managing mine rehabilitation.*[122]

2.4 Requirements for an environmental authority for cropping and horticulture activities

The Bill includes amendments to the EP Act to remove unnecessary provisions, address omissions and clarify and improve processes and regulatory tools.[123] Mr Robson, DES, stated:

> *None of these amendments will impose any significant additional requirements on stakeholders but are instead proposed to ensure that the intent of existing provisions are achieved. In that sense, all the provisions relate to existing intent and policy—not new areas of policy.*[124]

The explanatory notes state that the Bill will align application requirements for an environmental authority for cropping and horticulture activities with matters to be considered when making a decision to grant the environmental authority.

Clause 12 limits the matters that need to be addressed in variation or site-specific applications for an environmental authority for new cropping and horticulture activities in the Great Barrier Reef catchment to include only the matters related to the release of fine sediment, or dissolved inorganic nitrogen, into the waters of the Great Barrier Reef catchment or waters of the Great Barrier Reef.

In relation to requirements for an environmental authority for cropping and horticulture activities under new s 125(5), the Minister noted that the Bill clarifies:

> *… existing provisions for the improved implementation of the Great Barrier Reef protection regulations. In particular, these amendments put beyond doubt that the application*

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121 Mr Geoff Robson, Department of Environment and Science, public hearing transcript, Brisbane, 13 July 2020, p 28.

122 Public hearing transcript, Brisbane, 13 July 2020, p 6.

123 Explanatory notes, p 1.

124 Public briefing transcript, Brisbane, 1 July 2020, p 2.

requirements for new commercial cropping and horticulture activities in reef catchments are limited to reef water quality matters.[125]

The amendments clarify and streamline information requirements around the existing Great Barrier Reef protection measures that were introduced by the Environmental Protection Regulation 2019. Mr Robson, DES, confirmed:

We wanted to ensure that in the application process, which was established under separate legislation, the application requirements for those new environmentally relevant activities are limited to the impacts of sediment and nutrients on reef water quality. In other words, you do not have to go through the full list of information requirements that might be required to get an environmental authority. It is quite limited in that regard. It is not placing new obligations—if anything, it is clarifying the extent of the obligation to ensure that someone applying for such an environmental authority does not have to address unnecessary information requirements. There is also another clarification on the offence provision. Again, just to clarify, it relates to particular provisions that were introduced last year.[126]

QFF noted its support for the extension of the amendment to new commercial cropping and agriculture in the Great Barrier Reef catchment.[127]

2.4.1 Committee comment

The committee notes that the Bill includes a range of amendments to the EP Act. The committee supports actions to remove unnecessary provisions, address omissions and technical errors, and clarify and improve regulatory processes and tools. However, as discussed in 1.4.3 of this report, the committee is of the view that stakeholders would appreciate the opportunity to be consulted on all amendments, regardless of any opinions that the amendments are solely to provide clarification and do not impose any additional regulatory burden, to avoid potential unintended consequences and support rigorous legislative development.

[125] Hon Leeanne Enoch MP, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts, Record of Proceedings, 18 June 2020, p 1391.

[126] Public briefing transcript, Brisbane, 1 July 2020, p 6.

[127] Submission 10, p 4.

3 Compliance with the *Legislative Standards Act 1992*

3.1 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
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 General rights and liberties – ordinary activities should not be unduly restricted

Summary of provisions

Clause 63 amends s 291 of the EP Act, requiring a current plan of operations in order to undertake petroleum activities under a petroleum lease.

Issue of fundamental legislative principle

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.

There may be environmental authority holders that are currently undertaking petroleum activities under a petroleum lease with a plan of operations for which the plan period (a plan of operations for a specified period of time) has currently ended. These existing holders will need to have a new plan of operations for a current plan period upon commencement. This affects their rights and liberties by requiring them to devote additional resources to create, lodge and administer a new plan.

In the present case, the explanatory notes identify individuals who may be environmental authority holders as the affected parties. It is not clear the extent to which environmental authority holders undertaking petroleum activities under a petroleum lease are in fact individuals rather than corporate entities. The explanatory notes offer this justification:

> *Any breach of this fundamental legislative principle is considered justified because the intention in requiring a plan of operations was to ensure the administering authority has information demonstrating how the operator intends to meet the conditions of its environmental authority. This intention can only be fully delivered if the plan of operations remains current for the duration of the operations.*[128]

Committee comment

Given the overall objective of the Bill, the committee is satisfied that any breach of fundamental legislative principle is justified.

3.1.1.2 Right to privacy regarding personal information – information sharing and disclosure

Summary of provisions

Clause 114 inserts new s 76E of the MERFP Act. Section 76E(3) allows the scheme manager to request, from specified chief executives, information relevant to an actuary report for the residual risks fund.

[128] Explanatory notes, p 6.

Under new paragraph 76E(3)(b), the chief executives are required to provide the requested information to the scheme manager.

Issue of fundamental legislative principle

These provisions raise the issue of fundamental legislative principle relating to the rights and liberties of individuals. The request might require chief executives to disclose information that is confidential and of a private nature.

The right to privacy and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual. The explanatory notes offer the following justification:

> *Any impact on privacy is considered justifiable as the chief executives are likely to hold information necessary for determining the sustainability of the residual risks fund. Section 76E of the MERFP Act supports transparency in relation to the operation of the residual risks fund. Information given by a chief executive to the scheme manager under section 76E is subject to a duty of confidentiality and restrictions on use and disclosure (see sections 79-82 of the MERFP Act, as amended by this Bill). For these reasons, section 76E is considered to give sufficient regard to the rights and liberties of individuals.*[129]

Committee comment

The committee is satisfied that any breach of privacy is sufficiently justified.

3.1.1.3 Administrative power - Section 4(3)(a) Legislative Standards Act 1992

Summary of provisions

Clause 4 inserts new chapter 3, part 3, in the EP Act. Under s 73, a person can apply to the chief executive for a decision as to whether an environmental impact statement (EIS) is required in certain situations. Section 73C provides the chief executive must consider and make a decision on such an application. Section 143 of the EP Act is also amended to provide that this decision is subject to internal review but not subject to appeal under the EP Act.

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

> *Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*[130]

In relation to the lack of review rights, the explanatory notes state:

> *The review rights available for the decisions under section 73C are considered to be appropriate given the nature of the decisions and context in which they are made. It is in the interests of the community and the government that EIS processes are limited to appropriate projects (for example, to ensure resources and scrutiny are directed to the most significant projects). The administering authority and chief executive have significant technical knowledge on past, present and potential future projects and are in the best position to make a decision on the types under section 72 and 73C(1)(b) related to a process that is voluntary, and which is only raised if*

[129] Explanatory notes, p 6.

[130] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 18.

a person actively seeks to undertake a legislative EIS process. Given these matters, any limitation on review rights is not considered objectionable.[131]

The explanatory notes also explain that, although there is only an internal review available (and no appeal rights), the decision may still be subject to a review under the *Judicial Review Act 1991.*[132]

Committee comment

The committee is satisfied that, given the objectives of the Bill, the lack of merits-based review is justified.

3.1.1.4 *Delegation of administrative power - Section 4(3)(c)* Legislative Standards Act 1992

Summary of provisions

Clause 81 provides for the appointment of the Rehabilitation Commissioner. Under new s 444L of the EP Act, the Rehabilitation Commissioner may delegate certain functions to an appropriately qualified officer or employee. Powers of the Rehabilitation Commissioner that could be delegated include:

- consulting on, and raising awareness of, rehabilitation and management matters
- chairing workshops and forums about technical, scientific or engagement matters
- other functions given to the Commissioner under the EP Act.

The following functions cannot be delegated:

- providing advice to the Minister on rehabilitation and management practices and outcomes and advice on public interest evaluation processes and performance
- developing technical and evidence-based reports on complex aspects related to the rehabilitation of land or best practice management of non-use management areas
- providing guidance on the interpretation of advice or reports for the above mentioned matters (if asked by the chief executive and the Rehabilitation Commissioner considers it appropriate)
- monitoring, and providing reports to the Minister on, rehabilitation performance and trends.

Issue of fundamental legislative principle

Powers should be delegated only to appropriately qualified officers or employees.[133]

The appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.[134]

The OQPC Notebook notes that former committees have explained that a power being delegated is significant if the power is extensive, may affect the rights or legitimate expectations of others, or appears to require particular expertise or experience. If the power being delegated is significant, the category of delegate should be limited.[135]

131 Explanatory notes, p 7.

132 Explanatory notes, p 7.

133 The *Acts Interpretation Act 1954*: s 27A contains extensive provisions dealing with delegations.

134 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 33.

135 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook,* p 34.

The explanatory notes state:

> *… the delegated powers are not significant. They include powers such as chairing workshops and consulting on rehabilitation matters. Furthermore, they will only be delegated to an appropriately qualified person.*[136]

Committee comment

The committee notes that the delegation of functions is a common feature where powers are invested in a position. Given that the powers delegated here are limited and not significant, the committee is satisfied that any breach of fundamental legislative principle is justified.

3.1.1.5 Rights and liberties – Section 4(3)(g) Legislative Standards Act 1992

Summary of provisions

Clause 98 adds new transitional provisions to the EP Act. These have some retrospective effect.

Issue of fundamental legislative principle

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect the 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.[137]

The explanatory notes provide this background:

> *The EP Act has transitional provisions for the MERFP Act, which were intended to provide a consistent and equitable approach for all:*
>
> - *existing environmental authorities issued for a site-specific application relating to a mining lease; and*
> - *existing site-specific applications for an environmental authority relating to a mining lease made before 1 November 2019 and approved after commencement of the MERFP Act.*
>
> *There are limited circumstances where the existing transitional provisions do not achieve this intent. The Bill seeks to address this inconsistency.*[138]

The explanatory notes go on to justify the retrospective operation:

> *Retrospectivity is justified as it ensures that there are consistent transitional provisions for all relevant environmental authority holders. The amendments ensure that the intent of the MERFP Act, which was subject to extensive consultation, can be achieved.*[139]

Committee comment

The committee is satisfied that any retrospective operation is justified.

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136 Explanatory notes, p 7.

137 *Legislative Standards Act 1992*, s 4(3)(g).

138 Explanatory notes, p 8.

139 Explanatory notes, p 9.

3.2 Institution of Parliament

3.2.1 Delegation of legislative power

Section 4(4)(a) of the LSA requires that legislation has sufficient regard to the institution of Parliament.

3.2.1.1 *Delegation of legislative power - Section 4(4)(a)* Legislative Standards Act 1992

Summary of provisions

Clauses 55 and 76 propose provisions in the EP Act which allow for additional matters relating to the requirements for post-surrender management reports and the criteria for a decision on a progressive certification application to be prescribed by regulation.

Issue of fundamental legislative principle

A Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. Matters to be set out in regulation should appropriately belong in regulation rather than in an Act.

The explanatory notes justify this approach on the basis of a need for flexibility:

> *… The inclusion of these powers to prescribe additional matters in subordinate legislation is justified as flexibility is required to add and adjust matters if circumstances warrant a change. The key requirements for post-surrender management reports and major criteria for decisions on progressive certification are provided in the EP Act, but retaining the ability to prescribe additional matters by regulation will ensure the effective administration of the legislation.*[140]

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified.

3.2.1.2 Scrutiny of the Legislative Assembly – Section 4(4)(b) Legislative Standards Act 1992

Summary of provisions

Clause 53 inserts new s 262(1)(d)(ii) into the EP Act, requiring all resource environmental authority holders to provide a post-surrender management report with their surrender application. The report must comply with s 264A.

Clause 55 replaces s 264A of the EP Act, which sets out the requirements for a post-surrender management report. This provision requires that the post-surrender management report must include a risk assessment of the land that complies with a guideline.

Clause 59 replaces s 273(2) of the EP Act, requiring the administering authority to have regard to the residual risk guideline when deciding the amount and form of a residual risk payment. Also, cl 114 inserts a new s 76C(5) into the MERFP Act to require the scheme manager to consider any guideline made under s 76D when deciding whether to approve a payment from the residual risks fund.

Issue of fundamental legislative principle

The regulation introduces reliance on a number of guidelines that are not contained in the legislation and may not come to the attention of the Legislative Assembly.

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.[141]

[140] Explanatory notes, p 7.

[141] *Legislative Standards Act 1992,* s 4(5)(e).

The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

Where there is, incorporated into the legislative framework of the state, an extrinsic document that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the Legislative Assembly, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of parliament. A Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[142]

> *For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.*[143]

The explanatory notes justify this approach, based on a need for flexibility, and in light of the technical nature of the subject matter:

> *Due to the highly technical nature of risk assessments, it is not practical to include detailed guidance on how to undertake the risk assessment in legislation. The requirements for risk assessments are not easily translated into legislative form. The guideline will also provide flexibility to respond to changes in the industry that may arise following commencement of the new residual framework. Risk assessments will be informed by best practice standards, which are subject to regular review and change.*[144]

Committee comment

The committee is satisfied with the explanation provided by the department and concludes that this approach is justified.

3.3 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

142 *Legislative Standards Act 1992*, s 4(4)(b).

143 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 154.

144 Explanatory notes, p 8.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[145]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or

(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[146]

The HRA protects fundamental human rights drawn from international human rights law.[147] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility.

4.1 Human rights compatibility

The committee considered the following relevant clauses.

4.1.1 Placing of post-surrender management report in a register

Clause 60 amends s 275 of the EP Act to require the administering authority, within 10 business days after deciding to approve a surrender application (if a post-surrender management report exists), to:

- record the post-surrender management report on a public register
- give each owner or occupier of the land to which the report relates written notice of the existence of the report.

This gives rise to privacy issues as personal information about the environmental authority holder will be available to the public on the register.

4.1.2 Duty to notify for contaminated land

Clause 79 amends the EP Act to introduce a duty to notify in relation to any land (formerly only contaminated land). This gives rise to privacy issues as it may require a person to provide personal information relating to their personal affairs.

4.1.3 Actuarial information for residual risks funds

Clause 114 of the Bill inserts a new s 76E into the MERFP Act to require the scheme manager to investigate the actuarial sustainability of the residual risks fund within the prescribed period. New s 76E(3) allows the scheme manager to request information relevant to an actuary report for residual risk funds from specific chief executives.[148]

This does not appear to give rise to concerns about personal information. However, in the event that it may involve such information, the committee notes that the provision is designed to support the

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145 *Human Rights Act 2019*, s 39.

146 *Human Rights Act 2019*, s 8.

147 The human rights protected by the *Human Rights Act 2019* are set out in ss 15-37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; *Human Rights Act 2019*, s 12.

148 The chief executive administering the *Environmental Protection Act 1994* and the chief executive administering the resource legislation.

objective of transparency in the operation of the residual risks fund. As the explanatory notes state, the purpose of the actuary's report is to determine whether, in the actuary's opinion, the money in the residual risks fund is adequate to meet the State's costs to carry out residual risk activities.[149]

Therefore, it appears to be a necessary and proportionate mechanism to achieve that objective. Further, certain protections are built into the scheme to prevent unauthorised disclosure of information; that is, the information is subject to a duty of confidentiality and restrictions on use and disclosure (see ss 79-92 MERFP Act as amended by the Bill).

4.2 Human rights summary

Aspects of the Bill make some amendments which will enhance certain human rights to varying degrees. For instance, there are minor amendments which improve the procedural aspects of applications (which relate to due process and procedural fairness).[150] As the statement of compatibility notes, the Rehabilitation Commissioner may promote the cultural rights of Aboriginal peoples and Torres Strait Islander peoples as per s 28 of the HRA.[151] However, the latter issue flows from an existing provision (s 6 of the EP Act).[152] Therefore, it will not be the subject of detailed analysis in this advice.

The committee focused its analysis on the implications of cls 60 and 79 of the Bill which are the provisions which seek to limit a human right, namely the right to privacy.

4.2.1 Human rights issue – right to privacy

The right to privacy under s 25 of the HRA, states that:

A person has the right –

- not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with
- not to have the person's reputation unlawfully attacked.[153]

4.2.1.1 Nature of the human right

The right to privacy includes respect for informational privacy, that is, respect for private and confidential information. This is designed to particularly protect the storage, use and sharing of such information.[154]

It should be noted that privacy is highly contextual. Thus, whether an interference with privacy is permissible will depend on whether there is a reasonable expectation of privacy in the circumstances. For example, a person will have a greater expectation of privacy in relation to their home than in relation to their workplace. This is relevant because the information which is the subject of the

149 Explanatory notes, p 55.

150 See provision of a 'more administratively sound process for internal review applications' referred to in the explanatory notes, at p 4.

151 Statement of Compatibility, p 2.

152 *Environmental Protection Act 1994,* s 6 provides: 'This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally.'

153 This right is based on Article 17 of the International Covenant on Civil and Political Rights.

154 UN Human Rights Committee, General Comment No. 16: Article 17 (1988) [10] notes that 'Every person should be able to ascertain which public authorities or private individuals or bodies control or may control their files and, if such files contain incorrect personal data or have been processed contrary to legal provisions, every person should be able to request rectification or elimination'. See also, General Comment No. 34 (Freedom of opinion and expression) (2011), [18].

proposed amendments is personal information but is being disclosed as part of a public administrative decision-making process (and does not relate to sensitive personal data such as health information etc).

It should be noted that the United Nations Human Rights Committee which has indicated (in its General Comment on the Right to Privacy) that a law which authorises interference with privacy must be precise and circumscribed.[155] This is relevant to the proposed amendments which are, in the committee's view, sufficiently precise and circumscribed.

4.2.1.2 Nature of the purpose of the limitation

The proposed amendments seek to fulfil the purpose of improving transparency and accountability of environmental protection measures. These are matters which are reflected in the objects clause of the EP Act.

Clause 60 – public register

This allows for personal information to be placed on a public register. This gives effect to one of the objects of the EP Act, which is to ensure accountability of environmental strategies (s 4(2)(d)) by reporting publicly on the state of the environment (s 4(7)(c)).

The committee notes that the establishment of a register of this type is common in environmental legislation[156] and that the importance of transparency and public availability of information about mine rehabilitation has been highlighted in other jurisdictions, namely in reports at both the Commonwealth and State level.[157] For instance, the 2017 discussion paper *Improving Mine Rehabilitation in NSW* sets out draft policy principles for mine rehabilitation in New South Wales. Principle 5 notes that information on mine rehabilitation and associated activities must be made publicly available.[158]

Clause 79 – duty to notify

As per above, this serves an important accountability and transparency objective which enhances the ability of relevant authorities to address or prevent environmental harm. As the statement of compatibility notes, the purpose of the amendment is to expand the notification requirements to any land, not just contaminated land. This is important to allow environmental management actions to be undertaken before land becomes 'contaminated land'.

4.2.1.3 The relationship between the limitation and its purpose

Mining register

In relation to the public register, the purpose of the amendments are to ensure that there is public accountability for residual risks and that the public can access information about residual risks on any

155 Office of the High Commissioner for Human Rights, General Comment 16, 8 April 1988 [4].

156 See for instance, s 69 of the *Mineral Resources (Sustainable Development) Act 1990* (Victoria). Under this section, the Minister must establish and maintain a mining register for the information of the public. This register includes documents that are relevant to mining, exploration, prospecting and retention licences under the *Mineral Resources (Sustainable Development) Act 1990*. This can include the licence itself, approved work plans or work plan variations, and rehabilitation bonds.

157 See Senate Standing Committee on Environment and Communications, *Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities* (Commonwealth of Australia, 20 March 2019) https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/MiningandResources/Report.

158 NSW Government, *Improving Mine Rehabilitation in NSW*, Nov 2017, https://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/Mine-Rehabilitation-Discussion-Paper, p 11.

former resource site. As the explanatory notes observe, recording documents on a public register provides transparency around decisions and also serves the purpose of notifying current and future property owners about residual risks in relation to the land.[159] This is confirmed by the explanatory speech for the Bill:

> *To ensure transparency and accountability, documents produced by the Rehabilitation Commissioner will be publicly available. Additionally, an annual report will be tabled in this parliament that includes details on the commissioner's performance of its functions*.[160]

Committee comment

The committee agrees with the comments made in the statement of compatibility as to the scope of application of the amendments. That is, in most circumstances, environmental authority holders of resource activities are companies, not individuals, so it may only be in limited circumstances that the provisions relating to a post-surrender management report will limit an individual's right to privacy. Where an individual's rights are limited, the purpose of this limitation is consistent with a legitimate and reasonable purpose.

Duty to notify

The proposed amendments relating to the duty to notify in relation to land may require a person to provide information to the administering authority relating to their personal affairs. These appear to be related to achieving the purpose of the provisions. The justification for the administering authority requiring personal information (such as name and address) is in order to assess the degree of environmental risk associated with contamination or pollution events that are subject to the duty to notify. As the statement of compatibility notes, personal information will assist with matters such as contacting individuals for further information, identifying the affected land, and investigating any culpability for environmental harm.

4.2.1.4 Whether there are less restrictive and reasonably available ways to achieve the purpose

Mining register

It is possible that the register could be established so that it was not available to the general public but, rather, limited to use by other governmental agencies. However, that would not serve the transparency objective of the proposal.

The committee is satisfied that there are no less restrictive and reasonably available ways to achieve the purpose in this instance.

Duty to notify

The personal information in this context is required so as to assist authorities to contact individuals for further information and to undertake investigations. As such, there do not appear to be less restrictive and reasonably available ways to achieve the purpose.

4.2.1.5 The importance of the purpose of the limitation

The committee sets out this analysis above in previous sections (the recognised need for transparency and accountability in the context of mine rehabilitation).

However, in this context, it appears that mining rehabilitation has not been subject to sufficient transparency, accountability or oversight in the past. This issue has been addressed in detail in a

[159] Explanatory notes, p 30.

[160] Hon Leeanne Enoch MP, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts, Record of Proceedings, 18 June 2020, p 1389.

number of government reports in Australia, including a Commonwealth report from the Senate Standing Committee on Environment and Communications.[161]

The Senate Standing Committee on Environment and Communications report on *Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities* noted:

> *Several submitters and witnesses commented on the haphazard nature of many mine closures in Australia, and the lack of consistent information available about rehabilitation and closure statistics … [and] that information about the number of mines in each jurisdiction in Australia at each stage of mine life is incomplete and difficult to obtain.*
>
> *After attempting to collect comprehensive data on these issues from state and territory governments, the Australia Institute concluded:*
>
> > *[G]overnment agencies are not collecting or publishing adequate data on mine site rehabilitation. Seemingly simple questions are very difficult to answer. Most state government agencies do not publish simple data on how many mines are operating in their state. Information on how many mines have been abandoned, how many are being closed, how many have suspended operations is hard to obtain.*[162]

The Senate Standing Committee on Environment and Communication's report highlighted the need for greater transparency and accountability.

4.2.1.6 The importance of preserving the human right

As noted above, the right to privacy is clearly important (as noted above). However, it is a derogable right and can be limited where that is necessary and reasonable.

4.2.1.7 The balance between the importance of the purpose of the limitation and the importance of preserving the human right.

Mining register

The balance here is proportionate. The objective of introducing a statutory Rehabilitation Commissioner, as stated in explanatory notes, is to, amongst other things, 'facilitate better public reporting about rehabilitation in Queensland'.[163] Another objective is to 'enable evaluation of the rehabilitation reforms to enhance public confidence in rehabilitation in Queensland'.[164] The mining register represents a necessary part of that scheme and is a reasonable limitation of privacy for the purpose of ensuring transparency and accountability.

Duty to notify

These amendments facilitate the objectives of the EP Act and are justified given the problems with environmental harm identified in the explanatory notes and the record of proceedings. The committee notes that while personal information may be collected as part of the notification process, this information is directly related to a specified, limited purpose, which is linked to the conduct of investigations into environmental risks.

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161 Senate Standing Committees on Environment and Communications, *Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities*, Commonwealth of Australia, 20 March 2019, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/MiningandResources/Report

162 Senate Standing Committee on Environment and Communications, *Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities* (Commonwealth of Australia, 20 March 2019), https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/MiningandResources/Report, p 15.

163 Explanatory notes, p 2.

164 Explanatory notes, p 3.

Committee comment

The committee is satisfied that the Bill is generally compatible with human rights and that the human rights issues identified above are justified in the circumstances, having regard to s 13 of the HRA.

4.3 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Lock the Gate Alliance
002	Form A submission - 125 submissions (contact details provided); 65 submissions (contact details incomplete)
003	WWF-Australia
004	Australian Petroleum Production and Exploration Association Limited
005	Queensland Resources Council
006	Association of Mining and Exploration Companies
007	Property Council of Australia
008	AgForce Queensland Farmers Limited
009	Australia Pacific LNG Pty Limited
010	Queensland Farmers' Federation
011	Environmental Defenders Office
012	Cape York Land Council Aboriginal Corporation
013	Queensland Law Society
014	Origin Energy

Appendix B – Officials at public departmental briefing

Department of Environment and Science

- Mr Geoff Robson, Executive Director, Environment Policy and Planning
- Mr Lawrie Wade, Director, Environment Policy and Legislation

Appendix C – Witnesses at public hearing

AgForce Queensland Farmers Limited

- Dr Greg Leach, Senior Policy Advisor

Environmental Defenders Office

- Ms Revel Pointon, Special Counsel

Lock the Gate Alliance

- Mr Richard Humphries, Co-ordinator, Mine Rehabilitation Reform

Australian Petroleum Production & Exploration Association

- Mr Matthew Paull, Queensland Policy Director

Queensland Resources Council

- Mr Ian Macfarlane, Chief Executive
- Ms Chelsea Kavanagh, Assistant Policy Director – Environment
- Ms Frances Hayter, Policy Director – Environment
- Ms Leanne Bowie, Legal Adviser

Department of Environment and Science

- Mr Geoff Robson, Executive Director, Environmental Policy and Planning
- Mr Lawrie Wade, Director, Environmental Policy and Legislation
- Ms Scarlett Stephan, Principal Policy and Legislation Officer, Environmental Policy and Legislation

Ms Britney Mackenzie, Senior Policy Officer, Environmental Policy and Legislation

Statement of reservation

STATEMENT OF RESERVATION BY THE LNP MEMBERS OF THE COMMITTEE

ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2020

The Natural Resources, Agricultural Industry Development and Environment Committee's (committee) consideration of the Environmental Protection and Other Legislation Amendment Bill 2020 (the Bill) has revealed numerous failings with the legislation as drafted and considerable concerns that due process was not followed by the Palaszczuk Labor Government.

Lack of scrutiny and a rushed process

The LNP is concerned that the key underlying instruments of the legislation, such as the guidelines regarding the administration of the residual risk fund and the calculator for undertaking calculations on residual risk, are still unfinished and unpublished. The committee's consideration of this Bill has been hampered by the Palaszczuk Labor Government's inability to publish these key instruments for parliamentary, community and stakeholder scrutiny. As the below excerpt states, even though industry requested more time to consult on the Bill, the request was refused by Government with only six days provided for detailed consideration.

> **Mr WEIR:** The guidelines that would come under this legislation have not been finalised. That seems to be a bit of an odd situation to me.
>
> **Mr Macfarlane:** We did ask the government for more time to consult on this bill and that request was refused, so I think we had all of five days.
>
> **Ms Hayter:** Four originally. We argued and we got them up to six.
>
> **Mr Macfarlane:** Sorry, four originally and we got them up to six. For something that is going to have such a significant impact and has so many loose ends, for want of a better word, if not grey areas, then we would have thought that a longer consultation along the lines of what the government promised us, two months consultation on all legislation, would have at least been the minimum. Obviously, we were not afforded that and hence the grey areas around a significant part of this legislation.[165]

Whether the decision was made to avoid parliamentary scrutiny or as a stopgap measure to hastily introduce this Bill, the delegation of significant legislative functions to non-legislative instruments goes against the Parliament's fundamental legislative principles. As the Queensland Law Society's (QLS) submission to this Bill states, the increasing trend of delegating legislative functions outside of the Parliament's scrutiny is a concern.[166]

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165 Public hearing transcript, Brisbane, 13 July 2020, p 19.

166 Submission 13.

It appears that the Palaszczuk Labor Government has little regard for due process or parliamentary scrutiny. Even though the Office of the Queensland Parliamentary Counsel's Notebook clearly states:

> *For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation*.[167]

At a time when there are a record number of Queenslanders unemployed, with over 200,000 Queensland residents looking for work, the Palaszczuk Labor Government continues to create more regulatory uncertainty risking investment and jobs. As the below excerpt illustrates, while industry is willing to engage with the Government to resolve issues, the Department of Environment and Science (department/DES) is blocked from doing so by a Government that is happy to risk Queensland jobs and investment just to rush legislation through before this Parliament ends.

> **Mr Macfarlane:** The point here is that with consultation the industry is more than willing to resolve these outstanding issues in line with the government's expectation. From those within the department we hear that they do not want there to be a residual risk on the company once the land is surrendered; that is their intention. But they have not quite got their head around how that will happen and need to consult with it. We are fully on board with that, but again it highlights the fact of (a) a lack of consultation and (b) a rush to get this legislation through before all the finer details of the legislative framework are finalised. What that does to a potential investor is say, 'Well, Queensland is just getting too hard. There are too many uncertainties; we will invest somewhere else' at a time when we want every job we can get.[168]

The Queensland Resources Council (QRC) informed the committee that the changes in the Bill were significant and the Government had not undertaken a Regulatory Impact Analysis and did not consider that a Regulatory Impact Statement was necessary:

> *…the Bill also includes several substantive amendments to the* Environmental Protection Act 1994 *(EP Act), such as (but not limited to) amendments to the Environmental Impact Statement (EIS), Progressive Rehabilitation and Closure Plan (PRCP) and de-amalgamation processes.*
>
> *The proposed changes are significant and will materially impact the way in which the resources sector operates. Despite this, the Government failed to undertake adequate consultation on the Bill even though QRC sought to work proactively with DES and any other relevant Government departments in an iterative way to address the outstanding concerns in a timely manner ahead of introduction.*
>
> *Government also did not undertake a best practice Regulatory Impact Analysis (or Regulatory Impact Statement) to identify and assess the impact of the Bill (financially or otherwise). In disregarding this process, Government has failed to recognise how the Bill, in particular amendments to the residual risk framework, will impact on land value and compensation requirements. QRC advocates for a greater adherence to the Regulatory Impact Analysis*

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167 OQPC Notebook, p 154.

168 Public hearing transcript, Brisbane, 13 July 2020, pp 21-22.

process. Where a Regulatory Impact Statement is not deemed necessary, the justification for this should be transparent and extraordinary in nature.[169]

Concerns regarding the establishment of a Rehabilitation Commissioner

The QRC questioned the need for a Rehabilitation Commissioner and expressed their concerns that the role would cause duplication and require additional resourcing and expenditure:

QRC is of the view that a Rehabilitation Commissioner is unwarranted. Given the Commissioner is to draw upon already existing Government staff for support and to provide technical advice, much of which is anticipated to be sourced from within DES, QRC questions the add value of the role beyond the existing function and capabilities of the Department (or other agency). The additional resourcing and expenditure required to implement the role of Rehabilitation Commissioner and the associated office is to cost the State an initial $8 million over six years (through to 2024-25). This is a significant financial commitment in the current environment, particularly when Government already has the capability to largely deliver the intent of the Commissioner.[170]

The QLS raised concerns that the role of the Rehabilitation Commissioner may ultimately duplicate the functions of the regulator, leading to poor regulatory outcomes:

… it is concerned that the role of the Commissioner may ultimately duplicate the functions of the regulator (the Department of Environment and Science or DES). As has been seen with the establishment of other industry-specific commission roles, duplication of responsibility can lead to poor regulatory outcomes, as well as stakeholder confusion and erosion of public will. QLS considers that protections should be put in place to ensure high-level coordination between the Commissioner and DES, including strict delineation of responsibilities and allocation of resources to ensure appropriate system interoperability.[171]

Given AgForce's considerable interaction with the GasFields Commission Queensland, AgForce raised concerns about the capacities of a Rehabilitation Commissioner to fulfil the desired functions outlined in the EPOLA Bill and how they will work collaboratively with the community (including Traditional Owners), industry, environmental and scientific groups, and the Government.[172]

Concerns regarding the lack of legislative certainty

The Bill makes reference to the residual risk assessment guideline with respect to the risk assessment for a post-surrender management plan and also for deciding the amount of payment for residual risks. However, several submitters raised concerns that the contents to be included in the residual risk assessment guideline are unclear. For example:

QRC recommends that the Bill should provide some guidance about the minimum matters that the residual risk assessment guideline is required to cover, not just its title and who will publish it.

Instead the Bill relies on the 'Residual Risk Assessment Guideline' that has not yet been made available and could be subject to amendments at any time in the future without the oversight of Parliament or any guarantee of transparent public consultation. In the absence of the

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169 Submission 5, p 1. NB: In-text reference has been removed. Refer to original source for details.

170 Submission 5, p 21.

171 Submission 13, p 2.

172 Submission 8, p 3.

Guideline, the Bill standalone could capture any and all residual risks, which could result in significant unintended consequences. QRC emphasises the ongoing difficulties for the resources sector in being able to evaluate the true impact of proposed legislation when the underpinning detail is not available.[173]

Concerns regarding the lack of legislative enforcement

Like many Queenslanders, the LNP is concerned about the Palaszczuk Labor Government's ability to address key mining rehabilitation failures and the environmental risks posed by abandoned mines. Whether its cash refunds of environmental rehabilitation bonds to a mining company chaired by a Labor party stalwart or standing by as toxic mine water is washed downstream, the Palaszczuk Labor Government's track record in mine rehabilitation is substandard and unacceptable.

As the below excerpt from the committee's public hearing highlights, there are serious questions as to whether this Bill will have the regulatory power to implement real change for those landholders who are directly impacted by poorly rehabilitated resource projects.

Mr MADDEN: We are talking hundreds. My second question relates to the first recommendation in Mr Guerin's submission. He makes three recommendations. It is just the first one that I wanted to ask you about. I will read it out—

The Rehabilitation Commission be given discrete regulatory powers to instruct DES and DNRME to enforce rehabilitation compliance requirements.

Could you expand on that as to the need for that recommendation?

Dr Leach: This is a perfect question. The workshop that we ran in Emerald is a good example of where the department was quite happy to provide a large presentation of what are the regulatory requirements here. It was discrete, well presented and quite complex, granted, but it was quite an encompassing view. This is all protected—landholders and their property management is protected. However, the evidence on the ground is diametrically opposed to that. That is why this first recommendation is there. Where are the teeth in this enforcement capacity? It is there in the legislation but is it being enforced? Well, no. That is simply why we are saying, if a commissioner has some recourse to say, 'Our inquiries have found this,' we would need to hold to account DES and DNRME to say, 'Why haven't you done this?'[174]

Concerns regarding inaccurate information provided by the Department of Environment and Science

The non-government members of this committee hold concerns in regard to the reliability of the evidence given by DES, as a result of the inaccurate response to submitters' concerns about the absence of a RIS for this Bill. The department advised the committee in the departmental response to submissions that:

The department followed the Regulatory Impact Assessment requirements specified under the Queensland Government Guide to Better Regulation*. Under the principles in this guideline, none of the amendments in the Bill required a Regulatory Impact Statement. Where required under the guideline, the department sought advice from the Office of Best Practice Regulation by*

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[173] Submission 5, p 2.

[174] Public hearing transcript, Brisbane, 13 July 2020, p 4.

submitting exclusions and preliminary impact assessments. This is outlined in the Explanatory Notes for the Bill.[175]

The committee could not find the information on the RIS process in the explanatory notes as advised by the department.

In this instance, the department's evidence to the committee was not misspoken advice at a public hearing; this was in a considered written response to concerns raised in submissions. This is a very concerning error by the department.

The forthcoming election in October will be a referendum on who has an economic plan to move Queensland out of recession. The Bill is symptomatic of the Palaszczuk Labor Government's failure to manage the economy or protect the environment over the past five years. An LNP government will implement our economic plan for a decade of secure jobs, to get Queensland working again and pull Queensland out of the recession by stimulating the economy.

Pat Weir MP
Member for Condamine
Deputy Chair NRAIDE

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

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175 Department of Environment and Science, correspondence dated 16 July 2020, p 5.